FILED
DEC 29 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HAL L. McKILLIP AND SHIRLEY A. McKILLIP

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Upon the Petition of)
HAL L. McKILLIP,)
Petitioner-Appellant,)
And Concerning)
SHIRLEY A. McKILLIP,)
Respondent-Appellee.)

Filed December 29, 1982

2-311
2-67767

Appeal from Muscatine District Court - R. K. Stohr, Judge.

Petitioner-husband appeals from the economic provisions of the decree dissolving his marriage to respondent-wife asserting that, because of the trial court's erroneous considerations, the support award to the wife was excessive. He specifically argues 1) that the trial court improperly included property received as gifts and inheritance by him in its principle sum support award to the wife; 2) that the court failed to consider depreciation in its valuation of the farm machinery and equipment; 3) that the trial court placed an excessive valuation on a tract of real estate; and 4) that the "lump sum support award" should be reduced to its present value. AFFIRMED WITH MODIFICATION.

David Scieszinki, Wilton, Iowa, for petitioner-appellant.

Patrick J. Madden, Muscatine, Iowa, for respondent-appellee.

Considered en banc.

Petitioner-husband, Hal L. McKillip, appeals from the economic provisions of the decree dissolving his marriage to respondent-wife, Shirley A. McKillip. He asserts that, because of the trial court's erroneous considerations, the support award to the wife was excessive. Specifically, he argues 1) that the trial court improperly included property received as gifts and inheritance by him in its principle sum support award to the wife; 2) that the court failed to consider depreciation in its valuation of the farm machinery and equipment; 3) that the trial court placed an excessive valuation on a tract of real estate; and 4) that the "lump sum support award" should be reduced to its present value. We affirm with modification.

The parties were married in 1952. Their four children are now self-supporting adults. The husband was 53 at the time of trial. He has suffered from diabetes and high blood pressure for approximately ten years for which he takes daily medication and receives period scheduled check-ups by his physician. The wife was 47 years of age. Since 1970, she has suffered the progressive debilitating effects of multiple sclerosis and, as a result, is permanently and totally disabled.

At the time of their marriage, the husband owned a $5,000 interest in a farming partnership with his brother and father. He owned no real property. The parties farmed approximately 500 acres of land, 250 of which were owned by the husband's father. The husband brought no significant tangible assets to the marriage. Subsequently, the husband inherited two-thirds of a 200 acre farm from his father. He received the remaining one-third by gift from his mother in 1973. The parties have used this farm as their homestead since 1958. In 1978, the parties purchased an 80-acre farm on contract. They hold this property in joint tenancy with rights of survivorship. In addition to the above property, the husband rented and farmed an additional 500 acres of land. During the course of the marriage, the husband has made substantial capital improvements to the farming operation.

The trial court awarded the wife the personal property in her possession, the savings account in her name, three life insurance policies, a washing machine, and

an antique sewing machine. In exchange for her one-half interest in the parties' 80-acre farm, she was awarded $32,400. The husband was awarded the remainder of the parties' property, including his 200-acre farm, growing crops, livestock, and farm equipment and machinery. In addition, the trial court awarded the wife principle sum support in the amount of $287,600, payable in the following manner:

> Beginning on January 1, 1982, and on each January 1st thereafter through January 1, 1988, Petitioner [husband] shall pay to Respondent [wife] $25,000. Interest at the rate of six percent per annum shall be charged to Petitioner on all unpaid principal after January 1, 1982. By December 31, 1988, Petitioner shall pay Respondent the unpaid interest ($11,887) and principal ($210,006) due.
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> All unpaid principal and interest and all overdue payment shall be a lien against Petitioner's real and personal property and shall be secured by same and against his estate in the event of his death.

In addition to the support for the wife, the husband was directed to pay certain debts totalling approximately $98,500.

I. **Scope of Review.** Our review of dissolution proceedings is **de novo.** Iowa R. App. P. 4. We review the facts as well as the law and, from the credible evidence, determine rights anew on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978). While we give weight to the trial court's findings of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. **Challenges to Trial Court's Valuation.** Before deciding whether trial court's award to the wife was excessive, we will address the husband's arguments challenging the manner in which trial court valued the parties' marital property.

