

## IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF VIRGINIA CAROL DRISCOLL and RALPH ROBERT DRISCOLL

|                                          |   |                     |
|------------------------------------------|---|---------------------|
| Upon the Petition of                     | ) |                     |
| <b>VIRGINIA CAROL DRISCOLL,</b>          | ) |                     |
| Petitioner-Appellee/<br>Cross-Appellant, | ) | Filed June 25, 1985 |
|                                          | ) |                     |
| And Concerning                           | ) |                     |
| <b>RALPH ROBERT DRISCOLL,</b>            | ) | 5-253               |
|                                          | ) | <u>83-1398</u>      |
| Respondent-Appellant/<br>Cross-Appellee. | ) |                     |

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Appeal from the Iowa District Court for Linn County - Thomas L. Koehler,  
Judge.

Petitioner-husband appeals from the property division provisions of the  
parties' dissolution decree. AFFIRMED.

Stephen B. Jackson, Cedar Rapids, Iowa, for respondent-appellant.

L. G. Klein and Mary K. Hoefler, Iowa City, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Snell, and Hayden, JJ.

Petitioner-husband appeals from the property division provisions of the parties' dissolution decree. He claims that he should have been awarded a portion of the farm given to respondent-wife by her parents and that the division of the marital property was inequitable. We affirm.

Ralph and Virginia Driscoll were married in 1946. Their three children are all adults. For much of the marriage Ralph worked as a homebuilder in partnership with another person. In 1978 the partnership was dissolved and Ralph took a job teaching building trades at a community college. In 1981 and 1982 he earned about \$24,000 per year. He lost the teaching job in 1983, just before trial of the present action, but was told he might be rehired if demand for his classes increased. Virginia was employed outside the home as a secretary during much of the marriage. She was so employed at trial time, earning about \$15,000 per year.

The parties' primary assets were a house, valued at \$92,500 (subject to a mortgage debt of about \$11,500), and a farm of about 60 acres which had been deeded to them by Virginia's parents. They intended the gift to take the place of Virginia's inheritance, and they made the gift with the understanding that they would be cared for by Ralph and Virginia for the rest of their lives. The trial court awarded the residence to Ralph, subject to a \$35,000 lien in Virginia's favor, and the 60-acre farm to Virginia. In addition, each party received various personal effects and liquid assets. Neither party was awarded alimony or attorney's fees. Ralph then brought this appeal.

I. Ralph first contends he should have been awarded a portion of the 60-acre farm since he operated and maintained the farm for many years and helped to build a house and make other improvements. He concedes the applicability of Iowa Code section 598.21(2) which provides that property received by a spouse by gift or inheritance either before or during marriage is not subject to property division unless "refusal to divide the property is inequitable to the other party."

Ralph focuses on the quoted exception language of the statute and argues that the court's refusal to award him a portion of the farm is inequitable in this case in view of his contributions in operating and maintaining the farm and his close relationship with Virginia's parents—the donors. See In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982).

We agree with the trial court that the entire farm should be awarded to Virginia. First of all, it is inaccurate to say that the court failed to recognize the importance of Ralph's labors—in fact, he was awarded the house that he built and its accompanying acreage which was given to the parties by Virginia's parents. Furthermore, he shared in the income generated by the farm and thus benefited from the work he put into it. Finally, the gift of the farm to Virginia was intended by her parents to take the place of her inheritance. We will not defeat the donors' intent in this case by awarding a portion of the farm to Ralph absent a more compelling showing of resulting inequity than is demonstrated here. See In re Marriage of Wendt, 339 N.W.2d 615, 616-17 (Iowa Ct. App. 1983).

II. Ralph also claims that the court should not have awarded Virginia a \$35,000 lien against the equity in the house or the \$3,500 in escrow resulting from farm rent and contract payments from the sale of their former residence. We disagree. Considering all the relevant factors contained in Iowa Code section 598.21(1) relating to division of property, we find the trial court's decree equitable. Other than the 60-acre farm, which was properly awarded to Virginia, the trial court made an approximately equal division of property between the parties. Especially in view of the length of their marriage (37 years) and the many and varied contributions by both parties to their marriage and to the accumulation of assets, we see no reason to disturb that equal division of property.

The provisions of the decree are affirmed in their entirety. Each party will pay his or her own attorney fees incurred in this appeal.

AFFIRMED.