

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 25 1982

CLERK SUPREME COURT

IN RE THE MARRIAGE OF HERMINA J. WEDE AND EVERETT O. WEDE

UPON THE PETITION OF
HERMINA J. WEDE,

)

Filed May 25, 1982

432

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Petitioner-Appellee,

)

2-106

AND CONCERNING
EVERETT O. WEDE,

)

2-66896

Respondent-Appellant.

)

Appeal from Emmet District Court, Charles H. Barlow, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree, contending the property division was inequitable. AFFIRMED WITH MODIFICATION.

Joseph L. Fitzgibbons of Fitzgibbons Brothers, Estherville, for respondent-appellant.

William B. Ridout of Sanderson, Ridout, Martens & Surfass, Estherville, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Carter, JJ.

PER CURIAM

Respondent-husband appeals from economic provisions of the parties' dissolution decree, contending the property division was inequitable. We find the property division effected by the trial court was basically fair and equitable and is affirmed with modification.

Respondent-husband, Everett Wede, was born in 1925. Everett had graduated from high school, served in the U.S. Marine Corp., worked as a farm hand, layout and salesperson for a newspaper, salesperson at a hardware store and as a laborer at Wilson Packing Plant. More recently, Everett opened a short-order restaurant, which he operated until his marriage to petitioner, Hermina Wede, in 1977. Everett's prior marriage had been dissolved in 1974.

Hermina was born in 1931. She had graduated from high school and worked as a bookkeeper for a grain company. In 1950 she married James Whitehouse. Five children were born to them. In 1975 the marriage was dissolved. Custody of the one child, who had not attained her majority, was by agreement placed with the father. Hermina agreed to pay \$125 per month child support.

Hermina and Everett were married in June of 1977. The couple had met in March of 1977 after both answered a newspaper advertisement for a single persons meeting club. Shortly after the marriage, Everett sold the hamburger restaurant he owned in Cherokee, and the couple moved to Hermina's residence in Gruver, Iowa. Everett then used the funds from the sale of his business, approximately \$24,000, and from the sale of some securities, to purchase equipment so he could farm 160 acres of farmland acquired by Hermina from her parents in 1973.

The dispute in this appeal centers primarily around the 160-acre farm Hermina was purchasing on contract from her parents. The terms of the purchase agreement were \$64,000 purchase price, ten percent down payment, with the

balance payable in yearly installments of \$2000 at four and one-half percent interest. The agreement contained a clause under which Hermina was required to secure her parents' consent in order to assign the contract to anyone else. In 1977, after Hermina and Everett were married, Hermina, with her parents' consent, assigned the contract to herself and Everett as tenants in common.

The trial court awarded each party the personal property in his or her possession. Although the trial court acknowledged a completed gift of a one-half interest in the farm had been made by Hermina to Everett, Hermina was awarded the entire farm. Everett was awarded \$45,000 payable in annual installments of \$5000, plus interest at ten percent per year on the unpaid balance. A lien on Hermina's farm was granted to Everett to secure the payments. No alimony was awarded and each party was made responsible for personal attorney fees and one-half of the court costs.

I. Scope of Review.

Our review of this case is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to the findings, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision 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). In reviewing the property provision of a dissolution decree, we consider the factors articulated 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), and the factors enumerated in section 598.21, The Code 1981.

II. Property Settlement.

Everett contends the property settlement was inequitable. He claims the award should be increased given his substantial contributions to the marriage, the appreciation in marital assets and the tax liability that may accrue from the transfer of his interest in the farm to Hermina.

In response to Everett's argument, we are guided by the notion that although an equal division of the assets is frequent, there is no requirement 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, 284 N.W.2d 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); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). We agree with Everett's contention that the settlement may be inequitable to the extent a tax liability might accrue from the transfer of his interest in the farm to Hermina. See, e.g., Robert K. Stephens v. C. I. R., 38 T.C. 345 (1962); Rev. Rul. 74-347, 1974-2 C. B. 26. Accordingly, we modify the trial court's award so that by providing that Hermina shall indemnify Everett for the tax liability generated, if any, by the transfer of his interest in the farm to Hermina. Otherwise, we find the trial court's property settlement was equitable under the facts of this case.

AFFIRMED WITH MODIFICATION.