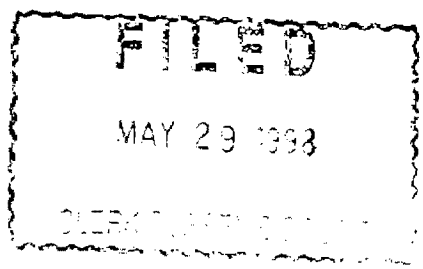
IN THE COURT OF APPEALS OF IOWA

No. 7-685 / 97-141

IN RE THE MARRIAGE OF PATRICIA ANN FRANCK AND KEITH BRUCE FRANCK



Upon the Petition of
PATRICIA ANN FRANCK,

Appellee,

And Concerning
KEITH BRUCE FRANCK,

Appellant.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Keith Bruce Franck appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Linda Hansen Robbins of Irvine & Robbins, L.L.P., Cedar Rapids, for appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Cady, C.J., Huitink, J., and Habhab, S.J.* Sackett, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

Respondent appeals various economic provisions of the parties' dissolution decree. Respondent contends: 1) the district court's division of marital property will force him to sell his farm assets, since he will have no cash available for operating expenses; 2) the district court erred in failing to set aside the value of his inheritance when computing the distribution of marital assets; and 3) the property settlement will gut the child support award. In our de novo review, we affirm the trial court's decision as modified.

Background. Keith and Patricia Franck married in 1971. They have four children: Sophia, born in 1974; Laura, born in 1976; Edward, born in 1979; and Joseph, born in 1983. At the time of the dissolution, Edward was attending East Buchanan High School and Joseph was attending East Buchanan Community schools.

At the time of the marriage, Keith had earned a bachelor's degree in agriculture from Iowa State University and was farming with his father in Buchanan County. The couple resided rent-free in a home owned by Keith's parents. Patricia also has a college degree and works at Rockwell-Collins in Cedar Rapids. She was earning $70,000 per year at the time of trial. Patricia continued to work after she had the two girls, commuting every day. Patricia also did the books for the farm operation and was responsible for the homemaking and child care.

In 1977, Keith and Patricia purchased a 140-acre farm for $269,000. The payments on the $210,000 mortgage to Federal Land Bank were paid both out of

Patricia's income and the farm profits. At the time of trial, the balance due was $143,000.

In 1984, Keith's father died. Pursuant to an option under his father's will, Keith was able to purchase the homestead where the family lived plus eighty acres of land for $800 an acre, or $96,000. The purchase was financed by Keith's mother, Helen Franck, who received a mortgage against the property and two promissory notes totaling $152,000.[1] The payments were made from an account that both Keith and Patricia contributed to. These notes had not been satisfied at the time of trial.

In 1986, Keith and Patricia purchased forty acres of land for $21,000, or $525 an acre. Keith's mother also loaned him the money to finance this purchase and received a mortgage and a promissory note. The note had not been satisfied at the time of trial. There is testimony the farm had a value of $60,000 at the time of trial.

Patricia received an inheritance during the marriage. Approximately $27,000 was left at the time of trial.

The parties began experiencing marital difficulties in the late 1980's and ultimately separated in 1995. Following a rocky period in 1989, Patricia's name was removed from the farm account and she was excluded from farm meetings concerning Keith's mother, the bank, and their lawyer. Patricia took out loans in the total amount of $12,000 against her 401(k) savings account to be used for family expenses. By the

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[1] One note was for the purchase price of $96,000, and the second note was for $56,000, which represented the value of Keith's father's share of the crop.

time of trial, Patricia had made payments on the loan, and her 401(k) had increased in value to $136,618.

Keith continued operating the farm after the separation, but had an increasingly difficult time due to the lack of Patricia's monetary support. By the time of trial, Keith had a crop ready for harvest worth approximately $120,000 and $24,500 in crops on hand. However, he had accumulated a debt to Walker Bank and had borrowed from his mother.

Following trial, the district court entered its decree. The district court awarded Patricia property totaling $78,430. Keith was awarded property totaling $874,015, including all the farm property. Keith was also ordered to pay $434,394 in marital debt, leaving him with a net worth of $441,621. In order to equalize the distribution, the court ordered Keith to pay Patricia $181,595.50, to be secured by a second mortgage on all of Keith's real estate. The court also ordered interest at the legal rate on the equalizing payment until paid. The principal debt itself is payable upon the occurrence of one of several events. Keith was awarded physical care of the children. Patricia was ordered to pay child support to Keith monthly in the amount of $1141.94. Keith has appealed.

