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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BETTY ANN BLACKWELL & REX B. BLACKWELL

Upon the Petition of)
BETTY ANN BLACKWELL,) Filed March 22, 1979
Appellant,)
And Concerning)
REX B. BLACKWELL,) 59 / 3-61898
Appellee.)

Appeal from Davis District Court - Charles N. Pettit, Judge.

Wife appeals child custody and economic provisions of dissolution decree. - AFFIRMED AS MODIFIED.

D. W. Harris, Bloomfield, for Appellant.

Thomas M. Walter, of Barnes & Walter, Ottumwa, for Appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Oxberger and Carter, JJ.

Petitioner Betty Blackwell appeals dissolution decree alleging that she should be awarded custody of the parties' minor child and that she should receive one half of the marital assets. We affirm with modification.

Betty and respondent, Rex Blackwell, were married in 1958 and have one daughter who was born in 1964. Neither brought substantial assets into the marriage. Through their mutual efforts, however, the parties acquired extensive farm property. In 1973, the parties were divorced but remarried each other approximately six months later. The 1973 decree is not a limitation on the power of the court to redetermine the equities and fix anew the property rights in a subsequent divorce proceeding involving the same parties. See Black v. Black, 200 Iowa 1016, 1018, 205 N.W. 970, 971 (1925) and Kantaris v. Kantaris, 169 N.W.2d 824, 831 (Iowa 1969).

we apply the criteria listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). Although not controlling, it is relevant that Becky, age thirteen, expressed a strong preference to live with her father. Rex's conduct has not been beyond reproach. He has, however, made commendable efforts to control his drinking problem and has shown that he is capable of providing his daughter with a structured and loving home. The issue of custody is not a matter of reward or punishment. We find that Becky's long range best interests would be most effectively served by keeping her in Rex's custody. Trial court's decision in this regard is affirmed.

We next turn to the question of an equitable property settlement. Trial court fixed the value of the parties' considerable assets at $892,976. This valuation is supported by the evidence, and we will not disturb it. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). Under trial court's decree, Betty received two of the five farms, her residence in Bloomfield, various items of personal property and a $30,000 lump sum payment. Her award constituted approximately thirty percent of the parties' net estate. Rex was not ordered to pay any alimony. In view of the duration of the marital partnership and Betty's substantial contribution thereto, we think she is entitled to a greater share of the parties' accumulated wealth. See In re Marriage of Fisher, 237 N.W.2d 452, 454 (Iowa 1976). We therefore hold that she should receive $100,000 instead of the $30,000 lump sum awarded by trial court. This amount shall be payable in ten annual installments with interest at eight percent. Trial court's decree is affirmed in all other respects. Costs on appeal shall be divided equally between the parties.

Affirmed as modified.

All judges concur, except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I dissent. Betty and Rex were originally married in 1958 and divorced in 1973. They subsequently remarried in 1974 and thereafter this dissolution took place. It seems to me the majority fails to address the problem specifically as to whether or not when parties remarry after a dissolution and subsequently file for a new dissolution, our consideration of property awarded the respective parties should date from the time of the first marriage or only from the second marriage. Our resolution of that issue is extremely important in the instant case because of the settlement aspects of the first dissolution between the parties. I dissent because the majority appears to consider all the years of marriage, from the date of the original ceremony, in its award of marital property. Considering the frequency of remarriage today, the problem of extensive re-litigation of prior marriage settlements will be a re-occurring problem of considerable importance. I believe that we ought to address this question more specifically, in absence of a decision of the Iowa Supreme Court.

Further, I find this to be an unusual factual setting with much of the evidence being completely contradicted by both parties. It is a complex case. It is fraught with controversy and contradiction, much of which could be reasonably resolved by having the opportunity to observe the demeanor of the witnesses and the candor of their testimony. After having read this cold record, I feel that the trial court's determination of the respective rights of the parties was such that I would affirm. There is no mandate that marital property has to be split 50-50; section 598.21, The Code 1977, requires the trial court to order a property divison "as shall be justified." See In re Marriage of Andersen, 243 N.W.2d 562 (Iowa 1976); In re Cooper's Marriage, 225 N.W.2d 915 (Iowa 1975). Considering the very complex financial arrangements in this matter, and the fact that we are not certain whether we are dealing here with a four- year marriage or a 20-year marriage under the present status of the law, I am unwilling to disregard the trial court's decision in this matter, and therefore would affirm.