IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF FONTAYNE ZIEGENHORN AND FLOYD G. ZIEGENHORN

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UPON THE PETITION OF **FONTAYNE ZIEGENHORN,**	)	
Petitioner-Appellant,	)	Filed November 20, 1984
AND CONCERNING **FLOYD G. ZIEGENHORN,**	)	4-373 84-153
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Muscatine County, Margaret S. Briles, Judge.

Petitioner-wife appeals from a dissolution decree asserting that the property division was inequitable. Respondent-husband asserts that the petitioner's failure to file a proof of service on her motion for new trial rendered the filing of the motion improper and thus deprived this court of jurisdiction of the appeal. AFFIRMED.

David A. Millage, Bettendorf, for petitioner-appellant.

Patrick Ryan of Hintermeister & Ryan, Muscatine, for respondent-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

The petitioner-wife asks us on appeal to adjust the property award in the parties' divorce decree, claiming it is inequitable. We affirm as modified.

We initially dispose of respondent's claim that this court cannot have jurisdiction over the appeal since the motion for a new trial was not properly served upon respondent. Service was made more than ten days after the decree, although the motion was properly filed with the clerk of court. Respondent says that since an improperly filed motion for a new trial cannot extend time for an appeal, petitioner has exceeded the time allowed for taking an appeal to this court. In re Estate of Dull, 303 N.W.2d 402, 404 (Iowa 1981). However, the supreme court has held that mailing of a notice to the party, rather than to his attorney, was not jurisdictional and required a showing of prejudice. Shirk Oil Co. v. Peterman, 329 N.W.2d 13, 15 (Iowa 1983). The court indicated that where the attorney finds out the motion is filed, no harm occurs unless prejudice is shown. Id. The Shirk case involved a different factual situation, but the court's considerations are pertinent to our decision. Here there has been no showing of prejudice. The respondent was aware of the motion and successfully resisted the motion for a new trial.

The petitioner, Fontayne Ziegenhorn, and respondent, Floyd, were married for twenty years when their marriage was dissolved. They have two minor children, Bryan, aged sixteen, and Andrea, aged twelve. The custody of both children was placed with Floyd, although Andrea will reside most of the week with Fontayne's aunt. Fontayne will pay child support of $50 per week. The couple's major assets include a 178-acre farm, purchased by Floyd from his mother for $40,000 prior to the marriage, and a homestead with accompanying two acres, valued at $125,000. Petitioner sets out the following list of property awarded by the court to the parties. She states values accompanied by an asterisk were set by the court, and the other values were allegedly found in respondent's financial statement or from his testimony at trial.

Awarded to Petitioner

Homeplace and two acres		$125,000.00
1979 AMC Spirit Automobile		1,500.00
3-wheel Honda		200.00
1980 Mini-Bike		200.00
Savings account in her name only		200.00
Shearson account in her name only		18,944.60
Furniture, appliances and clothes		19,000.00
Judgment against Respondent		35,000.00
	Total:	$200,044.60

Awarded to Respondent

*Farmplace	$310,000.00	
Less: Mortgage	47,663.67	
Net Value		$262,336.33
*Farm Machinery	$ 29,330.00	
Less: Value Brought into marriage	3,675.00	
Net Value		$ 25,655.00
*Soybeans in field		$16,000——20,000.00
*Corn on hand		6,200.00
*Joint assets in the hands of Third parties		20,000.00
Corn on hand		22,680.00
PIK program proceeds		12,375.00
Life insurance, cash surrender value		8,031.44
1976 Ford Truck		1,000.00
1973 Ford Thunderbird		2,000.00
1964 Ford		25.00
Adventureland Stock		200.00
Set-aside program proceeds.		441.00
	Total:	$376,943.77—$380,943.00
Less: Judgment payable		$ 35,000.00
		$341,943.77—345,943.77

Net difference in amount awarded Respondent $141,899.97—$145,899.17

Fontayne says although the court noted that, with the exception of the farm and equipment, each had brought equal assets into the marriage and that their interests in the joint assets were equal, the resulting property division is far from equal. She requests an adjustment of the award to achieve equity.

