FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

159

IN RE THE MARRIAGE OF JEAN M. MITCHELL AND G. ROSS MITCHELL

Upon the Petition of)

JEAN M. MITCHELL,)

Petitioner-Appellee,) Filed November 20, 1984

And Concerning)

G. ROSS MITCHELL,) 4-388
84-452

Respondent-Appellant.)

Appeal from the Iowa District Court for Poweshiek County - Dan F. Morrison, Judge.

Respondent husband appeals from the decree which dissolved the parties' marriage, asserting that he should have been awarded half the equity in the parties' homestead and farm. AFFIRMED.

Patrick W. Brooks of Mowry, Irvine, Brooks, Ward & Trout, Marshalltown, for respondent-appellant.

Orville Bloethe of Bloethe & Schwiebert, Victor, and C. M. Manly of Manly Law Firm, Grinnell, for petitioner-appellee.

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

DONIELSON, P.J.

Respondent-husband appeals from the decree dissolving the parties' marriage. He asserts that he should have been awarded half the equity in the parties' homestead and farm. Petitioner-wife requests attorney fees on appeal. We affirm.

Jean M. Mitchell and G. Ross Mitchell were first married in 1964; they divorced and then remarried in 1969. They have one child, Glen, who is no longer a minor. Jean is working at GTE. Ross farms and runs a lumber business; he has been losing money with both enterprises for some time. Ross brought farm equipment and tools into the marriage. Jean brought substantial assets into the marriage and also inherited substantial assets during the marriage. She has paid many of the bills for Ross's enterprises with these funds.

The trial court awarded Jean the parties' real estate, including their homestead and farm subject to any indebtedness. She was also awarded the parties' contract for the sale of certain other real estate, her personal effects, the parties' household goods and furnishings except several specified items, her life insurance and bank accounts, and certain funds which resulted from Ross's sale of assets in violation of a temporary injunction. The trial court awarded Ross the parties' vehicles, several specified household goods and furnishings, his life insurance, his businesses including their income of the past year, their equipment and portable buildings. The trial court directed Ross to pay his business debts. Ross has appealed.

Ross's sole claim on appeal is that the trial court erred in failing to grant him an interest in the family home and farm. Jean argues that the property was properly set aside for her since it is the result of the sale and reinvestment of the assets she inherited before and during the marriage. Apparently Ross does not dispute the fact that the property should be treated as inherited. Rather, he

claims that because of his contributions to the value of the homestead and farm, he is entitled to half the equity.

Iowa Code section 598.21 specifies the criteria to be considered by the trial court in dividing property. One provision of this statute addresses property which a party inherits or receives as a gift prior to or during the course of the marriage. Such property is not subject to division "except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage." Iowa Code § 598.21(2) (1983). In In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982), the supreme court set forth factors that would bear on a claim that property should be divided under the statutory exception:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
>
> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
>
> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
>
> (4) any special needs of either party;
>
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

The court also indicated that other factors such as the length of the marriage or the length of time the property was held may indirectly bear on the question. Id.

In considering these factors, we conclude that the property division should not be disturbed. During the course of their marriage, Jean has owned three farms, most recently 96 acres in Grinnell. Ross contends that he located and arranged for the purchase of the farms at "extremely advantageous prices." He also claims to have made various repairs and improvements on the properties. As Jean points out, however, there is no indication in the record that the repairs and improvements enhanced the value of the property. The only support in the record

for Ross's claims are his own statements which the trial court could chose to believe or disbelieve on the basis of credibility. We are inclined to agree with the trial court's determination that the funds and property Jean brought into the marriage have not increased due to the joint efforts of the parties.

Ross also argues that he is entitled to a portion of the property since he has continuously worked to satisfy the economic needs of the family. The record reveals that Ross has farmed and engaged in other business ventures. Yet his consistent financial problems have resulted in Jean using her cash and equity to pay delinquent accounts. In fact, as the trial court recognized, since she is the party who has assets, she may have to pay even more of the farm and business debts in the future.

Under the circumstances of this case, we conclude it was equitable to award the homestead and farm to Jean subject to any indebtedness.

Jean has requested appellate attorney fees. In evaluating this request, we consider the needs of the petitioner, Ross's ability to pay, and whether Jean was obligated to defend the trial court's decision on appeal. See In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). In doing so, we conclude that an award of attorney fees would be inappropriate. Accordingly, petitioner's request is denied.

AFFIRMED.