

JAN 31 1978

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KATHRYN D. CUTHBERT and KEITH N. CUTHBERT

KATHRYN D. CUTHBERT,

)

Filed January 31, 1978

Appellant,

)

AND CONCERNING

)

370

KEITH N. CUTHBERT,

)

2-60307

)

Appellee.

)

Appeal from Woodbury District Court - George F. Davis, Judge.

Petitioner wife appeals the economic provisions of dissolution decree claiming she should receive a larger share of the marital assets, comprised largely of the family farm inherited by respondent husband prior to the marriage. - Affirmed with modification.

Robert R. Eidsmoe, of Gleysteen, Harper, Kunze, Eidsmoe & Heidman, Sioux City, for Appellant.

Robert E. Beebe and Michael W. Ellwanger, of Kindig, Beebe, McCluhan, Rawlings & Nieland, Sioux City, for Appellee.

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

PER CURIAM

Petitioner Kathryn D. Cuthbert appeals the economic provisions of the dissolution decree entered January 17, 1977, terminating the 28-year marriage between her and respondent Keith N. Cuthbert. We affirm with modification.

Throughout the marriage the couple cultivated and improved a 110 acre farm which Keith had inherited seven years prior to the marriage. Keith maintained full-time employment as well, with annual earnings of approximately \$12,000 at the time of trial. Keith asserted the farm's value was between \$210,000 and \$227,000; Kathryn insisted its' value was \$244,028. The trial court awarded Kathryn the farm residence with outbuildings and the surrounding five acres of land; Keith claims this award accounts for \$70,000 of the farm valuation. The trial court made no findings regarding any valuation of property. Kathryn was ordered to pay the \$4170 indebtedness on the well installed on property she received. She was also awarded the family car subject to a \$1608 indebtedness. Her net property award was approximately \$64,000 plus the car and her other personalty. Keith received the remaining 105 acres of farmland (\$227,000 less \$70,000), \$6000 of farm machinery, \$5000 of livestock, \$3700 of grain and hay and \$4531 of debts. His net property award was approximately \$167,000.

We agree that Kathryn should share in a larger portion of the marital assets. We are convinced Keith had a relatively small amount of equity in the property when he brought it into the marriage in 1949. The entire 480 acre family farm, from which Keith's acres were partitioned in 1951, was valued in probate proceedings in 1942 at \$30,000, subject to a \$25,000 mortgage. After 1951, the couple paid off a \$5000 mortgage amount apportioned to their acres in the partition action. By Kathryn's account, her family provided the couple with cash gifts in excess of \$30,000 to assist with their living expenses and farm improvements during the marriage. Unquestionably the parties' net worth has been significantly enhanced by these inheritances and family gifts as in *In re Marriage of Beeh*, 214 N.W.2d 170, 175 (Iowa 1974). *Beeh* stated, in establishing each party's contribution to net worth under the *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968) third postmarital criterion, it could consider that neither party had contributed to the

acquisition of net worth by reason of extensive property rights which came to the husband by way of family gifts and inheritances. **Beeh** will not support Keith's attempts to shelter the farmland from classification and distribution as a marital asset.

In addition to the property awarded by the trial court, Kathryn should receive \$20,000 payable in four annual installments of \$5000 each, to commence 1 May, 1978 plus 7% from 1 May, 1978.

We find no merit in the contention by Kathryn that the language of the decree terminates her \$200 monthly alimony if she receives an inheritance from her mother. We think the trial court was expressing the court's current state of mind in the event there was a future application for modification of the alimony provision. Section 598.21, The Code, confers such jurisdiction.

In all other respects we affirm the trial court. Each party shall pay their own attorney fees. Costs on appeal are assessed against Keith.

Affirmed with modification and remanded with instructions.

Danielson, J. dissents.

DONIELSON, J. (dissenting)

I dissent. I see no reason to disturb the property settlement provisions as determined by the trial court. In formulating its decree, the trial court indicated that it had taken into consideration the testimony of the parties, the contributions of the parties to the marital net worth, as well as the inheritance of land by respondent. The court also stated that, in deciding upon an equitable property division, it was giving no weight to testimony that petitioner stands in a position to inherit a substantial estate from her 86-year-old mother, inasmuch as that estate has not vested.

This case presents an unusual situation in that the testimony of the parties was quite contradictory. However, the parties' daughter was able to confirm both petitioner's lack of candor during her testimony before the court and the testimony regarding the deterioration and breakdown of her parents' marital relationship. The parties and witnesses placed the trial court in a unique position in this case and its decision should be accorded more deference than the majority chooses to.

After reviewing the entire record in light of the criteria set forth in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968), I conclude that there is no basis for the modifications ordered by the majority. Therefore, I would affirm the judgment of the district court in its entirety.