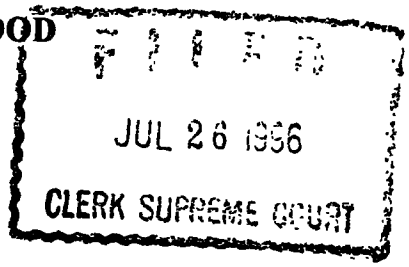
IN THE COURT OF APPEALS OF IOWA

No. 6-084 / 95-330

IN RE THE MARRIAGE OF LINDA KAY UNDERWOOD AND JAMES ALLEN UNDERWOOD



Upon the Petition of
LINDA KAY UNDERWOOD,

Appellant,

And Concerning
JAMES ALLEN UNDERWOOD,

Appellee.

Appeal from the Iowa District Court for Pottawatamie County, James M. Richardson, Judge.

Linda Underwood appeals certain economic provisions in the parties' dissolution of marriage decree. **AFFIRMED.**

Joseph J. Hrvol of Joseph J. Hrvol, P.C., Council Bluffs, for appellant.

Christopher J. Tinley of Root & Tinley, Council Bluffs, for appellee.

Considered by Sackett, C.J., Habhab, and Huitink, JJ.

PER CURIAM

This is an appeal by a wife claiming certain economic provisions of the parties' dissolution decree were inequitable to her. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Linda and James Underwood were married in 1969. Their two children are now adults. Linda is employed by Omaha Printing Company, where she works on a commission. She testified she earns between $1,100 to $1,500 per month. James is employed by Nelson Refrigeration, where he has annual income of $53,250.

The parties separated in March 1993 and James moved to Virginia. During the separation, he inherited about $76,000 from his mother. The parties agreed Linda should spend about $22,000 of this amount to pay their debts. James received $5,000 of the inheritance. It appears Linda spent the remainder of the inheritance on the parties' home in Council Bluffs and items for herself and the children.

The district court issued a dissolution decree for the parties on January 30, 1995. Linda was awarded property worth $61,200, and ordered to pay debts of $34,750. In addition, within five years she must pay James $22,225, which represents his interest in the marital residence. James was awarded other property worth $5,311. Linda was awarded a portion of James' pension account. The court declined to award alimony, based on its finding Linda had spent most of James' inheritance.

Linda now appeals. She claims she should have been awarded alimony. She states she was justified in spending James' inheritance because he did not pay

temporary support of $586 per month, which is the amount of the parties' mortgage payments.

We note the dissolution decree requires James to pay his delinquent temporary support payments. Thus, James failure to pay temporary support should not be offset against him inheritance. Iowa Code section 598.21(1) provides "the court shall divide all property, except inherited property or gifts received by one party, equitably between the parties." An exception arises where it would be inequitable to the other party to refuse to divide the inheritance. *In re Marriage of Hoffman*, 493 N.W.2d 84, 89 (Iowa App. 1992).

We agree with the district court that in the present case, James' inheritance should have been set aside to him. However, the parties do not have sufficient assets for him to receive the inheritance as property. Because property division and alimony are considered together in evaluating their individual sufficiency, the court decided not to award alimony in this case. We affirm the decision of the district court.

In the alternative, Linda asks to receive the total amount of equity in the marital residence, $44,500. We find James is entitled to one-half of the equity in the home, and affirm the requirement that Linda pay him $22,225 within five years.

We affirm the district court on each issue raised in this appeal. Costs of this appeal are assessed to Linda.

AFFIRMED.