

FILED

OCT 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARJEANE L. SLACH AND RAYMOND P. SLACH

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Upon the Petition of	)	
MARJEANE L. SLACH,	)	Filed October 29, 1985
Petitioner-Appellant,	)	
And Concerning	)	5-469
RAYMOND P. SLACH,	)	84-1999
Respondent-Appellee.	)	

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

Petitioner wife appeals from the decree dissolving the parties' marriage.
AFFIRMED IN PART; REMANDED IN PART.

William M. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, Iowa, for petitioner-appellant.

C. Peter Hayek of Hayek, Hayek, Hayek & Holland, Iowa City, Iowa, for respondent-appellee.

Considered by Snell, P.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

Petitioner wife appeals from the decree dissolving the parties' marriage. She asserts that (1) the trial court should not have decided the issue of alimony because it was not one of the issues the parties had stipulated were to be tried first, (2) the trial court's division of respondent husband's partnership interest in two farms was inequitable, and (3) certain farm buildings should have been treated as a marital asset subject to division. We affirm in part and remand in part.

Petitioner, Marjeane L. Slach, and respondent, Raymond P. Slach, were married in 1975. Marjeane is a beautician. Raymond is a farmer. After he finished high school in 1971, Raymond entered into a farm partnership with his father. In 1972, the partnership acquired a 154-acre farm ("the Grizel farm"), now valued at \$322,000 less the \$40,000 balance owing on the real estate contract. In 1978, the partnership acquired another piece of land, a 2.4-acre parcel ("the Miller property"), now valued at \$42,250 less the \$20,336 balance due on the purchase loan from West Branch State Bank. In 1983, the parties separated.

After trial, the court determined that half the equity in the Miller property was a marital asset and awarded Marjeane a \$5,625 share. The court further determined none of the partnership equity in the Grizel farm was a marital asset. However, in recognition of her contributions, Marjeane was awarded \$25,000. In arriving at this division, the court excluded the value of certain farm buildings. The decree also provided that neither party was entitled to alimony. Finally, the court indicated that, by agreement of counsel, the issues of child custody, child support, and personal property division were reserved for future determination. Marjeane has appealed.

Our review in this equitable matter is de novo. Iowa R. App. P. 4. While we give deference to the findings of the trial court, we are not bound by them. Iowa R. App. P. 14(f)(7).

Marjeane argues on appeal that it was improper for the trial court to make a determination concerning alimony. She claims that by stipulation the parties had agreed to limit the issues to the dissolution, the value of certain real estate, and the division of the real property.

There is no dispute that a stipulation existed between the parties. The difficulty in this case stems from an ambiguity in the wording of the stipulation. At the beginning of the trial, Marjeane's counsel made the following statement:

Your Honor, it's been agreed that this matter will be bifurcated and that the only matters to be considered at this hearing will be, of course, the dissolution itself of the marriage and the extent of the real estate which constitutes marital assets and the value thereof. There will be no evidence submitted at this time concerning child custody, child support or the division of personal property, it being believed that if these issues are going to be presented this morning can be resolved by the Court, that the possibility of the parties reaching some settlement on the other items is good.

From this statement, it is obvious the parties in this action intended to reserve certain issues for future consideration. By way of explanation, Marjeane's counsel listed the matters to be considered by the court and those to be reserved. A problem arises, however, because counsel made no reference to alimony. Marjeane claims the court should have only considered the matters listed by her attorney. Raymond's position is that the court properly considered alimony since it was not specifically reserved and there was a sufficient evidentiary basis for the decision.

A careful review of the record, however, reveals that neither party presented evidence directly concerning the issue of alimony. We do not believe it was the intention of the parties to have this matter resolved. Nor do we

believe there was sufficient evidence for the court to make an equitable determination in this regard. Notably absent from the record is any evidence concerning Marjeane's need for alimony or Raymond's ability to pay. Such factors should appropriately be before the trial court. See Iowa Code § 598.21(3) (1983). At the very least, the parties should have been aware that alimony was being considered and had the opportunity to present relevant evidence.

Accordingly, we vacate the trial court's decision to deny alimony and remand for the limited purpose of taking evidence on this issue.

Marjeane also argues that the \$25,000 award representing her share of the Grizel farm should be increased. She claims she is entitled to one-half of the parties' partnership interest in the Grizel property, or approximately \$68,000.

Our analysis of the property division is governed by section 598.21(1) of the Iowa Code which codifies many aspects of our prior case law. A percentage division of property is not statutorily sanctioned. Rather, the ultimate question is whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981).

Viewing the facts before this court in light of section 598.21(1), we conclude that the trial court's distribution of property was equitable. As the trial court indicated, the Grizel farm was purchased prior to the marriage; any subsequent increase in value was primarily due to inflation. Marjeane has never made a financial contribution to the farm. However, she did do certain farm work and assisted in making improvements on the parties' home, which is located on the property. We believe an award of \$25,000 properly reflects these contributions.

We also conclude that it was proper for the court to exclude the value of certain farm buildings from division. Contrary to Marjeane's assertion, there

is sufficient evidence to support the trial court's finding that these buildings were owned by Raymond's father and not the farm partnership.

We affirm the division of real property set forth in the decree and remand the case for a determination of alimony.

AFFIRMED IN PART; REMANDED IN PART.