FILED
JUN 24 1977
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HELEN LOUISE MARTS and LESTER HARVEY MARTS

Upon the Petition of	)	
HELEN LOUISE MARTS,	)	Filed June 24, 1977
Appellee,	)	
And Concerning	)	150 / 2-58544
LESTER HARVEY MARTS,	)	
Appellant.	)	

Appeal from Wapello District Court - Michael Enich, Judge.

Appeal from economic provisions of marriage dissolution decree. Modified, affirmed and remanded.

Kenneth L. Keith, Dull, Keith & Beaver, of Ottumwa, for appellant.

W. T. Barnes, Barnes, Schlegel & Walter, of Ottumwa, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

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PER CURIAM

Respondent Lester Harvey Marts appeals from the marital property division ordered in a decree which dissolved his 50 year marriage with petitioner, Helen Louise Marts.

To resolve the issues as trier de novo on appeal we examine the whole record and, while we give weight to the findings of trial court, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974). Criteria for determining equitable division of marital assets is set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), modified in In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972).

The marital assets in issue were accumulated over many years of marriage, largely through the effort of both parties. It is unfortunate, indeed, that they were unable to effectuate their own division rather than engaging in this prolonged and costly litigation. Trial court resolved their conflict by ordering the public sale of their real estate and personal property not specifically awarded to one of the parties with an equal division between them of the sale proceeds.

We conclude, however, that in this case several factors militate against this method of property division when considered in the light of the parties' fixed income. First, both stand to lose by the forced sale of their marital assets, by reason of being under compulsion to sell and because of the likelihood of capital gains tax consequences. Further, trial court's method fails to provide alternatives that may avoid the sale of the farm which has been owned within the Marts family for over 100 years, a sentimental yet acceptable consideration. *See* Lessinger v. Lessinger, 261 Iowa 1076, 1081, 156 N.W.2d 845 (1968). Other factors include the expenses connected with the sale of the Ottumwa home and the family farm, the termination of farm rental income which represents more than half of respondent's annual income,

and the loss of the prospect of further appreciation in land values.

Having weighed the facts peculiar to this case and applying *Schantz* criteria, we find trial court's decree should be modified in the following respects:

1. Petitioner shall be awarded as her sole property the residence located at 143 North Davis, Ottumwa, Iowa, and respondent shall execute and deliver instruments necessary to convey sole ownership to petitioner.

2. Respondent shall be awarded as his sole property the 180 acre farm in Wapello County, Iowa, and petitioner shall execute and deliver instruments necessary to convey sole ownerhip to respondent.

3. Respondent shall be awarded all personal property related to this farm and its operation or maintenance including machinery, tools, fencing, and other miscellaneous items.

4. Petitioner shall be awarded the sum of $18,500 which will be due and payable by respondent 180 days after trial court's decree is entered pursuant to modifications ordered by this opinion. This sum shall be secured by a lien in petitioner's favor on said 180 acre farm and special execution shall issue for sale thereof to satisfy any amount unpaid after it becomes due and payable.

Except as modified by this opinion, trial court's decree is affirmed including real and personal property valuations found by trial court.

This case hereby is remanded with directions to enter a decree in accordance with this opinion.

Costs on appeal are taxed equally to the parties.