

IN THE COURT OF APPEALS OF IOWA

No. 3-371 / 92-1586

FILED

MAY 26 1994

CLERK SUPREME COURT

IN RE THE MARRIAGE OF CONNIE J. JACKSON AND
JOHN L. JACKSON, III

Upon the Petition of
CONNIE J. JACKSON,

Petitioner-Appellee,

And Concerning
JOHN L. JACKSON, III,

Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk
County, George L. Stigler, Judge.

John L. Jackson appeals from the economic provisions of
the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Jay P. Roberts and Carter Stevens of Beecher, Rathert,
Roberts, Field, Fister, Walker & Morris, Waterloo, for
appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher,
P.C., Waterloo, for appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

CADY, J.

John Jackson appeals from the economic provisions of the parties' dissolution decree. He claims the district court erroneously awarded assets to Connie. He also claims he should get credit for overpayment of child support.

Connie and John Jackson were married in 1970. They have one minor child, Jack, born February 6, 1984. Connie is forty-one years old and works as a clerk typist at John Deere. Her net income is \$1,876 per month. John is forty-two years old, has a college degree, and works as an industrial engineer at John Deere. His net income is \$2,651.32 per month.

Connie filed her petition for dissolution in March 1991. John was ordered to pay temporary support of \$900 per month in mortgage payments. This amount was later modified, and John was required to pay \$590 per month in child support.

The parties stipulated to Connie's physical care of Jack. Since Jack was to stay with John for one-third of the year, the court deviated from the child support guidelines and ordered Jack to pay \$400 per month in support. Connie was awarded the house in which there is \$30,000 equity and received other property including an Acura car valued at \$17,000. The district court balanced the equities and determined Connie should pay John \$15,000 within one year of the decree.

John appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Distribution of Property

John first claims the district court erroneously awarded Connie a greater share of the assets accumulated during the marriage. He claims he was not given credit for using a large portion of his inherited monies to retire a debt against an automobile and to pay a Visa bill. He also claims he was denied other credits, including payment of other bills and excessive child support payments. Connie claims the property distribution, viewed in its entirety, properly credited John for his inheritance.

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 App. 1991). However, inherited property is generally not treated as marital property for distribution in dissolution actions. Iowa Code section 598.21(2) (1991) provides:

2. 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.

In considering whether the refusal to divide inherited property results in an inequity, the court must consider the length of the marriage; contributions made by either party toward the property's care, preservation, or improvement; and the impact of the property on the parties' standard of living. In re Marriage of Geil, 509 N.W.2d 738, 741 (Iowa 1993).

In this case, Connie received a total of \$30,000 in inherited monies during the marriage. John received \$12,000 in inherited monies. At the time of trial, Connie had \$14,850 remaining in an account. John had spent all or nearly all of his inheritance. We do not find the factors set forth in Geil impact the distribution of the inheritance in this case. The district court correctly awarded the account funds to Connie.

If John is entitled to a credit for the inherited monies he spent during the marriage, as he claims, we believe Connie is entitled to the same credit. Although John spent nearly all of his \$12,000 inheritance, Connie spent the greater portion of the \$30,000 she inherited during the marriage. A credit should not be reserved to John simply because he was able to trace the funds to the retirement of specific debts. John did not invest his

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inheritance proceeds in any identifiable assets. His concern was to reduce the marital debts to a manageable level after he felt the dissolution was inevitable.

John is also not entitled to a credit for paying off other debts prior to the dissolution. The reduction of debt also results in the reduction of assets. There is no credit to give.

John also claims he should receive credit for the overpayment of child support because he paid the parties' \$900 mortgage payment for ten months. He was later required to pay only \$590 per month in child support. In its temporary support order dated June 11, 1991, the district court ordered John to pay the parties' monthly mortgage. The court noted John had not filed an affidavit of financial status and it was unable to accurately determine child support. The court further noted the mortgage payments were in arrears. In its response to John's application to reconsider the temporary support order, the court noted the importance of not placing the asset in jeopardy. We find the court's order permissible within the dictates of Iowa Code section 598.11 (1991). We affirm the district court's property award.

II. Health Insurance

Finally, John contends the district court erred in failing to require Connie to maintain Jack on her health insurance. John correctly notes the district court did not

enter an order specifying which party shall maintain Jack's health insurance. He also notes Connie testified at trial she preferred to carry Jack on her insurance, which was at no cost to her.

The Uniform Child Support Guidelines and Iowa Code section 598.21(4)(a) (1991) require the court to enter an order for medical support. In our de novo review, we modify the decree to require Connie to maintain Jack on her health insurance as long as it is available through her employment at no cost. The parties shall equally share all medical costs not paid by the policy of insurance, and equally share all dental, orthodontic, and optometric expenses incurred by Jack during the time John is required to pay child support.

AFFIRMED AS MODIFIED.