

FILED

MAY 20 1977

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

SUZANNA LOEHR,

)

Appellee,

)

Filed May 20, 1977

v.

)

ROLAND D. LOEHR,

)

Appellant.

)

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2-58285

Appeal from Ida District Court - George F. Davis, Judge.

Appeal from economic provisions of marriage dissolution
decree. Affirmed.

Maurice B. Nieland, Kindig, Beebe, McCluhan, Rawlings &
Nieland, of Sioux City, for appellant.

Thomas H. Treinen, of Battle Creek, and Crary, Huff, Yates
& Clem, P.C., of Sioux City, for appellee.

Heard by Allbee, C.J., and Donielson, Oxberger and Carter,
JJ.; Snell, J., not participating.

PER CURIAM

Respondent, Roland D. Loehr, appeals from provisions of a decree of marriage dissolution regarding division of marital assets and the allowance of child support.

In resolving the issues as trier de novo on appeal, we have examined the entire record, giving weight to the findings of trial court but not being bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

A factual recital of the values contended by the parties for the farms, their extensive personal property, and other marital assets, as well as trial court's findings and its division of them is not required. Our close examination of the entire record reveals trial court's valuations and the resulting property settlement ordered are justified. Trial court properly applied as criteria for determining an equitable division of the marital assets those 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). We conclude the property division was equitable, just and recognized the parties' joint and equal effort in its accumulation during their 23 years of marriage.

Nor do we find the child support allowance to be excessive. While we agree with Roland's argument that both parties have a duty to support their minor children, support is not necessarily borne in equal shares, but rather, according to their ability to provide. McDonald v. McDonald, 183 N.W.2d 186, 189 (Iowa 1971). Factors that may be considered are set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974); nevertheless, the child support liability to be apportioned to each party in this case depends solely upon the peculiar facts disclosed in the record before us. Suzanna's and Roland's earning capacity and

income substantially differ. Suzanna has custody of the minor children and the accompanying responsibility for attending to their care and needs; she is limited to renting her land; she was not granted alimony. Roland can farm and has more than twice the amount of land given Suzanna. He was decreed the right to claim as income tax exemptions the three children for which he is required to pay support. We find no merit in Roland's contentions that the child support awarded by trial court was inequitable, unjustified or denied equal protection of the law. Accordingly, we confirm the allowance.

Finding no reversible error, we affirm trial court in all respects.

Suzanna has requested an allowance of fees for her attorneys' services related to this appeal. Attorney fees are not allowed as a matter of right and any such award must depend upon the financial circumstances and earnings of both parties. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975).

We find Roland should pay \$1600 towards Suzanna's attorneys' fees. By this we do not fix the amount to be charged by Suzanna's attorneys, we only have decided what portion should be paid by Roland. In re Marriage of Peterson, supra at 143.

Costs on appeal are taxed to respondent.