

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LAURA M. LONGLEY AND HARRY W. LONGLEY

**Upon the Petition of
LAURA M. LONGLEY,**

Petitioner-Appellant,

**And Concerning
HARRY W. LONGLEY,**

Respondent-Appellee.

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Filed February 25, 1987

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Appeal from the Iowa District Court for Scott County (No. 35711) - David
J. Sohr, Judge

Petitioner Laura M. Longley appeals from the custody and property
provisions of her dissolution decree. **AFFIRMED AS MODIFIED.**

Paul L. Macek, of Ridenour & Macek, Davenport, for appellant.

Harold L. DeLange II, of Wehr & DeLange, Davenport, for appellee.

Heard by Schlegel, P.J., and Hayden, and Sackett, JJ.

SACKETT, J.**98**

Petitioner Laura Longley appeals from the trial court's decree in her dissolution action. She contends (1) she should have been awarded physical care of the parties' daughter Kristina, and (2) the property division was inequitable.

Laura Longley was born in 1941. Harry Longley was born in 1940. They married in 1960. They had three children, Deborah born in about 1962, James born in about 1963, and Kristina born in 1977. The two older children are emancipated.

Harry has been employed during the marriage. He currently is a millwright. He has wages in excess of \$40,000 annually. He also raises cattle and does custom work. Laura returned to college just before James entered kindergarten. She has been employed full time as an elementary teacher since about 1970. She earns about \$20,000 annually. The parties have acquired certain property including farm real estate.

In 1984, Laura filed a petition for dissolution. It subsequently came to trial and the trial court awarded Harry physical care of Kristina in a joint custody arrangement and made a nearly equal division of property.

I. Physical Care

Laura claims she should have physical care of Kristina.

Our review is de novo. Iowa R. App. P. 4. When considering the credibility of witnesses we give weight to the fact findings made by the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). The first and foremost consideration is the best interest of the child. Iowa R. App. P. 14(f)(15).

We determine both parties to be loving and caring parents. Either is capable of assuming care of Kristina and doing an adequate job of parenting. The child has an excellent relationship with both parents. They have both assumed consi-

derable responsibility for her care. A recitation of the faults and weaknesses of each party in this record would serve no useful purpose.

We affirm the custody award made by the trial court. While the parental attributes of both parties are somewhat equal, we consider (1) the findings of the trial court, (2) the recommendation of McEchron, a psychologist hired by Laura who interviewed the parties and the child and determined that Harry should have custody, (3) the emotional stability Harry has exhibited during a difficult dissolution, and (4) the fact Kristina will continue to maintain the close relationship she has with her older sister if in her father's custody. The older sister has been alienated from the mother. We affirm the custody award.

II. Property Division

The property division resulted in a nearly equal division of all property. During the marriage Laura had inherited about \$30,000 from her father. Her inheritance was commingled with the parties' other assets. Laura argues she should receive credit for the inheritance in the property division. Harry claims she should not, claiming his salary has made a larger contribution to the family assets and he paid the costs of Laura's obtaining her bachelor's degree.

We have assessed Laura's inheritance under the dictates of Iowa Code §598.21(2) (1985) which provides:

Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

We have also considered the education acquired as a factor in assessing the property division. In re Marriage of Janssen, 348 N.W.2d 251, 253 (Iowa 1984); In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978).

Laura also argues she should have a larger share of the assets because of losses Harry sustained in the cattle business. We have examined the tax returns of the parties for the years 1978 through 1983. Harry reported income from two businesses, farming and silage bagging. Considering the gains and losses from these two businesses in the six year period, we find collectively they lost about \$43,000 or an average of about \$7,000 per year during that period. Laura claims the parties accumulated net worth has been substantially decreased by these losses. We disagree.

We note initially the combined wages of both would result in approximately 40 percent of their top bracket income going for federal and state income taxes. The business losses were fully deducted on the tax returns. Furthermore, in examining the tax returns we note the real estate taxes on the acreage, including the personal residence, are deducted in full on the farm schedule. We also find substantial deductions for utilities, insurance and gasoline. It appears certain *items of the losses may have been otherwise nondeductible personal items.* Because we find the net result is that Harry's business losses have not resulted in substantial decreases of the parties' net worth, we need not consider Laura's argument this factor should be considered in assessing the equities of the property division. In assessing the property division the ultimate question is whether the division is equitable. There is no rule based on percentage of division of assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982).

We examine the property division and determine neither party leaves the marriage under an economic disadvantage. See In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). We determine, however, Laura's salary potential and anticipated social security and pension benefits are less than Harry's.

We determine it is inequitable under this record to discount the \$30,000 Laura inherited and modify the property award to provide Harry shall pay to Laura the sum of \$15,000 Judgment shall be entered against him for said amount. In all other respects the property award made by the trial court is affirmed.

The parties request attorney fees Both parties leave the marriage with substantial assets and good incomes We determine each party shall pay his or her own attorney fees One-half of the appellate court costs shall be taxed to each party

AFFIRMED AS MODIFIED.