

IN THE COURT OF APPEALS OF IOWA

No. 0-908 / 10-0619
Filed February 9, 2011

IN RE THE MARRIAGE OF PATIENCE M. JOHNSON AND LUDEAN GENE JOHNSON

Upon the Petition of

PATIENCE M. JOHNSON,
Petitioner-Appellee/Cross-Appellant,

And Concerning

LUDEAN GENE JOHNSON,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Grundy County, Bradley J. Harris,
Judge.

LuDean Gene Johnson appeals and Patience M. Johnson cross-appeals
the economic provisions of the decree dissolving their marriage. **AFFIRMED.**

John J. Hines, of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, and
Robert Thompson of Thompson Law Office, Reinbeck, for appellant.

Gary Papenheim of Papenheim Law Office, Parkersburg, for appellee.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

SACKETT, C.J.

LuDean Gene Johnson appeals challenging the economic provisions of the February 1, 2010 decree dissolving his marriage to Patience M. Johnson. He contends the property division was not equitable and that the dissolution court erred in giving Patience one-fourth of stored 2009 crops. Patience on cross-appeal contends she should have received a larger share of the crops and additional compensation. We affirm.

I. Scope of Review

Our standard of review in appeals from dissolution decrees is *de novo*. Iowa R. App. P. 6.907; *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001).

II. Background.

The parties graduated from neighboring high schools in 1974 and married the next year. After their marriage they moved to a farm owned by LuDean's parents who gave LuDean about forty acres of farmland. In addition, they gave him a one-acre tract. On that tract the parties built a home, grain storage and drying facilities, and other farm buildings.

LuDean and Patience have three sons. The oldest child was twenty-seven at the time of trial and is not a subject of these proceedings. The second son born in September of 1991 was a senior in high school at the time of trial. He stayed with his father when his mother left the family home in the spring of 2009. The third son born in October of 1995 was of middle school age and after the parties separated he lived with his mother.

Patience filed a petition for dissolution of her marriage on May 4, 2009. On May 5th the district court entered a temporary support order that provided LuDean pay \$1500 in temporary alimony, \$520 in temporary child support and \$1000 as temporary attorney fees. There is no claim that LuDean has not paid as ordered by the court.

The matter came before the district court on December 11, 2009. On February 1, 2010 the district court entered its ruling dissolving the marriage, establishing child custody, child support and alimony and dividing the assets and debts. On March 15, 2010 the district court ruled on post-trial motions and made several corrections to the February 1, 2010 decree.

The parties were given joint custody of their two sons. The older of the two was placed in the physical care of his father and the younger with his mother. The court ordered LuDean to pay Patience child support of \$460 a month from February 1, 2010 until May 10, 2010 at which time Patience's child support obligation would cease and LuDean's support obligation would increase to \$657 a month. These provisions of the decree are not in dispute on appeal.

LuDean was also ordered to pay what the district court termed rehabilitative alimony to Patience for forty-eight months. The amount of alimony was set at \$1100 from February to May 2010, and then decreased to \$900 a month thereafter. LuDean does not challenge the award of alimony.

The court divided grain on hand from the 2009 crop year and valued it at \$205,000. Patience received one-fourth of the grain and LuDean received three-fourths. The court set aside gifts and inheritances to the person receiving them.

This included the forty-acre tract of the land given to LuDean by his parents and an inheritance Patience received from an aunt that was anticipated to be about \$40,000.

The court then found the parties to have a net worth excluding the inherited and/or gifted property and the 2009 grain to be \$1,064,494. These values are not in dispute. The court made what it determined was an equal division leaving LuDean with most of the farmland and requiring him to make a \$115,591 equalization payment to Patience.

III. PROPERTY DIVISION.

LuDean and Patience both challenge the property division contending they were not treated equitably. The challenges to the property division focus primarily on the division of the 2009 grain.

Iowa is an equitable division state. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). An equitable division does not necessarily mean an equal division of each asset. *Id.* Rather, the issue is what is equitable under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *In re Marriage of Swartz*, 512 N.W.2d 825, 826 (Iowa Ct. App. 1993). The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(5) (2009). *See In re Marriage of*

Estlund, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). While an equal division of assets accumulated during the marriage is frequently considered fair, it is not demanded. *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007).

LuDean believes he should receive additional property because he ran the farming operation while Patience was a full-time college student. He argues that Patience has sufficient education at this time so that she can be gainfully employed. He notes he is paying alimony and child support, has paid it during the course of these proceedings, and that Patience received fifty acres of land which he will no longer have to farm thereby decreasing his income.

Patience on cross-appeal contends that the division should be modified and she should receive an additional payment of \$69,258. She argues the division of the 2009 crops was not fair, that she should have received a portion for the 2008 crops which were sold prior to the dissolution hearing, and she should have \$10,000 for appellate attorney fees.

