FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DEAN L LEE and BETTY L. LEE

Upon the Petition of)
DEAN L. LEE,

Petitioner-Appellant/Cross Appellee,)

And Concerning)
BETTY L. LEE,

Respondent-Appellee/Cross-Appellant.)

Filed April 30, 1985

5-14
84-70

Appeal from the Iowa District Court for Pottawattamie County - Leo F. Connolly, Judge.

Petitioner appeals and Respondent cross appeals from their dissolution decree. AFFIRMED AS MODIFIED.

J. W. Salvo and Richard C. Schenk, of Hines, Lewis, Salvo, Deren & Schenk, P.C., Harlan, for petitioner-appellant/cross-appellee.

Robert J. Laubenthal, of Smith, Peterson, Beckman & Willson, Council Bluffs, for respondent-appellee/cross-appellant.

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

SACKETT, J.

Petitioner appeals and Respondent cross appeals from their dissolution decree.

Dean and Betty were married in 1951. Dean is a veterinarian. He was at the time of trial 56 years old. He had completed his education at the time of marriage. He had no assets. He practiced his profession, farmed and raised livestock during his marriage. He was a good husband and father and provided an excellent standard of living for his wife and five children. The family lived most of their married life in Sac City. In 1980 Dean became an employee of Ralston Purina and the couple moved to Council Bluffs. Dean has an annual salary of approximately $48,000, and in addition thereto has an attractive benefit package.

Betty did not complete her further education because she met and married Dean. He provided her with a comfortable living. She assumed the homemaking duties and the primary care for the parties' five children. She also assisted her husband in his veterinarian practice and in the farming operation. She was not employed outside the home until 1980 when she became employed as a nurses aid. Much to her credit she pursued a course of study that was to have led to an R.N. degree in the spring of 1984. She was 52 years of age at the time of trial.

Five children were born to the marriage. They are all adults; however, the youngest is still in college.

The parties were married shortly after Dean's graduation. Dean worked for a veterinarian in Storm Lake for a short period and then moved to Sac City where he established a practice. Dean's father had substantial land holdings in the area. Dean rented some of his father's land at less than market value and made improvements on the farm for which he was not reimbursed. At the time of trial the parties had a net worth, excluding inherited and gifted property, of approximately $50,000. The exact amount of these assets cannot be determined

from the record because the cash value of certain life insurance policies was not available at the time of trial. The trial court carefully fashioned an equal division of these assets. Neither party challenges this division on appeal.

The trial court ordered Dean to pay Betty $1,350 per month alimony until such time as Betty graduated from nursing school and obtained full time employment as a registered nurse, at which time the alimony should decrease to $500 per month payable until Betty reached the age of 65 years.

The only other asset of the parties was stock in a family farm corporation which was given by and inherited from Dean's father. The court awarded all of the parties' stock in the family farm corporation to Dean and provided that Dean pay Betty the sum of $100,000, payable at the rate of $10,000 a year. The first payment was to be made on the first anniversary of the decree with $10,000 payable on the same day of each year until the principal is paid in full - the principal to bear simple interest at the rate of 8% a year payable on the principal payment date.

I. Alimony

Dean challenges the alimony award made by the trial court. We have examined the alimony award in accordance with all the factors set forth in 598.21(3). This is a long-term marriage. Betty had a long absence from the job market to remain at home and assume custodial responsibility for the children of the marriage. She needs additional education to find appropriate employment to allow her to be self-supporting at a standard of living comparable to that standard enjoyed during marriage. Betty exhibits admirable qualities in her pursuit of a career after her long absence from the job market. We consider too, in evaluating the alimony award, the availability of Dean's inherited property. We recognize that the level of Dean's earnings has resulted in his paying maximum FICA tax since about 1957. The record reflects Dean should draw approximately $600 in

Social Security benefits if he works to age 65. His current accrued monthly retirement benefit at Purina, payable at age 65, is $34 per month. Under current law Betty will be able to draw Social Security on Dean's account, but her benefits will not be as large as his.

Considering all these factors we find the alimony award to be fair and equitable. We do, however, consider Dean's complaint that because a reduction in the award is only made when Betty becomes employed as a registered nurse that it may discourage her from obtaining employment. The uncertainty of the reduction can lead to confusion and problems for both parties. We recognize that Betty may not enter the job market immediately after graduation.

We modify the alimony award to provide that Betty should receive $1,350 per month until her graduation from nursing school and procurement of full time employment as a registered nurse, but no longer than through June 1, 1985. That upon Betty's procurement of employment as a registered nurse or the date of June 1, 1985, whichever event occurs sooner, the alimony shall be reduced to $500 per month, payable until Betty reaches the age of 65 years.

II. Property Award

Dean next challenges the $100,000 property award. Betty requests that the award be affirmed, but asks that the interest payable on the unpaid portions of the award be increased from 8% to 10%.

The first issue is whether the trial judge properly considered gifted and inherited property. Dean's father placed a 308 acre farm in a farm corporation and made stock gifts to Dean, Betty and their five children. In 1978 Dean's father died, and Dean inherited the balance of the stock. At the time of trial the stock in the farm corporation was owned 74.5% by Dean, 21.25% by their five children and 4.25% by Betty. The parties each had the farm appraised. Dean's appraiser valued Dean and Betty's interest at $410,761.26 and Betty's appraiser, at

$466,197.50. The shares are subject to a $91,000 federal estate tax lien. The lien is a result of a §6166 election by the beneficiaries in Dean's father's estate to pay the tax in deferred installments at a 4% interest rate.

