

IN THE COURT OF APPEALS OF IOWA

No. 5-564 / 94-1701

IN RE THE MARRIAGE OF CHARLES F.
NICHOLS AND RUTH M. NICHOLS

Upon the Petition of

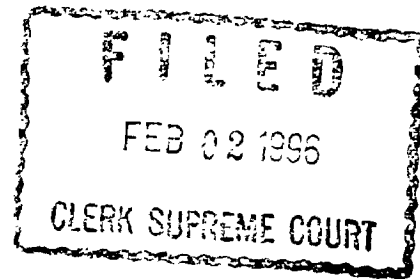
CHARLES F. NICHOLS,

Petitioner-Appellee,

And Concerning

RUTH M. NICHOLS,

Respondent-Appellant.



Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Ruth Nichols appeals the property division provision in the parties' dissolution of marriage decree. **AFFIRMED.**

~~David~~**A.** Morse of Garten & Wanek, Des Moines, for appellant.

~~Robert~~**A.** Nading, II, of the Nading Law Firm, Ankeny, for appellee.

Heard by Sackett, P.J., Habhab, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

PER CURIAM.

Charles and Ruth Nichols were married in 1978. There are no children from the marriage. Charles filed a petition for dissolution of marriage in October 1993. The dissolution decree is dated September 12, 1994.

The parties agreed on the value of most of the marital assets and liabilities. This agreement was evidenced in the Joint Statement of Assets and Liabilities. The only significant disagreement regarding valuation at the time of the trial was the value of Charles's stock in TNT Construction Company, Inc.

TNT was started by Charles, his two brothers-in-law and his father-in-law (Ruth's brothers and father). The company could not support incomes of four persons. Thus, in April 1993, Charles bought out his then father-in-law and brothers-in-law and paid each of them \$1000 for their stock. The stock had no value at the time of the purchase as determined by a C.P.A.'s review of the corporate books.

At trial, Charles's C.P.A., John Lamale, testified the TNT stock had no present value because the company's liabilities exceeded its assets. Ruth did not present any evidence regarding the value of the TNT stock, although the records of the corporation were available to her at all times.

The court found the stock had no present value and rejected Ruth's request she be awarded a \$50,000 property settlement. The court divided the parties' property so Ruth received property valued at \$11,400 and Charles received property valued at

\$11,798. In addition, Charles paid \$4000 in joint state and federal taxes that were incurred in 1993. Charles was ordered to pay Ruth \$1000 for her attorney fees.

Ruth appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Ruth's sole contention on appeal is the district court erred in making the property distribution. Ruth argues she should be awarded a cash settlement equivalent to one-half of Charles's net worth or, alternatively, she should be awarded a sum equal to one-half of the amount Ruth alleges Charles lent to his corporation out of marital funds.

The partners to a marriage are entitled to a just 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). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). We reject precise percentage divisions because "[t]he question is always what is an equitable and just

award in a given set of circumstances." *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975).

Prior to trial, the parties entered into a joint stipulation regarding their assets and liabilities. Of the property not agreed upon in the stipulation, only the value of the TNT stock appeared to be in dispute. Ruth does not, however, directly dispute the valuation of the TNT stock by the district court. Rather, she contends Charles converted marital funds into corporate funds. This contention must fail. We find no equitable reason to provide Ruth with a cash settlement. Funds from the corporation were used by Charles in the form of a salary to meet family obligations.

Next, Ruth contends she should be awarded one-half of Charles's net worth. This contention must also fail. The parties agreed to an equitable division of the property in the form of a stipulation. There is nothing in the record to substantiate that Charles has a net worth other than that agreed upon by the parties.

Our decision comes down to whether the district court reached a fair and equitable result. *See Russell*, 473 N.W.2d at 246. In the end, we find the distribution of property by the district court was equitable. Accordingly, we affirm the ruling of the district court.

AFFIRMED.