FILED
SEP - 6 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JEANNE M. SULLIVAN AND PATRICK F. SULLIVAN

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Upon the Petition of	)	
JEANNE M. SULLIVAN,	)	Filed September 6, 1984
Petitioner-Appellant,	)	
And Concerning	)	
PATRICK F. SULLIVAN,	)	4-283 83-1115
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Polk County - Rodney Ryan, Judge.

Petitioner appeals from a dissolution decree asking that her awards of property, child support, and alimony be increased. AFFIRMED.

James W. Carney of Carney, Hudson, Williams & Green, Des Moines, Iowa, for petitioner-appellant.

Thomas Hyland and Thomas P. Schlapkohl of Hyland, Laden & Pearson, Des Moines, Iowa, for respondent-appellee.

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

HAYDEN, J.

Petitioner appeals from a dissolution decree asking that her awards of property, child support, and alimony be increased. We affirm the conclusions reached by the trial court. Petitioner's request for attorney's fees on appeal is denied.

Petitioner, Jeanne Sullivan, and respondent, Patrick Sullivan, were married in 1964. They have three children, born in 1968, 1970, and 1974. The trial court placed the children in joint legal custody and in Jeanne's physical care. The custody arrangements are not challenged in this appeal.

Patrick is self-employed as a psychologist earning a gross income of approximately $54,000. After deducting his expenses of operating the business and his federal and state taxes, his net yearly income is approximately $30,000. Jeanne is employed as an office manager earning a net salary of $10,168.

The trial court directed Patrick to pay Jeanne child support of $250 per month per child. The trial court also ordered Patrick to contribute more heavily than Jeanne to the children's college expenses. Patrick was also directed to pay alimony of $150 per month for the next six years and then $300 per month for the next five years.

The parties' primary asset was a house valued at $76,000. The court awarded the house to Jeanne, subject to its mortgage debt of $27,500 and also subject to a lien in Patrick's favor of $26,000. The lien is payable when the youngest child turns eighteen, upon the sale of the house, or upon Jeanne's remarriage or cohabitation with another man, whichever occurs first. Patrick was awarded all of his interest, valued at $24,000, in some Illinois farmland which his parents had given to him and his siblings. In addition each party was awarded an automobile and various personal effects. Patrick was directed to contribute $1,000 toward Jeanne's attorney's fees.

Our review of this proceeding in equity is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Property Division. The factors to be considered by the court in making a division of the parties' property are found in Iowa Code section 598.21(1). Gifted property is the subject of a special section which 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). Factors to be considered in determining when inherited or gifted property should be divided are found in In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982). Jeanne argues that the trial court's refusal to divide Patrick's interest in the Illinois land which was given to him was inequitable under the circumstances. She cites the length of the marriage, her contributions toward Patrick's professional degree, and the fact that the only other real property of the parties is the family residence to support her argument.

This court in In re Marriage of Wallace, 315 N.W.2d 827, 832 (Iowa Ct. App. 1981), discussed when gifted or inherited real property should be divided in the following passage:

> Real property that has been in the family of one of the parties prior to their marriage ought, as far as possible, to be permitted to remain in the possession of that party. If the marriage has lasted a very long time and such real property is the principal asset of the couple and if maintenance of the family and an accustomed standard of living requires that the property or a portion thereof be placed in the possession and control of the other party for a period of time, then the court may order that that be done. Or if, in order to provide a reasonable division of the couple's property and to provide for the proper maintenance of the other party it is necessary to divide or sell such property, then that too may be done—but only as a last resort, the court's duty being to balance the claim of the one party to that property on the ground of family history and continuity against that of the other for the continuation of an accustomed style of life, particularly during the minority of any children of the marriage.

The problem in Wallace was that virtually all of the $15,000,000 net worth of the parties was attributable to gifts and inheritances of stock from the husband's parents. Id. at 829. This court held that the trial court's award of assets worth $2,300,000 to the wife was justifiable in order to maintain the standard of living to which she had become accustomed during this fifteen-year marriage. Id. at 833.

The present case is distinguishable from Wallace. In this case Patrick's interest in the Illinois land is not the primary asset of the parties, nor is its division or sale necessary to maintain the accustomed style of life of Jeanne and the children. The trial court's division gives Jeanne a net award of $23,660 and Patrick a net award of $17,693 plus the $24,000 gifted property for a total net award of $41,693. This case is similar to In re Marriage of Steenhoek, 305 N.W.2d 448, 453 (Iowa 1981), in which the supreme court approved of a division in which the wife received property valued at $32,000 and the husband received property valued at $49,500. The husband's share included credit for $17,750 of inherited property and other funds brought into the marriage by him.

We conclude that the trial court's division of property was equitable.

II. Child Support. Iowa Code section 598.21(4) sets forth the guidelines for a determination of child support. Considering those factors and the facts of this case, we cannot say that the trial court's award of $250 per month per child was too low for adequate support of the parties' three children.

III. Alimony. Iowa Code section 598.21(3) gives the criteria for awarding alimony. In this case the marriage was of relatively long duration and Patrick has a greater earning capacity. Therefore, we approve of the trial court's award of alimony to Jeanne. However, Jeanne is employed and, consequently, we reject her contention that the alimony awarded her is too low. The trial court's plan for increasing the alimony as the child support decreases assures Jeanne of an adequate income supplement to enable her to live comfortably.

IV. Attorney Fees on Appeal. An award of attorney fees is not a matter of right, but depends upon the relative financial condition of the parties. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). Considering the economic provisions of the decree we conclude that Jeanne should be able to pay her attorney's fees incurred in this appeal.

AFFIRMED.