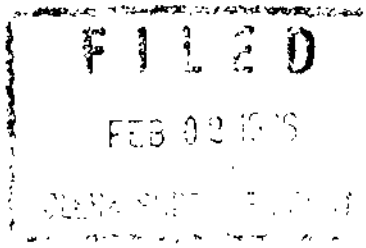
IN THE COURT OF APPEALS OF IOWA



No 5-659 / 94-2011

IN RE THE MARRIAGE OF GARY KENNETH BRUNSCHEEN AND WANETTA ROSE BRUNSCHEEN

Upon the Petition of
GARY KENNETH BRUNSCHEEN,

Appellant.

And Concerning
WANETTA ROSE BRUNSCHEEN,

Appellee.

Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge.

Gary Brunscheen appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Tricia L. Spratt and Bradley Norton of Norton & Norton, Attorneys at Law, P.C., Lowden, for appellant.

Jay A. Willems and Marty A. Hagge of Remley, Willems, & McQuillen, Anamosa, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

The Brunscheens were married for twenty-six years. Both were forty-six years old at the time this case was tried in October 1994. They have two children, Michelle, an adult, and Brian, a seventeen-year-old high school senior, as of the trial date.

Gary has farmed since 1968. He also works full-time for the city of Wyoming from May through October earning $8.40 per hour. Wanetta worked at Collins Radio until 1971 when she left to care for the children and to assist Gary in their farming operation. She returned to full-time employment in 1988. Wanetta, as of the trial, was working for minimum wage as a Kelly temporary until she finds suitable full-time employment.

The Brunscheens acquired substantial farm real estate during their marriage. In 1976 they purchased a 153-acre tract from Gary's parents for $130,050 (the home farm). In 1977 Gary and Wanetta, along with Gary's brother Alan and his wife Sue, purchased 240 acres for $173,275 (the Hill farm). Another 200-acre tract was acquired by Gary, Wanetta, Alan, and Sue in 1981 for $281,000 (the Dusanek farm). Each parcel was purchased on contract. We presume Gary's and Wanetta's equitable interest in the home farm is an equal and undivided tenancy in common. The Dusanek and Hill contracts also name Gary and Wanetta as joint purchasers without any designation of survivorship rights.

The value of the home farm is disputed. Wanetta's expert appraised the farm at $325,000. Gary's expert appraised the farm at $292,000. Gary testified that he valued this farm at $279,000. The Dusanek farm was appraised at $160,000, and the Hill farm at $186,000. Neither of these appraisals is disputed.

All of these parcels are subject to a blanket mortgage to Metropolitan Life Insurance Company. This loan was secured in 1985 to consolidate operating loans owed by the Brunscheen brothers' farming partnership and other advances made by the Maquoketa State Bank to the Brunscheens. The unpaid balance as of October 15, 1994, was $269,750. Gary and Wanetta disagree as to the amount of the remaining balance on this obligation that is attributable to the home farm. Wanetta claims their share is $136,675. Gary claims it is $159,826. There are no indications Metropolitan has or will accept any proportionate allocation of the obligation between the various parcels securing this loan. The unpaid balance on the Dusanek farm contract is $83,500. The balance due the Maquoketa State Bank on the Hill farm is $222,546. Gary, Alan, Sue, and Wanetta are jointly and severally liable on all of these obligations. The Maquoketa State Bank has also taken an assignment of the Brunscheen equity in all of these parcels as security for Brunscheen's operating loans.

Gary and Wanetta farmed all of this land together with Alan and Sue in an arrangement referred to as the Brunscheen Brothers Partnership. The record includes a partnership balance sheet, references to a separate tax identification number, and

partnership tax returns The assets of the partnership include grain, livestock, machinery, and miscellaneous personalty. Gary and Sue's undisputed share of these assets was valued at $79,277 as of October 15, 1995.

Gary's and Wanetta's personal property included household goods valued at $64,900, motor vehicles valued at $11,775, and bank balances of $2,900. The values and distribution of these assets are not disputed.

In addition to the liabilities referred to earlier, the Brunscheens also owed the Maquoketa State Bank $107,340 for operating loans. This obligation, like the others, is a joint and several obligation binding on Gary, Alan, Sue, and Wanetta. It is secured by all of the crops, livestock, machinery, and real estate equity.

The disagreements over the value of the home farm and the amount owed against it have produced divergent opinions as to Gary and Wanetta's net worth. Gary claims it is $250,829. Wanetta claims their net worth exceeds $300,000.

The district court did not determine the parties' precise net worth, but acknowledged it was more than $250,000. Gary and Wanetta were awarded equal shares of all the property acquired during the marriage. The district court, however, made no specific distribution because of Alan's and Sue's undivided fractional interest in most of the Brunscheen's property and the entanglements resulting from their joint credit obligations. As a result, the district court found it had no alternative but to refer

the Brunscheens to collateral proceedings to accomplish the final distribution of their real and personal property interest.

The record also indicates the district court declined to set aside Wanetta's $40,700 inheritance she received from her father in 1985. The court cited the Brunscheens' use of the inherited money for family obligations and its equal property division in support of this determination. Gary was ordered to pay $280 as child support for Brian, and Wanetta's request for alimony was denied.

On appeal Gary challenges the equity of the district court's equal property division. He also argues the court failed to distribute the property awarded and that the court did not consider the tax consequences of the inevitable liquidation necessary to accomplish an equal distribution of assets.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We give weight to the district court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The partners in a marriage are entitled to a joint and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). An equal division is not required. *Id.* The controlling factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made after considering all of the factors codified

in Iowa Code section 598.21(1). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

This is a twenty-six-year marriage during which each party contributed in a substantial way to the accumulation of jointly owned assets. Wanetta, although employable, does not have the earning capacity to enjoy more than a subsistence lifestyle. Gary's earnings are not sufficient to accommodate a significant alimony obligation and there are little, if any, liquid assets available for distribution. Under these circumstances, we find an equal property division is equitable.

After considering the unique circumstances presented in this case, we find ourselves in the same quandary as the district court. There is nothing short of a partition action or partnership dissolution involving nonparties that provides any effective means of accomplishing a distribution of the shares of property awarded. Although Gary has offered to by out Wanetta's share, the amount proposed, $50,000, is inadequate to compensate Wanetta for her share of a net worth exceeding $250,000. Moreover, Gary does not have the money and cannot obtain the financing required to fund a buy out at a more reasonable price. We are also unwilling to subject Wanetta to the substantial risk of default attending any installment arrangement over an extended period of time.

We therefore reach the same conclusion as the district court. The ultimate distribution of the property interests awarded will necessitate collateral proceedings to

accommodate the interest of persons not a party to these proceedings The judgment of the district court is accordingly affirmed

AFFIRMED.