

FILED
MAY 31 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARJORIE KINKADE AND FRANKLIN KINKADE

Upon the Petition of	)	
MARJORIE KINKADE,	)	Filed May 31, 1979
Petitioner-Appellee,	)	
And Concerning	)	
FRANKLIN KINKADE,	)	100
Respondent-Appellant.	)	2-62459

Appeal from Union District Court - M. C. Herrick, Judge.

Husband appeals from the economic provisions in the decree of dissolution.
Affirmed.

Wilson, Bonnett & Christensen, of Lenox, for appellant.

Arnold O. Kenyon, II, of Creston, for appellee.

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

DONELSON, J.

Respondent, Franklin Kinkade, appeals from the property division of a dissolution decree terminating his 34 year marriage to petitioner, Marjorie Kinkade. In our de novo review, Iowa R. App. P. 4, we are governed by the criteria listed in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), without regard to fault. In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972).

Neither party brought significant assets into the marriage in 1944, but by the time of trial in July 1973, a substantial amount of property had been accumulated. This property, including the parties' home, other real estate, stocks and bonds, life insurance, cars, bank accounts, and equipment and notes receivable acquired in connection with Franklin's construction business, was valued by petitioner at \$448,121 and by respondent at \$329,876. The trial court set a value of \$376,404, and determined petitioner was entitled to 50 percent of the assets. See In re Freese's Marriage, 226 N.W.2d 860 (Iowa 1975). During the marriage, Franklin worked in the construction business; in addition to rearing the parties' four children, Marjorie contributed secretarial and bookkeeping services to Franklin's business.

The trial court awarded petitioner cash and personal property valued at \$16,825, one half the proceeds from the sale of the parties' residence, a \$25,000 cash settlement payable within 30 days from the decree, and an additional property settlement of \$106,877 payable at 7 1/2 percent interest over 16 years, secured by mortgages on the real estate awarded Franklin. Franklin was awarded stocks, real estate including an 80-acre farm, a business acreage, and a rental house, one half the proceeds from the sale of the residence, cars and personal property, equipment and notes receivable in connection with the construction business, and some cash. Franklin was required to assume the outstanding indebtedness of the parties, and to pay \$5000 toward Marjorie's attorney's fees. Using trial court's valuations, Marjorie received assets worth \$188,202, and Franklin received assets of \$183,202 after attorney fees.

Franklin first contends that there was no evidence in the record to support trial court's valuation of the parties' assets, and the values ascribed were inflated. Both parties submitted financial statements, testified concerning some values, and called experts to testify concerning real estate values. The trial court's values conformed

more to those set by Marjorie. Franklin, in essence, complains that the trial court's values were unjustified because it did not use valuations placed on certain assets by the expert he called at trial.

The trial court is not bound by the testimony of experts of either party. Here, there is support in the record for the values set by trial court. Marjorie testified that many of her values for personal property or business assets were based on Franklin's financial statements. Lower values than those given by Franklin were assigned to some assets; in particular, the residence was valued at \$83,000 by Marjorie and the trial court, \$100,000 by Franklin. Where valuation of property is well within the permissible range of the evidence, we will not disturb it on appeal. In re Barc's Marriage, 203 N.W.2d 551, 554 (Iowa 1973).

Franklin also contends that certain stocks inherited during the marriage by him from an aunt and a certificate of deposit in which he has a remainder interest should have been set off to him as his sole property before the division of marital assets. While Franklin kept the proceeds from sales and dividends of the inherited stocks and bonds separate from household or business accounts, it appears he occasionally borrowed from and considered the account an "emergency fund." The \$8000 certificate of deposit is in Franklin's name, but pays interest to his elderly father. These assets were considered by the trial court in determining the parties' net worth and were awarded to Franklin in the dissolution decree. The value of property inherited by one of the spouses and awarded to him upon dissolution of the marriage is a proper factor to be considered by the court in arriving at the net worth of each party, relative needs of the other and the value of the resources of the parties. See Locke v. Locke, 246 N.W.2d 246, 253 (Iowa 1976); Schantz, 163 N.W.2d at 405.

After reviewing the entire record, we conclude that the property settlement ordered by the trial court does substantial equity, and we affirm it. We find no evidence that the trial court intended its decree to have a punitive effect upon Franklin. Fault of the parties has been specifically disallowed as a factor to be considered in determining division of assets. In re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974). The parties were married 34 years and each made substantial contributions to the assets accumulated. The decree of the trial court is affirmed.

Franklin contends that the trial court's award of \$5000 to Marjorie for attorney fees in district court was excessive. In absence of an itemization of time spent by the attorney, and giving weight to the trial court's finding, we will not substitute our judgment for his as to the value of services and amount to be paid by Franklin. In re Marriage of McBes, 244 N.W.2d 327 (Iowa 1976).

Finally, Marjorie seeks an award of attorney fees on appeal. Each party shall pay his or her own attorney fees on appeal; costs are assessed to Franklin.

AFFIRMED.