FILED
DEC 28 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MONICA J. SCHANY and WILLIAM P. SCHANY

Upon the Petition of	)	
MONICA J. SCHANY,	)	Filed December 28, 1977
Appellee,	)	
And Concerning	)	305
WILLIAM P. SCHANY,	)	2-59575
Appellant.	)	

Appeal from Palo Alto District Court - James H. Andreasen, Judge.

Appeal from economic provisions of marriage dissolution decree. Affirmed as modified.

Leo E. Fitzgibbons, of Fitzgibbons Brothers, of Estherville, for appellant.

Frank B. Nelson and John J. Greer, of James, Greer, Hoover, Nelson, Bertell, Montgomery & Barry, of Spencer, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

ALLBEE, C.J.

Respondent, William P. Schany, appeals from provisions of a decree of marriage dissolution regarding division of marital assets and the allowance of child support. In resolving the issues as trier de novo on appeal, we have examined the entire record, giving weight to the findings of trial court but not being bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

I. Our examination of the entire record reveals trial court's valuation of the parties' extensive real and personal property and the resulting property settlement decreed are justified, with the modification we here impose. Trial court properly applied the criteria for determining an equitable division of the marital assets 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). We discern some merit in William's expressed concern that deprivation of the farms awarded to Monica will disturb his integrated farming and livestock raising operation. We therefore order the decree modified to provide that William shall be given the right to lease from Monica the 480 acres awarded to her, as hereafter provided.

1. William's tenancy shall be on a year to year basis.

2. The terms and conditions of each yearly lease, including but not necessarily limited to rent and maintenance, shall be such as are fair, reasonable, and competitive at such times as farm leases ordinarily are negotiated.

3. Unless otherwise agreed, such leases shall be for the entire 480 acres as a unit.

4. The last lease to which William is entitled hereunder shall terminate on the last day of February, 1988.

If any problems regarding these provisions should materialize, remedies are available from the district court. See In re Marriage of Kehrli, 241 N.W.2d 923, 925-26 (Iowa 1976).

II. We do not find the child support allowance to be excessive. William is correct in arguing that both parties have a duty to support their minor children. Support, however, is not necessarily borne in equal shares, but according to ability to provide. McDonald v. McDonald, 183 N.W.2d 186, 189 (Iowa 1971). Factors to be considered are set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974);

the child support liability to be apportioned to each party in this case depends solely upon the peculiar facts disclosed in the record before us. William's and Monica's earning capacities and incomes differ substantially. Monica has custody of the minor children and the accompanying responsibility for attending to their care and needs; she was not granted alimony. William, with the modification we have ordered, is assured of being able to continue his farming operations unaltered. He was decreed the right to claim the children as income tax exemptions. We find no merit in William's attack on the child support awarded by trial court. Accordingly, we confirm the allowance.

Trial court's decree is affirmed as modified, and this cause is remanded for entry of decree consistent with this opinion.

Costs on appeal are taxed to respondent.

AFFIRMED AS MODIFIED.

All judges concur except DONIELSON, J., who concurs in part and dissents in part.

DONIELSON, J. (concurring in part and dissenting in part)

Although I agree in principle with the disposition made by the majority, I would give William additional property—either the "Eagan 80" or the "Griswold 80", in light of the facts of this case when viewed in the context of the criteria governing property division set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968).

As a result of the property settlement provisions of the dissolution decree, Monica was awarded property worth $723,390 which was not subject to debts or liabilities. William was given property worth $1,344,527. However, he was required to assume debts totaling $545,100. William's assumption of these debt obligations results in his giving Monica her debt-free property. As a result, he was given $799,427 worth of debt-free property.

My disagreement with the result reached by the majority is largely based upon William's record of contribution to the acquisition and development of assets during the pendency of the marriage. The record reflects that his skills surpass those possessed by the typical farmer and should be given appropriate consideration here as well.

Having considered that William must assume enormous debts as a result of the dissolution decree, the payment of which gives Monica the debt-free property; William's contribution to the net worth of the parties far exceeded that of Monica; and the other factors enumerated in **Schantz**, I would award William either the "Eagan 80" or the "Griswold 80".