

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 20 1984

CLERK SUPREME COURT

**IN RE THE MARRIAGE OF RAE JEANNE
KILBERGER AND EARL KENNETH
KILBERGER**

**UPON THE PETITION OF
RAE JEANNE KILBERGER,**

Filed March 20, 1984

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Petitioner/Appellee/Cross-Appellant,

**AND CONCERNING
EARL KENNETH KILBERGER,**

4-01

2-68052

Respondent/Appellant/Cross-Appellee.)

Appeal from the Iowa District Court for Linn County—Thomas M. Horan,
Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the decree dissolving the parties' marriage. On appeal, respondent-husband asserts: (1) that the 1956 Chevrolet and the farm petitioner-wife received as gifts during the marriage should have been subject to the property division; and (2) that the trial court should have ordered the parties' 1974 Pontiac sold at auction as it did several of the parties' other vehicles. On cross-appeal, petitioner-wife asserts (1) that the trial court should have allowed her to pay the substantial liens respondent-husband was awarded over several years rather than just one year; and (2) that the trial court should have divided most of the parties' personal property rather than ordering it sold at auction. **AFFIRMED AS MODIFIED.**

M.G. Hardesty, Jr., Cedar Rapids, for respondent-appellant.

Donna L. Paulsen of Lynch, Dallas, Smith & Harman, Cedar Rapids, for
petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, and Snell, JJ.

Earl Kenneth Kilberger and Rae Jeanne Kilberger were married in 1957; dissolution of the marriage was ordered in 1981. Earl now works for an engineering company; he had operated the parties' hay and straw business but does not intend to continue to do so. Rae Jeanne has always been a farmer and plans on operating the farm property in the future. She has also managed the couple's rental properties and helped with bookkeeping for a lighting business Earl operated from 1967 to 1980. During the marriage, Rae Jeanne received as a gift from her grandparents certain farm property and a 1956 Chevrolet.

Upon dissolution, the trial court awarded to Ray Jeanne, among other things, the farm property which she had been given by her grandparents, and the 1956 Chevrolet plus the parties' 1974 Pontiac Bonneville. Earl disputes the trial court's disposition of this property. The trial court also made much of the property awarded to Rae Jeanne subject to liens in Earl's favor and required the liens to be payable within one year after the decree. Rae Jeanne has cross-appealed, asserting that the trial court should not have required the liens to be paid within one year, but rather should have spread the award over several years. Rae Jeanne further contends that the trial court should have divided most of the parties' personal property between them rather than ordering it to be sold at auction.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing economic and property provisions of a dissolution decree, we consider all the provisions together as an integrated whole, see In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976), bearing in mind the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)(fault for breakdown of marriage eliminated from Schantz factors), and the factors enumerated in Iowa Code section 598.21 (1983).

There is no requirement in a division of assets that parity between the parties be effected. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). Even if the trial court's goal was to divide the assets equally, there is no requirement that the division be mathematically precise. Conley at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); Williams at 345; Schantz at 405.

Iowa Code section 598.21(2) provides that property given to either party during the course of the marriage is the property of that party and is not subject to property division unless nondivision would be inequitable. Iowa Code § 598.21(2)(1983). A spouse is not entitled to share in that portion of enhancement in the value of a gift to the other spouse, which was due solely to fortuitous factors, such as inflation, to which the spouse did not contribute in any way. However, under the equitable distribution statute, a spouse should share in those elements of increase to which the spouse contributed and those for which both spouses were jointly responsible. See In re Marriage of Lattig, 318 N.W.2d 811, 816 (Iowa Ct. App. 1982) (citing with approval Mol v. Mol, 147 N.J. Super. 5, 9, 370 A.2d 509, 510 (Super. Ct. App. Div. 1977)).

The parties worked on the farmland in dispute during the course of their marriage. The land was deeded to Rae Jeanne only, from her grandparents, in 1968. By this we conclude that the gift was made to Rae Jeanne alone. Earl contends that, because he contributed to the farm operation during the marriage, the property "had become inextricably the property of both parties by the time the marriage was terminated." We disagree. Although Earl may have contributed to the extraction of a yearly income from the property, after consideration of the factors enumerated in In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982), we see no evidence of contribution by Earl to the value of the property which

would make a grant to Rae Jeanne of the gift made to her inequitable.

Furthermore, we do not find the trial court's award to Rae Jeanne of the 1956 Chevrolet and the 1974 Pontiac Bonneville to be inequitable. Earl argues that the two automobiles should have been sold and the proceeds divided between the parties. The trial court awarded three automobiles to Earl: a 1977 Cadillac, a 1980 Honda, and a 1953 Chevrolet. Five other vehicles were ordered to be sold and the proceeds to be divided. The trial court awarded each vehicle after considering which of the parties used the particular vehicle the most. The court also considered the fact that the 1956 Chevrolet was a gift to Rae Jeanne from her grandparents. We do not find the award to be inequitable.

Rae Jeanne has cross-appealed, contesting the trial court's requirement that she pay the entire amount of the lump sum property settlement to Earl in one year. She argues that to pay the settlement amount of \$121,964 would be an undue hardship and would jeopardize her ability to continue operating and maintain ownership of the farm property. We agree. Earl has outside income and would not be burdened by an extension of the settlement payments. Therefore, we modify the trial court decree to divide the lump sum settlement into six equal parts, the first part due one year after the filing date of this opinion, the remaining portions due on each subsequent anniversary of the filing date. In addition, Rae Jeanne will pay interest added to each portion at the rate of ten percent per annum.

We do not reach the question of whether trial court should have ordered the parties' personal property to be sold at auction. The parties already have complied with that order; thus, the issue is moot.

AFFIRMED AS MODIFIED.