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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARLENE KAY WADDLE AND KENNETH EUGENE WADDLE

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Upon the Petition of	)	
MARLENE KAY WADDLE,	)	
Petitioner-Appellee,	)	Filed February 25, 1987
And Concerning	)	
KENNETH EUGENE WADDLE,	)	6-409 86-305
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Marion County (No. DM 5-342) - Arthur E. Gamble, Judge.

Respondent husband appeals from the judgment and decree dissolving the parties' marriage. **AFFIRMED.**

Ed Skinner of Skinner, Beattie & Wilson, P.C., Altoona, for respondent-appellant.

Dennis F. Chalupa of Brierly, McCall, Girdner, Chalupa & McCall, Newton, for petitioner-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

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Respondent husband appeals from the judgment and decree dissolving the parties' marriage. Respondent contends the trial court erred in failing to make a just and equitable division of the parties' property. Respondent asserts the trial court failed to take into account assets which he allegedly brought into the marriage. Respondent also asserts that because of his age and poor health the trial court should have ordered the parties' farm and homestead sold, with the proceeds being divided equally between the parties. We affirm.

The petitioner, Marlene Waddle, and respondent, Kenneth Waddle, were married in 1956. Marlene, who filed the dissolution petition in 1983, is employed as a factory worker and has an annual gross income of approximately $18,000.00. Kenneth is a self-employed farmer. At the time of the dissolution hearing, Marlene was 45 years old and Kenneth was 50 years old. Both of the parties' two children are adults and do not live with their parents.

At the dissolution hearing, Kenneth testified that he no longer desires to farm due to health problems. Kenneth also testified that he entered the marriage with farm equipment worth $10,000.00, livestock worth $5,000.00, two automobiles, and a $1,000.00 savings account. Marlene either denied or could not recall whether Kenneth entered the marriage with any assets.

The trial court found that Marlene, who was employed in various factory jobs for 21 of the parties' 29 years of marriage, was the dominant spouse, despite Marlene's tenth-grade education. The trial court also found that Kenneth, who had graduated from high school, relied on Marlene to handle his money and care for his daily needs. The trial court found that through the parties' joint efforts, the parties accumulated property which included a 90-acre farm and homestead with a fair market value of $42,000.00, considerable farm equipment, other personal property, and cash assets.

The trial court awarded Kenneth the farm and homestead, a 1980 Cadillac, all the farm equipment, the furniture and household appliances then in his possession, and $7,289.79 in cash from the parties' money market certificate. The trial court awarded Marlene a 1980 Buick, a Florida lot, 45 shares of Vernon stock, Avatar stock, $20,000.00 in cash from the parties' money market certificate, various bank accounts, all furniture and household goods then in her possession, and an equitable lien against the farm and homestead in the amount of $20,000.00. The court made Kenneth responsible for all the debts of the marriage. In essence, the trial court awarded Marlene most of the parties' liquid assets while awarding Kenneth the income-producing assets, subject to Marlene's lien.

Our scope of review in this equitable action 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 the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

When considering a claim that the property division in a dissolution decree is inequitable, we must note that there are no hard and fast rules governing economic issues in dissolution actions. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). Because precedent is of little value on those issues, our decision must ultimately rest on the particular facts of each case. Id. In fashioning a division of property, we note that a percentage division is not statutorily sanctioned; rather the ultimate question is whether the property distribution is equitable under the particular facts of the given case. In re Marriage of Callenius, 309 N.W.2d 510, 511, 514 (Iowa 1981); In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984). Because there is no mechanical rule which dictates an equitable division of marital assets and liabilities, a justified property division is one that is simply equitable under the circumstances,

taking into consideration the statutory criteria set forth in Iowa Code section 598.21(1) (1985).

Kenneth contends that the trial court did not take into consideration the value of the property he had brought into the marriage. Pursuant to Iowa Code section 598.21 (1985), the court must consider a number of factors when fashioning a just and equitable division of property, such as the length of the marriage, age and physical health of the parties, the contributions of each party to the marriage, and the property brought to the marriage by each party.