Floyd disputes figures regarding the value of soybeans in the field, the value set on her clothing, and the equity he brought into the marriage. He says we should reject the court's figure regarding the amount of soybeans in the field, and says they are worth only $8000. This is because he anticipates the price per bushel will lower, saying prices often seem to drop at harvest time, and that his yield will be lower because of this summer's drought. Floyd's lower estimate is merely speculation, and we accept the trial court's figure. We also agree with the trial court's figure reflecting the value of Fontayne's clothing. Floyd estimates she must have $50,000 in clothing since he guesses she was spending a considerable amount of money on clothes over ten years. He has no sound basis for the higher figure.

The court noted Floyd had purchased the farm for $40,000, but he says its real value was $60,000, and the $20,000 difference was a gift from his mother that should be set aside to him. There is no evidence presented to support the contention that he did not pay adequate consideration for the farm. Floyd had paid $9000 in equity at the time of the marriage.

After the property was brought into the marriage, $31,000 of the remaining debt on the farm was paid off in 1967. Another mortgage was placed on the farm of $60,000 to finance the second house, and a short term loan of $20,000 was also taken out, mortgaging the farm. Another $33,000 was paid during the marriage and a loan of $47,000 remains. The total amount paid during the marriage is $64,000.

We have recognized that when separate property increases in value because of inflation and increase in land values, that increase should be set aside to the person owning the separate property. In re Marriage of Lattig, 318 N.W.2d 811, 816 (Iowa Ct. App. 1982). Subtracting the equity placed in the farm by the couple, this means approximately $158,000 should be set aside to Floyd to reflect this increase.

Floyd also says this court should take into consideration the fact that Fontayne liquidated $50,000 in farm assets without his permission and used this amount for her own purposes. Fontayne does not deny this, but the majority of these amounts are reflected in the balance sheet she presents. Contained in her Shearson account is $18,944, $19,000 was spent on clothing, and $8200 was returned to Floyd. Although Floyd says this action by Fontayne was improper and must be taken into account, we find the trial court adequately considered this incident. The court further noted, "The Respondent has not been candid with the Court in his financial statement," referring to the fact Floyd had transferred $20,000 from the couple's joint account to the account of his daughter from a prior marriage. Floyd says we should not consider this action. We believe neither party has acted responsibly in this area, but decline to "punish" either party for the actions through a property award. Floyd says most of the funds were transferred back into accounts in his name on the advice of his lawyer. He has spent much of it and $9298 remains.

We agree with the figures presented by Fontayne, except that we adjust Floyd's assets reflecting "joint assets in the hands of third parties" to show the actual amount held in the accounts of $9298. We deduct from Floyd's net worth the amount he brought into the marriage, $9000 in equity in addition to the $3675 in farm machinery already deducted. Another $158,000 is deducted to reflect the inflationary increase in the separate property.

Floyd argues the division of property does not have to be equal in this case. He points out that he earns approximately $26,000 from work outside the farm, while Fontayne earns $25,000 per year. He claims her contributions to the family were minimal, and that from 1979 he fixed all the meals, did laundry and other household chores, in addition to working his salaried position and on the farm.

The factors to consider in reaching an equitable property division are set out at section 598.21(1),(2) of the Iowa Code. While their respective incomes from their salaried positions are approximately equal, Floyd also obtains considerable income from the farm. Fontayne's testimony shows that while the couple lived together, they each contributed to the marriage. Fontayne drove a tractor while carrying the couple's children, assisted in preparing meals for hired hands, paying bills, and maintaining the home. The period of time Floyd refers to when he did much of the housework occurred after the separation. We agree with the trial court that the contributions have been nearly equal, warranting an equal division.

In considering our adjustments to the figures presented, Floyd is left with $325,241 in total net worth, $167,124 of which reflects marital assets. Fontayne is awarded $200,044 of the couple's assets, including the $35,000 already awarded to her. In setting aside Floyd's separate property, we find the trial court's division was nearly equal, but that Floyd received somewhat less of the couple's marital assets than Fontayne. Accordingly, we find her contention that the division was inequitable to be without support and affirm the trial court.

AFFIRMED.