FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GENEVIEVE ANDERSON AND HARRY M. ANDERSON

UPON THE PETITION OF	)	
GENEVIEVE ANDERSON,	)	Filed February 28, 1978
Appellee,	)	
AND CONCERNING	)	
HARRY M. ANDERSON,	)	392 / 2-58560
Appellant.	)	

Appeal from Cerro Gordo District Court - B. C. Sullivan, Judge.

Respondent appeals the property division aspects of a dissolution decree. AFFIRMED AS MODIFIED.

Hobson, Cady & Drew, of Hampton, counsel for appellant.

William Pappas, of Mason City, counsel for appellee.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Respondent-Harry M. Anderson appeals the property division aspects of a dissolution decree entered June 9, 1975, alleging that the division was inequitable and based upon an erroneous finding that the employment earnings of the parties were approximately equal. Respondent and petitioner-Genevieve Anderson were married in 1961 when they were both about forty years of age. No children were born of the marriage, although the wife's child from a former marriage resided with the parties during part of the marriage.

When the marriage commenced, Genevieve owned a motel and skating rink and Harry worked at a meat-packing plant and also farmed some of his father's land. From the inception of the marriage until 1965, when the motel and skating rink were sold, the motel began to prosper financially. During this time, the parties apparently lived on respondent's income, except for certain housing expenses, which were paid by petitioner out of the motel operation proceeds. Although respondent did some work at the motel and skating rink, the trial court refused to find that Harry had made any material contribution by way of management to the improvement of the motel business.

During the initial four years of the marriage, improvements were made at the motel, the funds for which were obtained in part by mortgaging the motel. At the time this was done, the ownership of the motel was transferred from petitioner's sole interest to joint tenancy, although the trial court found that this change was not made because of any attempt by Harry to acquire an interest in Genevieve's property.

In 1965, petitioner sold the motel on contract for $105,000 and received a $15,000 down payment, $5,000 of which was used to reduce the debt on the motel and the remaining $10,000 was applied to the $10,500 purchase price of a ten acre property upon which a new family home was to be built. Soon after the motel was sold, the skating rink was sold on contract for $20,000.

A new home was built on the ten acre tract, and the total cost of the home and land was $61,817. At the time of trial, the entire property was valued at $78,000 and was subject to an encumbrance of $37,000. The trial court found that petitioner furnished most, if not all, of the funds for the construction of the home, although the parties were living on respondent's income. Further, as of the date of trial, the parties were entitled to receive an additional $77,000 in proceeds from the contract sale of the motel and skating rink.

The trial court awarded the homestead and both real estate contracts to Genevieve. Harry was awarded an automobile and farm machinery, with a combined value of approximately $4,600. Genevieve was ordered to pay Harry $5,000. The court did not award any alimony.

In making its determination, the trial court found that the parties' earnings from employment had been roughly equal, at least during the latter years of the marriage. The court also noted that Genevieve was in poor health while Harry was in good health. However, the court based its refusal to award alimony on the fact that it was likely that Harry, who had worked at the packing plant for 26 years, would be forced to take an early retirement and receive a pension of only $318 per month.

After judgment was entered, Harry filed an unsuccessful motion for vacation of judgment and for new trial contending, **inter alia**, that the court had erroneously found that the parties had equivalent earnings, inasmuch as the court only had access to the parties' joint income tax returns and not their separate W-2 forms. In overruling the motion, the court noted that both parties had been under a duty to supply these forms to the court and that the court had been unsuccessful in its own attempts to obtain these forms from the parties.

Our review in this matter is **de novo.** Rule 4, Rules of Appellate Procedure. Although we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P. After reviewing the entire record in light of the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), we conclude that the property division ordered by the trial court is inequitable and must be modified. We direct that Genevieve pay Harry an additional $17,500 with the total $22,500 to be paid in ten annual installments, commencing June 1, 1978. Interest at the rate of seven percent shall be due and owing from the date each such annual installment becomes due and owing and remains unsatisfied. Arnold v. Arnold, 258 Iowa 850, 854-855, 140 N.W.2d 874 (1966). In addition, a lien shall be established in favor of Harry in the amount of $22,500 against the home awarded Genevieve. Paul v. Paul, 217 Iowa 977, 984, 252 N.W. 114 (1934). We have reviewed the record and find respondent's other allegations to be without merit. Consequently, the judgment of the district court is affirmed as modified.

AFFIRMED AS MODIFIED.