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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF FRED PLAETH AND MARY ELLEN PLAETH

Upon the Petition of	)	
FRED PLAETH,	)	
Petitioner-Appellant,	)	Filed November 22, 1978
And Concerning	)	
MARY ELLEN PLAETH,	)	
Respondent-Appellee.	)	$\frac{698}{2-61623}$

Appeal from Polk District Court - A. B. Crouch, Judge.

Petitioner-husband appeals from economic provision of dissolution decree.

Affirmed.

P. F. Elgin, of Indianola, counsel for appellant.

Allan A. Herrick & Jon L. Staudt, of Des Moines, counsel for appellee.

Submitted to Oxberger, C. J., Donielson, Snell and Carter, JJ.

DONIELSON, J.

Petitioner Fred Plaehn appeals from that portion of the dissolution decree awarding certain real estate acquired by the parties during the marriage to respondent Mary Ellen Plaehn. The property in dispute is a 116-acre tract of land adjoining Mary Ellen's 80-acre farm purchased at a cost of approximately \$30,000 of which \$10,800 remained unpaid at the time of trial. To meet his half of a \$12,000 down payment on this property, Fred borrowed from Mary Ellen's five children and on livestock owned in the farming operation. At the time of trial he owed a small amount on the loans. The land was appraised at approximately \$39,015 at trial, and the trial court found the value to be \$38,000.

Our review is *de novo*. Rule 4, Rules of Appellate Procedure; *In re Marriage of Winegard*, 257 N.W.2d 609, 613 (Iowa 1977). The criteria for reviewing property settlement awards is contained in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968) as modified by *In re Marriage of Williams*, 199 N.W.2d 339, 345-346 (Iowa 1972). While we give weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P.; *Winegard*, *supra*.

Our *de novo* review of the evidence and application of the *Schantz* criteria leads us to the same result reached by the trial court. The record discloses that both parties brought about the same amount of assets into the marriage in 1968. Before the parties separated in 1974 there had been substantial appreciation in value of these assets, due in part to the efforts of Fred at his Burger Chef restaurant and Mary Ellen at the farming operation. In dividing the assets, the trial court awarded Fred his one-quarter interest in Burger Chef and Mary Ellen her interest in the 80-acre farm she had owned before the marriage. It awarded the property in question to Mary Ellen "in lieu of any alimony." While the Burger Chef has been very profitable and has high earning potential, the farming operation, including the 116-acre tract, has yielded little or no income, and has in fact provided tax savings due to losses during the marriage. The mortgages and financial obligations incurred in the farming operation become the responsibility of Mary Ellen. The property settlement is equitable, the trial court did not err and the decree is affirmed.

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Mary Ellen cross-appeals from the award of \$1000 toward her attorney fees at trial, and requests further attorney fees on appeal. Such fees are not allowed as a matter of right and any award must depend upon financial circumstances and earnings of both parties. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). We do not disturb the award for attorney fees at trial, and find that Fred should pay \$750 towards Mary Ellen's attorney fees on appeal, to be paid no later than May 31, 1979. Such provision in no way fixes the amount to be charged by Mary Ellen's attorneys. Costs on appeal are taxed to Fred.

AFFIRMED.