

FILED

FEB 26 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF BONNIE JO SCHNEIDER & JAMES MICHAEL SCHNEIDER

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Upon the Petition of)

BONNIE JO SCHNEIDER,)

Petitioner-Appellee,)

Filed February 26, 1986

And Concerning)

JAMES MICHAEL SCHNEIDER,)

Respondent-Appellant.)

5-659
85-567

Appeal from the Iowa District Court for Floyd County (23424) - J. W. Frye, Judge.

Respondent appeals the decree entered in this dissolution action, claiming that the division of property ordered by the court was inequitable. **AFFIRMED AS MODIFIED.**

Alfred A. Beardmore, Charles City, Iowa, for respondent-appellant.

Gary J. Boveia of the Boveia Law Office, Waterly, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Snell, and Schlegel, JJ.

SCHLEGEL, J.

Respondent, James Michael Schneider, appeals the decree entered in this dissolution action, claiming that the division of property ordered by the court was inequitable. Specifically, he claims that the court allowed a credit to the petitioner, Bonnie Jo Schneider, for the value of a Lowrey organ she brought into the marriage, and also awarded the organ to her, resulting, James claims, in a double award. Also, he claims that the court awarded everything Bonnie wanted, and awarded to him the items that no one wanted and were not useful. He complains that the court awarded him only \$9,777 of his inheritance in the total amount of \$24,723.80, and further, states that the court erred when it included in the assets of the parties a \$5,000 money market certificate and a \$2,000 savings account which he states were nonexistent. We affirm as modified.

I. In a dissolution action, the court is charged to divide all property, except inherited property or gifts received by one party, equitably between the parties after considering various criteria. § 598.21(1), Code of Iowa (1983). Subsection (2) of that section provides that 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 that section except upon a finding that a refusal to divide the property is inequitable to the other party or to the children.

The trial court sought, in this case, to achieve an equal division of the property of the parties, and for that purpose, found that they possessed real and personal property, including bank accounts, of a value of \$152,300. The court found that James and Bonnie had both received inheritances during the marriage, finding that James received an inheritance in a traceable amount of approximately \$16,800, and Bonnie received approximately \$2,500 as an

inheritance. Adding to that the value of the money and property that Bonnie brought into the marriage, the court found that her inheritance and contribution totalled \$7,080, and allowed James a credit of \$9,777. The court decided that the inheritance should not be treated as marital property in either instance, and the net difference, in the court's calculation, was the amount awarded to James. We believe the court was fair in its analysis of the treatment of the inheritance, and we affirm that portion of the court's ruling.

II. Upon our de novo review of the record, we believe that the court's division of property, in kind, and the ordering of a cash payment by Bonnie to equalize the awards, was equitable. We accept the court's findings of value. It does not appear, from the record, that James received property that no one wanted, or that it was of no value. In many instances, the court accepted the values James placed upon the property. In view of the fact that James sought to have everything sold at auction and to divide the proceeds, it seems a fair result to divide the property in kind, and to require Bonnie to make up the difference in cash.

III. The trial court found that the award to Bonnie was of a value of \$109,700 and that James received assets valued at \$39,950. The court required Bonnie to pay to James, within ninety days, a lump sum payment of \$34,000 to equalize the distribution. Following such payment, Bonnie would, under the court's findings, have a gross award of \$75,700, and James would have a gross value of \$73,950. This would represent a total distributed value of approximately \$149,650. This amount, the trial court found, represented the parties' net worth after Bonnie pays a \$3,000 debt to family Community Credit Union.

IV. The parties agree that the court awarded a bank account to James, which did not exist. That account was considered an asset with a value of \$5,000. In view of the agreed omission, the net worth of the parties must be reduced

by \$5,000. This results in a net worth, according to the established values, of \$144,302. Deducting the \$9,777 offset to James as his identifiable inheritance, leaves \$134,525 for division. Each party, therefore, would be entitled to \$67,262.50, if equality that the court sought is to be achieved. Since Bonnie has paid the \$3,000, or is obligated to do so, she has received \$106,700 by way of distribution, rather than \$109,700, as indicated by the court. To equalize the distribution of these assets, therefore, and to set off James's net inheritance, it is necessary that Bonnie pay to James the sum of \$39,000, instead of \$34,000. James is entitled to the additional \$5,000, and his distribution will then be \$67,262.50 plus \$9,777, while Bonnie's distribution will total \$67,262.50.

Bonnie has asked for attorney's fees for this appeal. In view of the relative financial condition of these parties, the parties shall pay their own attorneys. Each party shall pay one-half of the costs of this appeal.

AFFIRMED AS MODIFIED.