IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF DONNA M. HOEPER AND LAVERN F. HOEPER**

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| **Upon the Petition of** | ) | |
| **DONNA M HOEPER,** | ) | Filed January 29, 1986 |
| Petitioner-Appellee, | ) | |
| **And Concerning** | ) | 5-597 / 85-308 |
| **LAVERN F HOEPER,** | ) | |
| Respondent-Appellant. | ) | |

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Appeal from Iowa District Court for Bremer County - John F. Stone, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage **AFFIRMED AS MODIFIED.**

L Don Snow, Cedar Falls, Iowa, for respondent-appellant.

Gary J. Boveia, Waverly, Iowa, for petitioner-appellee.

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

Respondent husband appeals from the decree dissolving the parties' marriage. He asserts that the property division is inequitable, and in particular that the trial court should not have ordered substantially all the parties' property sold. Petitioner wife requests attorney fees on appeal. We affirm as modified.

Petitioner Donna M. Hoeper and respondent Lavern F. Hoeper were married in 1958. Neither party brought property of any consequences into the marriage. The parties have three children, all of whom are now grown. During the marriage, Lavern farmed and Donna cared for the children, maintained the house, and helped with the farm work.

The marital property subject to division included two farms. The "home farm" was valued at $228,000 subject to indebtedness of $26,000, leaving $202,000 in equity. The trial court determined the "east farm" to be worth $204,000 subject to indebtedness of $190,883.43, thus leaving $13,116 in equity. The parties' nonfarm-related debts total $69,881. The personal property owned by Lavern and Donna can be summarized as follows:

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| Farm Machinery | $45,000 |
| Livestock | 13,000 |
| Crops | 68,278 |
| Cars & Trucks | 5,050 |
| Life Insurance Policies | 13,238 |
| Other | 8,200 |
| | $153,001 |

In its dissolution decree, the trial court awarded Donna the life insurance on her life, the house in town, and their car; it awarded Lavern the life insurance on his life and the parties' pickup. The trial court then gave the parties the option of selling their other personal property to pay their substantial debts and stated that if the parties did not exercise this option, it would order not only their other personal property but also their farms sold. Donna elected not to exercise the option, and the trial court ordered the parties' other personal property as well as their farms sold. Lavern has appealed.

The division of property pursuant to a dissolution of marriage is governed by Iowa Code section 598.21(1). That section codifies prior Iowa case law which held that marital property is to be divided equitably between the parties, taking into account certain specified factors. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), and In re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974). Those factors include the duration of the parties' marriage, their respective ages and earning capacities, and the property brought into the marriage by each. A percentage division of the property is not statutorily sanctioned. Rather, the ultimate test is whether the distribution is equitable under the specified facts of a particular case. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976).

Lavern argues on appeal that it is inequitable to require him to sell the farms since it would necessitate termination of his farming business and deprive him of his source of livelihood. We agree.

"We have previously recognized the reasonableness of a trial court awarding a farm to the spouse who operated it and in fixing the awards and schedule of payments to the other spouse without reaching equality so the farmer-spouse might retain ownership of the farm. In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981). In Callenius, the court awarded the farmland to the husband, with a cash property award to the wife, commenting:

> Awarding the home eighty acres and another eight acres to Donna would take away from Ronald an important source of income and his only obvious source of refinancing. It would sever a farming unit embraced in one contract of sale and provide additional problems if one party defaulted on the contract. Forced sale of the property also raises questions concerning income tax liabilities. Furthermore, it would have serious effects on Ronald's ability to farm on his present scale.

Id. 123

While we do not have the precise factual concerns expressed in Callenius, we are faced with the same general problems which result from forcing liquidation of a farming business. Lavern's concerns in this regard are well-founded, especially in view of the deteriorating farm economy. Essentially, equity demands that, if possible, the farming operation remain intact.

With these principles in mind, we modify the decree as follows: Donna shall receive the home in town and both parties shall retain the life insurance policies and vehicles as provided in the original decree. Donna shall be responsible for the indebtedness associated with the home. Additionally, Lavern is awarded both farms, his farm machinery, and livestock. Lavern will be responsible for all indebtedness associated with the purchase of the farms.

The remaining personal property consists of crops valued at $68,278 and other miscellaneous property valued at $8,200. This personal property shall be sold and the proceeds applied toward the parties' remaining debts. Any unused portion of the proceeds shall be split equally between the parties.

In recognition of Donna's contributions to the marriage, we award her a cash settlement of $100,000, payable in thirteen annual installments of $7,500 principal plus accrued interest payments, and the remaining $2,500 principal plus accrued interest payable as the fourteenth installment. The first payment shall be due ninety days from the entry of the modified decree; the remaining 13 installments are payable on or before December 31 of each year. Interest shall accumulate at the rate of 10 percent per annum. Donna shall have judgment against Lavern for the amount of the unpaid balance until paid in full. A lien in favor of Donna is impressed against the real estate awarded Lavern for the amount of the unpaid cash settlement.

In the alternative, Lavern shall have the option of selling the farms, farm machinery, and livestock. The net sale proceeds shall be used first to pay the parties debts incurred as of the date of the trial. The remaining balance, if any, shall be divided equally between the parties In the event Lavern elects for this alternative option, he shall file an affidavit of his intention with the trial court within ninety days from the entry of the modified decree.

Based on the record before this court, we are convinced this is the most equitable result which can be attained Accordingly, we affirm as modified and remand for entry of a decree consistent with this opinion. Costs of appeal are assessed half to petitioner and half to respondent

**AFFIRMED AS MODIFIED.**