DEC 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Upon the Petition of)
CAROL ELAINE PETERSEN,)
Petitioner-Appellee,)
And Concerning)
DONALD CARL PETERSEN,)
Respondent-Appellant.)

Filed December 23, 1980

0-306
2-64572

Appeal from Muscatine District Court - Lowell D. Phelps, Judge.

Respondent-husband appeals from economic provisions of the parties' dissolution decree contending 1) that the approximately equal division was unjustified; 2) that certain items of personal property should have been awarded to him; 3) that he should be allowed to pay the cash settlement award to petitioner over a period of years, rather than by one lump-sum payment; and 4) that he should not have to pay $1,000 in trial attorney fees for petitioner. AFFIRMED WITH MODIFICATION.

David J. Meloy of Stanley, Lande, Coulter & Pearce, Muscatine, Iowa, for respondent-appellant.

Jerome W. Conway of Gillett, Conway & Allison, Muscatine, Iowa, for petitioner-appellee.

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

Respondent-husband, Donald C. Petersen, appeals from economic provisions of the parties' dissolution decree. He contends 1) that the approximately equal division was unjustified, 2) that certain items of personal property should have been awarded to him, 3) that he should be allowed to pay the cash settlement award to petitioner over a period of years, rather than by one lump-sum payment, and 4) that he should not have to pay $1,000 in trial attorney fees for petitioner. We affirm with modification.

The parties were married January 16, 1970. Their ten-year marriage was dissolved by decree filed December 27, 1979. No children were born to or adopted by the parties, although each had children from a prior marriage who had reached majority at the time of the hearing. At the time of the dissolution, petitioner was a forty-three year old high school graduate with training as a key punch operator. She had been employed throughout the marriage at Deere Insurance Company in Moline, Illinois. She earned approximately $20,000 in 1979. She received total child support of approximately $9,825 during the marriage. Respondent, age fifty-six, had been employed at Stanley Consultants in Muscatine for about thirty years. He had a B.A. degree in civil engineering, was employed as a Structural Design Engineer, and was in good health. His earnings were approximately $24,000 in 1979.

During the marriage, respondent assumed responsibility for most of the parties' living expenses, while petitioner used a portion of her monthly earnings to purchase the maximum stocks allowed from her employer. She also deposited additional monies in her credit union savings account. Some of these funds were used to pay taxes and car insurance for the parties. In addition to the stocks, the parties also acquired a twenty-acre homestead and other personal property. Respondent inherited an undivided one-fourth interest in his parents' farm, stocks and cash. Petitioner presented documentary evidence that the parties' property totalled $281,169 in value. Trial court accepted this figure.

Based upon its findings, trial court made the following award:

Assets		$281,169.00
Liabilities		
Mortgage on homestead	$ 11,992.34	
Mortgage on Cadillac	2,574.42	
	$14,566.76	-14,566.76
Reduction in Assets		
Petitioner's Retirement Account	$16,074.00	
Respondent's Retirement Account	51,102.00	
	$67,176.00	-67,176.00
		199,426.24

Total Net Assets to be Divided		
Assets set off to respondent	$177,260.16	
Assets set off to petitioner	-22,166.08	
Excess to respondent		$155,094.08
Less:		
—Value of property brought to marriage by respondent	$ 34,549	
—Value of property inherited by respondent	29,094	
		- 63,643.00
Net excess value to respondent		$ 91,451.08
Award of one-half to petitioner		$ 45,725.54

Trial court specially awarded petitioner the 1976 Cadillac and the encumbrance thereon. Respondent received the homestead and all other indebtedness of the parties. No alimony was awarded. Respondent was ordered to pay $1,000 towards petitioner's attorney fees at trial.

I. Scope of Review. Our review of dissolution proceedings is **de novo.** Iowa R. App. P. 4. We will examine the whole record and determine anew rights on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978) (quoting In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974)). While we give weight to trial court's finding of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Division of Property. Respondent contends that trial court's division of property was not justified. Specifically, he asserts: 1) an equal division of the assets is unjustified; 2) a $7,485 loan on respondent's insurance policy should have been included as a liability when the court calculated the parties' net assets; 3) trial court understated the 1970 value of respondent's home; and 4) trial court undervalued respondent's inheritance. We will discuss each of these assertions separately, although in an order different from presented by respondent.

