IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LARRY L. LARSEN AND GLORIA J. LARSEN

UPON THE PETITION OF LARRY L. LARSEN,	)	Filed November 29, 1982 63
Petitioner-Appellant,	)	2-293 / 2-67171
AND CONCERNING GLORIA J. LARSEN,	)	
Respondent-Appellee.	)	

Appeal from Polk District Court, Rodney J. Ryan, Judge.

Petitioner-husband appeals, and respondent-wife cross-appeals, from economic provisions of the parties' divorce decree. AFFIRMED.

Joseph G. Bertogli of Flagg, Hockett, Benhart & Golden, Des Moines, for petitioner-appellant.

Robert H. Laden of Hyland, Laden & Pearson, P.C., Des Moines, for respondent-Appellee.

Considered en banc.

PER CURIAM

Petitioner Larry Larsen appeals from economic provisions of the parties' dissolution decree, asserting that respondent-wife Gloria Larsen should not have been awarded half the stock he purchased under an employment-related option exercised after the petition for dissolution of marriage had been filed. Respondent Gloria Larsen asserts in a cross-appeal argument that she should have been awarded half the value of the $10,000 representing funds formerly held in an Ankeny State Bank certificate of deposit. We affirm.

The parties were married in 1975. Both had been married before, and both had children from previous marriages. Both parties brought property into the marriage of approximately equal value.

Larry was an insurance agent and earned between $30,000 and $50,000 per year. Gloria was a beautician and earned about $12,000 per year at the time of trial. She also worked part-time for Larry's insurance agency during the marriage, and performed most domestic chores. Gloria receives $37.50 per week from her former husband for child support.

Upon dissolution, the trial court awarded each party various items of personal property and ordered an equal division of: net proceeds from the sale of the parties' home, a $10,000 certificate of deposit held at American Federal Savings; and various stocks, including 2,168 shares of Life Investors stock in Larry's company. It is from trial court's division of the Life Investors stock that Larry appeals.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We review the facts as well as the law and determine anew those rights properly presented and preserved. <u>In re Marriage of Full</u>, 255 N.W.2d 153, 156 (Iowa 1977). We give weight to the findings of the trial court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Stock Division. Upon our de novo review of the trial court's property distribution, we cannot say that the trial court erred in its consideration of the relevant factors or in concluding that Gloria should be awarded one-half of the Life Investors stock. In accordance with Iowa Code § 598.21, the court is to divide all property, except inherited property or gifts—which the Life Investors stock clearly is not—after considering several factors. Our application of those factors to the instant case leads us to the same result that the trial court reached. Gloria and Larry each brought property to the marriage, of approximately equal value (598.21(1)(b)); Gloria contributed to the marriage in terms of homemaking and child care (598.21(1)(c)); and Gloria kept Larry's business books, took care of his correspondence, and even got her insurance license the first year they were married, thus contributing to Larry's business and earning power (598.21(1)(e)).

Larry argues that the option on the stock in dispute was not exercised until after the parties had separated and Larry had filed the petition for dissolution. Consequently, Larry claims, the options were never "part of [the] marriage" and the award of one-half the stock to Gloria is inequitable. A similar argument was presented by the appellant in Locke v. Locke, 246 N.W.2d 246 (Iowa 1976), to which the Iowa Supreme Court responded:

> [R]espondent's position would require a judicial determination of the exact date of the marital breakdown, an impossible task in most, if not all, dissolution cases. It would appear the date of trial is the only reasonable time at which an assessment of the partes' net worth should be undertaken.

246 N.W.2d at 252. We conclude that the stock was joint property of both of the parties and subject to distribution at the time of trial.

In support of his argument that the trial court's division of the stock was inequitable, Larry also contends that the tax consequences of the division will be extremely adverse to him, and that the stock was originally intended to be used for his children's education. While these contentions, if true, could be properly considered under Iowa Code § 598.21(j) and (m), we do not find sufficient support in the record for either contention to suggest that we should reach a different conclusion than that indicated by our consideration of the other factors involved in this case.

II. Cross-Appeal Argument. The brief submitted on appeal by Gloria's counsel contains a "cross-appeal argument" in which Gloria asserts that she should have been awarded half the value of the $10,000 representing funds formerly held in an Ankeny State Bank certificate of deposit. However, no notice of this cross-appeal was ever filed, as required by Iowa Rule of Appellate Procedure 6(a)(applied to cross-appeals in In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980)). While Larry's reply brief on appeal recognizes Gloria's cross-appeal, consent or waiver is not sufficient to confer jurisdiction on this court. Johnson Machine Works, Inc. v. Parkins, 171 N.W.2d 139, 143 (Iowa 1969). This court is therefore without jurisdiction to address the cross-appeal argument.

III. Attorneys Fees. Gloria's request for attorneys fees on appeal was ordered submitted with the appeal. In light of the present relative earnings capacities of the parties, we think that Gloria is entitled to assistance in this respect. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Without attempting to fix the total value of the services of Gloria's counsel, we hereby order Larry to pay Gloria the sum of $1,000 toward her attorneys fees in connection with this appeal.

AFFIRMED.