IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CLINTON DONALD HUTCHINGS AND DONNA EARLINE HUTCHINGS

UPON THE PETITION OF	)	Filed June 29, 1982
CLINTON DONALD HUTCHINGS,	)	2-166 2-67088
Petitioner-Appellant,	)	FILED JUN 29 1982 CLERK SUPREME COURT
AND CONCERNING	)	
DONNA EARLINE HUTCHINGS,	)	
Respondent-Cross-Appellant.	)	

Appealed from Davis District Court — James P. Rielly, Judge.

Petitioner husband appeals and respondent wife cross-appeals from the economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

D. W. Harris and R. Kurt Swaim of Harris & Swaim, Bloomfield, for petitioner-appellant.

C. K. Pettit, Bloomfield, for respondent-cross-appellant.

Considered by Snell, P.J., Carter and Johnson, JJ.

Petitioner husband, Clinton Hutchings, appeals and respondent wife, Donna Hutchings, cross-appeals from the economic provisions of the parties' dissolution decree. We affirm as modified.

The parties were married September 2, 1956, and had two children. One of the children is a minor and lives in the marital residence with Donna. At the time of trial, Clinton was 46 years old, and Donna was 42 years old.

The trial court entered a decree in the parties' dissolution action, but both parties filed motions for a new trial and correction of findings in response to that decree. The trial court overruled the motion for a new trial, and filed a substituted and corrected decree on May 26, 1981.

Clinton argues on appeal that the court's property division was inequitable because gift property he received from his parents was included in the property division. Donna asserts that she should receive alimony, additional child support, and attorney fees.

I. In our de novo review of this action, we look first at the property award. Section 598.21(2), The Code, explicitly provides that gifts received during the marriage by either party are not subject to a property division unless the court would find that it would be inequitable to not include the gifts. In re Marriage of Thomas, 319 N.W.2d 209, 210 (Iowa 1982).

Clinton's parents transferred the assets of the family plumbing business and some cash to him in December 1976. They filed gift tax returns for the transfer. The value of the gifts transferred totaled $66,000, and Clinton testified that he did not pay anything for that property. Clinton purchased the building the business is located in, and makes payments to his parents for the building. His parents have also given him $3,000 each year, from 1977 through 1980.

In the trial court's award, Donna was awarded property valued at $102,512, and a $12,000 cash award. There is an outstanding $34,800 mortgage against the

marital residence she was awarded. Not including the $12,000 cash award, Donna's net award was $67,712. Clinton received assets, other than what he considers the gift property, valued at $77,321 with debts of $52,383. His net award was $24,938. The plumbing business assets totaled $114,330, with debts of $45,927. The net amount he received from the gift property was $68,402. While the evidence reflects this gift, Clinton has reduced the potential marital estate by substantial payments to his parents and by providing them with a home to live in. We believe any adjustment to the property division as a result of the gifts should therefore be somewhat curtailed as a result of this circumstance.

We compensate for the gifts by deleting from Donna's award the $12,000 cash payment. In other respects, the property settlement is affirmed.

II. Donna argues on cross-appeal that she should receive alimony. Alimony is based on one spouse's need for support, and the other spouse's ability to pay toward that support. In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). Donna is making $14,679.84 annually and has an attractive fringe benefit package through her employer. She has extensive work experience and employment skills. There is some dispute about Clinton's income. Clinton maintains his annual income is approximately $16,000, although Donna contends it is approximately $20,000. Noting the factors outlined in section 598.21(3), The Code, which specify the considerations in deciding whether alimony should be awarded, we affirm the trial court's decision to not award alimony to Donna.

III. Donna further argues that she should have been awarded attorney fees by the trial court. Her attorney fees through the time of trial totaled $2,434.25. Attorney fees, just like alimony, depend on one spouse's needs and the other spouse's ability to pay . Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). In light of the property division and each parties' income, we therefore affirm the court's decision not to award Donna attorney fees.

IV. Donna's last contention in her cross-appeal is that she should have

received additional child support. The trial court ordered Clinton to pay $50 per week. The parties' son is employed by Clinton and earns $30 per week at that job. Given each parties' income and ability to support their sixteen-year-old son, we will not disturb the trial court's award of child support. Costs on appeal are assessed equally between the parties and, in addition, Clinton must pay $900 towards Donna's appellate attorney fees.

AFFIRMED AS MODIFIED.