A. The $7,485 Insurance Policy Loan. Respondent contends that the $7,485 insurance policy loan should have been considered as a liability in calculating the parties' net worth, as was the indebtedness on petitioner's Cadillac and the mortgage on the homestead. We agree. The total net assets of the parties, found by trial court to be $199,426.24, thus should be reduced by $7,485, leaving total net assets of $191,941.24.

B. The 1970 Value of Respondent's Home. Respondent purchased a home in 1954 for $14,000. The parties sold it in 1975 for $34,000. At issue is its valuation at the time of the parties' marriage in 1970. Respondent asserts that his home should have been valued at $29,453. He bases this figure on the proportionate number of years he owned the property in relation to the $20,000 increase in value. Petitioner valued the

property at $17,500 based on an alleged discussion with respondent at the time of their marriage in 1970. Trial court, on the other hand, found $20,000 to be a more correct valuation, stating that there was no testimony relating to the increase in inflation between 1970 through 1975 as compared with 1954 through 1970.

We find that trial court's value of $20,000 is within the permissible range of the evidence and will not disturb it.[1] In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973).

C. Valuation of Respondent's Inheritance. Respondent first argues that trial court undervalued his inheritance by not crediting him with the full amount of inherited property when calculating the net excess of assets awarded to him. Trial court used $29,094 as the inherited property value. The record discloses that this amount does not include $2,023 of Investor's Mutual Stock and $457 of Investors Stock. We conclude the value of respondent's inherited property therefore should be increased by $2,480.[2]

Secondly, respondent contests the court's equal division of the appreciated value of his inherited undivided one-fourth interest in farm land. He alleges he should have received a set-off equal to its value at the time of trial, which was $25,000. Trial court's set-off to respondent for this property was $8,500, its value when inherited in 1974. The court ordered the remaining assets to be divided equally. We conclude that trial court properly valued the inherited farmland at its 1974 value, but for reasons stated below we find merit in respondent's challenge to the equal division of the appreciation on the inherited farmland.

D. Equal Property Division. Respondent contends that an equal division of the parties' assets was unjustified due to his greater contributions to the parties' finances, petitioner's greater potential for future earnings, her prospects for inheritance, and the length of the marriage. He also maintains that his contributions through inheritance and initial net worth should have received more favorable consideration.

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1 The Bureau of Labor Statistics has determined the inflation factor for residential homes during 1970 to be 35.87 nationwide. Based on this figure, the 1970 value of the house would be $19,012.

2 The record does not reflect the value of the stocks as of the date of inheritance. Trial court, and this court as well, therefore, has used the value at the time of hearing.

In dissolution proceedings, the court may make such property divisions as are justified. § 598.2, The Code 1979. Justified property divisions are those considered equitable under the given circumstances. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The supreme court has rejected a mechanical rule that each spouse must receive one-half of the marital assets, but the court has recognized that an equal division of marital property is often equitable. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). Trial court's assessment of what constitutes an equitable division is to be given some weight. Iowa R. App. P. 14(f)(7). We are guided by the factors enumerated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), in reaching an equitable determination of the parties' financial or property rights and obligations. Further, properties brought into the marriage or inherited may be considered in arriving at a proper division of the parties' assets. In re Marriage of Conley, 284 N.W.2d 220, 222 (Iowa 1979); In re Locke, 246 N.W.2d 246, 252-53 (Iowa 1976).

In its award, trial court set off assets totalling $177, 260.16 to respondent and assets totalling $22,166.08 to petitioner. From the excess gross value of $155,094.08 awarded to respondent, the court deducted the total value of property brought to the marriage and inherited by respondent. The court then equally divided the balance. Under all the circumstances of the case, we find this inequitable. Petitioner expended no effort to enhance the value of respondent's inherited farmland. Nor was the property used to increase the joint assets of the parties. Respondent was responsible for the bulk of the parties' living expense, while petitioner utilized a substantial percentage of her income to accumulate stock which trial court awarded to her. Under these facts we conclude respondent should receive the $16,500 appreciation on the inherited farmland.

