FILED
FEB 28 1978
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PEARL M. STRAUSE and RICHARD STRAUSE

Upon the Petition of
PEARL M. STRAUSE,
Appellant,
and concerning
RICHARD STRAUSE,
Appellee.

Filed February 28, 1978

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2-59534

Appeal from Muscatine District Court - Nathan Grant, Judge.

Petitioner appeals from the property division ordered in a decree of dissolution of marriage. Affirmed.

H. Reed Doughty, of Winstein, Kavensky, Wallace & Doughty, of Rock Island, Illinois, for appellant.

David Scieszinski, of Wilton, for appellee.

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

PER CURIAM

Pearl M. Strause appeals from the property division ordered in a decree of dissolution of marriage. She requests that this court modify that decree so as to give her the entire marital home, subject to the unpaid mortgage, rather than the one-half awarded by trial court. In response, Richard Strause suggests that Pearl be given the personal property located in the garage, that each party pay attorney fees, and that the costs of this appeal be divided equally.

In resolving the issue presented in this appeal as trier de novo, we must examine the entire record, giving weight to trial court's findings, but not being bound by them. In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977). The question is whether trial court has properly applied the criteria for determining an equitable division of the marital assets as set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), but without consideration of fault. In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972).

Our consideration of the cause in light of the **Schantz** factors leads to the conclusion that trial court's decree was justified. Even if we treat the suggestion in Richard's brief that we give Pearl the personal property stored in the garage as a stipulation, we note that the courts of this state are not bound by such stipulations. Bamesberger v. Bamesberger, 238 Iowa 492, 494-96, 28 N.W.2d 28, 31 (1947); see also Wallace v. United States, 309 F.Supp. 748, 759 (S.D. Iowa 1970), affirmed, 439 F.2d 757, 760, cert. denied, 404 U.S. 831 (1971). Trial court's decree has provided Pearl with the property to which she is entitled.

Pearl has applied for attorney fees in this appeal. Examination of the parties' comparative financial conditions yields the conclusion that Pearl is as capable as Richard of paying these fees. Her application for attorney fees is denied. In re Marriage of Snyder, 241 N.W.2d 733, 734 (Iowa 1976).

AFFIRMED.