Scope of Review. Our review in this case is de novo. Iowa R. App. P. 4. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties before us. *In re Marriage of Daniels*, 568

N.W.2d 51, 54 (Iowa App. 1997). We give weight to the trial court's findings, but we are not bound by them. Iowa R. App. P. 14(f)(7).

On appeal. Keith asserts the district court's division of marital property will result in his having to sell the farm assets because he will not have any available cash to pay operational expenses. He maintains he cannot comply with the court's decree without liquidating assets.

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.* Iowa courts have recognized Iowa's position as a farm state and the need to look to preserving the farming business in dividing assets in a dissolution. *In re Marriage of Callenius*, 309 N.W.2d 510, 514-15 (Iowa 1981); *In re Marriage of Andersen*, 243 N.W.2d 562, 564 (Iowa 1976); *In re Marriage of Briggs*, 225 N.W.2d 911, 913 (Iowa 1975); *In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa App. 1995).

In our de novo review of the record, we first note some clerical errors in the calculation of the property values: one-half the value of Patricia's 401k was omitted; the telephone stock, although awarded to Patricia, is set forth under Keith's distribution and was added to Keith's total; and the sum of the values of the properties awarded to Keith was incorrect. In addition, we find the value of the 1996 crop

should be $120,000. Appellant apparently does not dispute that Patricia's 401k should be included in her property award, as long as the full value thereof is attributed to her. We accordingly modify the decree to show the full value of Patricia's 401k on her side of the ledger, and award the entire 401k to her. With this modification, the modification of the crop value, and the value of the telephone stock, the net value awarded to Patricia is $151,132 and the net value to Keith is $439,401. The difference in property values is equalized by a payment to Patricia from Keith of $144,134. The decree is modified accordingly as to this amount with the additional modification of awarding to Patricia her entire 401k.[2]

As it relates to child support, our review of the record reveals the trial court adopted Keith's "child support guidelines worksheet" in fixing Patricia's monthly child support obligation at $1141.94. Keith, in his brief, makes passing reference to the fact the interest he is required to pay on the equalizing debt is not included in Patricia's gross income. In his worksheet, Keith fixed Patricia's gross annual income at $70,000 and his at $12,000. Keith does not ask us to modify the decree as to child support. He merely calls to our attention the interest award is "grossly unfair and inequitable" and he has "no cash left for principal payments, food, utilities, necessities, or his obligation to support his children." Since he does not ask us to redetermine child support, we will not do so. Modification may, at some future date,

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[2] The award to Patricia of all of her 401k reduces substantially the "equalizing payment," thus lessening the monthly interest payment Keith must pay.

be in order when it is a certainty that Patricia is receiving her interest payments or the debt is paid in full, which then gives her an income-producing asset.

Although the farming operation's taxable income frequently is nil, this does not mean there is no cash flow or operating capital. Keith has been operating successfully for many years. Nothing in the record convinces us his financial situation is as dire as claimed. Consequently, we do not consider any tax consequences or selling costs for the farm assets because Keith intends to continue farming and we conclude the property division should not force him to sell assets.

Keith next argues the district court erred in failing to set aside the value of his inheritance when computing the distribution of marital assets. He bases his claim of an inheritance on the difference between the price the parties paid for the land and its fair market value. Under the circumstances here, we, like the trial court, reject Keith's argument. We note although Patricia's inheritance was set off to her, only about one-third of it remained to be set off at the time of the dissolution. The balance had been spent as a marital asset.

Finally, Keith claims the only way he would be able to make his interest payments is to raid his child support award. He asserts the trial court's decree effectively destroys any chance of a bank loaning him money for his operating fund. We agree with the trial court's credibility determination concerning Keith's testimony relating to farm debts. Many of the debts only appeared after the parties separated and prepared for the dissolution. In addition, the modifications made in the property

award will reduce the amount of interest Keith pays. He also could reduce it further by paying down the judgment earlier than required.

Having carefully considered all of the issues properly preserved for review, whether or not specifically addressed in this opinion, for the reasons set forth, we affirm the judgment of the trial court as modified previously in this opinion. No appellate attorney fees are awarded. Costs of this action are divided equally between the parties.

AFFIRMED AS MODIFIED.