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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARJORIE E. PERRIN AND CHARLES D. PERRIN

Upon the Petition of)
MARJORIE E. PERRIN,)
Petitioner-Appellee,)
And Concerning)
CHARLES D. PERRIN,)
Respondent-Appellant.)

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Filed September 24, 1985

5-434
85-58

Appeal from the Iowa District Court for Cass County - Leo Connolly, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage, asserting that the value of property he inherited during the marriage should not have been included in the property division. Petitioner wife cross-appeals requesting attorney fees. **AFFIRMED.**

Robert D. Nelson of Rasmussen & Nelson, Exira, for respondent-appellant.

Terrance G. Rutherford and Charles J. Stolz of Howard & Rutherford, Atlantic, for petitioner-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

SNELL, J.

Petitioner Marjorie Perrin and respondent Charles Perrin were married in 1969. It was the second marriage for both. Marjorie brought to the marriage some household goods and a car. Charles farmed with his father when the parties were married and he brought to the marriage livestock, farm products, and farm equipment. The parties established a real estate business which Marjorie managed. Marjorie also conducted a glass distribution business, a cosmetics business, and a uniforms shop during the marriage. Charles's father died in 1971, and Charles inherited a two-thirds interest in 400 acres of farmland with livestock and farm equipment. A 320-acre tract of this farmland was sold on contract in 1972. The parties retained an 80-acre farm but Charles retired from farming in 1972 and joined Marjorie in the real estate business. No children were born to the parties.

The trial court determined that it would be inequitable to refuse to consider the value of Charles's inherited property in the property division calculation because Charles extensively wasted the parties' assets in the commodity trading market.

Charles has appealed. He contends the property division is inequitable due to the fact that the court refused to set aside his inheritance before the court determined the amount of marital property subject to division.

Our standard of review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7).

Inherited Property. In a dissolution proceeding, the court is required to divide the property of the parties in an equitable manner employing the criteria set out in Iowa Code section 598.21(1) (1985). Section 598.21(2) deals with the

treatment of inherited property and provides:

> 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)

The Iowa Supreme Court recognized in In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982), that a variety of factors may bear on whether inherited property should be divided under section 598.21(2). "Any matter which would render it plainly unfair to a spouse . . . to have the property set aside for the exclusive enjoyment of the . . . devisee" is one of those factors and the most pertinent for purposes of this appeal.

The trial court ultimately set aside to Charles the property he had inherited from his father—the eighty-acre farm and the vendor's interest in the contract for the sale of 320 acres of farmland. The combined net value of these properties at the time of trial was $124,700. What Charles protests is that the trial court also considered the value of this inherited property in determining the total marital assets subject to division. This resulted in a determination that the net assets of the parties totaled $347,884. Of this amount, Marjorie received $144,652, reduced by liabilities of $3,003, for a net property award of $141,649. Charles received $203,232, reduced by liabilities of $59,332, for a net award of $143,900. In addition, Charles was awarded a $115,000 capital loss carryover which the parties had as a result of Charles's losses in the commodity trading market.

The trial court justified inclusion of the value of Charles's inherited property in the property division by stating:

> In the instant situation before the Court, the Respondent herein, Charles D. Perrin, engaged in highly speculative commodity trading all during the time of the marriage between the parties, and as a result thereof, he sustained

> losses in excess of $336,000.00. This speculative commodity trading was engaged in by the Respondent without the acquiescence or participation by Petitioner. To allow him to escape all responsibility for his actions in wasting assets and to have the Court set off to him property inherited by him would be inequitable.
>
> The Court has no doubt that the value of all property owned by the Respondent at the time of this marriage and inherited by the Respondent during this marriage would be less than the amount wasted by him on the commodity market and, therefore, the Court should at the very least treat the parties herein equally with respect to the division of the assets owned by them at this time.
>
> In connection with commodity trading by the Respondent, it was also testified to by Petitioner and undenied by the Respondent that the Petitioner herein was injured in an automobile accident in 1979. As a result of that automobile accident the Petitioner suffered a neck injury for which she was paid $50,000.00 in compensatory damages. From that $50,000.00 sum, $35,000.00 was taken by the Respondent in order to pay on losses suffered in his commodity trading. It is the finding of this Court that this $35,000.00 should be taken into consideration by the Court in the property settlement.

There is no evidence in the record which controverts these findings. Given the significant management contributions Marjorie made to the parties' businesses, and, therefore, to the parties' accumulation of marital assets, coupled with the fact that Charles squandered the parties' assets over the course of their fifteen-year marriage, the value of his inherited property is appropriately included in the marital estate. To hold otherwise would render the property division plainly unfair to Marjorie.

We conclude that the property division ordered by the trial court is equitable.

Attorney Fees. In evaluating a request for attorney fees on appeal, the appellate court must consider the needs of the party making the request and the ability of the other party to pay. In re Marriage of Castle, 312 N.W.2d

147, 150 (Iowa Ct. App. 1981). We order Charles to pay $500 of the attorney fees incurred by Marjorie on appeal.

AFFIRMED.