



IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

IN RE THE MARRIAGE OF HARRIET HUGHS HARVEY and ELTON JERRY HARVEY

Upon the Petition of	)	
HARRIET HUGHS HARVEY,	)	Filed April 28, 1978
	)	
Appellee,	)	
	)	
And Concerning	)	470
	)	<u>2-60519</u>
ELTON JERRY HARVEY,	)	
	)	
Appellant.	)	

Appeal from Marion District Court - Robert O. Frederick, Judge.

Respondent appeals from the property division ordered in decree of dissolution of marriage. Affirmed as modified.

Frank G. Wieslander, P.C., Altoona, for appellant.

Joseph M. Johnston, of Johnston & Hicks, Knoxville, for appellee.

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

PER CURIAM

Respondent, Elton Jerry Harvey, appeals from the provisions of a decree of marriage dissolution which awarded petitioner, Harriet Hughs Harvey, all of the real property owned by the parties and allowed him an \$18,500 property settlement, payable in installments. He asks that the decree be modified by ordering that title to the real property, originally acquired by petitioner through inheritance, be vested in the parties as tenants in common.

In resolving the issue presented in this appeal as trier de novo, we must examine the entire record, giving weight to trial court's findings, but not being bound by them. In re Marriage of Winegard, 257 N.W.2d 609, 613 (Iowa 1977). The criteria to be applied are those set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), but without consideration of fault. In re Marriage of Williams, 199 N.W.2d 339 (Iowa 1972).

The real property, comprised of tracts of farm land of 114 1/2 acres and 80 acres, was inherited by petitioner four months before the marriage in 1950. It has been improved by the parties by the building of a new home in the mid 1950's (in which they lived until they permanently separated), the construction of a new barn, granary, fences, and the addition of a garage and a breezeway to the house. Respondent contributed considerable labor and capital to these improvements. The parties farmed the land for about three years; during the remaining years they rented the land on crop share or cash rent bases. Each maintained other employment and both, by hard work, contributed significantly to the marital property. Two children, now adults, were born of the marriage.

At the time of trial, the parties were both 43. Respondent enjoys good health. Petitioner is under medication for mental depression, a condition that earlier required several hospitalizations and has affected her ability to maintain employment. Neither finished high school and both are limited in employment opportunities because of lack of education and job skills.

We are aware that a number of decisions have granted one spouse an interest in property inherited by the other. See Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976), citing In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1974). The precedents, however,

do not require awarding respondent an interest in the real property in this case. Other means of distributing the property are more appropriate. While, as trial court noted, much of the increase in value is a result of the substantial appreciation in farm land over the years, respondent's management, labor and sacrifice also contributed to the enhanced value of the real property. Therefore, our review leads us to conclude that the lump sum property award made by trial court should be increased by \$56,500 to a total property award of \$75,000. This lump sum award may be paid in ten equal installments, without interest, commencing July 1, 1978. This award shall be secured by a lien in respondent's favor on the real property and special execution shall issue for sale thereof to satisfy any amount unpaid after it becomes due and payable. In the event petitioner dies before the full sum is paid, the balance owed shall be a charge on her estate. See In re Marriage of Beech, supra.

Affirmed as modified and remanded. Upon remand, trial court shall enter a revised decree in conformance with this opinion.

OXBERGER, J., dissents.

OXBERGER, J. (dissenting)

The major marital asset of this 26-year-plus marriage was the farm improvements made and the appreciation in value of the farm land occurring during the marriage. I would increase the property division granted to Elton to at least one third of this increase in value. He contributed substantially to this approximately \$249,000 increase in valuation. He should share substantially in the division of this increase.