

IN THE COURT OF APPEALS OF IOWA

No. 4-139 / 93-481

IN RE THE MARRIAGE OF VICTORIA K. BLACK AND GLEN C. BLACK

Upon the Petition of
VICTORIA K. BLACK,

Appellee,

And Concerning
GLEN C. BLACK,

Appellant.

Appeal from the Iowa District Court for Lucas County, Donna L. Paulsen, Judge.

Respondent appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Theodore F. Sporer, Des Moines, and Patrick W. O'Bryan, Des Moines, for appellant.

Thomas P. Hyland of Hyland, Laden & Pearson, P.C., Des Moines, and Teresa A. Beyer, Des Moines, for appellee.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Glen Black appeals the economic provisions of the dissolution decree. Glen and Victoria have been married for thirty years. Glen is forty-eight years of age. Victoria is forty-nine. They are the parents of two grown children.

Glen has earned his living primarily as a farmer and cattleman. He also has sold real estate on a part-time basis in the past and earned as much as $14,500. Victoria has served as the Lucas County Clerk of Court for the past twelve years, earning a salary of $22,565 in 1992.

The Blacks began their farming operation by purchasing eighty acres from Glen's parents in 1969. The land consists mostly of pastureland, and the marital home sits on one acre. They also purchased an adjacent 195-acre farm in 1974 and an additional eighty acres from Glen's parents in 1978. During the marriage the Blacks also rented an additional 500 acres upon which Glen conducted his cattle operation.

Glen and Victoria saved their farm from foreclosure in 1988, but they were forced to assume a new mortgage on the entire farm to continue operating. The farming operation continues to show an annual loss.

Prior to the marriage, Victoria inherited a one-third interest in an eighty-acre farm, which her father farms and gives her the income. She also inherited a one-sixth interest in an additional 500-acre farm, which will become a one-third interest upon her mother's death.

Prior to trial, Glen filed a motion to compel discovery, seeking to obtain information from Victoria's parents regarding the property they owned and intended to make available to Victoria. The district court denied the motion.

The decree awarded Glen the eighty-acre farm with the marital home and other assets valued at $200,567. He was assessed the Fleet mortgage in the amount of $64,471 plus other liabilities. Victoria received the 195-acre farm, another eighty-acre tract, and other assets valued at $146,575. She was assessed $8,808 in liabilities. The district court declined to award alimony, and each party was obligated to pay his or her respective attorney fees. Glen appeals.

We first consider Glen's contention the district court erred in denying his motion to compel discovery. We review rulings on motions to compel discovery for an abuse of discretion. See Kendall/Hunt Publishing Co. v. Rowe, 424 N.W.2d 235, 240 (Iowa 1988) (affirming an imposition of sanctions for failure to comply with a Rule 134 order). An abuse of discretion exists only when the court exercises its discretion on grounds or reasons clearly untenable or to an extent clearly unreasonable. Rowen v. LeMars Mut. Ins. Co., 357 N.W.2d 579, 583 (Iowa 1984).

Glen argues Victoria's parents should be ordered to disclose any future inheritance they plan on devising to Victoria. He contends this information is required for the

court to make an equitable property settlement. We disagree. When making property divisions we are concerned only with dividing the assets the parties have now. We do not make divisions based on speculation of future inheritances. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). We find no abuse of discretion and affirm on this issue. We now turn to the property division.

Our review in equity actions is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Glen argues the property distribution was inequitable as the court awarded the majority of the farmland to Victoria and assessed the majority of the debt to Glen. We agree.

Property divisions are based on what is just and equitable under all of the circumstances. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). We must consider all of the economic aspects of the decree to determine its overall equitability. In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). However, a property division should not cause certain harm to one party and probable economic harm to both parties. See In re Marriage of Andersen, 243 N.W.2d 562 (Iowa 1976).

The property division saddles Glen with the blanket Fleet mortgage which covers all of the farmland but denies him the ability to generate cash to service the debt. As it now stands, Victoria is not obligated to use the income generated from the farmland awarded to her to service the debt. This leaves Glen with only eighty acres from which he must generate enough income to service the debt on the entire 355 acres of farmland. This jeopardizes the security of both parties and will lead to certain economic harm to Glen. We therefore modify the decree and award the separate eighty-acre tract the parties purchased from Glen's father in 1978 to Glen.

We affirm the district court as modified and remand for modifications in the decree to be entered accordingly. Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED AND REMANDED.