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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JEANNE L. SMITH AND WAYNE M. SMITH

Upon the Petition of	)	
JEANNE L. SMITH,	)	Filed November 24, 1981
Petitioner-Appellant,	)	
And Concerning	)	
WAYNE M. SMITH,	)	1-265 / 2-66172
Respondent-Appellee.	)	

Appeal from Marshall District Court - Paul E. Hellwege, Judge.

Petitioner wife appeals from economic provisions of the parties' dissolution decree, asserting that she should be awarded a share of farmland inherited by the husband or, alternatively, a larger award of alimony. AFFIRMED AS MODIFIED.

James C. Ellefson of Lundy, Butler & Lundy, Eldora, for petitioner-appellant.

Steven D. Kirkham of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Petitioner wife appeals from economic provisions of the parties' dissolution decree, asserting that she should be awarded a share of farmland inherited by the husband or, alternatively, a larger award of alimony. We affirm as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner filed for dissolution of marriage on June 13, 1979, after thirty-six years of marriage. The parties accumulated few assets during the marriage other than those acquired by inheritance. The wife inherited $10,000.00 from her mother and the husband inherited a half-interest in farmland with a total market value of approximately $855,000.00[1] from his mother.

The petitioner took care of both the home and children during the marriage and performed some farm chores. She also worked outside the home; initially on a part-time basis, but full time after 1962. Petitioner was 56 years old and employed as a hospital ward clerk with net earnings of $5,647.99 at the time of trial. The respondent was 58 years old and employed as a machinist with a gross income of $19,143.74 in 1979.

The dissolution decree awarded petitioner the $10,000.00 she inherited, but no part of the farmland. She was also awarded alimony of $350.00 per month until her remarriage, the death of either party, or the husband's attainment of age 65.

II.

Petitioner asserts that she should be either awarded a share of the inherited farmland or a larger amount of alimony. Our analysis begins with § 598.21, The Code 1981, and is guided by the familiar factors found in Schantz v. Schantz, 163 N.W.2d 398,

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1 Respondent's share of the farmland is valued at approximately $427,750.00 and his share of the yearly cash rental value is approximately $18,937.50.

405 (Iowa 1968), (modified to exclude fault in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). The property division and alimony provisions must be equitable to both parties. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975).

We believe the trial court was correct in allowing both parties to retain the property they inherited and, therefore, affirm the property division. We, however, do not believe the amount or duration of alimony awarded to petitioner was sufficient in light of the property division and the factors appropriately considered under section 598.21(3). Although allocations for alimony, support, and property have different purposes, the court can properly consider how the property has been divided in assessing the needs and resources of the parties in fixing alimony. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975).

The petitioner is 56 years old, with a limited earning capacity. Her total income, including alimony, will be less than $10,000.00 per year. It is unlikely she can ever become self-supporting given her age, education, and earning capacity. Respondent's gross income alone is double what petitioner can expect to receive. When the potential income from his inherited property is considered, his gross income approaches $37,000.00 per year. We, therefore, modify the award of alimony to petitioner in two respects. First, the amount is increased to $700.00 per month. Second, this award is made permanent and shall continue until petitioner's death or remarriage. In this regard, we find nothing in the legislative changes effected by section 589.21, The Code 1981, that would suggest abandonment of the decisions of In re Estate of Roberts, 257 Iowa 1, 131 N.W.2d 458 (1964), and In re Marriage of Kouba, 257 N.W.2d 35 (Iowa 1977). Thus, in light of the special circumstances of this case, we conclude alimony shall not terminate upon respondent's death, but in that event, shall be a charge on this estate.

Petitioner's request for payment of $315.65 in attorney's fees associated with this appeal is granted. The costs of this appeal are to be divided equally between petitioner and respondent.

AFFIRMED AS MODIFIED.

All judges concur except Donielson, J., who dissents.

DONIELSON, J. (concurring in part, dissenting in part)

I concur with the majority's decision to affirm the property division, increase the trial court's award of alimony to $700.00 per month, and make the alimony award permanent. I cannot, however, agree with the majority's decision to make the award of alimony a charge against the respondent's estate upon his death.

The bulk of respondent's estate would consist of the farm land inherited from his mother. The respondent owns this property as a tenant in common with his brother. Making the alimony a charge against respondent's estate would create severe problems in the administration of his estate and complicate the sale of the property subject to this charge. In re Robert's Estate, 257 Iowa 1, 6, 131 N.W.2d 458, 461 (1964). I believe such action should be taken only in very exceptional circumstances and that this case does not merit such an extreme modification in light of the increased alimony award.

In addition, I believe that the charge against the estate is in reality an indirect, contingent modification of the property settlement. It in essence gives the petitioner an undetermined portion of the value of the farm land which we properly awarded to respondent under § 598.21.

It should be noted that petitioner only requested relief in the form of more property or increased alimony; she never requested the alimony be made a charge against the respondent's estate. While I believe in judicial economy and resolving all issues properly before the court in a single action, I cannot help but feel that it is unfair to award the petitioner this charge against respondent's estate when the respondent was never given the opportunity to argue the equity of such a modification in this appeal.