

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 28 1985

CLERK SUPREME COURT

IN RE MARRIAGE OF CAROL JEAN GEVOCK AND GEORGE VINCE GEVOCK

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Upon the Petition of)

CAROL JEAN GEVOCK,)

Petitioner-Appellee,)

Filed May 28, 1985

And Concerning)

GEORGE VINCE GEVOCK,)

5-131
84-736

Respondent-Appellant.)

Appeal from the Iowa District Court for Washington County - James P.
Rielly, Judge.

Respondent appeals the decree entered in this dissolution action.
AFFIRMED AS MODIFIED.

D. Bradley Kiesey, Washington, Iowa, for respondent-appellant.

L. G. Klein, Coralville, Iowa, and Mary K. Hoefer, Iowa City, Iowa, for
petitioner-appellee.

Considered by Snell, P.J., Schlegel, and Sackett, JJ., but decided en banc.

Respondent appeals the decree entered in this dissolution action. He contends the trial court erred in failing to set off to him the portion of his inheritance that remained after its use for payment of bills and living expenses, and in failing to require petitioner to repay to him the amounts of the inheritance taken by petitioner for her own use. He also claims that unless part of his inheritance is returned to him the award of child support should be cancelled because he is unable to pay such support. We affirm as modified.

I. Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially in considering the credibility of witnesses, but we are not bound by those findings. Iowa R. App. P. 14(f)(7).

II. The court is required to divide the property of the parties to the marriage in an equitable manner, using the criteria set out in Iowa Code section 598.21(1) (1983). Section 598.21(2) deals with the treatment of inherited or gifted property, and states:

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. [Emphasis added.]

III. In 1979 or 1980, respondent, George Gevock, inherited about \$45,000 from his mother's estate. These funds were used in part for the payment of debts of the parties, for some living expenses, and apparently some loans to certain of the parties' five children. The sum of \$25,000 was used to purchase a certificate of deposit issued to George and Carol Gevock jointly. Shortly before the separation of the parties, Carol redeemed the certificate of deposit. According to the record, she used \$6,000 of the funds for the weddings of three of the parties' children, \$11,000 of the funds to pay her father for past work he had done on the parties' home, and most of the remainder of the funds for living expenses and a

new car. The remaining funds from the certificate constituted about \$2,000 and were placed in a savings account. There is no adequate record to demonstrate what occurred with the balance that is unaccounted for. In any event, George states that \$2,000 remained in the savings account at the time of the separation of the parties. George seeks the return of the \$25,000, or the balance of that amount remaining after the payment of living expenses for which part of it was used.

The trial court, in its findings, made no reference to the inheritance, or the funds remaining after the payment of debts and living expenses. George sought, through a motion to expand findings of fact, to have the court consider the inherited money and the \$25,000 disposed of by Carol. The court found that all but \$2,000 had been spent prior to the filing of the petition in this cause, and that the \$2,000 had been considered a marital asset. The court's decree divided that savings account between the parties.

Upon the record before us, we are unable to find that the expenditures by Carol for living expenses, for the weddings of the parties' children, or for the purchase of an automobile were improper. She received the benefit of the funds expended for the new automobile, since it was set off to her.

We believe that the payment of \$11,000 to Carol's father for work and materials he furnished on the homestead of the parties was improper. There had never been any agreement for the payment of any such sums, and in fact, it is more likely that such labor was a gift by Carol's father to the parties. At the time of trial, Carol was living with her parents.

We believe that the \$11,000 paid to Carol's father should be considered a marital asset, and that it should have been divided. This results in a division of funds that originated as an inheritance by George. However, this is a case where it would clearly be inequitable to fail to make a division of inherited property. For these reasons, we believe that the \$11,000 should be divided between the

parties, and that Carol should pay over to George, the sum of \$7,500, as his equitable share of said funds. To insure payment of the sum, George shall have judgment against Carol for \$7,500.

IV. George was directed to pay Carol child support of \$25 per week for the one minor child in Carol's custody. George contends that unless part of his inheritance is restored to him, he will be unable to pay the child support, and that the award should be set aside.

The trial court found that George's capabilities indicated he should be able to obtain a job and pay support for the benefit of the minor child, Michelle. We agree. The child support set by the court is nominal, and George should be able, as shown by this record, to obtain appropriate employment that enables him to meet the very minimal child support obligation. We affirm the trial court's child support order.

We modify the court's decree as to the property division provisions set out above, and affirm the award of child support.

AFFIRMED AS MODIFIED.