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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CONNIE SUE CASEY AND DENNIS WAYNE CASEY

Upon the Petition of)
CONNIE SUE CASEY,) Filed August 26, 1980
Petitioner-Appellant,)
And Concerning)
DENNIS WAYNE CASEY,) 0-155
Respondent-Appellee.) 2-63603

Appeal from Polk District Court - Harry Perkins, Judge.

Petitioner appeals from economic provisions of parties' dissolution decree, asserting she should be awarded either more alimony or a larger share of the accumulated property. AFFIRMED AS MODIFIED AND REMANDED.

Curt L. Sytsma, Des Moines, for petitioner-appellant.

John A. Templer, Jr. of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Petitioner, Connie Casey, appeals from economic provisions of parties' dissolution decree. On appeal, she asserts she should be awarded either more alimony or a larger share of the accumulated property. She also requests attorney fees for this appeal. We affirm the trial court's decree as modified and remand this matter for entry of a decree in accordance with this decision.

I.

On May 2, 1979, the trial court entered a decree dissolving the marriage between respondent, Dennis Casey, and Connie. The court awarded custody of their two minor children to Connie and granted Dennis reasonable visitation rights. Dennis was ordered to pay $300 per month per child during the minority of the child or while the child attends high school. Dennis was also ordered to pay Connie $100 per month as alimony. The trial court found Dennis' net worth exceeded Connie's by $140,000. To equalize the net worth of the parties, the court ordered Dennis to pay to Connie $70,000 in the form of his $33,000 interest in the family home and cash payments totalling $37,000 over a three-year period. All stock, bonds, and other property in Connie's name were awarded to her. All property in Dennis' name except as provided otherwise in the decree was awarded to Dennis.

II.

Our review of this proceeding in equity is de novo. Iowa R. App. P. 4. We will examine the whole record and determine anew rights on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978) (quoting In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974)). While we give weight to the findings of the trial court, we will not abdicate our function as trier de novo on appeal. Id.

III.

Connie contends the alimony and property settlement are inadequate and unfair. Applying the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except the fault criterion, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), to the facts of the case, she seeks to justify an award of higher alimony or a larger share of the accumulated property. Although alimony and property division have different purposes, they are closely related in the determination of the amount allowed. Id.

Division of property is intended to provide each party a just and equitable share of the property accumulated by the parties as a result of their joint efforts during the years of the marriage to serve their mutual needs. Knipfer v. Knipfer, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966). The major issue raised by Connie is whether the gift of stock received by Dennis on Thanksgiving Day in 1972 from her step-father should be viewed as part of her contribution to the joint accumulation of assets. We examine the approximately equal division of property ordered by the decree in the light of this consideration.

In November 1972 Connie and Dennis each received a gift of approximately 3400 shares of stock in Pioneer Hi-bred, International, from Connie's step-father, Henry B. Wallace. The gift was made in part to use the $30,000 lifetime gift tax exemption of the Wallaces. There is also evidence indicating the intent of the gift was at least in part to provide financial support and security for the Caseys. Viewing the facts of the case, we conclude the gift of stock was made individually to Dennis and Connie. In doing so, we note Dennis' close personal and professional relationship with Henry B. Wallace as supporting our conclusion regarding Wallace's intent.

The question of how to divide the gift remains. Connie argues this situation is analogous to when a spouse inherits property. The general rule grants a spouse an interest in the property the other spouse has inherited. In re Marriage of Moffatt, 279 N.W.2d 15, 20 (Iowa 1979); Locke v. Locke, 246 N.W.2d 246, 251-52 (Iowa 1976). The value of property inherited by one of the spouses and awarded to that spouse upon dissolution of marriage is a proper factor to be considered by the court in arriving at the net worth of each party, relative needs of the other, and the value of the resources of the parties. Locke, 246 N.W.2d at 253. Connie asserts she should likewise be granted an interest in the shares received by Dennis as there is no rational reason to differentiate between testamentary and inter vivos gifts. See In re Marriage of Beeh, 214 N.W.2d 170, 175 (Iowa 1974). While we agree Connie could receive part of Dennis' shares under certain circumstances, we find under these circumstances she is not entitled to a larger share of the accumulated property.

