**IN THE COURT OF APPEALS OF IOWA**

No. 8-662 / 98-0438

**IN RE THE MARRIAGE OF BARBARA PETERS AND MARK PETERS**

**Upon the Petition of BARBARA PETERS,**

Petitioner-Appellee,

**And Concerning MARK PETERS,**

Respondent-Appellant.



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Appeal from the Iowa District Court for Dickinson County, John P. Duffy, Judge.

Mark Peters appeals from the property distribution and child support provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED WITH DIRECTIONS.**

John L. Sandy of Sandy Law Firm, P.C., Spirit Lake, for appellant.

Lynn K. Fillenwarth of Fillenwarth & Fillenwarth, Estherville, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

**MAHAN, J.**

Mark Peters appeals from the property distribution and child support provisions of the parties' dissolution decree. Mark contends the district court (1) improperly included his inherited property within the marital assets to be divided between the parties, and (2) incorrectly determined his net income for child support guideline purposes. We affirm as modified and remand with directions.

Barbara and Mark were married in 1973. They have three children, only two of whom were minors at the time of trial: Ann, born October 24, 1979, and Joe, born February 26, 1986.

Barbara was born in 1953. She has worked outside the home during most of the marriage. She earned $16,916 in 1993 and $20,677 in 1994. In 1994, Barbara went back to school and obtained a degree in occupational therapy. After obtaining her degree, Barbara earned $34,075 in 1996, and at the time of trial she was earning approximately $47,000 per year.

Mark was born in 1952. He has worked at Eaton Corporation in Spencer since 1993. He earned $28,460 in 1994; $29,234 in 1995; and $28,281 in 1996. At the time of trial, his projected earnings for 1997 were $32,240. Mark provided dependent health insurance coverage for the two minor children and was paying $144 per week for health insurance through Eaton's flex dollar and price tag system. The record is unclear as to the exact amount of this sum which was for the benefit of the children.

Mark's grandmother died in July 1987; Mark was named as a beneficiary of her estate. Within a year of his grandmother's death, the parties entered into a real estate contract to purchase a house for $36,500. A $3000 down payment was made and the balance was to be paid in full within one year. Mark received the disbursement from his grandmother's estate in February 1989; $33,500 went directly to pay off the real estate contract. The parties recorded their warranty deed to the house on March 7, 1989. A $32,000 home equity loan on the property was recorded on March 30, 1989. The parties were advised by a financial counselor to borrow the money to obtain tax benefits. The money was used to pay off family debts and for other family purposes.

Child support and the division of assets and liabilities were issues at the trial. The parties could not agree as to their net monthly incomes. The parties also disagreed as to how Mark's inheritance was spent.

In determining Mark's net income, the district court gave Mark a $100 per month deduction for the cost of dependent health insurance coverage. The actual cost to Mark for the coverage was not determined at trial. The district court ordered Mark to contribute $577 per month for the support of the two minor children, to be reduced to $393 when only the youngest child qualified for support. The district court did not set off any amount for Mark's inheritance.

**I. STANDARD OF REVIEW.** Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). However, we have a duty to examine the entire record and may adjudicate anew rights on those issues properly presented. Iowa R. App. P. 14(f)(7).

**II. MARK'S INHERITANCE.** 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. Iowa Code §§ 598.21(1) and 598.21(2); *In re Marriage of Hardy*, 539 N.W.2d 729, 731 (Iowa App. 1995). In determining whether inherited property is divisible as marital property, the controlling factors are the intent of the donor and the circumstances surrounding the inheritance. *In re Wertz*, 492 N.W.2d 711, 714 (Iowa App. 1992). Placing inherited property into joint ownership does not, in and of itself, destroy the separate character of the property. *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa App. 1996).

The district court found, "Mark's theory regarding use of inherited property to purchase the house is not supported in the record." The court further stated:

> The house was purchased on contract on June 17, 1988, with $3,000.00 down and a monthly payment for one year. At the end of the year, title was transferred to the parties and the parties obtained a mortgage to pay off the contract.

Mark argues this is a blatant misstatement of the record. We agree it is a misstatement of the record.

There is no evidence to support the theory the home equity loan was taken out to pay off the real estate contract or that the inheritance is not traceable to the house. To the contrary, the record shows the contract was entered into in anticipation of Mark's inheritance from his grandmother and the inheritance was used to pay off the contract. The contract was entered into after Mark's grandmother died with the unusual agreement to pay the balance in full at the end of one year. Furthermore, the home equity loan was obtained three weeks *after* the parties received the deed to the house, and both parties testified the inheritance was used to pay off the contract.

Barbara does not claim Mark's grandmother intended her to share the inheritance. Thus, Mark should have received a set off for the amount of equity in the home attributable to his inheritance. *See In re Marriage of Richards*, 439 N.W.2d 876, 881-882 (Iowa App. 1989). However, we find Mark received some additional benefit from the home equity loan. Therefore, we award Mark $25,000 of equity in the house which shall be due and owing (1) upon sale of the house, or (2) when the youngest child no longer resides there, or (3) when the youngest child attains the age of twenty-one, whichever occurs first.

**III. MARK'S NET INCOME.** Mark contends he should have received a deduction from his gross income for a portion of the $144 per week he pays for health insurance. We agree he should receive a deduction for the amount he pays for dependent health insurance coverage. *In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 1997); *In re Marriage of Golay*, 495 N.W.2d 123, 127 (Iowa App. 1992).

The district court deducted $100 per month for dependent health insurance coverage in determining Mark's net income. It is unclear where this $100 figure came from. It is clear Mark is entitled to a larger deduction for this expense. It is also clear the district court did not determine how much of the $144 per week was attributable to dependent health insurance coverage. Without this finding, we are unable to determine Mark's child support obligation. *See In re Marriage of Van Zee*, 488 N.W.2d 721, 725 (Iowa App. 1992) ("Evidence of health insurance premiums is necessary to accurately apply the guidelines."). Therefore, we remand for the taking of any evidence necessary for the trial court to make a specific finding of the amount Mark pays for dependent health insurance coverage. A reconsideration of his support obligation should be made accordingly.

For these reasons, we affirm the dissolution decree as modified, and remand with directions. We no not retain jurisdiction.

**AFFIRMED AS MODIFIED AND REMANDED WITH DIRECTIONS.**