A. **Depreciation.** The husband claims that trial court erred in finding the value of the farm machinery and equipment to be $178,200. He maintains that

after considering a proper allowance for depreciation, the court should affix the value of the farm machinery and equipment at $66,477. We do not agree. First, trial court found the net value of the farm machinery and equipment to be $164,200. Further, in February, 1981, the husband valued the farm machinery and equipment at $189,800 in a financial statement provided to the Wilton Savings Bank. The assets were valued based on "what they would be worth if we traded them in on [sic] new equipment." At trial, the husband testified that the information he provided to the Wilton Savings Bank was personal. Based upon this record, we believe trial court's valuation is proper.

B. Excessive Valuation of the 200-Acre Farm. The husband also claims the trial court erred in fixing the value of the 200-acre farm at $410,400 based upon the appraisal made by the wife's expert witness'. The husband argues that a sale at public auction of a similar tract of land within a relatively short period of time prior to the dissolution of marriage is the best method of establishing the market value of the real estate in question. Using that value, $1,705 per acre, the 200-acre tract would be worth $341,000. We note that in an answer to the wife's interrogatory during discovery, the husband valued his 200-acre parcel at $470,000. We find trial court's valuation well within the permissible range of the evidence and thus will not disturb it. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

C. Present Value of Lump Sum Award. The husband also contends that the lump sum award was for future support obligations and that equity requires the lump sum amount be reduced to present value. We disagree with the husband's characterization of the award. The trial court stated: "Petitioner's principle sum support obligation to respondent or her estate is fixed at $287,600. . . ." Trial court further ordered interest to be paid on all the unpaid principal. We believe this award represents a present support obligation and that trial court's decree clearly defines the manner in which that obligation was to be paid by the husband

III. Equities of the Principle Sum Award. The husband alleges that trial court erroneously awarded the wife an amount equal to one-half of the net value of the marital assets of the parties at the time of the dissolution. He particularly challenges inclusion of assets he inherited and received as gifts during the marriage in computing that amount. The court stated in In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982), that one party may be awarded property which has been inherited or received as a gift by the other party to avoid injustice. The court enumerated a number of factors which might bear on a claim that such property should be divided. These include:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
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> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
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> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
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> (4) any special needs of either party;
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> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

The court also stated that other matters, such as the length of the marriage or the length of time the property was held after it was acquired, indirectly bear on the question. In this regard, we find that the record in this case shows the wife contributed substantially to the successful farming operation during the nearly 30 years of marriage. Further, the wife's special needs are undisputed. She has no earning capacity, is not eligible for social security, and has no other security for her support and care beyond that awarded by the court in this dissolution of marriage action.

Despite the fact that we believe the wife is entitled to a portion of the husband's individual property, we believe trial court inequitably divided the property by giving the wife approximately one-half of the net assets. Because the timing and the amount of the financial resources which will be required for the wife's future care are incalculable, we believe a better result is obtained by awarding the wife a smaller principle sum award in combination with an award of regular permanent alimony. We thus modify trial court's decree awarding the wife the principle lump sum support award of $287,600 in the following manner:

> The husband's principle lump support obligation to the wife or her estate is fixed at $120,000, payable in the following manner: beginning on January 1, 1982, and on each January 1st thereafter through January 1, 1993, the husband shall pay to the wife $10,000. Interest at the rate of 10% per annum shall be charged to the husband on all unpaid principal after January 1, 1982. The interest shall be payable annually beginning on January 1, 1983. In satisfaction of his annual $10,000 obligation, the husband shall be given credit for any amounts paid under the trial court's original decree. Thus, assuming the husband has paid the $25,000 due on January 1, 1982, pursuant to the trial court's decree, he shall have credit for the $10,000 obligations due on January 1, 1982, and January 1, 1983, as well as a $5,000 credit towards his $10,000 obligation due on January 1, 1984.
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> Further, as periodic alimony, the husband shall pay the wife $500 per month until such time as the wife remarries or dies. This support obligation should continue as a charge on the husband's estate so long as the wife remains alive.
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> All unpaid principal and interest and all overdue payments shall be a lien against the husband's real and personal property and shall be secured by same and against his estate in the event of his death.

We make no modification of the property division of $32,400 awarded to the wife.

IV. Attorney Fees. The wife requests an award of attorney fees in the amount of $5,731.33 incurred in this appeal. Such allowances depend upon the

parties' respective needs and abilities to pay. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Counsel has provided the court no itemization for support of his claim for attorney fees. See Id. In light of this record, we order the husband to pay $1,000 towards the wife's attorney fees. The husband also shall be responsible for costs of this appeal.

AFFIRMED AS MODIFIED.