

IN THE COURT OF APPEALS OF IOWA

No. 0-32 / 89-451

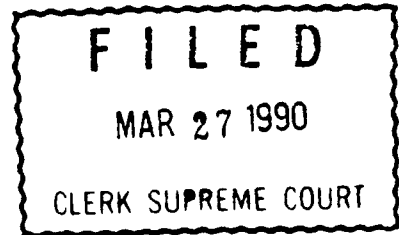
IN RE THE MARRIAGE OF AUDREY LOAN AND DARRELL LOAN

Upon the Petition of
AUDREY LOAN,

Appellee,

And Concerning
DARRELL LOAN,

Appellant.



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Appeal from the Iowa District Court for Linn County,
Paul J. Kilburg, Judge.

Defendant appeals a district court decree of
dissolution providing for the distribution of assets
accumulated during the marriage. **AFFIRMED.**

Steven K. Warbasse, Cedar Rapids, for appellant.

David S. Good of Nazette, Hendrickson, Marner & Good,
Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J.

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Darrell Loan appeals the economic provisions of a district court decree of dissolution. We affirm the trial court.

Darrell and Audrey Loan were married in January 1951. Three children were born of the marriage, but they are all adults. At the time of trial, Audrey was fifty-seven and Darrell was fifty-eight.

During the marriage the parties accumulated substantial real estate holdings on which they started two now-successful businesses. Around 1970 the parties started a sod business known as Blue Grass Enterprises. Later, around 1980, the parties started Aggregates, Inc., a business whereby sand and other aggregates are removed from the ground and sold. At the time of trial, the parties also had some stored grain as well as another house near the quarry.

In August 1986, Audrey filed this petition for dissolution of marriage. Subsequent to this petition, Audrey operated the Blue Grass business and Darrell operated the Aggregates business. Following trial, the district court divided the assets and liabilities of the parties. Because of the extensive holdings, no alimony or cash settlement was ordered. As a result of the decree, Audrey received the Blue Grass business and Darrell received the Aggregates business. The real estate assets

and debts were also divided. Following this decree, Darrell filed this appeal.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Darrell contends the economic provisions of the decree of dissolution were inequitable. He challenges the following specific items: (1) the division of cash accounts and accounts receivable; (2) the allocation of debt; (3) the division of real estate; (4) the failure to account for farming proceeds; (5) the division of businesses; and (6) the division of equipment and tools. All of these issues concern the property division as a whole and will be considered together in reviewing the dissolution decree.

This case presents a substantial and varied amount of marital property to be divided. As the trial court found, the exact values of the various properties are very difficult to determine. However, the trial court had certain expert testimony at its disposal and used that

testimony to its best advantage. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

The trial court found, and both parties admit, that all of the property considered in this appeal is marital property and has been accumulated through the substantial efforts of both parties. This is a marriage of 37 years. The parties have raised three children, and both parties are over 50 years old. There is no question that the property under consideration should be divided without unusual disparity toward one party or the other. The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

Darrell's complaint concerning the distribution of property and the allocation of debt is unfounded. The trial court awarded one of the parties two businesses to Audrey and the other to Darrell. The values of those

businesses are fairly equal. The trial court also divided the debt essentially down the middle. Each party was awarded at least one vehicle and various personal property. Darrell challenges the values placed on these and other items by the trial court. Unfortunately, he failed to produce any evidence of alternate values until this appeal. There is a disparity in favor of Audrey only if we accept Darrell's values instead of those found by the trial court. However, the obvious bias of Darrell and various rules of procedure prevent us from doing so. The trial court's valuation and division of the assets and liabilities was certainly equitable considering those assets were in excess of one million to each party. In fact, the division was almost equal. We affirm the trial court's division of assets and liabilities and decree of dissolution in toto.

Audrey requests attorney fees on this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Audrey was required to defend an extremely equitable distribution as set out by the trial court. We award her \$1,000 toward her attorney fees.

AFFIRMED.