FILED
APR 27 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GARTHA P. SCOTT AND RODNEY R. SCOTT

Upon the Petition of	)	146
GARTHA P. SCOTT,	)	Filed April 27, 1982
Petitioner-Appellant,	)	
And Concerning	)	
RODNEY R. SCOTT,	)	2-93 / 2-66633
Respondent-Appellee.	)	

Appeal from Scott District Court - Margaret S. Briles, Judge.

Petitioner-wife appeals from the economic provisions of the parties' dissolution decree asserting that trial court's property division was inequitable and seeking attorney fees on appeal. AFFIRMED WITH MODIFICATION.

Michael W. Liebbe of Raben, Liebbe, Shinkle & Bremer, Davenport, Iowa, for petitioner-appellant.

Marc Gellerman of Gellerman & Bribriesco, Bettendorf, Iowa, for respondent-appellee.

Submitted to Oxberger, C.J., and Carter and Johnson, JJ.

PER CURIAM

Petitioner-wife, Gartha P. Scott, appeals from the economic provisions of the parties' dissolution decree. She asserts that trial court's property division was inequitable because she was given insufficient credit for inherited funds she contributed to the acquisition of the property. She also seeks attorney fees on appeal. We affirm with modification.

The parties were married on June 25, 1977. No children were born to the marriage. In February, 1978, the parties purchased a $42,350 home, using approximately $7,000 of petitioner's inherited funds as a down payment. At the time of hearing, the home had an appriased value of $65,900 and was encumbered with a $34,200 mortgage. There is evidence to show that petitioner inherited approximately $45,000 during the course of the marriage. At the time of trial petitioner still had certificates of deposit in the amount of $16,800 and $5,000 cash from this inheritance. Several of the certificates of deposit were used as collateral for loans related to a carpet cleaning business in which respondent was a partner. Trial court awarded the parties' home to petitioner, subject to an $11,750 judgment lien at 12% interest, in favor of respondent. Petitioner received the bulk of the parties' household goods and furnishings; respondent received his partnership interest.

I. Scope of Review. Our review of this equitable proceeding is **de novo.** Iowa R. App. P. 4. Our responsibility is to review the facts, as well as the law, to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

II. Distribution of Property. Petitioner asserts: 1) that respondent is not entitled to an $11,750 judgment lien and 2) that respondent should be ordered to

effect release of petitioner's certificates of deposit before petitioner is required to pay the judgment. Since the assertions are closely related, we will discuss them in conjunction with each other.

Our analysis is governed by section 598.21, The Code 1981. That section, in pertinent part, provides:

> 1. . . . The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering the following:
>
> a. The length of the marriage.
>
> b. The property brought into the marriage by each party.
>
> c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> * * *
>
> 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 reviewing the individual economic provisions of the dissolution decree, we consider all provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). We reject any rule based on a percentage division of the assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981). As an additional factor, when the court must divide appreciated property acquired initially with the use of inherited funds, we consider whether the appreciation which occurred during the marriage was gratuitous or due to the efforts of the parties. See In re Marriage of Steenhoek, 305 N.W.2d 448, 453 (Iowa 1981).

Applying these principles to the present case, we agree with trial court's method of arriving at the $11,750 judgment awarded to respondent. Trial court gave petitioner credit for the inherited funds used as a down payment and properly considered respondent's contribution to the property, both in the form of monetary payments and labor. Thus, we affirm trial court's award of an $11,750 judgment to respondent.

We believe, however, that petitioner's request that respondent be ordered to take steps to obtain release of petitioner's certificates of deposits as pledges before she is required to pay the judgment should be granted. We therefore modify that part of trial court's decree awarding interest at 12% on respondent's judgment. Respondent is hereby ordered to take immediate action to obtain the release of petitioner's certificates of deposits as pledges for respondent's business loans. Until such time as these releases are effected, respondent is entitled neither to any interest on his $11,750 judgment nor to receive payment thereon. Once respondent has obtained release of petitioner's certificates of deposit as collateral, respondent is entitled to interest on the judgment at the rate of 12% per annum until the judgment is paid.

III. Attorney Fees. Petitioner also requests attorney fees in connection with this appeal. The primary consideration in making this determination is the parties' resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Based on this consideration, we deny petitioner's request and divide costs of this appeal equally between the parties.

AFFIRMED AS MODIFIED.