**IN THE COURT OF APPEALS OF IOWA**

No. 1999-463 (9-720) / 98-1996
Filed April 28, 2000

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CLERK SUPREME COURT

**IN RE THE MARRIAGE OF VICKI L. KRISTAN AND WILLIAM J. KRISTAN II**

**Upon the Petition of**
**VICKI L. KRISTAN,**
Petitioner-Appellant,

**And Concerning**
**WILLIAM J. KRISTAN II,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

The petitioner appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Kevin P. Shea of Shea Law Offices, Cedar Rapids, for appellant.

John M. Heckel, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

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**HECHT, J.**

Vicki K. Kristan ("Vicki") appeals various economic provisions of the parties' dissolution decree. She contends the district court erred in: (1) failing to divide the appreciation in the value of William J. Kristan's ("William") inheritance; (2) ordering her to pay William for her prepaid burial plan; and (3) failing to award an equitable division of the marital assets. We affirm.

**I. Factual Background and Proceedings.** William and Vicki married on January 11, 1967. They have two children: Kerry and Taryn. At the time of trial, William was fifty-two, Vicki was fifty, Kerry was thirty, and Taryn was eighteen.

Vicki has a high school education and an associate's degree. She was employed in clerical positions during most of the marriage. Most recently, after receiving her associate's degree, she worked as an administrative assistant until the company eliminated her position on July 2, 1998. She was unemployed at the time of trial.

William also has a high school education and was trained as an orthopedic assistant, although he had never worked in that capacity. For most of the marriage, he worked at the Wilson Foods Meat Packing Plant until the plant closed in 1990. He cared for an elderly aunt and uncle from 1990 until their deaths in 1997 and worked at various odd jobs. He is now unemployed due to a serious motorcycle accident and will unlikely be able to work again.

During the marriage, each party received an inheritance. Vicki received $14,000 in 1975 when her father passed away. The parties used some of the money to remodel the home and placed the rest in a savings account. In 1979,

they used the remaining money to purchase a business. Ultimately, the business was unsuccessful. William received $27,070.67 when his mother passed away in 1990. He placed most of the money in a Franklin Fund and purchased prepaid burial plots for himself and Vicki with the remainder.

Vicki filed a petition for dissolution on August 8, 1997. On October 1, 1997, William had a serious motorcycle accident and suffered injuries to his legs, head, and shoulder. Vicki assisted him during his rehabilitation at the hospital and at home. Before trial, William received a settlement offer of $100,000 contingent on Vicki's release of her consortium claim. Vicki initially refused to sign the release but later agreed to accept $2000 for her claim. The record does not indicate whether this case has been settled.

Trial in this matter commenced on July 20, 1998. Immediately before trial, Vicki found nearly $17,900 in cash hidden in the furnace in envelopes with William's writing on them. At trial, William denied the money belonged to him and testified he did not know where the money came from. He later indicated the money represented the proceeds from his employment with his aunt and uncle. The district court entered its findings, conclusions, and decree of dissolution on September 14, 1998. After both parties filed motions pursuant to 179(b), the district court entered an order awarding Vicki $2000 for her consortium claim from the proceeds of any award William might receive in his personal injury suit. Vicki appeals.

**II. Standard of Review.** Because this is an action in equity, our review is de novo. Iowa R. App. P. 4. In our review, we examine the entire record and

adjudicate anew the parties' rights on the issues properly presented. *In re Marriage of Maher*, 596 N.W.2d 561, 564 (Iowa 1999); *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). Although we give weight to the district court's factual findings, we are not bound by them. Iowa R. App. P. 14(f)(7).

**III. Property Division.** Vicki challenges several provisions of the district court's decree related to property distribution. The partners to a marriage are entitled to a just and equitable share of the property accumulated during the marriage through their joint efforts. *In re Marriage of Gonzalez,* 473 N.W.2d 94, 98 (Iowa App. 1997). An equal division or a percentage division is not required in determining a just and equitable share of the property. *In re Marriage of Russell,* 473 N.W.2d 244, 246 (Iowa App. 1991). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Clark,* 577 N.W.2d 662, 664 (Iowa App. 1998).

