IN THE COURT OF APPEALS OF IOWA

No. 1-043 / 00-1006
Filed May 9, 2001

IN RE THE MARRIAGE OF MARY JANE BRUNSTING AND ROGER BRUNSTING

Upon the Petition of
MARY JANE BRUNSTING,
Appellant,

FILED
MAY 0 9 2001
CLERK SUPREME COURT

And Concerning
ROGER BRUNSTING,
Appellee.

Appeal from the Iowa District Court for Sioux County, James D. Scott, Judge.

The petitioner appeals the property distribution provisions of the parties' dissolution decree. **AFFIRMED.**

Bradley K. De Jong of Klay, Veldhuizen, Binder, De Jong & Pals, Orange City, for appellant.

Lloyd W. Bierma of Oostra & Bierma, P.L.C., Sioux Center, for appellee.

Considered by Habhab, R. Peterson, and Harris, S.J.*

*Senior judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

HABHAB, S.J.

The appellant, Mary Jane Brunsting, appeals that part of the district court ruling regarding the division of the parties' property. We affirm.

I. Mary Jane Brunsting and Roger Brunsting were married on November 26, 1974. Born as issue of this marriage are three children: Michael, who at the time of the dissolution proceeding, was twenty-two years old; Kelly, who was twenty years old; and a daughter, Melissa, who was fifteen years old.

The parties entered into a pretrial stipulation as to the joint legal custody of Melissa with primary physical care being awarded to Mary Jane, subject to Roger's right to reasonable visitation. They agreed to the net monthly income attributed to both parties and the guideline amount of child support Roger is to pay.

The following issues were submitted to the trial court: division of the parties' assets, allocation of income tax liability, Roger's claim for alimony, dependency exemption, health insurance for Melissa, and Mary Jane's claim for attorney fees. Roger's claim for alimony was denied. Mary Jane is entitled to claim Melissa as a dependent on her tax return. Roger is to pay the income tax consequences from the sale of the farm properties, the parties are to share equally in the cost of medical insurance for their daughter, and each pays his/her own attorney fees. The only issues Mary Jane submits on appeal relate to the court's division of property.[1] Roger does not appeal.

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[1] We have set forth the issues presented to the trial court and their resolvement. As a reminder, when asked to review an economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. *In re Marriage of Lattig*, 318 N.W.2d 811 (Iowa Ct. App. 1982).

II. Pursuant to Iowa Rule of Appellate Procedure 4, our review is de novo. This court is required to examine the record in its entirety and adjudicate the rights and issues presented by the parties based on that record. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa Ct. App. 1993). We give weight to the trial court's findings, but are not bound by them. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). Precedent is of little value as our determination must depend on the facts of the particular case. *In re Marriage of Sparks*, 323 N.W.2d 264, 265 (Iowa Ct. App. 1982).

III. Mary Jane's mother and father gifted to her cash in the amount of $114,000 and, in addition, transferred to her title to eighty acres of land through a gift-giving program in small acre tracts from the years 1983 through 1988 and also in 1994 and 1995. The eighty acres includes seventy-three acres of tillable farmland and the site upon which Mary Jane and Roger made their home.

In accordance with the pretrial stipulation, the seventy-three acres of tillable farmland, at the time of trial, had a value of $197,100. The trial court found that its value at the time it was gifted was $150,000. When the $150,000 is coupled with the $114,000 cash, the total gifted property awarded to Mary Jane equals $264,000.

However, the court concluded that the appreciation of Mary Jane's farmland from $150,000 to $197,100, or $47,100, should be treated as a marital asset. It is here that Mary Jane on appeal contends the trial court erred. She claims the appreciation of the farmland should not have been treated as a marital asset, but should have been included as part of the gifted property. She argues

the total value of the gifted property to her should be valued at $311,100. She also claims the trial court erred in not setting aside to her an additional $10,000 that was gifted to her by her parents to buy furniture.

When distributing assets, the trial court relied upon the valuations agreed to by the parties in their pretrial stipulation. Their gross estate was valued at $564,494, and their indebtedness was fixed at $91,966, thus creating a net worth of $472,528. The trial court then summarized the parties' assets as follows:

Gross estate	$ 564,494
Less total debt	(91,966)
Net gross estate	$ 472,528
Less value of gift	(264,000)
	$208,528

The trial court then stated its conclusions and graphically illustrated the division of the parties' assets and liabilities:

> If Mary is allowed to retain all of her gifts and one-half of the martial assets, she would receive $368,264 and Roger would receive $104,264. This would be inequitable due to the long length of the marriage and the substantial amount of labor Roger provided to improve the acreage, the house and support Mary and their three children. However, the Court should not award Roger part of Mary's gifts since Mary's parents clearly did not intend to make gifts to Roger and the law does not limit Roger to an award of 50 percent of the marital assets. (See Conclusion of Law No. 2). Equity in this case requires an award to Roger of more than 50 percent of the marital assets.
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> For the reasons stated above, the Court finds an equitable division of the parties' assets and liabilities is as follows:

MARY'S ASSETS		***ROGER'S ASSETS***	
House	$150,000	'00 Pickup	$24,000
'94 Auto	5,200	New York Life policy	12,396
IPERS	2,182	Equitable policy	7,846
Furniture, etc.	12,500	IRA	1,765
Machine shed	20,000	Sale proceeds	98,145
Remaining buildings	20,000		
Property purchased at farm sale	13,360		
73 acres of land	197,100		
TOTAL	$420,342	**TOTAL**	$144,152

MARY'S LIABILITIES		***ROGER'S LIABILITIES***	
IMP Loan	(700)	Tax liability	(70,000)
House loan	(21,266)		
Net distribution	$398,376		$74,152
Property settlement	(75,000)		75,000
FINAL NET DISTRIBUTION	$323,376		$149,152

The trial court submitted a detailed accounting of the assets and liabilities of the parties. Mary Jane, on the one hand, received the home valued at $150,000, the farmland with the appraisal value of $197,100, and other items valued at $73,242. Her gross total was $420,342. She assumed liabilities (that included the house loan of $21,266) of $21,700. Her pre-net distribution totals $398,376.

