

FILED

MAY 30 1980

CLERK SUPREME COURT

129

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JAMES C. SPIES & LORETTA JANAN SPIES

Upon the Petition of)

JAMES C. SPIES,)

Petitioner-Appellee,)

Filed May 30, 1980

And Concerning)

LORETTA JANAN SPIES,)

Respondent-Appellant.)

0-84
2-63344

Appeal from Palo Alto District Court - James H. Andreasen, Judge.

Respondent-wife appeals economic provisions of dissolution decree. - Affirmed.

John J. Greer & Richard J. Barry, of Greer, Nelson, Bertell, Montgomery & Barry,
Spencer, for appellant.

Leo E. Fitzgibbons, of Fitzgibbons Brothers, Estherville, for appellee.

Submitted to Oxberger, C.J., and Denielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-wife, Loretta Spies, appeals the economic provisions of the decree dissolving the marriage between herself and petitioner-husband, James Spies. Loretta contends the property division and alimony award were inequitable. She also contends that the trial court should have made specific provisions for increases in the property division and the alimony award upon the vesting of James' contingent interest in certain trust property. We affirm.

James and Loretta were married July 2, 1960. Both came from families of above-average income. James and Loretta had three children, the custody of whom was awarded to Loretta, and is not an issue on this appeal. The trial court found the net worth of the parties to be approximately \$750,000 after deductions of liabilities in the approximate amount of \$180,000. The trial court estimated that approximately \$500,000 of the total net worth was attributable to gifts and inheritances received during the marriage, primarily from James' family. Loretta valued her share of the property division, including the marital home, at \$204,505.10. Also included in that valuation was a cash award of \$50,000. James was awarded the remaining assets but was also required to pay all of the parties' existing debts. Loretta was awarded \$1500 alimony per month, and \$300 per month per child, for a total annual income of \$22,800. Loretta was also awarded \$4000 for her attorney fees incurred at trial. James was employed as a farm manager, and his adjusted gross income for 1977 was \$64,726, and his after-tax income was \$46,621. Loretta remained at home throughout the marriage to care for the home and the children. The trial court considered James' contingent interest in certain trust property and determined that the vesting of that interest would constitute a change of circumstances that could justify a future modification of the economic provisions of the decree.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing the property and alimony provisions of a dissolution decree, we consider the factors enunciated in Schantz v. Schantz, 163 N.W.2d 398, 435 (Iowa 1968), except fault. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

In determining the propriety of the property division of a dissolution decree, we are not guided by statutorily sanctioned percentages; we must determine what is an equitable and just award under the circumstances. In re Locke, 246 N.W.2d 246, 251 (Iowa 1976). Under the circumstances here, and in light of the Schantz criteria, we conclude that the trial court's property division was equitable and just. In reaching that conclusion, we have considered all the economic provisions of the decree, including the property division, the alimony award, the child support award, and the award of attorney fees. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). We also note that much of the marital property was acquired through gifts and inheritances from James' family, rather than through the joint efforts of the parties. We think the trial court properly considered the net worth of the parties in that light. See In re Marriage of Conley, 284 N.W.2d 220, 222 (Iowa 1979); Locke, 246 N.W.2d at 252-53. We have also considered the decree's requirement that James pay the approximately \$180,000 worth of debts incurred by the parties. In light of these circumstances, including the generous award of alimony and child support to Loretta, we cannot conclude that the property division awarded by the trial court was unjust or inequitable.

Loretta also contends that the alimony award of \$1500 per month is inadequate. Our review of the record and all the economic provisions of the trial court's decree in light of the Schantz factors leads us to the conclusion that Loretta's contention of the insufficiency of her alimony award is without merit.

Loretta argues that the trial court should have made specific provisions for increases in the property division and the alimony award upon the vesting of James' contingent interest in certain trusts. The trial court concluded that including such specific provisions in the decree would be inappropriate since James' interest was only contingent at the time of trial. The trial court did provide, however, that the vesting of James' interest could constitute a change of circumstances that would justify modification of the decree's economic provisions. James asserts the trial court's resolution was proper. James' remainder interest in the trust property was subject to the condition of his surviving his father. James' father, Adolph, was alive at the time of trial. James' remainder interest, subject to the conditions of surviving his father, is considered a contingent interest in Iowa. See Huse v. Noffke, 271 N.W.2d 682, 684 (Iowa

1978); Buchan v. Buchan, 254 Iowa 566, 569-70, 118 N.W.2d 611, 613-14 (1962). Although a potential inheritance may be a factor to be considered in the determination of the economic provisions of a dissolution decree, In re Marriage of Kunzman, 239 N.W.2d 582, 582 (Iowa 1976); In re Marriage of Beeh, 214 N.W.2d 170, 172 (Iowa 1974), we can only determine the value of marital property at the time of trial. Locke, 246 N.W.2d at 252. Under the circumstances presented here, we decline to disturb that portion of the trial court's decree.

Loretta has applied for attorney fees incurred by this appeal. In evaluating a request for attorney fees incurred on appeal we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Applying those factors to the case at bar, we conclude that both parties should pay their own attorney fees on appeal. Costs are taxed to Loretta.

AFFIRMED.