

IN THE COURT OF APPEALS OF IOWA

No. 6-399 / 95-1376

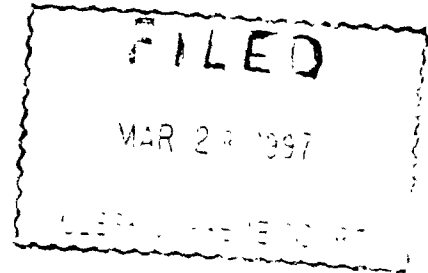
**IN RE THE MARRIAGE OF MARTHA M. RITZ
AND H. LE RITZ**

Upon the Petition of
MARTHA M. RITZ,

Appellee,

And Concerning
H. LE RITZ,

Appellant.



Appeal from the Iowa District Court for Davis County, James D. Jenkins,
Judge.

H. Le Ritz (Le) appeals the district court's distribution of the parties' property
in its dissolution of marriage decree. **AFFIRMED.**

Timothy W. Dille of McGrath & McGrath, P.C., Keosauqua, for appellant.

David J. Hester of Johnson, Hester, Walter & Harrison, L.L.P., Ottumwa, for
appellee.

Considered by Cady, P.J., Streit, J., and Peterson, S.J.*

*Senior judge from the First Judicial District serving on this court by order of
the Iowa Supreme Court.

PETERSON, S.J.

The marriage of Martha M. Ritz and H. Le Ritz was dissolved by a decree filed on July 14, 1995. H. Le Ritz appeals contending the trial court erred in concluding he had no interest in the 160-acre farm where the parties resided.

I. Scope of Review. We review this equity matter de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the findings of the district court, but are not bound by them. In our review of the property division portion of a dissolution decree, we are not required to achieve an equal percentage division but rather that which is equitable and just under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). Each partner is entitled to a just and equitable share of the property accumulated as a result of their joint efforts. *In re Marriage of Frances*, 442 N.W.2d 59, 62 (Iowa 1989). The courts do not require an equal division or a percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991).

II. Background Facts and Proceedings. Martha M. Ritz (Martha) and H. Le Ritz (Le) were married on September 18, 1969. Their marriage was dissolved on July 14, 1995. At that time, Martha was seventy-three years of age and Le was eighty-three years of age. Their marriage was one of approximately twenty-five years in duration.

At the time the parties were married, Martha owned a 160-acre farm in Davis County, Iowa. She also had some livestock, as well as a line of machinery that was used in operating the farm. She also had the normal household goods and furnishings in the home. Le was in the trucking business and brought to the marriage the truck he used as well as his personal effects.

Martha was working at that time at Edgerlys. The record does not indicate what type of employment this was; however, they went out of business in 1976. She then took care of elderly people in their homes until shortly before the trial. At that time she was unemployed. Le continued in his trucking business until 1983 when he retired, and he sold the truck two years later. Since that time, his sole source of income has been benefits from social security in the amount of \$500 per month. Petitioner's exhibit 26 showed that Le earned \$31,083 over the period of the parties' marriage. The exhibit shows no income for him from 1984 on. The exhibit shows Martha earned \$58,454 during the marriage. It shows no income for her for the years 1977 and 1978, the years from 1981 through 1986, and the year 1993. The parties kept their incomes separate; however, Martha paid the bills and did the record keeping for Le's trucking business.

The parties farmed the 160 acres for the first few years after they were married; however, since that time, the crop ground has been rented. They did retain the hay ground and the pasture and raised livestock. Le provided labor for the planting

of the crops during the period of time the parties farmed, and the funds were provided by Martha. Le did contribute gas from time to time for the tractor.

After the parties ceased farming but continued their livestock operation, Le would mow the hay, but they would hire the baling done. The expense of the baling was paid by Martha. Le suffered a heart attack in 1989 and since then has not provided any significant help in connection with the farm.

