

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 26 1983

CLERK SUPREME COURT

IN RE THE MARRIAGE OF DONNA J. MANN AND CHARLES W. MANN

00096

Upon the Petition of)

DONNA J. MANN,)

Petitioner-Appellee,)

And Concerning)

CHARLES W. MANN,)

Respondent-Appellant.)

Filed January 26, 1983

2-428
2-68155

Appeal from Fremont District Court - J. C. Irvin, Judge.

Respondent-husband appeals the economic provisions of the parties' dissolution decree alleging that the trial court erred in subjecting certain real property inherited by him to division in the decree and in failing to consider the tax consequences of the division of property ordered in the decree. AFFIRMED AS MODIFIED.

Robert J. Laubenthal and Curtis Hewett of Smith, Peterson, Beckman and Willson, Council Bluffs, Iowa, for respondent-appellant.

David E. Richter and James M. Haney, Council Bluffs, Iowa, for petitioner-appellee.

Considered en banc.

PER CURIAM

Respondent-husband appeals the economic provisions of the parties' dissolution decree. He alleges that the trial court erred in subjecting certain real property inherited by him to division in the decree and in failing to consider the tax consequences of the division of property ordered in the decree. We affirm.

The fifteen-year marriage of Donna and Charles Mann was dissolved by decree on September 23, 1981. Under the decree, Charles was awarded his interest in three tracts of farmland which he had received by inheritance before and during the marriage, the total value of those three interests equalling approximately \$300,000. He was awarded other assets and was made responsible for most of the parties' rather significant debts, leaving him with a net asset value of \$124,773.46. Donna was awarded a 68-acre tract purchased by the parties on contract which she now uses as a homestead for herself and the parties' two children of whom she was awarded custody. She was ordered to pay the balance on the contract. She was also awarded other items of personal property and a cash award of \$60,000 in lieu of alimony. This award was made due and payable on March 1, 1982, and is to draw interest at the rate of 15%. She was left with a net asset value of \$68,405. The decree made other provisions regarding child support and attorney fees not relevant here. Charles' motion to enlarge the findings and conclusions and his motion for new trial were overruled, and he brought this appeal.

I. Charles first claims that the court erred in subjecting his inherited property to distribution as marital property. Iowa Code § 598.21(2) states as follows:

Property inherited 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 determining whether inherited property should be divided under the statutory exception, we consider the following factors:

- (1) contributions of the parties toward the property, its care, preservation or improvement;
- (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
- (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
- (4) any special needs of either party;
- (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982). In this case, the court specifically found that Donna's contributions to the marriage were at least equal to those of Charles through her services as homemaker and in caring for the children. In addition, she helped with the field work and in taking care of the livestock. Donna also requires training or education of some kind in order to obtain employable skills. Under these circumstances, we agree with the trial court's conclusion that refusal to consider the inherited property as property subject to division would be inequitable to Donna and the children. No error occurred in this regard.

II. Charles also claims that the trial court erred in failing to consider the income tax consequences and other financial expenses which will result from enforcement of the property division in this decree. Of course, the court must consider tax consequences in determining an equitable division of property. Iowa Code § 598.21(1)(j). Here, Charles claims that he will suffer adverse tax consequences and will incur other expenses when he is forced to sell his interests in the real property received by inheritance. The court, however, was very much aware of this problem when it referred to "the possibility that [Charles] will have to liquidate some of his holdings in order to satisfy the indebtedness and his obligations [under the decree]." Thus, we believe the court was also aware of and considered the tax consequences which would inevitably follow such a liquidation.

We note again that Charles received assets having a net value of almost twice that of the assets awarded to Donna---this excess should be sufficient to take care of most, if not all, tax liability incurred by Charles.

III. We note that the trial court awarded Donna 15% interest on the cash award. Under Iowa Code § 535.3, however, interest on judgments is fixed at 10%; we find no authority for the trial court's ability to modify the statutory rate. See In re Marriage of Steenhoek, 305 N.W.2d 448, 454 (Iowa 1981). We therefore modify the decree to award Donna 10% interest on the cash award.

Except for this modification, the provisions of the decree are otherwise affirmed.

AFFIRMED AS MODIFIED.