FILED
JUN 1 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANITA L. ROWLAND AND DONALD M. ROWLAND

Upon the Petition of)
ANITA L. ROWLAND,) Filed June 1, 1979
Appellant,)
And Concerning)
DONALD M. ROWLAND,)
Appellee,)
and) 139
) 3-62611
WILLIS M. ROWLAND and)
MARJORIE A. ROWLAND,)
Intervenors.)

Appeal from Marion District Court - Van Wifvat, Judge.

Wife appeals economic and custody provisions of dissolution decree. - Affirmed with modification.

John A. Pabst, of Pabst & Pabst, Albia, for Appellant.

David A. Johnson, of Johnson, Jordan & Lane, Knoxville, for Appellee.

Warren A. Reiter, Knoxville, for Intervenors.

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

PER CURIAM

This is an appeal from a decree dissolving the four and one half year marriage of petitioner, Anita Rowland, age 25, and respondent, Donald Rowland, age 24. Petitioner contends she should receive a more substantial property settlement and full custody of the parties' son. We affirm with modification.

We review this case de novo, Iowa R. App. P. 4, and apply the criteria listed 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). On January 1, 1977, respondent's parents sold, on contract, respondent and petitioner a farm for $213,000. At the time of trial, the fair market value of the property was approximately $360,000. Respondent also owned a one-half interest in a farming partnership with his father. The farm respondent's parents sold to the parties was an integral part of the farming partnership. During the marriage respondent's income ranged from $5000 to $13,000 annually. The contract for the farm called for a principal payment of $4000 annually plus an interest payment of $16,452.50 for the first year. Petitioner and respondent made no payments on the contract for the first year and one half. The petition for dissolution was filed November 7, 1977. On May 27, 1978, respondent's parents served a notice of forfeiture of the farm contract, but upon petitioner's application, trial court temporarily enjoined the forfeiture proceedings.

In the dissolution decree, trial judge made no mention of the value of this farm which indicates that he considered the forfeiture an accomplished fact. Our review of the circumstances of the case leads us to a different conclusion. The contract price for the purchase of the farm was $147,000 below market vlaue. The first year's interest and principal payment of $20,452.50 was considerably higher than the $5000 to $13,000 income respondent earned during the marriage. Respondent's parents obviously did not expect to receive the full payments required by the contract. It was not until shortly before the final hearing on the dissolution decree that they filed their forfeiture action.

We find that the discount on the price of the farm was intended to be a gift to the parties from respondent's parents and but for the dissolution action would not have been returned to his parents by way of the forfeiture proceedings. It, therefore, constituted a marital asset and should have been considered as such by trial court. See Miller v. Miller, 202 N.W.2d 105, 110 (Iowa 1972). Applying the Schantz criteria to these facts, we

conclude respondent should receive the bulk of this asset and petitioner should receive $7500 as her equitable share. Respondent is ordered to pay this amount to petitioner within 120 days of the filing of this opinion.

In our consideration of the custody issue, we have examined the record in full and have applied the criteria listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). We find no reason to disturb the trial court's award of joint custody. We likewise affirm trial court's denial of petitioner's request for attorney fees and suit money in the trial of this matter.

Court costs on appeal are taxed to respondent, and although we do not determine the amount petitioner's attorney may charge, we hold that respondent shall pay $750 toward petitioner's attorney fees in the appeal of this case. See In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976).

AFFIRMED WITH MODIFICATION.