

FILED

JAN 26 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CAROL ANN OLSON AND ROBERT DEAN OLSON

Upon the Petition of)

CAROL ANN OLSON,)

Petitioner-Appellant,)

And Concerning)

ROBERT DEAN OLSON,)

Respondent-Appellee.)

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8-231
87-1278

Appeal from the Iowa District Court for Webster County
(No. D-3336), R. K. Richardson, Judge.

Petitioner appeals from the ruling of the district
court upon remand from the court of appeals. **REVERSED AND
REMANDED.**

Mark S. Soldat, Algona, for petitioner-appellant.

Bruce E. Cornell, Ft. Dodge, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ. Habhab, J. takes no part.

OXBERGER, C.J.

The issue in this appeal is, was the trial court correct in its interpretation of this court's remand. We reverse and remand.

On March 5, 1986, petitioner-appellant filed a motion to enforce a decree in which she sought an accounting of respondent's operation and closing of the family business. Respondent filed a general denial answer. During the hearing, neither the parties nor the court raised an issue concerning the nature of the sale.

On the 20th day of May 1986, the trial court entered an order pursuant to the motion to enforce the decree. The court interpreted provision 3B of the divorce decree concerning the sale of the family's flower business to award all the net proceeds of the sale to respondent if the sale was after July 15, 1984. The trial court concluded that the sale was after July 15, 1984.

On the 31st day of March 1987, this court held the trial court had erroneously concluded the trigger date was July 15, 1984. This court stated the correct trigger date according to the decree was May 1, 1985. If the sale of the business was completed prior to May 1, 1985, the petitioner received one-quarter of the net assets and the respondent three quarters. After the May 15, 1985 trigger date, the respondent was to receive all the assets of the sale.

This court concluded the record evidence was inconclusive as to what date the business was sold. This court remanded this matter to the trial court with these words:

. . . we remand the present case to the trial court and order that a hearing be held to determine when a sale of the parties' business did in fact occur. If the trial court finds that such a sale occurred on or before May 1, 1985, the trial court, if necessary to carry out the provisions of the decree, shall order that Robert shall make a full and complete accounting to Carol as to the disposition of each and every asset and any proceeds resulting from the sale of such assets.

The trial court, on August 6, 1987, entered a ruling upon remand instructions. The trial court said:

The decree speaks of a "sale," which would seem to indicate that the court again contemplated the sale of the business as a complete entity rather than a liquidation. . . . It is, therefore, the finding of this court that the business was liquidated in a manner not contemplated by the dissolution decree of Judge Smith and that although the liquidation was prior to the May 1, 1985, date established in the decree, that this court does not find it necessary to carry out the provisions of that decree to order a complete accounting.

The petitioner has filed the present appeal, claiming the trial court failed to act properly upon remand. She asks us to reverse and remand this matter, prescribing the accounting to be required.

In the previous appeal, the respondent-appellee did not cross-appeal the trial court's ruling on May 20, 1986, holding:

. . . that provision 3B of the decree deals with the sale of the flower business In the

event that the sale is not closed until after July 15, 1984, then in that event the respondent shall be entitled to all the net proceeds from such sale.

Thus, the "sale" of the family business became a sale covered by the divorce decree. It was the law of the case as the issue was not appealed. The parties may not piecemeal the appellate process. Issues necessary to a determination of an issue appealed are considered as established facts or law of the case unless appealed. United States v. Unger, 700 F.2d 445, cert. denied, 104 S.Ct. 339, 464 U.S. 934, 78 L.Ed.2d 308 (8th Cir. 1983); State v. Steffens, 282 N.W.2d 120 (Iowa 1979).

A determination of the nature of the "sale" was necessary before the court could determine whether the sale was completed by a certain date. Therefore, the ruling of the trial court on May 20, 1986, established the issue of whether the nature of the "sale" was a sale contemplated in the original decree. The trial court was in error in re-examining the issue of whether the sale was a covered sale under the decree or uncovered liquidation.

Additionally, we find that the liquidation sale of the parties' flower business was a sale contemplated by the original decree. The original decree provides, "If the business is not sold by July 15, 1984, . . . the business shall be closed, with continued sales effort being made on a closed basis."

The record is clear that the business was not sold prior to July 15, 1984. The decree clearly directs that the sale of the business after that date was to be a sale of a closed business, the type of sale in fact made in this case.

The trial court on remand is directed to order the respondent to provide an accounting as requested in the petitioner's motion of March 5, 1986.

REVERSED AND REMANDED.