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DEC 27 1979

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF DELLA KATHRYN MITCHELL & MERLE JOSEPH MITCHELL

Upon the Petition of	)	
DELLA KATHRYN MITCHELL,	)	Filed December 27, 1979
Petitioner-Appellee,	)	
And Concerning	)	
MERLE JOSEPH MITCHELL,	)	282
Respondent-Appellant.	)	<u>2-62920</u>

Appeal from Howard District Court - Carroll E. Engelkes, Judge.

Respondent-husband appeals property division provisions of dissolution decree. -

Affirmed.

R. L. Donohue, of Donohue Law Office, West Union, for respondent-appellant.

C. J. Anderson, Cresco, for petitioner-appellee.

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

PER CURIAM

Respondent-husband appeals the property division provisions of a dissolution decree, asserting that the trial court undervalued the farm real estate, resulting in an inequitable property division after the trial court announced that it was going to divide the marital assets equally, and that the trial court failed to provide contingencies in a child support prepayment plan for the emancipation or death of the child before reaching age eighteen. We affirm.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially regarding the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). In determining whether a property division in a dissolution case is fair and equitable, we are assisted by the guidelines announced in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

The trial court valued the farm real estate at \$1000 per acre, in agreement with petitioner and her expert witness. Respondent's expert witnesses testified that the value of the property was higher. The trial court was at liberty to accept or reject any or all opinion evidence on the valuation of the property. Schantz, 163 N.W.2d at 404. We believe there was substantial evidence to support the trial court's valuation of the farm real estate, and that the value arrived at was reasonable.

Respondent contends the trial court improperly subtracted a six percent real estate commission in its valuation of the property. This contention is not supported by the value of the property ultimately arrived at by the trial court. The trial court valued the 137 acres at \$1000 per acre for a total of \$137,000. The \$12,000 mortgage assumed by petitioner was then subtracted to leave \$125,000, which was divided by two to determine the amount of respondent's share. The trial court then subtracted \$200 from respondent's share for attorney fees owed petitioner, resulting in an amount of \$62,300, which was the total principal sum that petitioner was ordered to pay respondent for his one-half interest in the farm pursuant to the decree. There is no evidence of a deduction of a real estate commission, and respondent's contention on that ground is without merit.

Respondent also contends that the trial court failed to properly consider the value

of the growing crops on the land. The trial court apparently considered the value of the growing crops to be an offset against certain amounts awarded to respondent, and awarded the entire value of the growing crops to petitioner. Regardless of the trial court's reasoning, we conclude that the growing crops were properly awarded to petitioner, since the growing crops were part of the land that was awarded petitioner, and petitioner is more than likely dependent on the income of the growing crops to pay off the farm mortgage that she was required to assume. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979).

Thus, we conclude that the trial court's property division was fair and equitable. The trial court was certainly justified in seeking to attain an equal distribution of the marital assets under the Schantz principles. Conley, 284 N.W.2d at 223; In re Marriage of Wahl, 246 N.W.2d 268, 271 (Iowa 1976). That equality need not be achieved with "mathematical exactness." Conley, 284 N.W.2d at 223; In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). The proximity within which this trial court attained an equal distribution of the marital assets was well within the bounds of fairness and equity.

The decree provided that upon either party's election, petitioner would be required to pay the full balance of the amount of respondent's share of the farm, crediting the amount of future child support to be paid until the child reached age eighteen. Respondent raised for the first time in an amendment to a motion for a new trial, the contention that the trial court erred in failing to provide for contingencies in case of the death or emancipation of the child prior to reaching age eighteen. The amendment was not filed within the time period allowed for the filing of motions for new trial. Iowa R. Civ. P. 247. A late-filed amendment to a motion for a new trial cannot be considered unless the issue raised is germane to an issue in the original timely-filed motion. Julian v. City of Cedar Rapids, 271 N.W.2d 707, 708 (Iowa 1978). While we recognize the arguable germaneness of the issue raised in the amendment here to an issue in the original motion, we conclude that it was not sufficiently germane to warrant overlooking the timeliness requirement of rule 247.

Notwithstanding this failure to properly preserve error, we do not perceive any imminent need to address respondent's contention at this time. Neither party has yet

exercised the election of accelerating the payment of respondent's share of the farm. The trial court has the power to make changes in the provisions of the decree relating to the child support payments "when circumstances render them expedient." Section 598.21, The Code 1979. The trial court is better able to rule on respondent's claims relating to the procedures for the payment of child support should the election of prepayment of respondent's share of the farm be exercised. Consequently, we conclude that this is a matter more appropriately reserved for ruling by the trial court if and when the election of prepayment is made, and we decline to address it at this time.

Petitioner seeks attorney fees incurred by this appeal. In evaluating a request for attorney fees incurred on appeal, we consider the financial need of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). With these considerations in mind, and without fixing the amount to be charged by petitioner's attorney, we conclude that respondent should pay \$400 toward petitioner's attorney fees incurred by this appeal. Costs are taxed to respondent.

AFFIRMED.