LuDean has farmed since the marriage, cultivating the land given him by his parents. He also acquired land with his two brothers and his parents, which he rents at a reduced cash rent. He fed livestock for a period, but currently grain farming is his sole source of income. He owns farm machinery with his brothers. He finances the cost of the operation and at the time of trial had a \$124,336 operating loan. In the calendar year 2008 he reported net farm income of \$51,414. He is in his early fifties. He has a problem ankle and recently had ankle surgery. He also has arthritis and testified his discs are deteriorating. He has trouble reading. He farmed 368 acres in 2009, but probably will have fewer

acres to farm in succeeding years. It is reasonable to assume that his net farm income may well decrease. It is also reasonable to assume that operating as a grain farmer provides him the best chance for a good income. We consider these factors.

The couple originally established themselves as a farm family. Patience initially helped do the farming and bookkeeping. She took a semester of nurses' training soon after the marriage and a psychology course at the University of Northern Iowa in 1978. Between 2000 and 2004 she worked as a daycare provider. Beginning in 2004 Patience became a full-time college student. At the time of trial she held a bachelors of arts degree with majors in psychology and human services and minors in religion and philosophy having graduated summa cum laude from college in the spring of 2008. In the fall of that year she began attending Bethel Seminary in Rosedale, Minnesota, seeking to be a hospital chaplain and a pastor. At the time of trial she was in a distance learning program at Western Seminary in Holland, Michigan. Most of her education occurs on the internet, but she is required to be on campus for two-week sessions twice a year. She testified she believed it would take her four to five additional years to complete the program and receive a Masters of Divinity degree, which she hoped would allow her to be ordained in the Reform Church, serve at a church, and work on the side as a hospital chaplain. She testified she believes that a beginning pastor makes about \$32,000 a year. As a part of the Masters program she is required to do clinical work, consequently she is on-call as a chaplain at three hospitals in the Waterloo and Fort Dodge area. She also has a position as

a visiting pastor at the Wellsburg, Iowa, Reformed Church. None of these positions are paid although she indicated maybe they could be. She does not feel she can be employed while she is a full-time student. She has financed her education with student loans, what scholarships she has been able to get, and income from the farming operation. At the time of trial she had student loans of over \$50,000. Some \$32,000 of the loans were taken out after the parties separated. Patience owes Iowa Student Loan \$13,125 and these loans are drawing interest. There is a 6.8% annual interest on \$7000 of the loans and the balance draws interest of 3.61%. She has Stafford loans with Bethel University of \$20,500 and a loan with Western Seminary of \$17,000.

LuDean believes that he should not have been required to give Patience one-fourth of the 2009 grain noting he did the farming and managed the household and paid expenses while she attended classes. He further challenges the district court's decision to give her the grain without charging her with a percentage of the crop input expenses. He notes that he has an operating note due Farm Credit Service of \$124,336 and subtracting the note from the anticipated sale of grain would leave a net gain of \$80,664. The problem with this argument is that the operating note was considered by the court in arriving at an equal division of the equities that were valued at \$1,064,494. The division of the 2009 crops when considered with the division of the \$1,064,494 gives LuDean more than one-half of the parties' equities as valued at the time of trial. Patience points this out in arguing that she should have had one half of the 2009 grain. She also contends she should have a portion of the 2008 grain because

some of it was on hand when the parties separated. She argues she should have a portion of the \$66,500 crop inputs that had been prepaid for 2009 with the proceeds from the sale of 2008 grain. She further asks for a share of a \$2630 bank account that was in LuDean's name.

LuDean contends that we need to look at Patience's quest to be a full-time college student and her decision to incur debt without returning anything to the marriage or to LuDean's benefit. LuDean's earning and the temporary alimony he has paid have contributed to this quest. Also in the course of her quest for education she has accumulated over \$50,000 in debt. This debt was allocated to her as a part of the division of the \$1,064,494 so LuDean is paying one-half of that debt plus he will pay her nearly \$45,000 in alimony. In setting the alimony at four years the district court commented,

Petitioner has elected to pursue a career which will not bring her great financial reward. Respondent should not be held financially liable for petitioner for a longer period of time given that petitioner made a knowing career choice. . . . Petitioner has asked the court to take into consideration crop inputs for the 2010 crop year and monies spent by respondent within the past year. The court determines that the property settlement provided for herein is an equitable division of all property rights of the parties.

Considering the property division together with the alimony we find the economic provisions of the decree are equitable and affirm the district court on the appeal and cross-appeal. We award no attorney fees. Costs on appeal are taxed one-half to each party.

AFFIRMED.