Martha's grandson, Larry McKine, moved in with Martha and Le in 1981. He was thirteen at the time, and he stayed there until 1985 when he graduated from high school. He worked on the farm during those years and contended that he did the majority of the work that related to the farm operations. He felt that Le did help at the beginning; however, after he had his heart attack, he slowed down.

Van U. Ritz, Le's son, lived with them for approximately a year and one-half to two years when he was thirteen and fourteen. During the time he lived on the farm, he assisted with the chores.

During the time parties lived together on the farm, they made some improvements. In 1970, there was a fence replacement. The labor for this was provided by Le, and the funds for the materials were provided by Martha. Water was brought into the house and a sink was added, as well as a bathroom and a furnace. An old barn was torn down, and a new barn constructed by a contractor. The funds for these improvements were provided by Martha.

Le provided some of the labor for these improvements. He also was assisted in these endeavors by his sons. They tore the old barn down and poured the footings for the new barn. Martha rented a cement mixer and purchased the cement for these footings. Le also assisted in putting the pipe in for the water system and was also assisted in this endeavor by one of his sons. His sons also assisted him from time to time with taking care of the livestock and some of the machinery work and some fencing. These items were described as "general farm things."

The condition of the farm was described as average when the parties were married; however, it is now described as below average because maintenance has not been done. The fences have not been maintained, and junk has been allowed to accumulate in the pasture area, and there is some work that needs to be done because of some soil erosion. The farm was appraised at the time of the decree as having a value of \$70,000. The same appraiser believed the farm was worth \$27,200 at the time the parties were married.

During the marriage, Le inherited some money, and that was placed in certain bank accounts. The interest had been used for living expenses; however, the principal was intact at the time of the trial.

The trial court awarded Le his automobile, his life insurance policies, and the principal of his inheritance which amounted to \$11,854, as well as the household goods and furnishings in his possession, and certain machinery. The balance of the property, including the real estate, was awarded to Martha. The trial court found

Martha owned the 160-acre farm, together with a substantial number of livestock prior to the parties' marriage. It further found there was no showing of any credible evidence that any improvements Le claimed to have made on the property in any way affected the current fair market value of the farm.

III. Disposition of Inherited Property. It is Le's contention that he should be awarded an interest in the 160-acre farm. Section 598.21(2) provides that "property inherited by either party or gifts received by either party prior to or during the course of the marriage is property of that party and is not subject to a property division under this section except upon a finding that a refusal to divide the property is inequitable to the other party or to the children of a marriage."

Accordingly, the ultimate question is, as it has always been, whether the distribution of the property was equitable. When asked to review an individual economic provision of a dissolution decree, we will consider all the provisions together as an integrated whole. *In re Marriage of McFarland*, 239 N.W.2d 175, 179 (Iowa 1976). An additional factor in dividing appreciated property acquired before the marriage is whether the appreciation which occurred during the marriage is fortuitous or due to the efforts of the parties. The underlying premise of our analysis is that an equitable property division of the appreciated value of property should be a function of the tangible contributions of each party, and not the mere existence of the marital relationship. *In re Marriage of Hass*, 538 N.W.2d 889-893 (Iowa 1995);

In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa 1991); *In re Marriage of Lattig*, 318 N.W.2d 811, 814, 815 (Iowa App. 1982).

We agree with the trial court that the increase in value in the farm was fortuitous and not due to the efforts of the parties. We do not believe the labors provided by Le on the farm rise to the level of contributing to the appreciation of the farm. There is testimony that the farm at the time of the decree was in substantially poorer physical condition than at the time the parties were married. Le did not provide any evidence concerning the extent of any financial contribution and conceded that the financial contribution for the operation of the farm, as well as for any improvements made, came from Martha's income. The monies he inherited were awarded to him as well as the personal property he had on the premises. We believe under the circumstances that the trial court was correct in finding that Le did not have an interest in the farm and that the division of the property was equitable under the circumstances.

AFFIRMED.