

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

IN RE THE MARRIAGE OF SHERIL FARRIS AND JEWELL DOYCE FARRIS

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UPON THE PETITION OF
SHERIL FARRIS,

)

Filed November 26, 1985

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Petitioner-Appellant,

)

$\frac{5-471}{85-47}$

AND CONCERNING,
JEWELL DOYCE FARRIS,

)

Respondent-Appellee.

)

Appeal from the Iowa District Court for Audubon County, E. F. Hanson,
Judge

The petitioner-wife appeals from the dissolution decree. **AFFIRMED.**

Rhoda Schollars, Anita, for petitioner-appellant.

No appearance for appellee.

Considered by Oxberger, C.J., Donielson, and Sackett, J J.

OXBERGER, C.J.

Appeal is made from the trial court's dissolution decree and ruling on a motion for a new trial. We affirm.

The parties were married in 1970. They are the parents of two children, girls born in 1972 and 1974. The dissolution decree placed the children in the custody of their mother, Sheril. The custody award is not challenged in this appeal.

Jewell, forty-nine years old at trial time, has been a truck driver throughout the marriage. He is currently employed in Arkansas as a coordinator for a trucking firm at a gross salary of \$500 per week. In addition, he operates his own trucking business with hired drivers. There is a dispute about the number and net value of the trucks owned by Jewell. Sheril, forty years old at trial time, has limited employment experience and few employment skills.

The dissolution decree directed Jewell to pay Sheril alimony of \$300 per month for a period of 121 months and child support of \$500 per month along with \$8600 cash as part of the property settlement. Jewell was also directed to contribute \$600 toward Sheril's attorneys fees.

The dissolution decree directed that the parties' house be sold and that the net proceeds be divided equally between the parties. The house is valued at \$90,000 and is free of debt. The decree awarded Sheril a car, household goods, recreational horses and \$8600 in cash. The decree awarded Jewell a ten-acre tract of agricultural land, a bank account containing \$11,700, a life insurance policy with a cash value of \$5500, a pickup truck, and a van. Jewell was also awarded all his interest in his trucking business, which the trial court found to consist of a 1981 Kenworth truck worth over \$30,000 but mortgaged for most of its value.

The assets were valued by the court for a total of \$151,100. The court found Jewell had brought into the marriage \$37,600 in property, which included cash, an account receivable, and two inheritances. It considered this separate property of Jewell's in making its final division which resulted in Sheril receiving \$60,500 in assets, which is more than one-half of the assets, less the separate property.

Following the decree, Sheril filed a motion for a new trial. She alleged, among other things, that Jewell's trucking business actually owned six trucks rather than one, with ownership of five of the trucks being acquired gradually under a "lease-purchase" agreement. Prior to the decree Sheril had secured an extension of time to present evidence on this subject. However, no further hearings were held and no further evidence submitted to the court on the matter. She says her attorney had ceased working on the case in October 1984 and she had been unable to obtain new counsel. She also alleged Jewell had not revealed all his assets and was not frank with the court. The final allegation was that the property division was inequitable and the inherited property should have been considered in the settlement. The trial court denied the motion for a new trial.

Sheril has appealed, reasserting the claims presented in the motion for a new trial. She says the court erred in not granting the motion because the additional evidence should have been allowed, and that even if the evidence is not presented, the division was inequitable.

The court's decision regarding a request for a new trial is within the discretion of the court, and we will reverse only upon a showing of abuse of such discretion. Thompson v. Rozeboom, 272 N.W.2d 444, 446 (Iowa 1978). As Sheril points out, newly discovered evidence can result in a grant of a new

trial, but only if it could not have been discovered with reasonable diligence during trial. Iowa R. Civ. P. 244. In this instance, Sheril was aware that Jewell might be concealing property, and in fact asked for more time to discover the information. Although her counsel withdrew several weeks before the decree, she did not obtain new counsel and there is no evidence she otherwise sought to discover the evidence. The court has held that where information was not revealed concerning the actual value of the parties' house and financial statements, when such evidence could have been discovered prior to trial, the court did not err in refusing to grant a new trial. In re Marriage of Steenhoek, 305 N.W.2d 448, 451-52 (Iowa 1981). The petitioner also cites the court to Jettre v. Healy, 245 Iowa 294, 60 N.W.2d 541 (1953) for the proposition that perjury can be sufficient to allow a new trial. However, that decision also points out the rule that a new trial will not be granted on the ground of perjured testimony if it could have been discovered during trial. Id. at 299, 60 N.W.2d at 544. We find ample support for the court's decision to deny the motion for a new trial.

We also find the court reached an equitable result in dividing the property of the parties. Courts need not achieve exact equality in dividing property. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984). Even considering the money brought by Jewell into the marriage, Sheril has received approximately 40 percent of the assets, and Jewell has received 56 percent. An equitable division allows the other party to benefit from the separate property if the marriage has been a long one, to the degree that it affords the life-style to which the person has become accustomed. In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981). We find the property division which affords Sheril with a sizeable amount of liquid assets provides for an equitable result. We affirm the court's ruling in all respects.

AFFIRMED.