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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARY LUCILLE HOIT AND WARREN ELBERT HOIT

Upon the Petition of)
MARY LUCILLE HOIT,)
Petitioner-Appellee,) Filed September 29, 1981
And Concerning)
WARREN ELBERT HOIT,) 1-138 / 2-64435
Respondent-Appellant.)

Appeal from Henry District Court - David B. Hendrickson, Judge.

The respondent appeals from the parties' dissolution decree, challenging the division of property and award of attorney's fees to petitioner. AFFIRMED IN PART; REVERSED IN PART.

Craig R. Foss of Foss & Kuiken, Fairfield, for respondent-appellant.

Michael A. Riepe, Mount Pleasant, for petitioner-appellee.

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

DONIELSON, J.

The respondent, Warren Elbert Hoit, appeals from the parties' dissolution decree, challenging the division of property and award of attorney's fees to petitioner, Mary Lucille Hoit. Respondent contends the trial court erred by: (1) considering the appreciated value of a forty-acre farm as an asset of the marriage when respondent had acquired and paid for this property prior to the parties' marriage; (2) considering money received by respondent as compensation for an industrial accident, which occurred during the marriage, as an asset of the marriage; and (3) requiring respondent to contribute $400.00 toward petitioner's attorney fees as well as pay court costs. Petitioner requests that respondent be directed to contribute to the payment of attorney fees she incurs in connection with this appeal.

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, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the 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 Nehrli, 241 N.W.2d 923, 926 (Iowa 1976).

We affirm in part and reverse in part.

I.

The parties were married in 1970. Throughout the marriage they lived on a forty-acre farm which was purchased and paid for by respondent before the marriage. In 1975, during the marriage, respondent conveyed this property to himself and petitioner as joint tenants. In 1970, it is estimated this property was worth $20,000.00. When it was conveyed to the parties as joint tenants, the property was valued at $35,000.00, and at the time of trial its estimated value was $60,000.00.

In 1959, respondent lost a hand in an accident involving a cornpicker, but still retained some use of the arm. In December, 1972, during this marriage, he suffered another injury to the same arm which resulted in loss of use of the arm. Petitioner cared for respondent during his convalescence and performed the routine household work. Subsequently, both petitioner and respondent were named as plaintiffs in a

lawsuit which was settled for $40,000.00, and netted the parties $27,000.00, after payment of attorneys' fees and related expenses. $5,000.00 of this money was loaned to petitioner's son and the remaining balance was invested.

At the time of trial respondent was employed part-time, but netting only about $700.00 per year. Respondent hopes to earn a four year accounting degree. He was enrolled in accounting classes at a community college. Vocational rehabilitation is paying for his tuition and books and providing an additional $40.00 per week for other expenses. Petitioner was earning $92.00 per week (net) at the time of the trial. She is under a doctor's care for arthritis and other health problems, but is not incapacitated.

The trial court dissolved the marriage and made the following property settlement:

> 2. . . . The Court concludes that the acreage should be sold and after expenses of sale, the remaining proceeds should be divided as follows:
>
> a) The first $20,000 should be set off to Warren;
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> b) The remainder should be divided equally between the parties;
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> In lieu of the foregoing, the acreage can be awarded to Warren upon payment on such terms as is satisfactory to Lucille of a principal amount of $20,000. The choice to sell or pay Lucille $20,000 for her interest shall be made by Warren within Sixty (60) days from the date of filing of this ruling.
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> 3. Lucille is awarded the $5,000 receivable payable by her son.
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> 4. The household goods and furnishings listed on Petitioner's Exhibit 4 are awarded to Lucille.
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> 5. All other household goods and furnishings, plus the automobiles and machinery, are awarded to Warren.
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> 6. From the remaining assets on deposit, including the shares in State Bond Mortgage Company, Lucille is awarded the sum of $7,500.00 and the balance is awarded to Warren.
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> 7. All debts, including the major one to Pilot Grove Bank, shall be assumed by Warren.
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> 8. In view of the rather short duration of a viable marriage, and the limited income of the respondent, no award of alimony is made herein.
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> 9. Court costs, including the sum of $400 towards fees for petitioner's attorney, shall be paid by the respondent. The uncashed 1978 income tax refunds now held by the respondent may be applied towards the payment of court costs and attorney's fees.

Respondent then instituted this appeal. We affirm the trial court's settlement as

to items 3, 4, 5, 7, 8, and 9; but reverse as to the division of the appreciated value of the acreage and the division of the other assets of the marriage.

II.

Section 598.21, The Code 1979, provides that "[w]hen a dissolution of marriage is decreed, the court may make such order in relation to . . . property . . . as shall be justified." Id. A justified property division is one that is equitable under the circumstances. In re Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The factors to be considered in achieving a fair and equitable determination of the property rights of the parties are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

We consider the following factors, along with the other Schantz criteria to be especially applicable to the division of appreciated property acquired before marriage:

1. The duration of the marriage.

2. The contribution, financial and otherwise, of each party that enhanced the value of the property.

3. The reduced standard of living resulting from the financial drain of maintaining or enhancing the value of the property.

4. The appreciation due to general economic conditions.

5. The fortuitous nature of a rapid appreciation occurring during the marriage.

6. The need to sell the property to comply with an ordered division. See In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976).

