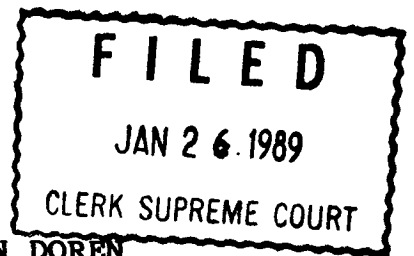


IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
KIETH WALTER VAN DOREN AND MARY LOU VAN DOREN



Upon the Petition of	)	
KIETH WALTER VAN DOREN,	)	272
	)	
Petitioner-Appellant,	)	
	)	
And Concerning	)	
MARY LOU VAN DOREN,	)	8-334
	)	<u>86-1650</u>
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Webster County
(No. DM 3637), Stephen Carroll, Judge.

The husband appeals from a dissolution decree,
challenging various economic provisions. **AFFIRMED AND
MODIFIED.**

Kieth Van Doren, Larkspur, Colorado,
petitioner-appellant, pro se.

Charles F. Fairall and Theodore R. Hoglan, of Fairall,
Fairall, Kaplan & Hoglan, Marshalltown, for the
respondent-appellee.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ. Habhab, J. takes no part.

OXBERGER, C.J.

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In this appeal Kieth W. Van Doren, petitioner-appellant, seeks appellate review of the economic issues in a dissolution decree. We affirm and modify.

I. MOTION FOR NEW TRIAL

Kieth maintains the trial court erred in failing to rule on his motion for a new trial filed October 21, 1986. The motion supported by Kieth's affidavit claims a new trial should be ordered because of newly discovered evidence which arose after the final hearing in November 1985 and before the filing of the decree in October 1986. Kieth filed a Notice of Appeal on November 13, 1986, before the trial court ruled on his motion. Justice J. L. Larson of the Iowa Supreme Court ordered the appeal was to be treated as if Kieth had timely taken the appeal after the district court's ruling on Mary's 179(b) motion.

Kieth's "newly discovered evidence" claim relates to matters after the final hearing as they bear on his ability to pay alimony. Section 598.21(8) provides a method of modifying alimony orders where conditions have changed after the final hearing. Therefore, we will limit our de novo review in this appeal to the evidence produced at the final hearing. Because of the modification procedure we do not consider Kieth's claim of "newly discovered evidence."

II. TEMPORARY SUPPORT

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Kieth alleges the trial court erred in its temporary support order. We do not have jurisdiction to hear this issue. In In re Marriage of Prybil, 230 N.W.2d 487, 488 (Iowa 1975) the supreme court held temporary support orders are a final judgment and must be appealed within thirty (30) days of the temporary order. Kieth's notice of appeal of this matter was beyond the time limit. Therefore, we do not consider this issue.

III. CONTEMPT OF COURT

Kieth contends his failure to pay the temporary support was not willful. The trial court concluded:

. . . that given the procedural posture in which the application arose (this was heard at the same time of Petitioner's request for review which was denied) no punishment, aside from payment of costs, should attach to the Petitioner's failure.

We find that in view of the trial court's findings the record does not justify a finding of willful contempt and the trial court's finding of contempt is vacated.

IV. DELAY

Kieth alleges the trial court abused its discretion in delaying its entry of decree for eleven months after final hearing. Kieth does not cite any authority for this proposition and we deem it waived. Iowa R. App. P. 14(a)(3).

V. ALIMONY AND PROPERTY AWARDS

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Kieth states the trial court erred in its ordering excessive alimony and property awards. Kieth refers to events after the trial in support of this issue. Pursuant to the holding in In re Marriage of Callenius, 309 N.W.2d 510, 513 (Iowa 1981), we limit our consideration to matters solely within the record and do not consider matters after the date of the trial.

Kieth maintains the trial court should have considered the \$26,000 Mary Lou inherited. Section 598.21(2) requires the court to find a failure to divide the inherited property would be inequitable. Kieth did not cite any reason the failure to divide was inequitable. We do not find the failure to be inequitable.

Kieth says alimony is appropriate but the amount and length of time are excessive. This was a marriage of more than twenty years. Kieth was earning nearly \$60,000 gross annually and Mary Lou was unemployed at the time of trial. We find the alimony award of \$800 per month until January 19, 1988, then \$600 per month until January 1993, then \$300 per month until January 1996 is reasonable. We have reviewed and find no inequity in the property award.

VI. TAX EXEMPTION

The decree is based on the fact Mary Lou was unemployed at the trial. We believe Kieth should be awarded the tax exemptions for the children. We modify the decree to so provide.

VII. ATTORNEY FEES**276**

Kieth objects to the trial court's award of \$3,500 attorney fees. We find Mary Lou has inherited \$26,000, thus she has adequate funds to pay her own attorney fees. Therefore, we modify the decree to strike the attorney fee award.

We find court costs on appeal should be equally shared by appellant and appellee.

AFFIRMED AND MODIFIED.

Donielson, J. concurs; Schlegel, J. dissents.

I respectfully dissent.

The majority states:

Section 598.21(2) requires the court to find a failure to divide the inherited property would be inequitable. Kieth did not cite any reason the failure to divide was inequitable.

This provision follows the statutory direction that property inherited by one party is not subject to a property division. Iowa Code § 598.21(2) (1987). I agree that there is no showing that to fail to divide the inheritance was inequitable. The majority, however, states the following:

Mary Lou had inherited \$26,000, thus she has adequate funds to pay her own attorney fees.

Mary Lou was, at the time of trial, unemployed, while Kieth had an income of \$60,000 per year.

The award of attorney fees in a dissolution action depends upon the relative financial circumstances of the parties. In re Marriage of Vrbán, 359 N.W.2d 420, 428 (Iowa 1984). I believe Kieth's financial condition is such that he should contribute to Mary Lou's attorney fees. To do as the majority has ruled is to require a division of her inheritance, where there is no evidence to show that a failure to so divide it would be inequitable. I believe the trial court was correct. I would not modify the attorney fee provision of the trial court's decree.