

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 30 1983

CLERK SUPREME COURT

215

IN RE THE MARRIAGE OF
GLEN KEITH JORDAN, SR., AND MARY MARGARET JORDAN

Upon the Petition of)

GLEN KEITH JORDAN, SR.,)

Petitioner-Appellant,)

And Concerning)

MARY MARGARET JORDAN,)

Respondent-Appellee.)

Filed August 30, 1983

3-150
2-69085

Appeal from Pottawattamie District Court - Paul H. Sulhoff, Judge.

Petitioner-husband appeals from the economic provisions of the parties' dissolution decree. AFFIRMED.

Hugh P. Finerty, Jr., and Stephen L. Rosman of Finerty-Rosman, P.C., Council Bluffs, Iowa, for petitioner-appellant.

Robert C. Heithoff of Heithoff, Pratt and Heithoff, Council Bluffs, Iowa, for respondent-appellee.

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

PER CURIAM

Petitioner-husband appeals from the economic provisions of the parties' dissolution decree. The petitioner asserts that the respondent should not have been awarded alimony of one hundred dollars per month until her death or remarriage and that the trial court should have considered the respondent's inheritance in determining the issue of alimony. We affirm.

Our scope of review is *de novo*. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981). The court gives weight to the fact findings of the trial court but is not bound by them. Iowa R. App. P. 14(f)(7).

The parties were married in 1976, divorced in 1979, remarried to each other in 1981, and separated in 1982. Both were 46 at the time of trial. The husband had a tenth grade education and had been employed as a heavy equipment operator until a job-related accident in which he sustained a knee injury resulting in a permanent fifty percent disability to the left knee. At the time of trial his only income was \$200 per week in workers' compensation benefits. The wife had a ninth grade education and some vocational rehabilitation training and was employed part-time as a nurses' aide with a gross income of \$214.40 per month (take home pay of \$184 per month). She suffered from alcoholism and a fifteen percent disability to a knee and expected to receive an inheritance of between \$10,000 and \$18,000 from her father's estate upon completion of probate proceedings. The trial court awarded each party the property that they had brought to the second marriage and awarded the wife alimony of \$100 per month terminable upon her death or remarriage. There were no children as a result of either marriage.

Payment of alimony is not an absolute right. It depends upon the circumstances of each particular case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The court may grant an award of alimony after considering all the factors set out in Iowa Code § 598.21(3) (1981). The court may consider ownership of property acquired by gift or inheritance along with anything else

relevant to an individual case in assessing the needs and the resources of the parties in fixing alimony. In re Marriage of Moffat, 279 N.W.2d 15, 20 (Iowa 1979); see In re Marriage of Thomas, 319 N.W.2d 209, 212 (Iowa 1982) (consideration of gifted or inherited property in determining ability to pay); In re Marriage of Sparks, 323 N.W.2d 264, 267 (Iowa Ct. App. 1982) (consideration of property division in assessing needs of the parties in fixing alimony). The date for determining the parties' net worth in order to assess their needs and their resources is the time of trial. Locke v. Locke, 246 N.W.2d 246, 252 (Iowa 1976). Although the respondent had not actually received the inheritance from her father's estate, there was testimony at trial by the administrator of her father's estate as to how much respondent's share of the distribution would be. We consider the inheritance as relevant in determining the respondent's net worth in order to assess her need for alimony.

Upon our *de novo* review we agree with the trial court's conclusion that the respondent, Mary Jordan, should be granted \$100 per month alimony until her death or remarriage. Although the marriage was one of short duration, that is only one factor which we look at in determining alimony. The age and physical health of the parties, the educational level of the parties, and the relative earning capacity of the respondent are other factors which indicate that this is a proper case for an award of alimony albeit a small award.

Costs on appeal are taxed to the petitioner. Respondent has also requested attorney fees for this appeal. There is, however, nothing in the record to indicate time or costs upon which to base an award. The parties shall pay their own attorney fees.

AFFIRMED.