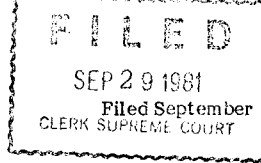


IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHERRY JEAN TILK AND GENE ALFRED TILK

Upon the Petition of)
 SHERRY JEAN TILK)
 Petitioner-Appellant,)
 And Concerning)
 GENE ALFRED TILK,)
 Respondent-Appellee.)



1-258
 2-65944

Appeal from Adair District Court. M. C. Herrick, Judge.

Petitioner wife appeals from the economic provisions of the parties' dissolution decree. AFFIRMED IN PART AND MODIFIED IN PART.

David L. Jungmann, of Don Carlos & Carlberg, Greenfield, Ia., for petitioner-appellant.

Jay E. Howe, of Howe & Olesen, Greenfield, Ia., for respondent-appellee.

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

PER CURIAM

Petitioner wife appeals from the economic provisions of the parties' dissolution decree. We affirm in part and modify in part.

Petitioner wife, Sherry Jean Tilk, appeals from the economic provisions of the parties' dissolution decree, asserting that the trial court undervalued the parties' assets, that she should have been awarded a greater portion of the assets, that she should have been awarded alimony, trial and appellate attorney fees and that she should not be required to pay one-half of the court costs.

Sherry and Gene Tilk were married on August 26, 1972. Sherry was eighteen years of age and Gene was nineteen. Both graduated from high school, but did not continue their formal educations after that time.

After graduation from high school, Gene worked for his father, operated a trucking business and drove a school bus on a part time basis and became a member of the Air National Guard. In the spring of 1971, with the help of operating loans from the First National Bank of Fontanelle and the use of equipment owned by Gene's father, Gene began leasing a farm on a fifty-fifty crop share basis. During the marriage, Gene also farmed 120 acres of his grandfather's land for three or four years and eighty acres of land owned by Sherry's grandparents for two years. The gross asset value of Gene's farming and trucking business totalled \$92,582.20, and was subject to debts in the total amount of \$67,931.84, leaving the business with a net worth of \$24,650.36. Gene's 1979 net income for self-employment as a farmer, trucker and bus driver was \$2,643.50.

Sherry did not work outside the home until one year after their marriage. After the first year of marriage, Sherry worked at several part time jobs, including a job as a secretary for the Adair County Public Health Service. Sherry's 1979 salary was \$6,813.50. Since the parties' separation, Sherry has voluntarily resigned her employment to undertake training to become a licensed practical nurse.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision of the dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing the property and alimony provisions of a dissolution decree, we consider the factors

articulated in Schantz v. Schantz, 163 N.W.2d 393, 405 (Iowa 1968) except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

I. Sherry claims the trial court erred in valuing the parties' assets. Apparently the basis of her claim is that the trial court committed error in accepting Gene's valuation of the assets with only slight modifications and additions. Our review of the record leads us to the conclusion that the trial court's findings of fact on the value of the parties' assets was reasonable. The factual findings in this case revolve primarily around which of the parties or witnesses was more credible. This court is hesitant to second guess a trial court's factual determinations when there is ample evidence to support the court's conclusions and where credibility is an important factor. On the whole, we cannot say the trial court was unreasonable and we adhere to the trial court's valuation of the parties assets.

II. Sherry also claims that the property settlement was unfair. She is particularly dissatisfied with the fact that her award is substantially less than fifty per cent of the parties' total equity, in light of the fact that she has a somewhat dimmer earning capacity than does Gene.

In response to Sherry's argument, we are guided by the notion that although an equal division of the assets is frequent, there is no requirement that parity between the parties be effected. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). If the trial court's goal is to equally divide the assets, there is no requirement that the division be mathematically precise. Conley, 284 N.W.2d at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). We are of the opinion the trial court's property settlement should be modified. Accordingly, we award Sherry \$10,000 to be paid in equal installments of \$5,000. The first installment is due as of the date of the original decree, and the second installment is due one year later, both installments payable with interest accruing at the rate of ten percent per annum. We deny Sherry's request for alimony.

III. Sherry's final contention is that the district court erred in not ordering Gene to pay Sherry's attorney fees. Attorney fees are not recoverable as a matter of right. Geisinger v. Geisinger, 202 N.W.2d 44, 47 (Iowa 1972). Nevertheless, in light of Gene's

better financial situation, he shall pay \$1,000 of her attorney fees incurred at trial and on appeal. Costs are assessed to Gene.

AFFIRMED IN PART AND MODIFIED IN PART.

All judges concur except Donielson and Carter, JJ., who dissent.

DONIELSON, J. (dissenting)

I dissent. While the majority correctly states that we are not bound by the trial court's findings of fact in our de novo review of dissolution decrees, I feel that in this case more weight should have been given to the trial court's division of the marital assets.

The total net worth of respondent's farming and trucking business was \$24,650.36. Respondent was ordered to pay all debts related to this business, i.e. \$67,931.84. In light of this fact, the trial court's award of \$6,000 cash and \$400.00 accounts receivable to the petitioner seems equitable. The marriage was one of relatively short duration (7-1/2 years) both parties exit the marriage in good health, less than 30 years of age, and with the ability to earn a living wage. It was not inequitable for the trial court to require respondent to finance his future earnings by assuming all the debts of his business.

I would have decided this case in a manner consistent with the recent case of In re Marriage of Callenius, No. 64389 (Iowa, filed Aug. 26, 1981), and thereby affirmed the trial court.

Carter, J., joins in this dissent.