The criteria to determine an equitable determination are set forth in Schantz, 163 N.W.2d at 405. One criterion is the contribution of each party by labor or otherwise to the net worth of property acquired during the marriage. Id. A single criterion, however, is not conclusive. The criteria taken as a whole provide a framework of

analysis involving many variables, no one of which operates to exclude consideration of the others. The fact the gift of stock to Dennis originated from Connie's family is thus not conclusive of the question of distribution, particularly in the light of the close relationship between Dennis and Henry B. Wallace. An examination of the other Schantz criteria along with this consideration indicates the property division ordered by the court was justified and equitable. Id.

Dennis and Connie were married on June 20, 1964. They met while Dennis was a senior and Connie was a freshman at Iowa State University. Dennis graduated later that year; Connie did not return to school. After graduation, Dennis worked for a year before returning to school to work toward a graduate degree. During Dennis' graduate education, he received income from a graduate assistantship and consulting fees. Connie made a larger financial contribution from her clerical work. Connie's parents also provided financial support during this period.

Upon graduation in 1970, Dennis was hired as a research geneticist with Hy-Line International, a division of Pioneer managed by Henry B. Wallace. In 1974 Dennis became general manager of Hy-Line, a position he now holds. His salary in 1977 from this job was $49,668. His current salary is $4326 per month. Dennis' future employment is somewhat uncertain due to the sale of the division he manages to a German firm. His other annual income, primarily from stock dividends, equals approximately $20,000.

Connie has cared for the parties' two sons and has not been otherwise employed since 1970. She has no specialized training or education and plans to remain a full time mother. Her net after-tax income consisting of dividends from stocks given to her by her father equals approximately $10,000 per year. These stocks had an estimated value of $391,000 on November 1, 1978.

Each party has made significant sacrifices during the course of the marriage. Connie provided part of the funds for Dennis' education, while foregoing her own education. In his education and job, Dennis worked extraordinarily long hours to provide for his family.

In sum, we hold an approximately equal division of the parties' accumulated assets is justified. The trial court's division set forth in the decree achieves that end and is affirmed.

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Alimony is considered to be an allowance to the spouse in lieu of the legal obligation of support. Knipfer, 259 Iowa at 352-54, 144 N.W.2d at 143. Consideration of alimony is not limited, however, solely to the spouse's basic needs. In re Marriage of Zoellner, 219 N.W.2d 517, 524 (Iowa 1974). The Schantz guidelines provide guidance in the amount of the alimony award.

Incorporating our prior discussion of the circumstances surrounding this action, we note some additional considerations relevant to the issue of alimony. Connie's limited education, training, and work experience limits her employment opportunities and income potential. Combining her dividend income, the child support payments, and her potential employment income, she still will not be able to maintain the standard of living she and the children are now enjoying. At the same time, Dennis' standard of living is continuing to improve. The inequity of this circumstance in light of Connie's contribution to Dennis' potential earning capacity is apparent. See In re Marriage of Horstmann, 263 N.W.2d at 891-92. We also note Connie's stated intent to remain at home to care for the children rather than go to work. See In re Marriage of Matson, 215 N.W.2d 358, 360 (Iowa 1974); Beeh, 214 N.W.2d at 174.

After carefully considering all relevant factors, we conclude the decree should be modified to provide that Dennis shall pay to Connie as alimony $750 per month. The alimony shall continue until the youngest child graduates from high school or marries or becomes self-supporting or Connie either remarries or dies. This modification is effective with the alimony due September 1, 1980.

IV.

Connie requests an award of attorney fees for this appeal. Such an award is not allowed as a matter of right; any award must depend upon the financial circumstances and earnings of both parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Connie has not apparently filed an itemized schedule of the rendered services. While this court's task is thus made more difficult, failure to file such a schedule is not fatal to Connie's request. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977); Wilson v. Wilson, 197 N.W.2d 589, 594 (Iowa 1972). In such a situation, this court may resort to its experience in fixing the reasonable amount of fees to be allowed. Wilson, 197 N.W.2d at 594. Under these circumstances we hold Dennis shall contribute $1000 toward Connie's attorney fees. In doing so we do not intend to establish the amount of attorney fees Connie shall pay. Dennis is also taxed with the costs of this appeal.

VII.

We remand this action for entry of a decree in accordance with this decision. All parts of the original decree that have not been modified are affirmed.

AFFIRMED AS MODIFIED AND REMANDED.