FILED
JAN 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

In Re Marriage of **NANCY L. LUTZ** and **GLENN E. LUTZ**,

Upon the Petition of **NANCY L. LUTZ**,

Appellant,

And Concerning **GLENN E. LUTZ**,

Appellee.

Filed January 31, 1978

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2-59849

Appeal from Linn District Court - Clinton E. Shaeffer, Judge.

Appeal by petitioner from economic determination made in decree dissolving marriage of the parties. - Affirmed as modified.

John K. Von Lackum, of Wadsworth, Elderkin, Pirnie & Von Lackum, Cedar Rapids, for Appellant.

Iris M. Muchmore and Tom Riley, of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Petitioner, Nancy L. Lutz, appeals from the economic determinations contained in the trial court's decree dissolving her marriage of 21 years to respondent Glenn E. Lutz. We apply the criteria for economic determinations in dissolution matters which were set forth in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), without regard to fault. Upon application of these criteria we affirm the trial court's decree with certain modifications.

I. Division of Happel & Sons, Inc. stock. Nancy argues on appeal that it was inequitable for the trial court to grant the parties equal ownership and control of the business known as Happel & Sons, Inc. At the time of the decree, Nancy held 41 shares in this corporation and Glenn held 10 shares. This represented all of the outstanding capital stock of this corporation. Happel & Sons, Inc. is a farm implement dealorship, long operated by Nancy's father and grandfather and by which Glenn has been employed since 1966.

Both Nancy and Glenn received their respective shares in this corporation as gifts from Nancy's father during his lifetime. At the time of said gifts and up until the time of her father's death in 1973 there were 400 shares outstanding in the corporation. The parties' increased ownership represented by their stock holdings at the time of the decree resulted from a stock redemption procedure carried out by the corporation after the death of Nancy's father. We believe that Glenn's contribution to the parties' acquisition of sole ownership in the business was substantial as a result of the fact that he was uniquely in a position to assume management of the business and therefore endeavor to obtain on behalf of the parties the stock redemption and necessary financing therefor. Nancy concedes she was unable to personally manage the business. Considering the foregoing circumstances we cannot say that an equal division of the stock was inequitable based upon Glenn's contribution toward attaining the interest which the parties held in the business.

We do not believe that potential adverse federal and state income tax consequences if any, which may accompany this division of assets should fall

entirely upon Nancy. We therefore modify the decree with respect to the transfer of Happel & Sons, Inc. stock so as to provide that Glenn shall indemnify Nancy for 50% of increased state and federal income tax liability, if any, which may result to her from a transfer of 15.5 shares of said stock to Glenn.[1]

II. Assets received by Glenn from his father's estate. We agree with Nancy's contention that the sum of $9,600 remaining to be distributed to Glenn from his father's estate at the time of the decree should have been divided equally between the parties and modify the trial court's decree so as to require equal division of this asset.

III. Alimony to Nancy. With respect to Nancy's contention on appeal that she should be awarded alimony from Glenn, we conclude upon an ad hoc determination under the facts of this case that alimony was properly disallowed by the trial court. See e.g. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976).

The decree of the trial court is affirmed as herein modified. Each party shall be responsible for their own attorney fees on appeal and costs shall be assessed equally between the parties.

OXBERGER, J., dissents.

[1] In our de novo division of the Happel & Sons, Inc. stock we do not confirm any valuations found to exist by the trial court nor do we independently value said shares. We direct equal division thereof irrespective of value.

OXBERGER, J. (dissenting)

I dissent. I do not agree that Happel & Sons Inc., valued by the trial court at $275,000, is the property of Nancy and Glenn equally. The majority affirm upon the basis of Glenn's "unique" contribution to the successful "blind draw" for ownership of the company and his management of it since the summer of 1974. I note the petition for dissolution was filed in November of 1975; the decree was entered in April of 1976. I find no substantiation for crediting Glenn's skill or clout with the garnering of the stock. Neither do I find that his less than two years management of Nancy's family's business makes him indispensable to it or consitutes a substantial contribution on his part to marital assets.

I would rule Nancy should keep the 41 shares she inherited from her parents and that Glenn should retain the 10 shares he received as a gift from Nancy's parents with his option to sell the shares to Nancy at book value, this option to be exercisable within 120 days of the entry of the modified decree.