**IN THE COURT OF APPEALS OF IOWA**

No. 1-98 / 90-527

FILED
DEC 31 1991
CLERK SUPREME COURT

207

**IN RE THE MARRIAGE OF DEAN PAUL FARNHAM AND CAROL JEAN FARNHAM**

Upon the Petition of

**DEAN PAUL FARNHAM,**

Appellant/Cross-Appellee,

And Concerning

**CAROL JEAN FARNHAM,**

Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Webster County, Dale E. Ruigh, Judge.

Both parties appeal the economic provisions of a dissolution decree in which the district court valued the parties' farming assets and crops. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Lad Grove, Ames, for appellee.

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

**SCHLEGEL, P.J.**

Dean and Carol (Jean) Farnham were married on August 10, 1974. At that time the parties were both twenty years old. Two children were born during the marriage: Trent Dean Farnham, born September 17, 1975; and Tyler Scott Farnham, born November 16, 1979. During the marriage the parties lived on a farm near Gowrie, Iowa.

Dean works as a farmer. In 1984 Dean incorporated his farming business as Farnham Farms, Ltd. Neither Dean nor the corporation actually owns any farmland. The corporation owns farm machinery and crops. Dean and Jean were paid a salary by the corporation. We will consider the corporation and Dean's farming operation to be one and the same. Dean farms 920 acres, which he rents from his father and grandmother. Dean has the ability to earn a total gross annual income of between $35,000 to $45,000.

Jean only worked briefly outside of the home during the marriage. After the parties separated in September 1988, Jean moved to Ames and began working for AAA Motor Club. Her average gross monthly income is $823, and her net monthly income is about $650. Jean shares living quarters and expenses with Carl Streit. His net weekly income is about $343.

The district court awarded the parties joint custody of the children and set forth a visitation schedule for Jean. The court applied the child support guidelines and ordered Jean to pay child support of $110 per month for two

children, and $75 per month for one child. Jean was not awarded any alimony. The court awarded the farm assets and debts to Dean. Dean must pay Jean a property settlement of $30,000, payable over three years. Dean was also ordered to pay $2,000 towards Jean's attorney fees.

Dean appealed, and Jean cross appealed.

I. Our review in this equity action is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Both parties challenge the division of property made by the district court. We will consider these arguments together.

Dean states that the court improperly considered $16,865 in gifts he received from his grandmother as marital property.

The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Oler, 451 N.W.2d 9, 11 (Iowa App. 1989). Property inherited or received by gift is not subject to a property division except upon a finding that refusal to divide the property is inequitable. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). However, this rule does not apply where gifts are made to both parties. In re Marriage of Vrban, 359 N.W.2d 420, 428 (Iowa 1984).

We do not believe the gifts from Dean's grandmother were made to Dean alone. Dean himself testified the gifts were made for the benefit of the family. Thus, the district court properly did not exclude the gifts from its consideration of the marital property.

Dean also states that growing crops should not be considered an asset, but should be considered as income. He feels it is unfair to consider the value of the growing crops as an asset for purposes of dividing the property, but to consider the value of those same crops as income for purposes of determining Jean's child support obligation.

In essence, Dean asks the court to overrule the case of In re Marriage of Martin, 436 N.W.2d 374 (Iowa App. 1988). In Martin we stated, "Although the growing crop may be considered an expectancy only, it is an accrued and accruing asset and has a value to the parties." Id. at 376. We concluded, "the value of crops growing upon real estate owned by both parties may be considered as property separate from the value of the real estate." Id. We decline to overrule Martin at this time.

We believe, however, that where the value of a farmer's growing crops are divided as a marital asset, the court should take into consideration the fact that this will reduce the farmer's gross income in the following year.

Jean contends that the district court did not properly value the marital assets. She thinks the value of Dean's farm machinery should be increased by $20,000. She asks us

to rely on the appraisal of the equipment made by her brother-in-law, Greg Anderson. We agree with the district court that the appraisal made by John Lizer was more reliable. Jean also thinks that the value of the growing crops should be increased by $7,000. Since the crops had not yet been harvested at the time of the dissolution hearing, this value was necessarily an estimate. Dean saw these growing crops every day, and we believe his estimate is more reliable than Jean's. We will not disturb the district court's valuation of the marital assets.

Jean also contends that she should be awarded one-half of the parties' net worth. The district court found a precisely equal division would give Jean $40,560. Based on several factors, the court granted Jean a judgment of only $30,000. Among these factors was the fact that the division of the value of the growing crops would reduce Dean's income to support himself and the children.

As we noted in the case of In re Marriage of Oler, 451 N.W.2d 9, 11 (Iowa App. 1989), we are not bound to achieve a precisely equal division in awards of marital property. The ultimate question is whether the property division is equitable. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). After considering all of the issues raised by the parties, we find that the property division made by the district court was equitable, and we affirm it.

III. Jean contends that the district court should have awarded her a greater amount of attorney fees. Jean had

trial attorney fees of approximately $10,000. The district court ordered Dean to pay $2,000 of those fees.

Attorney fees are not recoverable as a matter of right, but rest within the trial court's discretion. In re Marriage of Dahl, 418 N.W.2d 358, 361 (Iowa App. 1987). Any award of attorney fees depends on the financial circumstances and earnings of each party. Id. Considerable discretion is assigned to the trial court in the allowance of attorney fees. Id. We affirm the district court's award of attorney fees in this case.

IV. Finally, Jean seeks attorney fees for this appeal. As noted above, dissolution courts have considerable discretion with regard to attorney fees. We find that the parties have the ability to pay their own appellate attorney fees. Costs are assessed one-half to each party.

**AFFIRMED.**