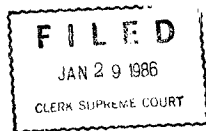


IN THE COURT OF APPEALS OF IOWA



IN RE THE MARRIAGE OF MAVIS J. KRAMER AND PAUL F. KRAMER

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UPON THE PETITION OF
MAVIS J. KRAMER,

) Filed January 29, 1986

Petitioner/Appellant/Cross-Appellee,

)

AND CONCERNING
PAUL F. KRAMER,

)

5-524
84-1986

)

Respondent/Appellee/Cross-Appellant.

)

Appeal from the Iowa District Court for Butler County, B. C. Sullivan,
Judge

Petitioner-wife appeals and respondent-husband cross-appeals from the
decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Gary J. Boveia, Waverly, for petitioner/appellant/cross-appellee.

Ralph E. Laird of Laird & Carney, Waverly, for respondent/appellee/cross-appellant.

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

Both parties appeal from the property division made by the trial court in the decree dissolving their marriage. We affirm as modified.

The petitioner and appellant, Mavis Kramer, was forty-one years old at the time of trial, a high school graduate, and waitress and hostess earning \$560 per month in net pay. The respondent and cross-appellant Paul works at John Deere and as a farmer, earning approximately \$1000 per month. He is forty-seven years old and completed junior high school.

Paul brought into the marriage eighty acres of land and personal property. The land was purchased for \$42,700 and Paul had paid \$23,000 of this amount when he was married. The personal property was worth \$13,000. During the marriage the couple jointly purchased another eighty acres.

Each of the parties presented an expert as to the value of this land. The court reached a figure somewhere between the values assigned by those experts and considered the decrease of farm land values over the years. It found the land brought by Paul into the marriage referred to as the East 80 acres was worth \$120,120, and the land the couple purchased, referred to as the West 80 acres, was worth \$113,295. Farming and mortgage encumbrances on both lands totaled \$139,472. The court found both parcels equally liable for these amounts, which left a net value on the East 80 acres of \$50,384 and on the West 80 of \$43,559.

Mavis's initial objection is to the court's valuation. She says her expert was more reliable and his figures should have been used. This determination by the court called for a decision of which witness was more credible, and the court struck a middle ground. We review the facts anew on appeal, but give weight to the court's findings, particularly where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). We find the court's valuation to be proper.

Mavis also objects to the court's division of property, saying the court did not adequately consider her contributions to the increased value resulting from the farm, and did not weigh the varying earning capacities of the parties adequately. She says the court erred in not considering Paul's pension in making an award. Paul says the parties' net assets are lower than what the court figured because a larger amount should have been set aside for his separate property. He also says the court should have considered his monetary contributions in providing for support of two children that Mavis had by a prior marriage.

As the trial court noted, the party who did not bring the separate property into the home will usually not benefit by the increased value of the separate property which is due to inflation or other economic factors. In re Marriage of Lattig, 318 N.W.2d 811, 815-816 (Iowa Ct. App. 1982). However, contributions by the spouse will be considered in valuing the property which increased in worth during the marriage. Id., at 816.

In valuing the separate property, we set aside the separate asset and then determine net worth of marital property. In re Marriage of Sparks, 323 N.W.2d 264, 267 (Iowa Ct. App. 1982).

At the time the property was brought into the marriage, Paul had contributed 53.68 percent of the present equity. Since that time the property has increased in value by \$77,420. Paul contributed to this increase in value in proportion to the equity he brought into the marriage. Therefore, of this \$77,420 increase in value, 53.68 percent or \$41,032 is due to Paul's separate contribution. We hold Paul's separate property to include \$23,000 in equity, \$41,032 in the increased value attributable to this equity, and \$13,000 in personal property. We find Paul's separate property totaled \$56,332. This method of valuing the interests is similar to that described in In re Marriage of Lattig, 318 N.W.2d at 816.

Mavis contributed monetarily to family's needs through her work as a waitress and as a homemaker. Paul says her contributions in the field were minimal. We find the remaining amounts the farm value increased after it was brought to the marriage to be due to both parties' efforts and they should share equally in this amount. See Lattig, at 815.

The marital assets were found by the court to total \$284,863. From this amount \$56,332 is subtracted for total net marital assets of \$228,531. In computing the debts, Paul says the court forgot to include the September Federal Land Bank payment of \$8,512 and December FMHA payment of \$3841. We find no reason these debts should not be included. Therefore, the total debt is \$139,472 resulting in a marital net worth of \$145,391. We disagree with Paul his contribution to the support of Mavis's children by a prior marriage should further reduce this amount. As he concedes in his brief, Mavis's ex-husband paid for the support of the children. The couple instead chose to use the money for clothing.

The court made the following distribution:

<u>Mavis</u>		<u>Paul</u>	
One-half West 80	\$21,779	One-half West 80	\$21,779
Ford	\$3400	East 80	\$50,384
Household Goods	\$3747	Crops	\$16,353
Cash Value for Beans	\$5451	Machinery	\$12,520
Cash Value		Motorcycle	\$1950
for Machinery	\$13,049	Pontiac	\$100
	\$47,426	Bank	\$1000
		Credit Union	\$2000
		Commercial Credit	\$2200
			<u>\$108,286</u>

An approximately equal division of the marital assets would result in an award to Mavis of \$72,695. We increase the cash award to Mavis from \$18,500 to \$43,769. This amount shall be paid in the manner the court dictated: \$3769 shall be paid before November 1, 1984, and \$5000 paid each November 1 beginning

1985 through and including 1992. Interest shall be paid at the rate of ten percent per annum on the unpaid balance to be computed from November 1, 1984.

Mavis contends it was error for the court not to consider Paul's pension in making its award. However, at trial she testified as follows:

Q. Anything else that you've taken off the net worth in terms of calculating a 50 percent share? A pension?

A. (Witness shakes head.)

Q. Did you take the pension off in calculating the net worth?

A. No. I don't think I would want to get into the pension.

THE COURT: Well, I'll have to.

THE WITNESS: I don't think I want to get into his pension.

Mavis referred to the pension as vested, and said benefits would be paid when Paul reached the age of sixty-five. Paul said the pension would not be paid if he did not continue employment at John Deere until retirement at age sixty-two. There is no information to indicate the amount Paul contributes to this pension, or that shows how much of the contribution to the pension was paid from marital assets. We find any attempts to divide this pension would involve considerable speculation and decline to include it in the marital assets.

We look to the needs of the requesting party, the ability of the other party to pay and results on appeal in considering a request for a contribution of attorneys fees. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We hold each party shall pay their own attorney fees.

AFFIRMED AS MODIFIED.