Concerning the issue of property brought into the marriage, we initially note that where a marriage is of a relatively-short duration, neither party will have a significant claim in the other's property owned prior to the marriage. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982); In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981). Where there is a wide disparity between the assets of the parties at the time of the marriage, such as is alleged in the present case, the length of the marriage is a major factor in determining what the respective rights of the parties with respect to such property are at the time of its dissolution. Id. See also Arnold v. Arnold, 257 Iowa 429, 439, 133 N.W.2d 53, 60 (1965) (where the Iowa Supreme Court noted that where a court has made an approximately equal division of marital property, there has usually been an accumulation of property due to the joint efforts of both parties over a considerable length of time).

In the present case, Kenneth alleged that he brought approximately $20,000.00 worth of assets into the marriage, while Marlene brought only $40.00. The parties, however, were married for nearly thirty years. There was little evidence offered other than Kenneth's testimony to aid in the court's determination as to the value of any property brought into the marriage by either party. Considering the length of the parties' marriage, it would be quite difficult to

place a valuation on such property since any such property would have long ago been sold or replaced and assimilated into the other marital assets of the parties.

We further note the contributions of both Marlene and Kenneth during the course of the parties' marriage. Though Marlene was only sixteen years old at the time of the parties' marriage and had a tenth-grade education, Marlene exhibited a great deal of intelligence in handling the farm operations. Kenneth relied almost solely on Marlene to handle the parties' finances and care for the daily needs of their home and children. Marlene worked in various factory jobs for twenty-one of the parties' twenty-nine years of marriage. Together with Kenneth's considerable farming skills, Marlene and Kenneth considerably increased their marital assets. The parties acquired a 90-acre farm with a net value of $39,350.00, farm equipment valued at $51,161.00, and several automobiles and trucks. The parties also acquired a significant amount of money in money market certificates.

Kenneth, however, contends that the trial court should have considered his age and poor health when ordering the division of the marital assets. Kenneth argues that because of his poor health, he no longer wishes to engage in farming and argues that the trial court should have ordered the sale of the farm and farm equipment, dividing the proceeds equally. Upon our own independent examination of the record, we do not believe there is sufficient evidence to support a finding that Kenneth's health would be a considerable impediment to his chances of carrying on a successful farming operation. Furthermore, while Kenneth claims that he no longer desires to continue farming, at one point Kenneth testified that he had valued the farm machinery too high because he had wanted to "continue going."

In In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981), the Iowa Supreme Court recognized that it is reasonable under certain circumstances to award the farm to the spouse who operated it and fix the award to the other spouse. In Callenius, the wife had argued that the farm assets should be sold and divided equally. 309 N.W.2d at 514. The Iowa Supreme Court, however, refused to order that the farm assets be sold and the proceeds divided. Id. at 515. The court noted that the principal asset of the parties was farmland, which was the source of the parties' wealth and livelihood. Id. The court also noted that a possible forfeiture of the parties' land contracts would decimate the parties' assets and that the tax consequences of a sale would be substantial. Id.

In the present case, we note that Kenneth has been a farmer for most of his life, possesses few non-farm skills, and is presently unemployed. Kenneth had little knowledge of what the tax implications would be in the event the farm assets were sold. Richard White, a real estate appraiser who examined the farm assets, testified that it would not be a good time for a farm sale to occur because of depressed farm real estate prices. Should a sale be ordered, Kenneth and Marlene would not be assured that they would even receive the fair market value of their farm assets and, taking notice of the depressed Iowa farm economy, they would likely receive substantially less. While the trial court did not expressly state these considerations in its order, we cannot say that the tax implications and depressed Iowa farm economy were not recognized by the trial court in dividing the parties' assets. We therefore believe that the trial court was correct in declining to order the sale and division of the parties' farm assets.

Upon careful consideration of all the evidence, we hold that the trial court's order granting Marlene the great share of the parties' liquid assets and

Kenneth the farm and farming equipment was equitable under the circumstances.

AFFIRMED.

Hayden, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent.

The majority has determined:

> Should a sale be ordered, Kenneth and Marlene would not be assured that they would even receive the fair market value of their farm assets and, taking notice of the depressed Iowa farm economy, they would likely receive substantially less.

and yet they affirm a property division which gives the farmland to Kenneth without adjusting the value of the farmland given to Kenneth for the tax consequences on sale and the depressed market condition. To liquidate the farm Kenneth will have substantial tax liability and will be forced to satisfy Marlene's lien with after-tax dollars.

This appears to be a case for nearly equal division of assets. Marlene should share the tax consequences of a sale. I would divide the assets, including the farm, equally. The parties can share the marketing decision and tax liability.