

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

CLERK SUPREME COURT

IN RE THE MARRIAGE OF BLANCHE RUPP AND CLIFFORD RUPP

351

Upon the Petition of)

BLANCHE RUPP,)

Filed August 29, 1985

Petitioner-Appellant,)

And Concerning)

5-357

CLIFFORD RUPP,)

84-669

Respondent-Appellee.)

Appeal from the Iowa District Court for Pottawattamie County - Keith Burgett, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage.

AFFIRMED.

Mark J. Eveloff, Des Moines, Iowa, for petitioner-appellant.

Thomas L. Root of Pogge, Root & Steege, Council Bluffs, Iowa, for respondent-appellee.

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

Petitioner wife appeals from the decree dissolving the parties' marriage. She asserts that the trial court erred in not including respondent husband's farm property and treasury bill in the property distribution. She also asserts that the trial court erred in its division of the equity on the family home. We affirm.

Petitioner Blanche Rupp and respondent Clifford Rupp were married in 1972. The marriage lasted about eleven years; during this time the parties were separated approximately four years. At the time of trial, Blanche was 67 years old and Clifford was 63 years old. This was the second marriage for both parties and no children were born of this marriage.

Blanche has an income of \$800 per month and currently lives in an apartment. Clifford has an income of over \$750 and currently resides in the family home. The family home has an equity of over \$9,000.

Testimony and evidence at trial reveals that Clifford held an interest in two farms at the time of the marriage. Clifford and his first wife initially owned 240 acres as joint tenants. Clifford then acquired a portion of his parents' 160 acre farm by inheritance and purchased the remaining share by mortgaging the 240 acres of farm land. His first wife's parents also helped with the purchase price.

In 1973, the 240 acre farm was sold. The money from this sale was used to pay off the mortgage on the 240 acre farm.

Clifford and his daughter have a \$20,000 treasury bill. About half of the amount was put in by Clifford and half by his daughter. Clifford claims that his share of the treasury bill was accumulated before the marriage.

The trial court found that the farm land and treasury bill should not be considered as marital assets subject to division. The court also found that the current family home was acquired with Clifford's assets.

The trial court awarded Blanche a 1983 automobile and all household goods and furnishings in her possession. The court further awarded Blanche \$2,500 as her share of the assets acquired during the marriage. Respondent was awarded a 1981 automobile, household goods and furnishings, and the family home. The court finally ordered that the parties were responsible for their own attorney fees.

The trial court overruled Blanche's timely filed motion for new trial. Blanche has appealed.

Blanche argues that the property distribution is inequitable in several respects. In considering her claims we are guided by the factors set forth in section 598.21(1) of the Iowa Code. A percentage division of the property is not statutorily sanctioned. Rather, the ultimate question is whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). Furthermore, we recognize that all economic aspects of the divorce decree must be viewed as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

Initially, we consider Blanche's claim that the 160 acre farm should have been considered in the property division. She argues that at minimum she is entitled to a 50 percent share of the noninherited portion of the farm. We cannot agree.

Clifford acquired his interest in the farm before the parties were married. He inherited a small portion and purchased the remainder from his brothers and sisters. Clifford and his first wife, Lois, owned the 160 acre farm as joint tenants with a right of survivorship; when Lois died, Clifford inherited her undivided interest in the land.

Some testimony indicates that Clifford still owed money on the 160 acre farm during the time he and Blanche were married. This debt was paid off

with a portion of the proceeds from the sale of the 240 acre farm. The significance of this fact is that Blanche claims she has an interest as a joint tenant in the 240 acre farm. If this were true, it could be argued that she contributed financially to the 160 acre farm. However, we find no support in the record for the proposition that Blanche and Clifford owned the 240 acre farm as joint tenants. Although both parties signed the warranty deed to convey the farm, there is no indication that they held the title as joint tenants.

Essentially, Blanche has made no contribution, financial or otherwise, to the existence of the farm. In view of the short length of the parties' marriage, it would seem inequitable to award Blanche a portion of the farm. See In re Marriage of Wallace, 315 N.W.2d 827, 830-31 (Iowa Ct. App. 1981) (If marriage lasts a short time, the claim of either party to property owned by the other prior to marriage is minimal at best.).

For similar reasons, we also conclude that Blanche was not entitled to have a \$20,000 Treasury Bill considered in the property division. Testimony would support the trial court's conclusion that the asset was purchased prior to the parties' marriage by Clifford and his daughter. As we view it, Blanche has little basis for claiming she is entitled to a portion.

Blanche's final claim with respect to the property division is that she is entitled to half the equity in the parties' home. After reviewing the record, we conclude that the trial court's award of \$2,500 as Blanche's share of the marital assets is equitable. As Clifford points out, the parties' marriage was relatively short. Furthermore, the home was acquired with Clifford's assets. It is apparent to this court that an award of \$2,500 properly reflects the factors set forth in Iowa Code section 598.21(1). Accordingly, we affirm the decree in this respect.

The remaining issue before this court concerns attorney fees. Blanche requests both trial attorney fees and appellate attorney fees. In light of the financial situation of the parties, we believe such an award would be inappropriate.

AFFIRMED.