IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 2-172 / 91-1135

IN RE THE MARRIAGE OF ELSA DARLENE FEDDERSEN AND JOHN EDWARD FEDDERSEN

Upon the Petition of

ELSA DARLENE FEDDERSEN,

Petitioner-Appellant/Cross-Appellee,

And Concerning

JOHN EDWARD FEDDERSEN,

Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Cedar County, Max R. Werling, Judge.

Darlene appeals, and John cross-appeals from a district court decree dissolving their thirty-six year marriage and ordering a division of property. **AFFIRMED.**

Lew Eells & Michael E. Howard of Eells & Peiffer, P.C., Cedar Rapids, for appellant.

L.E. Dendinger of Custerline & Dendinger, Tipton, for appellee.

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

SACKETT, J.

This appeal addresses the economic division of inherited property in a long-term marriage. Petitioner-appellant Elsa Darlene Feddersen appeals contending the trial court's decision to allocate to respondent-appellee John E. Feddersen the value of a 200-acre farm he inherited from his father was not equitable to her. Elsa also contends the trial court should have divided real estate in kind rather than ordering it sold. We affirm.

Elsa and John were married in 1955. At the time of their marriage Elsa was eighteen and John was twenty-three years old. The four children born to the marriage are now adults.

John and Elsa both have some health problems. Elsa works as a legal assistant three days a week and earns $7 per hour. John is a factory worker and earns $5.50 an hour with health insurance and gainshare benefits, and also earns $1,000 annually as a telephone company director.

When the parties were married, John was farming with his father, a widower. Since 1950 John and his father had had a fifty-fifty arrangement for farming. John's father owned and lived on the 200-acre farm John was to later inherit. After the parties were married, they moved into a large, furnished farm house with John's father on the 200-acre farm. John's father lived with the couple for ten

years. John's father then lived in town for three years, and was in the hospital and in a nursing home for a period following a stroke. John's father again lived with the couple at the farm from March 1969 to September 1973 when he again went to a nursing home. John's father died in February 1976. When John's father died he left the 200-acre farm to John, and the balance of his estate to John's sisters. There was a will contest and other litigation filed by John's sisters. John's sisters sought a share of the 200-acre farm and sought to require John to account for and pay the estate for his father's interest in the personal property belonging to the farm partnership. It was determined John's father's interest in the personal property of the partnership was about $60,000. John ultimately paid his father's estate $60,000 and retained the assets. Elsa and John borrowed the money to pay this sum to the estate.

The trial court found the 200-acre farm was worth $265,000 when John inherited it, and John and Elsa had had expenses relating to John's inheritance that reduced John's inheritance to about $210,000. The trial court divided the property with an allocation that resulted in John receiving value of $292,220 and Elsa receiving value of $143,309. The trial court accomplished this division by giving each spouse certain assets and ordering 300 acres of the farmland sold. The 300 acres of farmland included the

200-acre tract John had inherited. After the sale of the 300 acres, the trial court ordered John should first have his inheritance of $207,600, and that Elsa should have her inheritance of $26,241 and an additional $30,000 representing the amount of Elsa's off-farm income earned during the marriage which exceeded John's off-farm income earned during the marriage. Elsa received an additional amount of money to balance the division of personal property already agreed upon. The remaining proceeds from the sale were to go one-half to each spouse.

Elsa contends this allocation was not equitable. Her contention is the trial court incorrectly set off to John the value of the 200-acre farm. Elsa directs us to In re Marriage of Thomas, 319 N.W.2d 209, 211-12 (Iowa 1982), which she contends supports not setting off the value of the 200 acres to John. The issue is whether the presence of John's father in the parties' home supports a finding Elsa and John's father had a relationship that, according to Thomas, should support her receiving an interest in the 200 acres John inherited. When the parties moved in with John's father, the home they lived in and the furnishings in the home were John's father's. They paid John's father no rent. Elsa did cook for John's father, did his laundry, and took care of the house. Elsa also claims she had a very close relationship with John's father. There is dispute in the record about this claim of Elsa's.

John's father was active and worked on the farm with John. The couple's children got along well with their grandfather. John's father was never bedridden. John's father drew several wills but never mentioned Elsa in the wills. The trial court concluded there was never such a special relationship to find an exception to the rule that John should have his inherited property set aside to him.

The trial court's decree appears to balance the benefits to the family of living rent free in John's father's home with the benefits to John's father of Elsa's household chores. We agree with the trial court. We note too in arriving at our decision that Elsa received education during the marriage, and she has been employed in the work force off the farm and has the ability to earn an adequate wage. Elsa received substantial property in the division, and a sum of $30,000 for the amount of her off the farm income which exceeded John's off the farm income. We consider the $30,000 in assessing her argument. Additionally, Elsa has FICA coverage on her own account. We distinguish cases where a spouse has been given a share of the other spouse's inherited or gifted property. In re Marriage of Moffatt, 279 N.W.2d 15, 21 (Iowa 1979) (spouse was in poor health and not able to support self); In re Marriage of Mentel, 359 N.W.2d 505, 506 (Iowa App. 1984) (person making gift was nonfamily employer).

Elsa also contends she should have credit for interest and real estate taxes paid on the 200 acres after John inherited it. What this argument ignores is the farmland generated income after John inherited it. The income from the farm has not been separately allocated to John. Therefore, there is no basis to give Elsa credit for taxes and interest paid on the land.

Elsa's last contention is the farm real estate should have been divided in kind rather than ordered sold, because of the income tax consequences associated with the sale. The trial court determined the type of division. The trial judge is in the better position to determine whether assets should be divided in kind or should be sold and the proceeds divided. We can find no compelling reason to disagree with the trial court's method of division. We affirm.

AFFIRMED.