FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARGARET BELLE HOOD AND ROBERT JOHN HOOD

51

UPON THE PETITION OF
MARGARET BELLE HOOD,

Petitioner-cross-Appellant,

AND CONCERNING
ROBERT JOHN HOOD,

Respondent-Appellant.

Filed September 21, 1982

2-220
2-67112

Appeal from Humboldt District Court, Newt Draheim, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from economic provisions of the parties' dissolution decree. Both parties assert that the child support award and the attorney fees award to the wife were inequitable. The husband further asserts that the property division was inequitable. The wife further asserts that she should have been awarded alimony and requests attorney fees on appeal. AFFIRMED AS MODIFIED.

Ronald W. Kuntz and Pamela D. Griebel of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for respondent-appellant.

Arthur H. Johnson and James L. Kramer of Johnson, Erb, Lathan & Gibb, Fort Dodge, for petitioner-cross-appellant.

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

PER CURIAM

Respondent-husband appeals and petitioner-wife cross-appeals from economic provisions of the parties' dissolution decree. Both parties assert that the child support award and the attorney fees award to the wife were inequitable. The husband further asserts that the property division was inequitable. The wife further asserts that she should have been awarded alimony, and requests attorney fees on appeal. We affirm as modified.

The parties, Margaret Belle Hood and Robert John Hood, were married for approximately fourteen and one-half years. Two children were born during the course of the marriage, Mary Margaret and Ann Wynne, who were thirteen and nine years of age, respectively, at the time of trial. Margaret filed a petition for dissolution of marriage on May 19, 1980. The petition was granted and custody of the two children was awarded to Margaret. Robert was ordered to pay child support in the amount of $300 per child per month, and to pay attorney fees in the amount of $1000 in addition to the $600 temporary attorney fees previously paid. Robert appeals from these provisions of the dissolution decree as well as from the property division.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(F)(7).

Robert contends that the trial court's division of assets was inequitable because "Margaret received all joint assets accumulated during the marriage and substantial portions of Robert's inherited property." The facts indicate that several of the items distributed by the court in its property division had been

inherited by Robert, including his one-fourth interest in the homestead (worth approximately $11,500), his one-fourth interest in the commercial property ($33,612), certificates of deposit ($75,000), and personal property such as a dining room set, a hutch, silverware, and Haviland china. The acreage was purchased with interest from inherited funds.

The test for a proper division of property is one that is "an equitable and just award under the circumstances." In re Marriage of Locke, 246 N.W.2d 246, 251 (Iowa 1976). The factors to be considered in effectuating an equitable distribution are listed in Iowa Code § 598.21(1). Previously considered among these factors was the property inherited by each party, In re Marriage of Vrban, 293 N.W.2d 198, 204 (Iowa 1980), but in 1980 a new section was added to govern such property. This section provides:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Iowa Code § 598.21(2).

The effect of this section on the distribution of the parties' assets would be to set aside the aforementioned property inherited by Robert before distributing the remaining assets. When this is done, the trial court's approximately equal division of the value of the parties' assets is not as equitable as Margaret contends. We think that a more equitable division can be achieved by awarding the acreage to Robert, not because it was inherited—it was purchased with interest from inherited funds—but because through his inheritance, Robert brought more property into the marriage. See Iowa Code § 598.21(1)(b).

Although one-fourth of the purchase price of the homestead and certain heirlooms were inherited by Robert, we think that this property was appropriately

awarded to Margaret. Property inherited by one party may be subject to a property division if a refusal to do so would be inequitable to the other party or to the children. Iowa Code § 59821(2). Two considerations would make it inequitable not to award these items to Margaret: contributions of the parties toward the property's care, preservation, or improvement; and the special needs of the parties. In re Marriage of Thomas, 319 N.W.2d 209 (Iowa 1982). Margaret contributed to the acquisition of the remaining three-fourths of the homestead and to the care and preservation of the property. Furthermore, the award of the house and heirlooms to Margaret will provide continuity and stability in the lives of the children. The trial court's additional provision maintaining the heirlooms in trust for the children will prevent Margaret from disposing of them and ensure that the children will eventually inherit them, in conformance with Robert's wishes.

We therefore modify the trial court's order respecting the property division by awarding the acreage to Robert. We also award two household items, the firewood Robert cut and the unopened box of dishes, to Robert. The personal savings which Margaret and Robert accumulated subsequent to the separation in the amounts of $1000 and $700 shall be awarded to each party, respectively. In all other respects the trial court's property division order is affirmed.

The trial court's conclusions with respect to the issues of child support and attorney fees are also affirmed. In light of the property settlement, Margaret's cross-appeal regarding alimony is hereby denied. Robert is ordered to pay the $1000 attorney fees ordered in the divorce decree. We do not consider the issue of attorney fees for this appeal since no statement of attorney's fees has been filed with the Clerk of supreme court.

AFFIRMED AS MODIFIED.