The underlying premise of our analysis is that an equitable property division of the appreciated value of property acquired prior to marriage should be a function of the tangible contributions of each party, and not the mere existence of the marital relationship. We find support for this proposition in the Schantz guidelines and the cases applying them. See In re Marriage of Anderson, 243 N.W.2d 562, 563-64 (Iowa 1976); Zinger v. Zinger, 243 N.W.2d 639, 640-42 (Iowa 1976); In re Marriage of Woodward,

229 N.W.2d 274, 278-79 (Iowa 1975); In re Marriage of Cooper, 225 N.W.2d 915, 920 (Iowa 1975); In re Marriage of Bech, 214 N.W.2d 170, 175 (Iowa 1974); Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143-44 (1966). A cogent example of such reasoning is found in In re Marriage of Ralston, 242 N.W.2d 269, 271 (Iowa 1976), which upheld an approximately equal property division as fair and reasonable. In that case, the parties were married 39 years and each made substantial contributions to the accumulation of property. Id.

Particularly noteworthy in the Ralston case was the reaffirmation of the view that the husband was not entitled to a greater share merely because he brought the bulk of the income into the home, while the wife worked in the home and devoted her attention to homemaking and child-rearing. Id. This view had been expressed in an earlier case by the supreme court when it recognized the substantial contribution of the wife by noting that "[w]hile [the husband's] accomplishments may have been more financially productive, this does not mean [the wife's] efforts as wife and mother were less important." In re Marriage of Biggs, 225 N.W.2d 911, 913 (Iowa 1975).

Where, however, the accumulated property is not the product of the joint efforts of both spouses over a considerable period, financial or otherwise, or where one party brings the property into the marriage, there need not necessarily be a division. Arnold v. Arnold, 257 Iowa 429, 439-40, 133 N.W.2d 53, 60 (1965); Lane v. Lane, 253 Iowa 92, 96-97, 111 N.W.2d 286, 289 (1961). Cf. J.D.P. v. F.J.H., 399 A.2d 207, 211 (Del. 1979) (increase in retained corporate profits due to the economic conditions not divisible); Mol v. Mol, 147 N.J. Super. 5, 9, 370 A.2d 509, 510 (Super. Ct. App. Div. 1977) (wife not entitled to share in that portion of enhancement in value due solely to inflation or economic factors to which she did not contribute). But see In re Marriage of Moffott, 279 N.W.2d 15, 20 (Iowa 1979) (inheritance may be subject to division); Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976); In re Marriage of Bech, 214 N.W.2d 170, 175 (Iowa 1974). This concept of compensation for contributions of the parties complies with the statutory and case law standard--equitable and justified. See In re Marriage of Moffott, 279 N.W.2d 15, 20 (Iowa 1979) (parties' contributions is important but not sole consideration). The parties receive according to their efforts, no more and no less. We hold that appreciation must likewise be evaluated for division.

III.

The parties were married for approximately nine years. They were both employed

at the time of marriage and are both currently able to work, although neither party is capable of earning much above subsistence level wages.[1] Both parties worked off and on, when able, during the marriage. At the time of the marriage, petitioner contributed her household goods and $250.00 to the marital assets. During the marriage she did the majority of the household tasks, made some home improvements,[2] and cared for respondent during his recuperation. At the time of marriage, respondent contributed an acreage valued at $20,000.00 and stocks currently valued at $1,700.00. During the marriage, he contributed an industrial accident settlement of $27,000.00 (net) which was invested. During the marriage the acreage was conveyed to both parties as joint tenants, and at that point it was valued at $35,000.00. We find that the bulk of the increase in value was due to inflation rather than the tangible efforts of the parties, but at least part of the increase is due to improvements made by petitioner; therefore, we award petitioner $7,500.00. This amount represents some of the increase in value which accumulated from the date the property was conveyed to the parties as joint tenants.

$21,000.00 of the $27,000.00 settlement remains invested. This amount includes the $5,000.00 loaned to petitioner's son and not, as yet, repaid. Although both parties were plaintiffs in the suit which resulted in this settlement, the bulk of the award must have been due to the loss of respondent's arm. We note, however, that petitioner's care for respondent during his recuperative period is significant. We, therefore, award petitioner one-third of the settlement funds that remained invested as of June 23, 1979, plus interest. This amounts to $7,878.85. [3] The remaining assets of the marriage, totaling $2,175.00, are to be divided equally between the parties.

The above property division shall be implemented as follows:

1. Respondent is to pay petitioner $11,466.35 in cash, and the $5,000.00 accounts receivable for a total of $16,466.35.

2. Respondent is to retain ownership of the acreage.

In this difficult case we have attempted to divide the assets in a manner

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1 It should be noted that both parties claim their own physical conditions impair their ability to earn money, while at the same time claiming the other is not similarly hindered. Respondent has chosen to forego full-time employment to obtain an accounting degree and petitioner claims she is in poor health for various reasons, none of which are disabling.

2 The source of the money used for home improvements is not disclosed.

3 This amount is calculated by totaling the figures reported in the addendum to answer to interrogatories, dated 6/23/79, and adding the $5,000 loaned to petitioner's son, then dividing the total by 1/3.

consistent with the spirit of Section 598.21, The Code 1981. The petitioner entered this marriage with $250.00 and some household goods. She made some, but not substantial, contributions to the accumulation of marital assets. Petitioner now exits the marriage after nine years with household goods and $16,466.35. We believe this division is equitable. It gives petitioner sufficient cash to set up her own independent household and allows respondent to maintain his current living situation while attending college. Both parties are awarded part of the value of the acreage and part of the investments which resulted from respondent's industrial injury settlement. Petitioner is given cash and respondent is given real property. We thus avoid the necessity of selling the property to accomplish an equitable division.

We deny petitioner's request for payment of attorney's fees incurred due to this appeal. The costs of this appeal are to be equally split between the parties.

AFFIRMED IN PART; REVERSED IN PART.