

IN THE COURT OF APPEALS OF IOWA

No. 1-499 / 90-1938

604

IN RE THE MARRIAGE OF WILLIAM D. LeMASTER AND
CAROLEE LeMASTER

Upon the Petition of

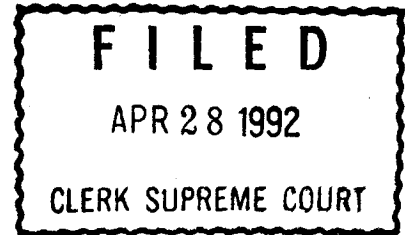
WILLIAM D. LeMASTER,

Appellant,

And Concerning

CAROLEE LeMASTER,

Appellee.



Appeal from the Iowa District Court for Polk County,
Gene L. Needles, Judge.

The petitioner appeals from the portion of the
dissolution decree which awarded respondent a property
settlement of \$80,000. **AFFIRMED.**

Ted E. Marks of Marks, Marks & Marks, Urbandale, for
appellant.

John C. Powell of Shirley, Smith, Shirley & Powell, for
appellee.

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

DONIELSON, P.J.

William and Carolee LeMaster were married in July 1964. They had one son, Darrell, who is now an adult. The parties lived on a farm near Granger, Iowa, during the marriage.

William was forty-five years old at the time of the trial. He farms with his brother, Dale. Together they rent about 1200 acres. William's gross income was \$18,417 in 1988. In 1981 the parties, together with Dale and his wife, purchased a 178-acre farm. The parties had farm machinery and livestock worth \$196,042.

Carolee was forty-two years old at the time of the trial. She has worked outside the home on at least a part-time basis during most of the marriage. She is presently employed full-time as a physical therapy assistant at Mary Greeley Hospital in Ames. Her gross income there is about \$16,765 per year.

The main issue in this case is the division of property. The parties entered into a stipulation concerning household goods which does not seem to be part of the record. However, this stipulation was approved by the district court.

Three issues were presented to the district court: (1) the value of the farm owned in part by the parties; (2) the value of several P. Buckley Moss prints; and (3) whether

money received by the parties from William's parents was a loan or a gift.

The court valued the parties' one-half interest in the farm at \$140,000. The court found the value of the Moss prints was \$6,500. The court also determined the money received from William's parents was a gift. This was based on a finding there was no fixed schedule of repayment and William's parents had never sought repayment. Furthermore, William's brother received money from their parents at the same time.

The district court awarded William all of the farm assets, which total \$336,042. However, he was also ordered to pay debts of \$70,222. This gave William net assets of \$265,820. Carolee was awarded her Moss prints which have a value of \$6,500. She was ordered to pay a debt of \$6,000 to Darrell. This gave her net assets of \$500. The court then ordered William to pay Carolee a property settlement of \$100,000.

William filed a motion to reconsider. The court noted there were debts of \$57,100 which had not been assigned to either party. The court ordered William to assume these debts. The court also reduced Carolee's property settlement to \$80,000. As a result, William received net assets worth \$128,720. Carolee received net assets worth \$80,500. William has appealed and Carolee has cross-appealed.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

William contends the property settlement awarded to Carolee is excessive. He states that his income is not sufficient for him to pay such an award without selling a portion of his assets. He also claims the money received from his parents should be considered a loan. William states the parties owe his parents \$178,750, including interest. In the alternative, William claims that if the money received from his parents was a gift, it was a gift to him alone.

Carolee contends the property settlement should be increased to \$100,000. She claims the district court had already considered the debts of the parties when it awarded her \$100,000. She feels the debts were improperly considered a second time in reducing the property settlement to \$80,000.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). We do not require an equal division or percentage distribution. Id. The determining factor is

what is fair and equitable in each particular circumstance. Id.

We affirm the property distribution as set forth by the district court. We agree with the district court's conclusion that the money received by the parties from William's parents was a gift to them. We also find the gifts were made to the parties as a family, not to William alone. We find the district court properly considered the parties' debts.

We realize it may be difficult for William to be able to pay the property settlement. On the other hand, we find it would be inequitable to Carolee to further reduce the property settlement. We find the property settlement of \$80,000 is the most equitable solution to the problem before us.

Carolee has asked for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We find the parties should be responsible for their own attorney fees. Costs of this appeal are assessed one-half to each party.

AFFIRMED.