

IN THE COURT OF APPEALS OF IOWA

No. 8-542 / 08-0026
Filed August 13, 2008

**IN RE THE MARRIAGE OF BRENDA L. EBEN
AND RONALD W. EBEN**

**Upon the Petition of
BRENDA L. EBEN,**
Petitioner-Appellee,

**And Concerning
RONALD W. EBEN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Lyon County, James D. Scott,
Judge.

A husband appeals from the district court's dissolution decree that did not
set aside gifted property to him. **AFFIRMED.**

Bradley K. De Jong of De Jong, De Jong & Halverson, P.L.C., Orange
City, for appellant.

Missy J. Clabaugh of Jacobsma, Clabaugh & Freking, P.L.C., Sioux
Center, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Ronald and Brenda Eben divorced after twenty-three years of marriage. The sole issue on appeal is whether the district court acted equitably in declining to set aside a farm to Ronald.

On this issue, the district court found that the entire 160-acre farm was a gift from Ronald's parents to Ronald.¹ After noting that gifted property is not subject to division unless the failure to do so would be inequitable, the court concluded that a failure to subject the farm to division would be inequitable. See Iowa Code § 598.21(2) (2005). The court reasoned as follows:

If Ronald is awarded the farm and homestead as his separate property as he requests, he will receive a net award of almost \$709,000 and Brenda will receive a net award of just over \$62,000. This is plainly unfair in light of the long duration of the marriage, the contributions Brenda made to the care and preservation of the farm through support of the family and actual farm work and Ronald's dissipation of over \$25,000 of marital assets

Equity will best be served if the net appreciation of the farm is subject to division The parties lived on the farm, worked together in the farm operation, and raised their family there. Its appreciation has been largely fortuitous. Brenda's contributions to the parties' economic welfare have helped preserve this asset. The net appreciation, after subtracting existing indebtedness, is \$457,000. Brenda should receive \$200,000 of this amount.

On our de novo review, we agree with this assessment. There is no question that the farm was a gift to Ronald alone, but there is also no question that Brenda contributed to the farm in many ways. Ronald and Brenda moved onto the farm when they married in 1984 and lived there for approximately fifteen years. Ronald's parents gave the farm to him in 1986, just two years after the

¹ Brenda testified that forty of the 160 acres were purchased on contract from Ronald's parents for \$25,000. Ronald's father vehemently disputed this assertion. He explained that certain payments to him from Ronald and Brenda were not for the purchase of the forty acres but for various loans he made to them to buy fertilizer, seed and other items.

marriage. In the intervening years, Brenda assisted with the following farm operations:

Disking, field cultivating, baling, mowing, pulling out fences, putting in new fences. Took out [a]n old grove, put in a new grove. Painted buildings, new roofs on all the buildings. Did some brickwork on the house. Some tiling to the field. Just everything to do with the farm and keep it up and work on it.

She testified her income was used to pay for work that needed to be hired out, and proceeds from the farm operation were used for marital expenses.

Ronald minimized Brenda's contributions, stating she helped with loading the hogs "once in a while" and milked and fed the cows occasionally. However, when asked how frequent her involvement with the farm operation was, he initially said "not that often" but later said "I mean—I don't know."

Ronald's proposed distribution would have left him with the farm as well as an off-the-farm homestead valued at \$180,000, which was purchased with inherited funds. While he testified this distribution scheme would result in a negative net worth to him of \$151,000 and would leave Brenda with a positive net worth of \$38,316, it is readily apparent that his proposal was a boon to him. The district court did equity by declining to accept it.² The district court also did equity by awarding \$200,000 of the appreciated farm value to Brenda. We find no reason to modify the court's ruling on this issue.

Brenda seeks appellate attorney fees. An award is discretionary. *In re Marriage of Benson*, 545 N.W.2d 252, 256 (Iowa 1996). As Brenda was forced

² The \$180,000 home went to Ronald. Neither party takes issue with this aspect of the decree.

to defend the appeal, we order Ronald to pay \$1000 towards her attorney fees.

AFFIRMED.