FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF PATRICIA LYNN CRISMAN AND JAMES EDWARD CRISMAN

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Upon the Petition of)
PATRICIA LYNN CRISMAN,)
Petitioner-Appellant,)
And Concerning)
JAMES EDWARD CRISMAN,)
Respondent-Appellee.)

Filed October 23, 1984

4-345
84-447

Appeal from the Iowa District Court for Poweshiek County - Dan F. Morrison, Judge.

Petitioner appeals the property award of a dissolution decree. AFFIRMED AS MODIFIED.

Roger W. Sunleaf of McNeil & Sunleaf, Montezuma, Iowa, for petitioner-appellant.

Patrick W. Brooks of Mowry, Irvine, Brooks, Ward & Trout, Marshalltown, Iowa, for respondent-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Petitioner, Patricia Crisman, appeals the property award of a dissolution decree. She asserts that farmland inherited by respondent, James Crisman, should have been divided as part of the property settlement. We affirm as modified.

In 1958 James's mother died. He inherited from her 160 acres of farmland in Illinois. The 160 acres were two-thirds of a 240-acre tract. His grandmother inherited the other one-third of the tract. James subsequently bought the other one-third from his grandmother.

In 1963 James and Patricia were married. They moved into a house in Urbandale that James had also inherited from his mother. The record does not indicate the extent of James's interest in the house at the time of the marriage, although it is undisputed that the house was subject to a mortgage of at least $3,000. The Crismans subsequently sold the Urbandale home and used the proceeds to purchase a lake lot. They then built a home upon the lot.

The Crismans have always lived in Iowa. Neither party worked on the farm in Illinois. The farm was taken care of by a manager. During the first half of the marriage the farm proceeds were reinvested in the farm. During the last ten years of the marriage, however, the parties drew money from the farming operation, which increased the family's standard of living.

Sometime after the marriage, four acres of land adjoining the farm were purchased. Those four acres are worth $9,200. The value of all farmland is $683,200. The farmland is subject to $92,000 of debt.

The dissolution decree awarded certain personal property and vehicles to each party. The farmland was awarded to James. The home is to be sold when the minor child reaches majority, and James and Patricia are to receive one-half of the proceeds of the home. The home's value is $45,000. In addition to awarding child support, the decree requires James to pay $250 alimony per month for four years.

I. Scope of Review. Our review in this equity proceeding is de novo; although not bound by the trial court's findings of fact, we give weight to those findings. Iowa R. App. P. 4, 14(f)(7). Our analysis of the property settlement is governed by the applicable statute, section 598.21 of the Iowa Code (1983). See In re Marriage of Castle, 312 N.W.2d 147, 149 (Iowa Ct. App. 1981). Subsection 598.21(1) states, "The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties . . . ." (Emphasis added).

II. The Modification Request. We do not agree with Patricia's argument that the farmland inherited and owned by James prior to marriage should have been divided. However, we do believe the circumstances of this case require us to modify the property division to achieve equity.

Section 598.21 specifically excepts inherited property received by one person from division, unless refusal to divide the property is inequitable. Iowa Code § 598.21(1)-(2) (1983). The factors bearing upon whether inherited property should be divided were listed by the supreme court as follows:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
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> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
>
> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
>
> (4) any special needs of either party;
>
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.
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> Other matters, such as the length of the marriage or the length of time the property was held after it was devised or given, though not independent factors, may indirectly bear on the question for their effect on the listed factors. Still other matters might tend to negative or mitigate against the appropriateness of dividing the property under a claim that it falls within the exception.

In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982). After considering all of those factors, we do not believe the 240 acres of Illinois farmland should be subject to division. Patricia's argument that Illinois law should control disposition of the farmland is without merit. Assuming, without deciding, that Illinois law could control, Patricia has failed to specifically plead and prove that law as required by Iowa Kemper Insurance Co. v. Cunningham, 305 N.W.2d 467, 469 (Iowa 1981).

The four acres of farmland purchased after marriage are susceptible to division. We believe it is equitable that it be divided evenly. The four acres are worth $9,200. We modify the decree to direct James to pay $4,600 to Patricia within thirty days of the date this opinion is filed.

We also modify the scheme of disposition of the proceeds from the eventual sale of the family home. One of the factors to be considered in the property division is the earning capacity of each party, including the ability of the party "to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage." Iowa Code § 598.21(1)(f) (1983). The trial court found that Patricia will not likely earn more than minimum wage. In addition, alimony will cease after four years. It is apparent that Patricia will not be able to support herself at a standard of living comparable to what she enjoyed during the last ten years of marriage, when proceeds from the farm operation were used by the parties. Accordingly, we modify the decree to provide that upon the sale of the home Patricia will receive 70% of the proceeds and James will receive 30% of the proceeds.

AFFIRMED AS MODIFIED.