IN THE COURT OF APPEALS OF IOWA

No. 5-327 / 94-747

IN RE THE MARRIAGE OF JOLEEN KAY BALLARD AND GARY BRUCE BALLARD

Upon the Petition of

JOLEEN KAY BALLARD,

Petitioner-Appellant/Cross-Appellee,

And Concerning

GARY BRUCE BALLARD,

Respondent-Appellee/Cross-Appellant.

FILED
SEP 22 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Marshall County, Carl E. Baker, Judge.

Joleen Ballard appeals, and Gary Ballard cross-appeals, from provisions of the parties' dissolution decree. **AFFIRMED.**

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellant.

Charles R. Fairall of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

Petitioner-appellant Joleen Kay Ballard challenges the property allocation and child support awards made by the trial court in dissolving her marriage to respondent-appellee Gary Bruce Ballard. Gary cross-appeals challenging the trial court's computation of his income for child support purposes. We affirm.

Joleen and Gary were married in 1984. They have two children, Stephanie, born in 1986, and Garrett, born in 1992.

Joleen, forty-one at the time of trial, was employed as a carrier by the United States Postal Department. She holds a degree in horticulture from Iowa State University. Gary, thirty-seven at the time of trial and a farmer, holds an associate degree in agricultural and farm business from Ellsworth Community College.

The trial court divided the assets and liabilities of the parties, giving consideration to inherited property and property brought into the marriage. Joleen contends the award was not equitable as it did not give sufficient consideration to property she inherited.

We review de novo. Iowa R. of 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).

Joleen was awarded assets totaling $212,610 and ordered to pay debts of about $20,000. Additionally, Gary was ordered to pay her $60,000 in installments of $6000 per year commencing July 1, 1994. Interest was to accrue only on delinquent payments. Gary was awarded assets of $486,670 and ordered to pay debts of $406,670 in addition to the $60,000 he was ordered to pay Joleen.

Joleen contends this division is not equitable because she came into the marriage with an inheritance of $162,866, other assets worth $10,500, and she inherited an additional $15,165 during the marriage. She also contends her inherited assets generated income during the marriage and she should be given further credit for that amount. Joleen contends her inheritance was depleted by Gary's purchases of farmland and equipment. She contends she has subsidized Gary's farming operation. Gary contends Joleen has been treated equitably.

Iowa Code section 598.21(1) (1991) states, "the court shall divide all property, except inherited property or gifts received by one party, equitably between the parties . . . ." Section 598.21(2) also 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." Basically, property inherited by either party prior to or during the marriage should be set aside to that person absent a finding it is not

equitable to do so. *See In re Marriage of Bergfeld*, 465 N.W.2d 865, 868 (Iowa 1991).

Generally, gifts or inheritances received by a party during the marriage are not subject to a property division unless the failure to do so would be inequitable to the other party. *In re Marriage of Oler*, 451 N.W.2d 9, 10-11 (Iowa App. 1989). There are a number of factors the courts look to in determining whether inherited property should be divided. *See In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982). The length of the marriage is also an important factor in considering when gifted or inherited property should be divided. *See Oler*, 451 N.W.2d at 11.

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). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

We find no inequity in the trial court's division of the property.

Joleen next contends Board of Regents bonds and a $1174.27 investment with Edward D. Jones should be set aside to the children as college funds. The funds are in Joleen's name and she can transfer them to the children if she wishes. We understand her argument to be that she should have additional property if she does

transfer the property to the children. We have found the property division equitable and affirm the trial court on this issue.

Joleen next complains about the ordered child support and allocation of child support exemptions. Gary was ordered to pay child support of $500 monthly and given the exemption for income tax purposes of the younger child, Garrett. The trial court fixed Gary's income from grain farming by averaging three years' income, namely 1990, 1991, and 1992. Joleen objects because she contends in the future he will be farming more land and will have more machinery. She also contends because he is only a grain farmer he should work away from the farm during the winter months and because he has failed to do so additional income should be allocated to him.

Gary contends Joleen's argument is misplaced and, had the trial court averaged his income over three years using only straight-line depreciation, his child support would have been less. He complains the trial court should not have excluded 1993 because it was a bad year. On cross appeal, Gary asks his child support be fixed using a three-year average including 1993. We have considered all arguments and believe the income allocated to Gary to be fair and will not disturb it on appeal.

Joleen contends Gary designated surplus material for the appendix. Gary included most testimony from all but two witnesses. Joleen has failed to specify why the pages designated are not appropriate. Gary's designation is approximately one-

half of the appendix. We determine the costs on appeal should be allocated one-half to Joleen and one-half to Gary.

We award no attorney fees.

AFFIRMED.