IN THE IOWA COURT OF APPEALS

IN RE THE MARRIAGE OF DORIS MARIE HOUSER & WOODROW EDWARD HOUSER

Upon the Petition of

DORIS MARIE HOUSER,

Petitioner-Appellee,

And Concerning

WOODROW EDWARD HOUSER,

Respondent-Appellant.

Filed May 26, 1981

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CLERK SUPREME COURT

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Appeal from Johnson District Court. William R. Eads, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree. AFFIRMED.

Steven K. Warbasse, of White & Warbasse, Cedar Rapids, Ia., for respondent-appellant.

Phillip A. Leff, of Leff, Leff, Leff & Haupert, Iowa City, Ia., for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-husband appeals from economic provisions of the parties' dissolution decree. He claims that the division of property was inequitable and that the trial court erred in taking note of Illinois law regarding the disposition of gift property. Our review is de novo. Iowa R. App. P. 4. We affirm.

Woodrow and Doris Houser were married in 1959 and had two sons—Woodrow II, born in 1960, and Bradford, born in 1963. Doris filed this petition for dissolution on June 16, 1978. The parties were able to agree as to the disposition of all their property except the marital residence on Oakland Avenue and the North Dodge duplex in Iowa City and forty acres of Illinois farm land, a gift to Doris from her parents.

The trial court's decree of June 29, 1979 awarded the Oakland Avenue property to Woodrow and the Illinois farm land to Doris. The net income from the rental North Dodge duplex was to be divided equally between the parties. In addition, Woodrow was given the option of paying $12,250 to Doris within sixty days from the date of entry of the decree. That amount represents one-half of the equity in the duplex; its market value was $35,000 encumbered by an unpaid mortgage balance of $10,500. If Woodrow chose not to make the payment, the duplex was to be sold with the parties dividing the net proceeds. Woodrow's motion for new trial was overruled on October 8, 1979, but the court supplemented the decree and ordered that, upon sale of the duplex, a debt owing to Woodrow's father (representing his contribution to the down payment for the duplex) should be paid before the rest of the proceeds are equally divided. This appeal followed.

I. Woodrow first argues that the trial court improperly considered Illinois law in disposing of the marital property. In its conclusions of law the court stated:

> "It is to be noted that Illinois, in which this property is located, provides that gifted property is excluded from property allocated by the Court in dissolution decrees (Code of Illinois, Chapter 40, Sec. 503(a) and 503(c)(9))."

Doris concedes that the court did not have authority to take judicial notice of Illinois law but argues that the court did not do so, nor did it base its decree on Illinois law. We agree. The court fully explained its reasoning in awarding the Illinois property to Doris:

> The Court concludes that Respondent shall not share, directly or indirectly, through this Decree in the property located in Woodford County, Illinois, deeded to her by her parents. The property was deeded to her in 1974 rather than in the early years of the marriage. It was deeded to her alone and, at least during the lifetime of her parents, was a part of an estate plan.

> Petitioner receives no present income from the property and has no present use of the land. Respondent made no contribution to the acquisition of the land either in cash or in kind. The parents select the tenant.

We are satisfied that the court did not base its decision upon an application of Illinois law.

II. Woodrow also argues that the court erred in not considering the Illinois land as part of the marital estate and that the division of property was inequitable. His first claim is answered by the court's conclusion quoted above; the court decided it was equitable that the property should be awarded to Doris.

We also conclude that its division of property was equitable after considering the relevant factors in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault. Both parties made significant contributions, financial and otherwise, toward the accumulation of assets in this twenty-year marriage. The Illinois farm land was awarded to Doris since it was apparent that the gift was a part of her parents' estate plan; Woodrow disavows any desire to be awarded any portion of that land. He was awarded the Oakland Avenue residence having an equity of $38,000, although his brother who contributed one-half of the original purchase price, may have an interest in that equity. The duplex was effectively divided equally between the parties—they will share equally either in the rental income or in the net proceeds after sale. Accepting his figures on the values of the various items of property and his disclaimer of any interest in the Illinois land, he was awarded property having a total value of $34,950, while Doris was awarded property having a value, excluding the Illinois land, of $16,750. Thus, he was awarded more than two-thirds in value of the property in which he claimed an interest. Under these circumstances, we find no reason to disturb the decree and affirm its provisions in their entirety.

Costs are assessed against Woodrow.

AFFIRMED.