IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KRISTIN H. FISHER
AND CHARLES TERRY FISHER

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Upon the Petition of)

KRISTIN H. FISHER,)

Petitioner-Appellant,)

And Concerning) 8-442 / 88-231

CHARLES TERRY FISHER,)

Respondent-Appellee.)

Appeal from the Iowa District Court for Dubuque County (D.M. No. 5801), Robert E. Mahan, Judge.

Petitioner appeals from certain provisions of the decree of dissolution entered by the district court in this case. **AFFIRMED AS MODIFIED.**

Chad C. Leitch of O'Connor and Thomas, P.C., Dubuque, for petitioner-appellant.

Michael J. Coyle of Fuerste, Carew, Coyle, Jergens & Sudmeier, P.C., Dubuque, for respondent-appellee.

Considered by Oxberger, C.J., and Schlegel, and Hayden, JJ.

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Kristin Fisher appeals from certain provisions of the decree of dissolution entered by the district court in this case. Kristin claims that the district court erred in: 1) making a property distribution which was inequitable to her; and 2) denying her alimony. Kristin asks for attorney fees for this appeal. We affirm as modified.

Kristin H. and Charles Terry Fisher were married in 1958. They had three children, all of whom are now adults. Kristin was 50 years old at the time of trial. She has some college education. She was a homemaker during the marriage. Charles was 55 years old at the time of trial. He is presently employed as a production manager at Putnam Publishing Company in Chicago, Illinois. During the marriage Kristin's parents gave the parties many monetary gifts in order to keep their marriage and financial situation stable. During the dissolution proceedings Kristin's father died and left her a trust fund.

The district court determined that each party should receive one-half of the proceeds of the sale of the house and one-half of the present value of the automobile. The court did not award Kristin any alimony. Kristin appeals from certain aspects of the decree dissolving the parties' marriage, challenging the property division and denial of alimony. She also requests attorney fees on appeal. Our review of dissolution proceedings is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially where the credibility of witnesses is involved; but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. PROPERTY DIVISION

Kristin argues that the house and the automobile should not be considered marital assets because they were purchased with money which was a gift from her parents. She further claims that the other marital property was not divided equitably.

The parties purchased their home in 1960 for $20,000. A down payment of $6,000 was made leaving a mortgage balance of $14,000. One thousand dollars of the down payment came as a gift from Kristin's grandparents, and the remaining $5,000 of the down payment came as a gift from Kristin's parents. An additional $5,000 was paid on the mortgage balance on January 25, 1972, as a birthday present to Kristin from her parents. A total of $11,000 of the money paid toward the parties residence came from either Kristin's grandparents or her parents. It is clear that the entire family was actively involved in maintenance of the home.

The parties' first car was a used Volkswagen. It was paid off in 1959 by using $1,625 which was a portion of a gift from Kristin's grandparents. In 1963 the parties purchased a second car with the trade-in of their old car plus $3,000 which they received from shares of stock which were given as a gift from Kristin's grandparents. In 1973 the parties purchased their third car through trade-in and an additional gift of $2,000 from Kristin's parents. In 1983, the parties purchased their fourth automobile. This case was purchased through trade-in and an additional $4,500 give from Kristin's parents.

Iowa Code section 598.21 specified the criteria to be utilized when dividing property in a dissolution action. Section 598.21(1) provides that the court should "divide all property except inherited property or gifts received by one person." Iowa Code § 598.21(1) (1987). We must decide whether the gifts were given the Kristin only or to both Kristin and Terry. See In re Marriage of Vrban, 359 N.W.2d 420, 427 (Iowa 1984). If we find that the gifts were given to both Kristin and Terry, they are considered marital assets and divided subject to section 598.21(1). If we find that the gifts were given to Kristin only, we will apply section 598.21(2).[1]

The record reveals that the sums of money were intended as gifts to both Terry and Kristin. Kristin's mother testified at trial that the funds were given "to make their life a little more pleasant, a little easier." She further testified generally that the gifts were given to the family

1. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

to promote stability in the marriage and to ease the financial situation of the Fishers. There is no evidence on the part of the donors that either the house or car were intended for the sole use of Kristin. However, we do agree with the trial court's finding that the $5,000 birthday gift from Kristin's parents to her for use toward the mortgage was a gift made to her exclusively. As we find the funds given by Kristin's parents for the down payment on the house and part of the down payment on the car were given to both Terry and Kristin, the property is considered marital property and should be divided according to section 598.21(2).

Second, Kristin asserts that the property division as ordered by the trial court is inequitable. The proceeds from both the car and the house were ordered divided equally between the parties. Each party was awarded the life insurance within his or her control. Terry was awarded the moped. Each party was awarded accounts and stock in their name. Terry was awarded the parties' 1986 federal tax refund in the amount of $1,146. Kristin was awarded the parties' 1986 state tax refund in the amount of $87. The trial court awarded Terry his pension benefits from his employment with Georgia Pacific/St. Regis in the amount of $13,470.

It is well established that equality need not be achieved with mathematical exactness. <u>In re Marriage of</u>

Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The factors to consider in assisting the court in making an equitable division are enumerated in Iowa Code section 598.21(1) (1987). Pension benefits are marital property subject to division in the economic provisions of a dissolution decree. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982).

Terry was employed at Georgia Pacific Corporation/St. Regis Paper Company for 15 years. We modify the trial court's decree to provide an equal division of Terry's pension benefits from Georgia Pacific in the amount of $6,735 to each person upon disbursement. Upon our consideration of the factors enumerated in Iowa Code section 598.21(1), we find the property division as modified above to be equitable.

II. ALIMONY

Kristin asserts on appeal that the district court erred in failing to award her alimony. When determining the appropriateness of alimony, the court must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Additionally, we consider the value of inherited property and the income derived from such property in determining whether alimony is appropriate. Petition of Sturtz, 415 N.W.2d 173, 174 (Iowa App. 1987).

Kristin worked for the first four months of the parties' marriage. She has a little over a year of college education. For the majority of the marriage Kristin was a homemaker. She also did volunteer work.

Terry worked as a graphics manager for Georgia Pacific/St. Regis for 15 years. His income in calendar year 1984 was $33,398. His income in calendar year 1985 was $33,908. In 1986, his income was $24,486. However, he was laid off for part of the year. During the time when Terry worked for Georgia Pacific his check went to pay household expenses. During part of this time, he also worked a second job at Carlisle Graphics where he earned approximately $200 per month. Terry moved from Dubuque to Chicago where he is currently employed as a production manager at Putnam Publishing Company. He earns an annual gross salary of $42,000.

Kristin's father died in June of 1987 and left Kristin a trust of a net value of $236,689. The net annual income to Kristin from the trust is $10,063. Upon our de novo review of the record in conjunction with the factors enumerated in section 598.21(3) we decline to award alimony to Kristin.

Respondent's motion to strike portions of the petitioner's brief which are not a proper part of the record on appeal pursuant to Iowa Rule of Appellate Procedure 10(a) is combined with this appeal. Petitioner sought to include information which would change the value of the trust which was established at trial. Respondent's motion to strike is sustained.

Each party will pay his or her own costs and attorney fees.

AFFIRMED AS MODIFIED.