



IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF BARBARA JUNE GILBERT
AND CLARENCE ALBERT GILBERT**

Upon the Petition of	)	
BARBARA JUNE GILBERT,	)	
Petitioner-Appellee,	)	Filed April 26, 1983
And Concerning	)	
CLARENCE ALBERT GILBERT,	)	<u>3-52</u>
Respondent-Appellant.	)	2-68788

Appeal from Jasper District Court - Gene L. Needles, Judge.

Respondent husband appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED.**

Eugene Knopf of Diehl, Clayton, Cleverley, Knopf & Williams, Newton, for respondent-appellant.

Ennis McCall and Brad McCall of Brierly, McCall, Girdner & Chalupa, Newton, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

DONIELSON, J.

Respondent husband appeals from the economic provisions of the parties' dissolution decree. On appeal he asserts: (1) that the property division was inequitable and based on an erroneous valuation of both the marital assets and an inheritance he received; and (2) that no alimony should have been awarded. Petitioner wife has requested attorney fees on appeal. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give them weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner, Barbara Gilbert, and respondent, Clarence Gilbert, were married in 1947. They were married approximately 35 years and raised four children. Clarence farmed throughout the marriage while Barbara was primarily a housewife and mother. She also worked a short time outside the home and helped with the farming chores. At the time of trial, both parties were experiencing some health problems, though Barbara's appear to be more severe. The combined income of the parties averaged approximately \$26,000 for the five years preceding trial.

In 1972 Clarence inherited \$19,141 from his father's estate which he used to buy his father's livestock, crops, and machinery. At that time he also secured a loan to purchase the family farm from his father's estate for a price of \$42,492. An appraiser testified that the farm purchased from Clarence's father was worth \$228,000 as of the date of appraisal but that farm prices had declined since then.

The appraiser testified that he attached a value of approximately \$25,000 to a home on the farm while a real estate agent testified that the home had a value of \$60,000 to \$64,000.

Another farm purchased by the parties during the marriage was sold at the time of the dissolution and the proceeds divided equally, with each party receiving \$101,500. In making the property division the trial court valued the farm purchased from Clarence's father at \$205,000 and, for purposes of determining Barbara's share of the marital assets, deducted \$50,000 as a credit for Clarence's inheritance.

In addition to the \$101,500 Barbara received from sale of the second farm, the trial court awarded her a lump sum of \$140,000, a pickup truck valued at \$2,500, and alimony of \$200 per month terminable upon the death of either party or either party's receipt of social security benefits. Clarence was awarded most of the real estate, valued at \$205,000, livestock and crops valued at \$83,000, and personal property items needed to farm the land valued at approximately \$54,000. He then instituted this appeal.

II.

Initially, Clarence challenges the property division as inequitable. Our analysis is governed by § 598.21 which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968)(modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1976)). Among the factors we consider in dividing marital property under section 598.21 are the length of the marriage and the contribution of each party to the marriage, including homemaking and child care services. The ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309

N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). With regard to gifts received by a party, section 598.21(2) provides that

[p]roperty inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Clarence argues that the court erred in establishing the value of Clarence's inheritance. We find his arguments to be without merit. Clarence used his \$19,141 inheritance to purchase his father's farm machinery, crops and livestock. He secured a loan to purchase the farm from his father's estate. We believe the \$50,000 credit awarded Clarence for his inheritance is appropriate in this case. This figure is greater than the \$19,141 actually inherited and is well within the considerations set forth in section 598.21(2) and In re Marriage of Thomas, 319 N.W.2d 209, 210-11 (Iowa 1982).

Clarence also contends the trial court erred in its valuation of the farm real estate. Specifically, he complains that the value of the property had declined at least twenty (20) percent since the property was last appraised. The appraiser testified that farm real estate values had "declined a minimum of 10 percent, probably on up to 20 percent, and in some cases no one is interested in the land." Overall the decrease in value was from ten (10) to thirty (30) percent, while the appraiser thought it was properly more like twenty (20) percent. The court applied the minimum ten (10) percent figure in determining the present value of the land. We believe this valuation was appropriately based on the evidence in the record. The fact that the decrease percentage figure was somewhat speculative does not lead us to the conclusion that the value assigned was unfair or unreasonable. See In re Marriage of Conley, 284 N.W.2d 220, 222 (Iowa 1979). The

court need not determine the exact value; a reasonable and fair value estimate is required so that the court can make an equitable distribution of the assets. In re Marriage of Moffatt, 279 N.W.2d 15, 19 (Iowa 1979). We believe the valuation in the instant case was a reasonable one.

Based on our de novo review of the record, we find the property division provisions to be equitable and justified. The parties' marriage was of long duration. Their wealth is not evidenced by the income produced through farming, but in the increased value of the land they purchased throughout the marriage. We have noted that "an equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship." In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982). We recognize Barbara's contributions in the instant case and believe that she should be awarded a substantial amount of the property, taking into account its appreciated value. However, we have also recognized that the fact that the land is being used for one's livelihood may require special consideration. See Callenius, 309 N.W.2d at 315. In the instant case the farmland provides the livelihood for Clarence. Accordingly, he was awarded virtually all the real property. The lump sum award to Barbara is to be made in payments through 1984, which allows Clarence the opportunity to raise the award money from his farming efforts. The initial \$100,000 due to Barbara upon entry of the decree is presumably available to Clarence from his share of the proceeds received from the sale of a portion of the parties' farmland. Thus we do not believe enforcement of the decree would work any hardship on Clarence's ability to continue his current farming operations. Having found it to be equitable, we affirm the property division provisions in full.

III.

Clarence also contends that no alimony should have been awarded. The

factors to be considered in determining whether spousal support should be granted are set forth in § 598.21(3). Those pertinent to the instant case include the following:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to subsection 1.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

See also In re Marriage of Hitchcock, 309 N.W.2d 432, 436 (Iowa 1981); In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Petersen, 227 N.W.2d 139, 142 (Iowa 1975).

Applying these criteria, we believe the court properly awarded alimony to Barbara. As we have noted, the marriage was of long duration and Barbara is in poor health and unable to secure adequate employment. She worked very little outside the home during the marriage and has had no job training or college education. While the award of \$200 per month alimony is not a large sum, we believe it is adequate in light of the above property division.

IV.

Barbara also seeks attorney's fees in connection with the appeal. Attorney's fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Likewise on appeal, our primary consideration in making an award of attorney's fees is the parties' resources. Considering the parties' financial needs and abilities, we believe that each party should pay his or her own attorney's fees on appeal and should pay half of the court costs.

Having considered all of the parties' contentions, we affirm the decree.

AFFIRMED.