III. Personal Property Items. Respondent next contends that items listed on his Exhibit B should have been awarded to him as the items were either owned by him prior to his marriage to petitioner or were peculiarly suited for award to him rather than to petitioner. Petitioner contends that since respondent did not introduce Exhibit B at trial, the evidence cannot be considered now. Trial court in its conclusions of law, however, found it equitable and just to award respondent the property which he brought to the marriage and to divide the remaining assets of the parties equally among them.

From examining the record, including petitioner's listing in Exhibit 1 of the parties' inventory of assets (which was introduced at trial and used by the court to divide the assets), we find evidence only of an oak table which belonged to respondent. In

reviewing the decree, we find respondent should have been awarded the table and the $150 value of table accordingly should be subtracted from the assets received by petitioner. We find respondent failed to make an adequate record to substantiate his claim on any other items.

IV. Lump Sum Payment. Respondent also urges this court to modify the decree to permit him to pay the cash property settlement in installment payments over a reasonable period of years rather than by one lump sum payment. We find merit in respondent's request.

Installment payments of lump sum awards are unquestionably permissible. See In re Marriage of McDowell, 244 N.W.2d 238, 240 (Iowa 1976); In re Marriage of Kunzman, 239 N.W.2d 582, 584 (Iowa 1976). Contrary to petitioner's argument, we do not believe that installment payments will preclude her from securing suitable housing in the near future. We therefore conclude that respondent shall pay to petitioner the lump sum award in five annual installments.

V. Attorney Fees. Respondent contends that he should not be required to pay $1,000 of petitioner's attorney fees at trial. Petitioner, in addition to arguing this award was justified, claims entitlement to attorney fees on appeal.

The principles for determining reasonable attorney fees are well settled. See In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979); Locke v. Locke, 263 N.W.2d 694, 698 (Iowa 1978); In re Marriage of Jennerjohn, 203 N.W.2d 237, 245 (Iowa 1972). Further, where other provisions of the decree enable each spouse to pay his or her attorney fees, the other party need not be required to do so. In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976); Craft v. Craft, 226 N.W.2d 6, 9 (Iowa 1975).

Applying these standards to the instant case in reviewing the parties financial situation, we find no abuse of trial court's discretion in awarding petitioner $1,000 attorney fees at trial. We, however, conclude an award to petitioner of attorney fees on appeal is unwarranted. Each party thus is responsible for his or her own attorney fees for this appeal.

VI. The Modified Decree. In light of the foregoing discussion, we conclude that trial court's decree should be modified with the division of assets as follows:

Total Assets:		$281,169.00
Reductions:		
Unpaid mortgage	$ 11,992.34	
Unpaid car loan	2,574.42	
Life insurance loan	7,485.00	22,051.76
		$259,117.24

Less Retirement Funds		
Petitioner	$ 16,074.00	
Respondent	51,102.00	67,176.00
Total Net Assets:		$ 191,941.24
Respondent's Award under decree	$177,260.16	
Less insurance loan	7,485.00	
Plus oak table	150.00	$169,925.16
Petitioner's Award under decree	$ 22,166.08	
Less oak table	150.00	$ 22,016.08
Excess award to respondent		$147,909.08
Less property brought to marriage by respondent	$ 34,549.00	
Less value of inherited property	31,574.00	
Less appreciation of farmland	16,500.00	
		82,623.00
Net excess awarded to Respondent		$ 65,286.08
One-half to Petitioner		$ 32,643.04

Respondent shall pay petitioner's $32,643.04 lump sum award in four equal annual installments of $6,528.60 each beginning January 1, 1981. A fifth and final payment of $6,528.64 shall be made January 1, 1985. Interest on the unpaid balance shall accrue at twelve percent per annum from the date of the original decree. Interest on past due amounts shall be at seven percent per annum.

The provisions of trial court's decree not expressly modified by this opinion are affirmed. Costs of this appeal are assessed equally against each party.

AFFIRMED AS MODIFIED.