Roger, on the other hand, was awarded his pickup valued at $24,000, farm sale proceeds of $98,145, policies of insurance valued at $20,242, and furniture valued at $1,765. His gross total was $144,152. However, he is required to pay the tax liability resulting from the farm sale of $70,000, leaving him with a pre-net distribution of $74,152.

The trial court had before it Mary Jane's pre-net distribution of $398,376 and Roger's pre-net distribution of $74,152. To achieve equity, the trial court

ordered Mary Jane to make annual installment payments to Roger totaling $75,000 with interest on the unpaid balances at the rate of 8% per annum. Thus, Mary Jane's final net distribution, according to the trial court, amounted to $323,376 and Roger's $149,152.

IV. From our de novo review of the record, we agree that the trial court made an equitable division of the property of the parties. This is particularly true under the facts of this case where the parties accumulated property during the course of their marriage, where property was gifted, and where the gifted property appreciated in value. To do otherwise would create an inequity.

As we stated in *In re Marriage of Grady-Woods*, 577 N.W.2d 851 (Iowa Ct. App. 1998):

> There are several factors given special emphasis when determining an equitable division of property owned prior to the marriage and appreciated during the marriage. *See In re Marriage of Lattig*, 318 N.W.2d 811 (Iowa App. 1982). First, the "tangible contributions of each party" to the marital relationship are considered. *Id.* at 815. Homemaking is considered a tangible contribution to a marriage. Iowa Code § 598.21(1) (1997). Looking to the tangible contributions prevents entitlement to appreciated property due to the mere existence of the relationship. *See Lattig*, 318 N.W.2d at 815. Second, we look at whether the appreciation of the property is attributed to fortuitous circumstances or the efforts of the parties. *Id.* Third, we look to the length of the marriage. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995).
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> In addition to the factors given special emphasis, we look to the statutory factors including the age and physical and emotional health of the parties, the earning capacity of each party, and the economic circumstances of the parties. Iowa Code § 598.21(1) (1997). The critical inquiry is always whether the distribution is equitable in the particular circumstances. *In re Marriage of Williams*, 449 N.W.2d 878, 881 (Iowa Ct. App. 1989).

Here we have a marriage of almost twenty-six years. Shortly after their marriage, they moved to the farm. Roger farmed Mary Jane's family's adjacent farm ground on either a 50-50 crop share basis or rental basis from 1974 until 1999. In addition to being a grain crop farmer, Roger fed cattle until 1982 and had a hog farrow-to-finish operation on the property until 1996. Roger made significant improvements to the homestead property and did much of the work himself. In 1992, the parties constructed a new residence on the farm property. Although the relationship between Roger and Mary Jane's father, John Brantsen, is strained, Mr. Brantsen testified that Roger was a good farmer and worked hard on the family farm. Like the trial court, we find that Roger contributed a substantial amount of labor in improving the acreage, the home, and toward the support of Mary Jane and their three children.

Likewise Mary Jane, although not actively involved in the farming operation, made significant contributions to the marriage. Shortly after their marriage, she worked at K-Products for about one year. After that, she became a housewife and the couple started a family. In 1995, she executed a mortgage encumbering the farmland gifts to her by her parents. The funds from the mortgage assisted the family who were having financial difficulties. About that time, she obtained full-time employment and with the money she earned, she made payments on the mortgage and contributed her funds to help support the family.

Mary Jane is currently forty-six years old and employed full time as a licensed practical nurse and receives benefits. Under the current distribution,

she has a $150,000 home with a small mortgage, farm buildings, grain bins, and the seventy-three acres of farm real estate that can be rented.

Roger is fifty-one years old. He has farmed for the majority of his life and now is working construction without benefits. He is in good health, although his knees do cause him problems. He currently rents an apartment. Under the current distribution, he has been allocated the proceeds from the auction of $98,145 but also the full tax bill, which is projected to be $70,000. He received his pickup, his own minimal life insurance policies, and a small IRA, making his net distribution of assets after paying the tax bill $74,152. He is to receive $75,000 in annual installments over the next ten years from Mary Jane with interest at 8%, and as noted earlier, gives him a final net distribution of $149,152.

V. We agree with the trial court that the appreciation in value of the gifted property should be considered as a marital asset. However, we agree with the appellant that the farmland should have been valued at $160,000,[2] but we disagree with the appellant that she is entitled to an additional amount of $10,000 to be added to her gifted property. The record before us does not support this claim.

Even though we have added the $10,000 increase to the farmland, which of course increases the value of her gifted property and decreases the value of the marital assets, we do not believe, under the circumstances here, that we should disturb the final result reached by the trial court. As we stated in *In re Marriage of Lattig,* 318 N.W.2d 811, 814 (Iowa Ct. App. 1982):

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[2] From the review of the record before us, this is the only evidence of value that was before the trial court.

Thus, the ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on a percentage division of the assets and must determine what is equitable under the specific facts of this case. *In re Marriage of Callenius*, 309 N.W.2d 511 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. *In re Marriage of McFarland*, 239 N.W.2d 175 (Iowa 1976).

AFFIRMED.