FILED
FEB - 5 1980
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ILA M. PETERS AND LOREN F. PETERS

Upon the Petition of	)	
ILA M. PETERS,	)	Filed February 5, 1980
Petitioner-Appellant,	)	
And Concerning	)	327 2-63008
LOREN F. PETERS,	)	
Respondent-Appellee.	)	

Appeal from Crawford District Court - George F. Davis, Judge.

Petitioner-wife appeals economic provisions of dissolution decree alleging trial court erred: 1) in finding she was not totally and permanently disabled; 2) in valuing the parties' net worth and division thereof; and 3) in providing insufficient funds to support her for the balance of her lifetime. AFFIRMED WITH MODIFICATIONS.

Warren L. Bush of Reimer, Vipond & Lohman, Denison, for petitioner-appellant.

William Q. Norelius and Stephen M. Engelhardt, of the Norelius Law Offices, Denison; and H. E. McQueen of McQueen & Dandos, Sioux City; for respondent-appellee.

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

Petitioner-wife, Ila M. Peters, appeals economic provisions of dissolution decree terminating her marriage to respondent-husband, Loren F. Peters. She alleges trial court erred: 1) in finding she was not totally and permanently disabled; 2) in valuing the parties' net worth and division thereof; and 3) in providing insufficient funds to support her for the balance of her lifetime. We affirm with modifications.

The parties were married June 21, 1960. Both were married previously.[1] Petitioner brought four children to the marriage; respondent none.[2] Together, the parties had one daughter, Denise Peters.[3] Neither party brought substantial assets to the marriage. Respondent owned farm machinery and some livestock; petitioner owned a modest home and was receiving social security benefits for the children. During the marriage, however, respondent inherited three parcels of farmland from his parents: a 157-acre tract; a 90-acre tract; and an 80-acre tract. Respondent, age 47, in good health, and a high school graduate, farmed throughout the parties' 18 year marriage. Petitioner, age 49, with an eleventh-grade education, worked in the home, around the yard, intermittently sold Rubbermaid, Tupperware and jewelry, and was employed briefly as a waitress.

During the original trial of this proceeding, petitioner was very seriously injured in an automobile accident, which trial court found resulted in a temporary total and partial permanent disability. As a result of these injuries, trial court set aside the proceedings on its own motion. Prior to retrial of the matter, trial court appointed a guardian for petitioner due to her disabilities. Despite these factors, trial court concluded: once the dissolution was resolved, petitioner would become mentally and physically able to resume some gainful employment. It further valued the total net worth of the couple at $577,243 and awarded petitioner approximately $9,000 in personal property and a $100,000 cash settlement, to be paid by respondent on installments without interest. Respondent was awarded the remainder of the marital estate.

I. Scope of Review. Our review of dissolution proceedings is **de novo.** Iowa R. App. P. 4; Zinger v. Zinger, 243 N.W.2d 629, 640 (Iowa 1976).

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[1] Petitioner's first marriage ended through death of her husband, respondent's through divorce.

[2] Petitioner's two sons died while institutionalized. Respondent adopted her two daughters.

[3] Custody of Denise was awarded to third parties and is not challenged on appeal.

II. Distribution of Property. Petitioner contends trial court's valuation of the parties' property was erroneous and the award to her inadequate. Trial court established property values as follows:

Real Estate	$497,000	
Less Mortgage	72,000	
Net Value		$425,000
Personal Property	$ 178,490	
Less Debts	26,247	
Net		152,243
Total Net Worth		$577,243

We believe these valuations are "well within the permissible range of the evidence" and, therefore, will be used in our review. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

We find respondent's farming operations require he receive the bulk of the personal property and affirm trial court's award thereof. We further agree with trial court that a division of the land would not be in the best interest of the parties as the property was inherited from respondent's parents and has been in his mother's family since the early 1800's, the property is necessary to respondent to continue farming, and petitioner would have difficulty in carrying on a farming operation on a portion of the land.

Applying the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972), we find trial court's lump sum award of $100,000 to petitioner, while not generous, nonetheless is within acceptable equitable boundaries. The bulk of the parties' net worth was three parcels of land which respondent inherited from his parents upon their deaths in 1970 and 1972, respectively. While each case must be decided on its own facts, in light of such cases as Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976), In re Marriage of Briggs, 225 N.W.2d 911, 912-13 (Iowa 1975), Conaway v. Conaway, 217 N.W.2d 625, 627 (Iowa 1974), and In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1973), when combined with the parties' contributions to the marriage and respondent's duty to pay the existing indebtedness of the parties, we conclude the $100,000 award should be affirmed. Trial court further concluded the unpaid installments should bear no interest unless they became delinquent. We cannot agree. Petitioner's award will not appreciate with inflation, as will respondent's. Her enjoyment of the full award is postponed to prevent hardship to respondent. We, therefore, conclude interest on the unpaid balance shall

accrue at 9% per annum as of March 1, 1979. Past due amounts shall be a lien upon the farm realty awarded respondent .

III. Alimony. Petitioner contends trial court erred in finding her both mentally and physically able to resume some gainful employment and in failing to provide her with sufficient funds for support for the balance of her lifetime. Petitioner has a limited education and, instead of refining employable skills during the term of the marriage, remained home to care for the family. She suffers permanent partial disability as a result of the automobile accident and, at date of trial, was not allowed to drive an automobile. However, we conclude petitioner is or should be capable of obtaining some gainful employment in the future. Nonetheless, based on her needs, her limited earning capacity, respondent's ability to pay and the property award, petitioner should receive $400 per month alimony until the death of either party or petitioner's remarriage.

IV. Attorney Fees. Petitioner has applied for an award of attorney fees on appeal in the amount of $2,470. We do not determine the amount petitioner's attorney is entitled to receive in this case, but merely any amount respondent will be required to pay. In re Marriage of Horstmann, 263 N.W.2d 885, 892 (Iowa 1978). Respondent is ordered to pay $1,200 of those fees. Costs of this appeal are assessed against respondent.

All other provisions of trial court's judgment are affirmed.

AFFIRMED WITH MODIFICATIONS.