IN THE COURT OF APPEALS OF IOWA

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FILED

MAY 29 1997

CLERK SUPREME COURT

No. 6-462 / 95-1404

IN RE THE MARRIAGE OF MARGARET M. AXON AND JOHN R. AXON

Upon the Petition of
MARGARET M. DeLONG, formerly known as MARGARET M. AXON,
Petitioner-Appellant,

And Concerning
JOHN R. AXON,
Respondent-Appellee.

Appeal from the Iowa District Court for Bremer County, John S. Mackey, Judge.

Petitioner appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Christopher C. Foy, Waverly, for appellant.

Gary J. Boveia, Waverly, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P. J.

I. Background Facts and Proceedings.

Margaret Axon appeals from the property division made by the district court in the decree dissolving her marriage to John Axon. We affirm.

John and Margaret Axon were married in May 1991. Each was married before and accumulated substantial property. John's net worth in 1991 was $159,000, and Margaret's was $175,000.

These proceedings were initiated in August 1994. Most of the financial issues arising in this case were resolved by agreement. The Axons' stipulated property division allocated assets consistent with their premarital holdings. The only disputed issue was Margaret's entitlement to a cash award for her contribution to the purchase and renovation of a commercial property known as the "Opera House."

The district court's final decree included the terms of the Axons' stipulation. Margaret's request for a cash award was denied. The decree did not include the provision of the stipulation requiring John to seek release of the mortgage on Margaret's home securing the Opera House line of credit.

On appeal Margaret renews her argument that she is entitled to a cash award for her contributions to the Opera House. She also argues the district court's failure to make the cash award demanded renders the entire property division inequitable.

Margaret's demands for appellate relief also include John's obligation to secure a release of the mortgage on her home.

II. Scope of Review.

Our review in this case is de novo. Iowa R. App. 4. We give weight to the district court's findings of fact but we are not bound by them. Iowa R. App. P. 14(f)(7).

III. Property Division.

The parties to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* We reject precise percentage divisions because "[t]he question is always what is an equitable and just award in a given set of circumstances." *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975). The distribution of property should be determined after considering the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

As already noted, the only disputed issue concerns the Opera House. The record indicates the Axons bought this property for $7308 in 1992. The cost of renovating the Opera House was partially financed by a $60,000 loan from a local bank. Margaret claims an unreimbursed contribution of $37,138 toward these costs. John claims an unreimbursed contribution of $61,281.

The Opera House property was professionally appraised at $51,500. The balance of the bank loan as of trial was $57,436. The relevant tax returns indicate the Opera House lost money in 1992 and 1993. The 1994 tax returns showed a small profit from its operation.

The economic reality is that the value of the Opera House is exceeded by its debt. Both John and Margaret have lost their personal investment in this venture. There is no evidence indicating its earnings or other economic conditions will increase its value or profitability. The risk of additional losses is substantial and John has assumed this risk under the terms of the Axons' stipulation. Under these circumstances, it would be inequitable to require John to incur additional expense by repaying Margaret for her cash contribution to the Opera House.

We have carefully reviewed the record and find no inequity in the district court's property division. We find Margaret's request to impose a duty on John to "use his best efforts to obtain a release of the mortgage on her home" is too ambiguous to enforce. We lack the authority to compel the mortgagee to release its security. John has been ordered to hold Margaret harmless for any loss resulting from his default on the obligations secured by this mortgage. In the absence of any other evidence on this issue, we are unable to order any meaningful appellate relief.

Margaret's request for appellate attorney fees is denied. Costs of this appeal are taxed to Margaret. The judgment of the district court is affirmed.

AFFIRMED.