



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HERMAN J. KURTZ AND BARBARA E. KURTZ

Upon the Petition of	)	
HERMAN J. KURTZ,	)	
Petitioner/Appellant/ Cross-Appellee,	)	Filed August 30, 1983
	)	
And Concerning	)	
BARBARA E. KURTZ,	)	<u>3-36</u>
	)	2-68090
Respondent/Appellee/ Cross-Appellant.	)	

Appeal from Jefferson District Court - Phillip R. Collett, Judge.

Petitioner husband appeals and respondent wife cross-appeals from the decree dissolving the parties' marriage. **AFFIRMED IN PART AND MODIFIED IN PART.**

Bailey C. Webber of Webber, Gaumer & Emanuel, Ottumwa, for petitioner-appellant.

William C. Ball of Ball, Kirk & Holm, Waterloo, and David P. Miller, Libertyville, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

DONIELSON, J.

Petitioner husband appeals and respondent wife cross-appeals from the decree dissolving the parties' marriage. On appeal, petitioner husband asserts (1) that the property petitioner husband received as gifts and inheritances should not have been included in the property division; (2) that the trial court failed to give adequate consideration to the tax consequences of its property division; (3) that most of the parties' property was acquired through petitioner husband's efforts, and an equal division is thus inequitable; and (4) that the trial court's requirement that petitioner husband pay a cash property settlement, a portion of respondent wife's attorney fees, and substantially all the parties' debts, imposes an impossible burden on him from a cash flow standpoint. On cross-appeal, respondent wife asserts that the trial court should have awarded her alimony. We affirm in part and modify in part.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give them weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner, Herman Kurtz, and respondent, Barbara Kurtz, were married in 1950. They had four children, all of whom had reached their majority and moved from the family home by the time the parties separated in 1980. At the time of the marriage neither party owned substantial assets. Herman was, at that time, living with his parents on the farm referred to by the parties as the 'home place.' Along with his father Herman farmed some of the 'home place' land plus some

additional land he had rented and 260 acres he had purchased on contract. After two years of service with the Marine Corps, Herman and Barbara returned to the land Herman had farmed previously and continued their married life, building a substantial marital estate. They acquired several farms, including the 'home place', which they bought from Herman's father at a substantial discount. Herman received some life insurance proceeds when his brother and his father died. He also received some farm equipment as gifts and inheritances.

During the marriage Barbara was primarily responsible for raising the parties' four children. She also cooked the family meals, gardened, canned the garden produce, raised chickens, and helped keep the farm books. She worked part-time outside the home in 1975 during which time Herman served on the Board of Supervisors. The additional income from the parties' outside work activities was used for family-related expenses.

At the time of trial, Barbara was 49 and Herman was 52 years of age. Herman had suffered a heart attack but was on medication and continued his farming operations. Barbara was in relatively good health, though she experiences some back problems. She presently works as a clerk in an office supply company.

The trial court valued the parties' net worth at \$1,344,417. The court found that it would be inequitable to refuse to divide the gifted or inherited property and awarded Barbara three of the parties' five farms, a car, half of the parties' household goods, some stock, an insurance policy, her checking account, and a cash property settlement of \$100,000, payable over eight years with ten percent annual interest. She was directed to pay debts of \$2,680. Herman was awarded the 'home place' farm and another farm, a car, a truck, a checking account, and all the farm machinery, livestock, grain on hand, and growing crops. He was directed to pay debts of \$367,375, and \$5,000 toward Barbara's attorney fees. No alimony was awarded. This appeal and cross-appeal followed.

II.

Herman contends the property division is inequitable due, in part, to the fact that the court refused to set aside inheritances and gifts made to him by his family before the court determined the amount of marital property subject to division. We disagree.

Our analysis is governed by § 598.21 which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968)(modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). The ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). With regard to gifts received by a party, § 598.21(2) provides that

[p]roperty inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

We agree with the trial court that it would be inequitable in this case to refuse to consider Herman's gifted and inherited property as part of the marital estate. Given the duration of this marriage (over thirty years) and Barbara's substantial contributions to the family's livelihood, such property should be included in the division of assets.

After considering all of the relevant criteria found in Iowa Code § 598.21(1), however, we conclude that the property division ordered by the trial court is inequitable. Although Herman's net award is greater than Barbara's, the majority

of that award is made up of an illiquid asset—farmland—that has greatly increased in value over the years because of inflation. In addition, we cannot overlook the fact that it was primarily due to Herman's farming efforts and good business judgment that the parties acquired so much farmland and operated it successfully. We have noted that "an equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship." In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). We recognize Barbara's contributions in the instant case and believe that she should be awarded a substantial amount of the property, taking into account its appreciated value. However, we have also recognized that the fact that the land is being used for one's livelihood may require special consideration. See Callenius, 309 N.W.2d at 315. In the instant case the farmland provides the livelihood for Herman and at least some of his four children. At the time of trial Herman and his sons were attempting to form a partnership within which to conduct farming operations.

Taking into account these factors, Herman's gifts and inheritances, Barbara's contributions in homemaking and childrearing, the potential tax consequences and the thirty-year existence of the marriage, we believe the property division must be modified. We therefore order that Herman shall receive, in addition to tracts 3 and 5 as ordered by the trial court, the tract 4 farm as well. These three parcels of land are contiguous and will better enable Herman and his sons to continue their farming operations. To compensate, we increase the cash property settlement awarded Barbara to \$200,000: \$40,000 payable this year with the balance to be paid in eight yearly installments of \$20,000 each. Interest shall accrue on the unpaid balance at a rate of ten percent. The other provisions of the property division and allocation of debts as ordered by the trial court are affirmed.

III.

The factors to be considered in determining whether spousal support should be granted are set forth in § 598.21(3). Those pertinent to the instant case include the following:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to subsection 1.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

See also In re Marriage of Hitchcock, 309 N.W.2d 432, 436 (Iowa 1981); In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Petersen, 227 N.W.2d 139, 142 (Iowa 1975).

Applying these criteria, we believe the court correctly refused to award Barbara alimony. Barbara presently earns \$3.40 an hour and works between 30 and 40 hours per week. She also has the two tracts of farmland which, if rented, would provide her with income. In addition, she is receiving \$200,000 cash settlement and has only a small debt under the decree. Herman, on the other hand, has a major debt to repay and is experiencing net losses on the farming operations. Based on her estimated needs and Herman's ability to pay, we believe alimony is inappropriate.

The decree is affirmed as modified.

AFFIRMED IN PART AND MODIFIED IN PART.