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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANNA JUNE JARRARD AND LAWRENCE A. JARRARD

UPON THE PETITION OF)
ANNA JUNE JARRARD,)
Appellee,) Filed August 31, 1978
AND CONCERNING)
LAWRENCE A. JARRARD,) 571
Appellant.) 2-60038

Appeal from Linn District Court - Clinton E. Shaeffer, Judge.

Respondent-husband appeals from the economic provisions of the decree of dissolution of marriage. Affirmed by Operation of Law, § 684.10, The Code.

William J. Matias and Jon M. Kinnamon, of Cedar Rapids, counsel for appellant.

Stephen B. Jackson, of Cedar Rapids, counsel for appellee.

Submitted to Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

Respondent-Lawrence A. Jarrard appeals from the economic provisions of a decree of marriage dissolution. He and petitioner-Anna June Jarrard were married on November 16, 1943, and at the time of trial, Lawrence was 62 years old and June was 56. During the course of the marriage, June remained in the home and was primarily responsible for rearing the children while Lawrence was employed full time. Five children were born to the marriage, and custody of the one remaining minor child and child support was awarded to June. Lawrence does not dispute these provisions.

When the parties married, they had no assets beyond an automobile owned by Lawrence. A year and a half before the marriage, Lawrence was granted certain proprietary interests in two farms in Johnson County by his parents. He was given a life estate in one 80-acre farm, subject to a life estate in the survivor of his parents, and a half-interest in fee in the second farm of 160 acres, also subject to a life estate in his parents. At his mother's death in 1959, Lawrence's interests in the farm vested in possession. The half interest in the farm in fee was subsequently sold, with a contract balance still owed at the time of trial of $19,600. The annual gross profits from the life estate, of which Lawrence receives 50 percent, has varied from $2000 to $6000 per year from 1959 to the dissolution. During this time the income from both farms was used to support the family.

During the course of the marriage, the parties accumulated a house, several cars and household and personal property. Prior to the dissolution action Lawrence and June sold their home, divided equally and invested separately the $30,000 proceeds, and divided the household and personal property. In dividing the property between the parties, the trial court awarded June the $3000 car, her $15,000 investment, personal and household goods in her possession and her bank accounts, if any; Lawrence was awarded the other cars valued at $3875 and $200, his $15,000 investment, personal and household goods in his possession and his bank accounts, if any. The trial court further awarded June one-half of all contract payments owed to Lawrence as a result of his sale of the farm, and as alimony one-half of the net income received by Lawrence from his life estate in the other farm. On appeal, Lawrence contends that the trial court's award of alimony and the grant of income from the interest in his inherited property to June was inequitable and onerous.

Our review in this matter is de novo. Rule 4, Rules of Appellate Procedure. Although we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P. With regard to property settlement, we are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), without regard to fault. In re Marriage of Williams, 199 N.W.2d 339, 345-346 (Iowa 1972). Precedents are of little value and a determination of what is equitable depends upon the facts of each case. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973).

At the outset we deal with the assertion of petitioner-June that this appeal should be dismissed because Lawrence acquiesced in the trial court's decree by paying child support and transferring all property awarded to June except the funds received from the farms. Lawrence's willingness to abide by certain provisions within the decree does not waive his right to claim other provisions were unjust. In re Marriage of Abild, 243 N.W.2d 541, 542-543 (1976).

After reviewing the entire record, we conclude that the property settlement ordered by the trial court achieves an equitable division of the parties' assets. This marriage endured for almost 33 years. We believe trial court's division of the marital property fits the circumstances of this case, including granting one spouse an interest in property inherited by the other under this particular factual setting. See Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976), citing In re Marriage of Beeh, 214 N.W.2d 170 (Iowa 1974).

June seeks an award of attorney fees on appeals. Each party shall pay his or her own attorney fees. The costs of appeal are assessed to Lawrence. The judgment of the district court is affirmed by operation of law. Section 684.10, The Code.

Affirmed by Operation of Law.

Carter, J. concurs. Snell and Oxberger, JJ. dissent.

OXBERGER, J. (dissenting)

I dissent. I believe Lawrence should be allowed a setoff for the inheritance property he brought into the marriage. Since both parties agree the income from these properties was devoted to the acquisition of marital assets and payment of family expenses and necessaries, I would rule both parties have already enjoyed the benefits of any inflation in value of the assets during the marriage. Therefore, I would rule that Lawrence is entitled to his life estate and his future income from the farm contract free and clear of any claim from June.

It is apparent from the record once June no longer receives child support and social security income for Julie she will have a difficult time maintaining her lifestyle. Her need for alimony must be balanced against Lawrence's ability to pay. In re Marriage of Dally, 222 N.W.2d 478, 482 (Iowa 1974). We should grant June $50 per month in alimony until Julie reaches age 18; thereafter she should receive alimony of $150 per month until such time as she remarries or either party dies.

SNELL, J. joins this dissent.