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IN THE COURT OF APPEALS OF IOWA

In re the Marriage of Doris G. Lanphere and Herbert R. Lanphere

Upon the Petition of	)	
DORIS G. LANPHERE,	)	Filed September 9, 1977
Appellant,	)	
And Concerning	)	181 / 2-58726
HERBERT R. LANPHERE,	)	
Appellee.	)	

Appeal from Linn District Court - Robert Osmundson, Judge.

Appeal from economic provisions of dissolution decree. - Affirmed as modified.

David F. McGuire, of Cedar Rapids, for Appellant.

William G. Faches and Jon M. Kinnamon, of Cedar Rapids, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell and Oxberger, JJ; Carter, J. takes no part.

PER CURIAM

Petitioner, Doris G. Lanphere, appeals the property division provisions of the dissolution decree. Our review is de novo. Rule 4, Rules of Appellate Procedure. In matters of property settlements we are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except that the fault concept has been eliminated by In re Marriage of Williams, 199 N.W.2d 339, 345-46 (Iowa 1972). Further, precedents are of little value, and determinations of what is right depends upon the facts of each case. In re Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973). And while we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P.

At the time of the dissolution, the parties had been married over 25 years. Respondent, Herbert R. Lanphere, was age 66 and petitioner, age 50. Since 1964, the parties were self-employed in the farm plat book business. Respondent sold the advertising for the plat books and petitioner did the detail work relative to obtaining the information from the Auditor's Office for the maps, the paste-up of ads and preparing copy for the printer. The entire income of the parties was earned through this endeavor. The trial court found that the physical assets of the business consisted of desks, tables, typewriters and similar equipment which has a nominal inherent value.

In its decree, the trial court set off to petitioner, as her own separate property, a certificate of deposit worth \$6000, a 1/3 interest in a real estate contract and a savings account worth \$2300, all of which represented property inherited from her mother. Each party received the personal property in their possession as well as the personalty acquired since their separation; petitioner also received the personalty inherited from her mother. Finally, each party received their own checking account and an automobile. Respondent was ordered to pay all debts incurred by the parties.

Petitioner's major dissatisfaction is with the disposition of the parties' home and plat book business. The trial court awarded both to respondent. Testimony showed the home was valued between \$18,000 and \$25,000 with encumbrances of approximately \$8000. Respondent testified the business had little actual value and was only a vehicle for potential income; petitioner believed it was worth between \$8000 - \$10,000. Petitioner appeals because the trial court's disposition gives her only 1 1/2% of the total assets acquired during the marriage by their joint efforts, while respondent received 98 1/2 % of those assets.

We find that the business operated by parties during the marriage has no inherent value other than as a vehicle for potential income. It is a highly personal business and testimony showed that most other plat book businesses go broke. In fact, petitioner attempted to start her own plat book business without success. In her reply brief, petitioner states she does not desire to have the business set-off as her asset.

Respondent currently receives $285 per month in social security benefits and also earns approximately $200 per month operating his plat book business on a limited basis. In order to continue to receive his social security benefits, respondent may not work more than 45 hours per month. This is his justification for operating his business on the limited basis. We believe the trial court was correct in awarding the business interest to respondent.

Respondent was also awarded title to the parties' home subject to the encumbrances which he was ordered to assume. Petitioner seeks an additional property award of at least $13,500 based on her claim to one-half the value of the business and the parties' home. Alternatively, she argues for either a sale of the home and a division of the proceeds or outright ownership of the home subject to the mortgages thereon. Respondent argues that with his limited income and social security benefits he needs the home as both a place to live and as a place to operate his business. Petitioner, on the other hand, earned over $2200 in a four-month period immediately prior to the trial, although at the time of trial she was in fact unemployed.

After a review of the **Schantz** criteria, we find that the trial court was correct in awarding possession of the parties' home to respondent. However, the decree is modified to the extent that petitioner is awarded the sum of $5000 as an additional property settlement. Said sum is hereby made a lien on the home, shall draw interest at the rate of 7 per cent per annum from the date of this decree and shall be due and payable within six months from the date of this decree.

Costs taxed to both parties equally and the judgment of the trial court is affirmed as modified.

AFFIRMED AS MODIFIED.