

IN THE COURT OF APPEALS OF IOWA

No. 7-466 / 96-1717

000283

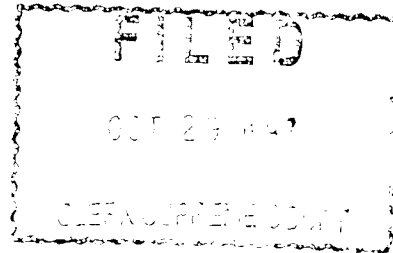
**IN RE THE MARRIAGE OF IRENE DELORES
OELLRICH AND GERALD DON OELLRICH**

**Upon the Petition of
IRENE DELORES OELLRICH,**

Petitioner-Appellant,

**And Concerning
GERALD DON OELLRICH,**

Respondent-Appellee.



Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.

Petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Christine L. Crilley of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

William F. Olinger of William F. Olinger Law Office, Cedar Rapids, for appellee.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Petitioner Irene Oellrich appeals various economic provisions of the parties' dissolution decree. We affirm.

Irene and respondent Gerald Oellrich were married on November 1, 1952. They have seven children, all of whom are adults. The parties were both sixty-three years of age at the time of trial.

Gerald and Irene purchased a farm in Toddville, Iowa, over thirty years ago. Gerald has been operating that farm on a full-time basis for the past seventeen years without significant assistance from Irene. Indeed, the record shows the parties have lived independently of each other for these seventeen years although residing at the same farm residence. They have not socialized together for many years.

Irene currently works at a laundromat earning \$5.75 per hour. She receives a lifetime pension benefit of \$171 per month from St. Luke's Hospital. She is eligible for social security but has not yet signed up for this benefit. Gerald receives \$332 per month from his Cargill pension, which will end at age seventy-one. He receives an additional \$762 per month as a social security benefit.

I. SCOPE OF REVIEW. Our review of this equitable proceeding 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 Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). 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).

II. FARM VALUATION. The farm real estate was valued through two different appraisers, both hired by Irene. The first appraisal valued the farm at \$151,250. Not satisfied, Irene hired a second appraiser who valued the farm at \$309,500 based on speculation that the farm had development potential due to its proximity to Cedar Rapids. The trial court adopted the first appraisal as the most realistic assessment of the actual value of the property. The valuation found by the trial court was well within the permissible range of the evidence and we are not inclined to disturb it. *See In re Marriage of Versluis*, 521 N.W. 760 (Iowa App. 1994); *In re Marriage of Bare*, 203 N.W. 2d 551 (Iowa 1973).

III. SALE OF THE FARM HOMESTEAD. The trial court awarded the farm homestead to Gerald for three reasons: (1) Gerald relies on the farm to supplement his income; (2) the parties' children and grandchildren enjoy visiting the farm; and (3) Gerald plans to have the option of passing the farm to his heirs. Irene objects to Gerald's desire to hold onto the farmstead. She argues a fair and equitable division of the parties' property cannot be achieved if Gerald is allowed to keep the farm. We disagree.

We conclude a sale of the farm homestead is not necessary to effectuate an equitable distribution of the parties' assets. *In re Marriage of Kurtt*, 561 N.W.2d 385,

388 (Iowa App. 1997). The trial court found Irene's equity to be \$75,625 but awarded her \$80,000. In addition, the trial court ordered said amount paid within ninety days of the date of the decree and awarded Irene a lien against the real estate until such time as the obligation was satisfied.

IV. PROPERTY DIVISION. The trial court awarded Irene her National Travelers annuity valued at \$31,000 and a \$10,000 certificate of deposit. Irene was also awarded the Scudder mutual fund valued at \$14,610 and other property for a total of \$52,113.50. Gerald was awarded assets totaling \$66,445, but Irene was then awarded an additional sum of \$7203.50 to equalize the property division. Gerald was also ordered to pay the debt associated with the farming operation in the sum of \$7128. Irene argues this division of property was inequitable.

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 Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). The courts are not bound to achieve a precisely equal division in awards of marital property. *Kurtz*, 561 N.W.2d at 388. The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1995). *Id.*

We believe the property division set out by the trial court was fair and equitable to both parties. It will not be disturbed on appeal.

V. ATTORNEY FEES. Irene argues she should have been awarded attorney fees by the trial court and she is entitled to appellate attorney fees.

Iowa trial courts have considerable discretion in awarding attorney fees. *Gonzalez*, 561 N.W.2d at 99. To overturn an award, the complaining party must show the trial court abused its discretion. *Id.* We find there is no evidence of abuse of discretion.

In determining whether to award attorney fees on appeal, our decision is guided by the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). We have reviewed these factors and now determine Irene is not entitled to an award of appellate attorney fees.

We have carefully reviewed all of the issues presented on appeal and determine the decision of the trial court should be affirmed in its entirety.

AFFIRMED.

Sackett, P.J., and Vogel, J., specially concur.

SACKETT, J. (concurring specially)

I concur with the majority in all respects. In doing so, I do not adopt the trial court's reasons for not ordering the farm sold.

Vogel, J., joins this special concurrence.