

IN THE COURT OF APPEALS OF IOWA

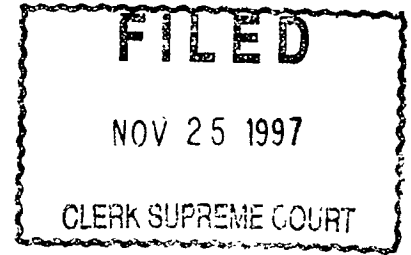
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No. 7-415 / 96-1461

**IN RE THE MARRIAGE OF BONITA MARIE
McKUSKER AND CRAIG ALAN McKUSKER**

Upon the Petition of
BONITA MARIE McKUSKER,
Appellant,

And Concerning
CRAIG ALAN McKUSKER,
Appellee.



Appeal from the Iowa District Court for Iowa County, Van D. Zimmer, Judge.

The petitioner appeals various economic provisions of the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

James E. Bobenhouse, Cedar Rapids, for appellant.

John C. Wagner and Christopher L. Jorgensen of John C. Wagner Law Offices,
P.C., Marengo, for appellee.

Heard by Cady, C.J., and Huitink and Streit, JJ.

STREIT, J.

This is an appeal from the economic provisions of a divorce decree. We affirm all issues on appeal, pursuant to Iowa Supreme Court Rule 9, with the modification that Bonita should share in the appreciation of Craig's classic vehicles.

In the February 1996 decree, Bonita was awarded the parties' duplex in Marengo, Iowa, worth \$51,000, and Craig was awarded the family farm in Ladora, Iowa, and the "Heller farm" located across the road—the two valued at \$261,000. The court divided the parties' personal property including stock, IRAs, partnership interests, investments, cars, furniture, and appliances.

After de novo review, we find the district court's division of assets equitable, with the exception of the division of the appreciation of Craig's classic cars. Bonita contends the assets of the parties should be divided in equal percentages. However, Iowa courts have rejected a rule based on percentage division of assets. *In re Marriage of Lattig*, 318 N.W.2d 811, 814 (Iowa App. 1982); *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995)(Iowa courts do not require an equal division of property, but rather, an equitable division).

Although awarding Craig the family farm and the Heller farm resulted in Craig receiving a larger percentage of assets than Bonita, the award was equitable. Craig has farmed on his own and been involved with a "family farm partnership" before and during the marriage. He brought considerable farm assets into the marriage. From an economic

standpoint, it is best for the children if the family farm and the “Heller farm” continue to be tilled and maintained by Craig.

The district court awarded Craig physical possession and the appreciation value of his classic vehicles. Iowa law does not give credit to a party for the value of property owned prior to the marriage. *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa App. 1994). Instead, property brought to the marriage by each party is a factor to consider together with the other relevant factors in determining an equitable property division. *Id.*; Iowa Code § 598.21(b) (1995). Much of the appreciation was due to restoration efforts during the marriage. The value of the cars increased with the contribution of marital time and assets. The district court correctly awarded Craig physical possession of his classic cars, but should have allocated to Bonita some of the appreciation of the cars. Craig’s cars have appreciated by \$3900 in value.¹ Bonita should be awarded one-half of this appreciation. Craig is ordered to pay Bonita \$1950.

Bonita contends that the trial court abused its discretion in admitting the testimony of Craig’s expert witness when the witness was not formally disclosed thirty days before trial. Bonita had knowledge of the expert witness three months before trial. She was provided the division chart prepared by Craig’s expert shortly before trial. Under these circumstances, Bonita was not prejudiced by the late disclosure and the trial court did not abuse its discretion in allowing the evidence or in adopting Craig’s expert’s valuations. Where the values

¹ Craig’s 1966 Ford pickup was worth \$300 in 1986 and today has a value of \$600. The 1982 Chevrolet Truck had no value in 1982, but appreciated to \$100 worth of value by 1996. The 1986 Ford truck, which had no value in 1986 appreciated to \$3500 in 1996.

determined by the district court are within the permissible range of the evidence, we will not disturb them on appeal. *See In re Marriage of Alexander*, 478 N.W.2d 420, 422 (Iowa App. 1991). The court's findings were in the permissible range of evidence.

Bonita argues that she and Craig made an agreement Craig would pay Bonita \$15,000 in exchange for furniture Bonita took from the home. It is evident the negotiation discussions between Craig and Bonita were offers of compromise that are not admissible. *See Iowa R. Evid. 408* (West 1997). The court did not err in refusing to recognize the agreement.

Bonita argues the court miscalculated Craig's child support obligation because the court did not take all of Craig's overtime and farm income into account when calculating child support. Bonita has raised other arguments as to why child support is not correct, but has not preserved those arguments for appeal by a 179(b) motion. If not properly raised by a 179(b) motion, the issue is waived. *Iowa R. Civ. P. 179(b)*; *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). Craig's overtime was uncertain. In this circumstance, the court does not need to include overtime wages in calculating child support. *In re Marriage of Griffin*, 525 N.W.2d 852, 854 (Iowa 1994).

Bonita requests trial attorney fees for this appeal. Craig seeks attorney fees on appeal. Each party has the ability to pay their own attorney fees. No fees are ordered. We affirm the trial court on all other issues.

AFFIRMED AS MODIFIED.