FILED
FEB 23 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CARROLL L. ETCHEN AND LUELLA ETCHEN

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Upon the Petition of	)	
CARROLL L. ETCHEN,	)	Filed February 23, 1983
Petitioner/Cross-Appellant,	)	
And Concerning	)	
LUELLA ETCHEN,	)	2-498 2-68455
Respondent-Appellant.	)	

Appeal from Cerro Gordo District Court - John F. Stone, Judge.

Respondent-wife appeals and petitioner-husband cross-appeals from economic provisions of the parties' dissolution decree. AFFIRMED WITH MODIFICATION.

R. Michael Sweesy, Mason City, Iowa, for respondent-appellant.

M. Wayne Oltrogge, Clear Lake, Iowa, for petitioner/cross-appellant.

Considered by Donielson, Acting C.J., Johnson and Schlegel, JJ.

PER CURIAM

Respondent-wife appeals and petitioner-husband cross-appeals from the economic provisions of the parties' dissolution decree. They both claim that the division of property ordered by the trial court is inequitable. The wife further claims that the court abused its discretion in failing to award her alimony. She also requests attorney fees incurred in this appeal. We affirm with modification.

Carroll and Luella Etchen were married in 1950 and were, respectively, 55 and 51 at the time of trial. There are no minor children affected by this petition. Carroll farms the 160 acres owned by the parties as well as approximately 1500 acres rented from others. His 1981 adjusted gross income of $71,251 was fairly indicative of his income over the past few years. Luella has no outside employment, but she worked on the farm and outside the home as a laborer during the marriage. She currently suffers from arthritis, degenerative spinal disease and ulcers.

The trial court entered its findings, conclusions and decree on April 2, 1982. The court accepted Carroll's valuation of the farm property and machinery rather than Luella's considerably higher valuation. The court credited her for gifts and inheritance of $7,300 that she received during the marriage and concluded that the net assets of the parties, valued at $687,579, should be divided approximately evenly after deducting $131,917, an amount representing the potential tax liability in the event that the farm property and machinery had to be sold. Luella was awarded bank accounts containing $8,500, a car worth $4,000, a motor home worth $12,000, an Edsel car worth $7,500, $100,000 payable within sixty days, $60,000 payable upon sale of a Florida residence valued at $63,900, and $93,131 payable in six annual installments. Certain items of jewelry, collectibles and antiques which the trial court was unable to value were ordered sold with the proceeds to be equally divided. Carroll was awarded all remaining property including the farm, valued at $392,000, and the farm machinery, valued at $347,150; he was ordered to

assume indebtedness of $256,439. No alimony was awarded, and each party was ordered to pay his or her own attorney fees. This appeal and cross-appeal followed.

I. Both Carroll and Luella claim that the property division is inequitable. In our **de novo** review of the appropriateness of the trial court's decision, we examine the relevant criteria in Iowa Code § 598.21(1).

We conclude that some modification is required. We first take issue with the trial court's method of determining the net value of the parties' assets for purposes of making an equal division thereof. The court decided that the net asset value of $687,579 (both parties apparently accept this figure) should be further reduced by $131,917—the tax liability that would be incurred if the 160-acre farm and the machinery were forced to be sold. However, the court did not order such a sale, and the record does not convince us that such a sale will in fact be necessary to enable Carroll to pay off his obligations under the decree. Tax consequences are, of course, a relevant factor in making a division of property. Iowa Code § 598.21(1)(j). Nevertheless, we believe that the trial court erred in subtracting the potential tax liability from the net asset value when there is no assurance that liability will ever be incurred. Therefore, the amount subject to division should have been the total net asset value of $687,579 without the tax liability adjustment made by the trial court.

Because we agree that a relatively equal division of property is justified in this case and because of our upward adjustment of the net asset value (discussed above) to be distributed, Luella's property award must be adjusted correspondingly. We are not compelled to reach an exactly equal division of property. See In re Marriage of Castle, 312 N.W.2d 147, 149 (Iowa Ct. App. 1981). We therefore increase her $93,131 judgment by $40,000 for a result of $133,131. The terms of the payment of this judgment will be the same as ordered by the trial court with the exception that the annual payments for the years 1983 through 1987, inclusive, shall be $15,000 rather than $10,000 as ordered by the trial court.

II. Luella claims she should have been awarded alimony. One of the factors we may consider in such a question is the distribution of property already ordered. Iowa Code § 598.21(3)(c). The property division in Luella's favor is quite generous. We agree with the trial court that an alimony award is not called for in this case.

III. Luella has submitted a request for attorney fees incurred in this appeal. Such an award depends on the relative financial circumstances of the parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Without directing how much Luella's attorneys may charge, we order Carroll to pay $1,500 toward that obligation.

With the exception of the modification discussed in Division I of this opinion, we affirm the trial court's decree in all other respects. Costs of this appeal are assessed one-half to Carroll and one-half to Luella.

AFFIRMED WITH MODIFICATION.