The trial court in its finding determined the value of the shares of the parties in the family farm corporation to be $550,000. Dean contends said valuation was in error. Betty admits the trial court may have arrived at the $550,000 as a valuation of the total shares of the corporation rather than the 78.75% owned by the parties. We review the record de novo. In Re Marriage of Moffatt, 279 N.W.2d 15, 17 (Iowa 1979). We make our own determination of the record before us.

Dean contends the trial court erred in subjecting his inherited property to division. Iowa Code section 598.21(2) addresses inherited or gifted property and provides in relevant part:

> 1. . . . The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties. . .
> 2. 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 a refusal to divide the property is inequitable to the other party or the children of the marriage.

We first consider that Dean's father gifted shares of stock to Betty. The gifts to Betty were motivated by gift tax considerations. While it is unlikely that Betty would have received the property had she not been married to Dean, we do not consider, in this situation, that it would be inequitable to compensate Betty for this stock. See In Re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). We agree with the trial court in its decision to award Betty money rather than leave her with a minority interest in a corporation controlled by Dean. Joint ownership of postmarital assets should be avoided where possible.

We must next determine whether or not the trial court properly made an award to Betty based on Dean's inherited property. As an exception to section 598.21(2), the supreme court has set forth five factors which might bear on a claim that inherited property is subject to division. We consider particularly:

> . . .
> (4) any special needs of either party;
> (5) any other matter which would render it plainly unfair to a spouse. . . to have the property set aside for the exclusive enjoyment of the donee or devisee.

In Re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982).

Considering the length of the marriage, the contribution Betty made to the family and the fact that the parties accumulated few marital assets, we determine that an award to Betty of a portion of Dean's inherited property is fair.

We now must reach the final and most difficult question of whether the amount awarded was fair and equitable. Dean contends if we affirm the trial court's award he will be forced to sell the family farm now operated by his son. The record clearly reflects that a net return from Dean and Betty's shares of the corporation, without considering the interest payable on the deferred federal estate tax would be between $15,000 and $20,000 annually. Assuming we were to adopt Betty's valuation of $466,197.50, the annual rate of return from this farm land is little more than 4%. The conservative rate of return is one of the realities of Iowa farm land. The federal government recognized the conservative return from farm land in their enactment of §2032A which allowed, for estate tax purposes only, certain farm land to be valued for the use under which it qualifies rather than at its fair market value.

We look then at Dean's financial situation should he continue farm ownership and attempt to service a $100,000 property settlement to Betty and his federal estate tax obligation[1] from his farm income.

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[1] Dale will be required to pay $91,000 in federal estate tax. Interest accrues at 4% per annum. The principal payment commenced in December of 1984.

Net farm income available:

$20,000[2]

Due 1984 based on current judgment:

To pay trial court award to wife

9-30-84	$10,000 principal[3]
9-30-84	$ 8,000 interest[4]

To pay deferred federal estate tax

12-84	$ 9,000 principal[3]
12-84	$ 3,500 interest[4]

Total principal	$18,000
Total interest	11,500
Total due	$29,500

The same principal payments would be due in each succeeding year. The interest payments would decrease by $1,160 each year.

We agree with Dean that in all probability he will be required to sell the farm he inherited from his father if the decree of the lower court is affirmed. We cannot determine the amount awarded to Betty is equitable under these circumstances. We wish to make it very clear in this discussion that we are considering a division of inherited property not property acquired through the parties' joint effort. The Iowa legislature has clearly dictated that in approaching inherited property the court start with the premises that said property is not subject to division, but the premises yields where its application would be unjust. In Re Marriage of Thomas, 319 N.W.2d at 209-10. In looking at the equities, we must consider the realities of the farm economic picture. Dean's father was a farmer and Dean inherited a farm. Dean and Betty's son is a farmer. The income the farm produced during the marriage after it was inherited in 1976[5] shows no greater percentage of return than it does today. In our determination we look too

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[2] No income tax has been computed on this amount.

[3] These amounts would have to be paid with post tax dollars.

[4] These amounts would be deductible under current tax laws.

[5] The record shows the value of the farm declined after that date.

at Betty's needs. She should have financial security but equity does not dictate that she needs the amount awarded by the trial court when coupled with her alimony and earnings to maintain herself at a standard equal to that enjoyed during marriage and still obtain financial security. Equity does not dictate that Dean's inherited property should be charged with more. We consider too that Betty has benefited from the $30,000 joint debt forgiveness in Dean's father's will. We have considered the improvements made by the parties on the farm Dean inherited but have balanced them against the substantial rent reduction for the farm enjoyed by the parties for an extended term.

We affirm the trial court in the award of the farm stock to Dean and affirm the provisions made for the charge against the stock to assure Betty's payments. We modify the award by reducing it to $35,000 and providing for principal payments of $5,000 a year. We increase the interest rate on the unpaid balances to 10%.

Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.