Vicki contends the district court erred by not dividing the appreciation in value of William's inheritance from his mother. William received $27,070.67 from his mother in 1990. At the time of trial, the money was in a Franklin Fund and had grown to $43,161.67.[1] Vicki claims she should be awarded half of the increase in its value. We must first determine whether William's inherited property is divisible. Iowa Code section 598.21(1) states "the court shall divide

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[1] This figure represents the principal amount in the Franklin Fund plus the fund's earnings from 1991 until 1998 ($18,091) subtracting the $2000 William withdrew shortly before trial to pay for Taryn's first semester of college.

all property, except inherited property or gifts received by one party . . . ." Iowa Code § [illegible]21(1) (1997). Generally, inheritances received by one party during the marriage are not subject to a property division unless the failure to do so would be inequitable to the other party. *In re Marriage of Hardy,* 539 N.W.2d 729, 731 (Iowa App. 1995). Our supreme court has listed a number of factors to be considered when determining whether inherited property should be considered marital property including:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
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> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
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> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
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> (4) any special needs of either party;
>
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.
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> Other matters, such as the length of the marriage or the length of time the property was held after it was devised or given, though not independent factors, may indirectly bear on the question for their effect on the listed factors. Still other matters might tend to negative or mitigate against the appropriateness of dividing the property under a claim that it falls within the exception.

*In re Marriage of Thomas,* 319 N.W.2d 209, 211 (Iowa 1982). The district court treated the Franklin Fund as William's separate property and awarded the full amount to William. The parties maintained separate finances for the last twenty years of their marriage, and Vicki did not contribute to the fund during the marriage. There is no indication Vicki contributed all of her income to the family while William's income went to the preservation and growth of his inheritance. To the contrary, it appears from the record Vicki and William contributed equally

to the daily expenses of the household from their respective incomes. Although this marriage lasted almost thirty-one years, William did not receive the inheritance until 1990, at least ten years after the parties began maintaining separate finances. In addition, William preserved the assets in the Franklin Fund and did not commingle them with other assets of the parties. *See In re Marriage of Van Brocklin,* 468 N.W.2d 40, 45 (Iowa App. 1991).

We also consider William's special needs. He was severely injured in the motorcycle accident and it is unlikely he will work again. Vicki, on the other hand, has been employed for most of the marriage and, although she was unemployed at the time of trial, she is in good health and she has the ability to earn an income in the future. We also do not believe it would be unfair or inequitable to set aside the inheritance as William's separate property. Taryn will not be unfairly affected as the parties agreed to pay for her college education partially from this fund. In addition, we believe Vicki was not treated inequitably as the district court ordered William to pay Vicki $11,539.60 to offset the fact the court awarded him the marital residence. Although Vicki's post-decree net worth is less than William's, most of William's net worth is in the house while Vicki was awarded a substantial amount of cash, including the cash she found in the furnace and the offset from William.

Vicki also argues because the parties used her inheritance to improve the home and purchase a business, William's inheritance should also be divided between the parties. We must consider the specific circumstances surrounding the inheritance and the facts of each case. *See In re Marriage of Liebich,* 547

N.W.2d 844, 851 (Iowa App. 1996); *In re Marriage of Hardy*, 539 N.W.2d 729, 731 (Iowa App. 1995). The parties treated Vicki's inheritance as joint property by making improvements in the home and purchasing a business. However, this does not require the court to treat William's inheritance the same way. In view of the other facts and circumstances of the parties, we conclude the district court correctly declined to divide Willian's inheritance or the appreciation in its value.

Vicki next argues the district court erred by ordering Vicki to pay William for her prepaid burial plan. The district court ordered Vicki to reimburse William for the value of the plan, $3997, because he paid for the plans out of money he received from his mother's estate. Vicki contends this was error because the prepaid funeral plan was a gift from William. William argues the plan was not a gift and he paid for the plan because he "did not want to personally incur a debt when she died." There is little evidence in the record supporting any of these arguments. We give strong deference to the trial court which, after sorting through the economic details of the parties, made an appropriate division supported by the record. This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine important, but often conjectural, judgment calls, they foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa App. 1999). We affirm the district court on this issue.

Finally, Vicki claims generally that the district court's property distribution was not fair and equitable. She contends she is entitled to a greater portion of

William's personal injury settlement from his motorcycle accident. We agree that proceeds of a personal injury claim are to be divided according to the circumstances of each case. *In re Marriage of McNerney*, 417 N.W.2d 205, 206 (Iowa 1987). However, the specific circumstances of this case do not merit modification of the district court's disposition of the value of the claim. William's injuries occurred after Vicki filed the petition for dissolution. In addition, Vicki stated during trial she did not want any money for her consortium claim but refused to sign the release of the claim because she objected to William's attorney receiving money from the settlement. Most importantly, in its ruling on the parties' 179(b) motions, the district court specifically ordered $2000 of the settlement to be allocated to Vicki's consortium claim and resolved this issue. We find the district court's disposition of this matter equitable and do not disturb it on appeal.

**AFFIRMED.**