

IN THE COURT OF APPEALS OF IOWA

No. 1-301 / 90-1445

FILED

OCT 29 1991

CLERK SUPREME COURT

IN RE THE MARRIAGE OF LYNN M. WHITE AND DALE B. WHITE

Upon the Petition of

LYNN M. WHITE,

Petitioner-Appellee,

And Concerning

DALE B. WHITE,

Respondent-Appellant.

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Appeal from the Iowa District Court for Lucas County,
Peter A. Keller, Judge.

Respondent appeals from the economic provisions of a
dissolution decree. **AFFIRMED AS MODIFIED.**

James Vernon Hicks of Johnston, Hicks, Guter &
Griffith, Knoxville, for appellant.

William L. Shelton, Chariton, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

SACKETT, J.

Respondent-appellant Dale B. White challenges the economic provisions of his dissolution decree. He also contends the trial court did not properly apply the child support guidelines. We affirm as modified.

Dale and petitioner-appellee Lynn M. White were married in September 1975. It was the first marriage for Dale and the second for Lynn. Dale was born in 1928, and Lynn was born in 1951. Lynn's first husband had died leaving her with the care of their two children born in 1973 and 1974. Lynn had few assets at the time of marriage. However, she was receiving social security for herself and the two children. She lost her social security upon remarriage. Her children continued to receive social security. Dale and Lynn had one child, Jennifer, born in September 1977.

Dale has been the primary wage earner during the marriage. At the time of marriage, Dale had a job with the Veterans Administration and farmed. He had a vested pension of about \$10,000. Dale had worked for the Veterans Administration Medical Center for twenty-five years before May 1990, when he retired due to a disability. He took optional retirement and now receives \$798 per month. Lynn assumed the majority of the responsibilities for the home and family. She worked outside the home less than three years. Just prior to the dissolution, she had received a nursing degree from the area college and was qualified as a

registered nurse. She is currently employed at the Veterans Administration Medical Center in Knoxville, Iowa as a staff nurse earning \$24,750 annually.

The social security that was paid to Lynn for the children's care was not directed to paying the expenses for their food, clothing, and other needs. These expenses came out of the family income that came almost entirely from Dale's wages. The social security money was placed in a savings account. After their marriage, the family invested in farm land. Some of this real estate has appreciated in value since purchase, and other has depreciated.

The trial court valued the parties' assets at about \$228,000, and allocated the property so that Dale received about \$104,000 in value, Lynn received about \$46,500 in value, and the three children received about \$77,500 in value.

In addition, Dale was ordered to pay \$439 per month in child support, and one-half of the posthigh school educational expenses of his child.

Dale has challenged the property division, claiming it did not give him ample credit for the property he brought into the marriage, and failed to credit him with the substantial support he provided for Lynn's two children.

The question is, was the division made by the trial court equitable and in accordance with the legislative dictates on property division. See Iowa Code §

598.21(1)(2); see also In re Marriage of Urban, 359 N.W.2d 420, 427 (Iowa 1984); In re Marriage of Dahl, 418 N.W.2d 358, 361 (Iowa App. 1987).

The trial court found at the time of the marriage Dale had (1) bank accounts of nearly \$60,000, (2) \$2,000 in real estate, and (3) about \$4,000 in other property. Dale also inherited money and an undivided interest in real estate from his father, the total value of which was about \$10,000. In assessing the equitability of the property division we look to assets brought into the marriage and inherited property. See Dahl, 418 N.W.2d at 360.

The trial court divided the property by giving Dale nearly all the real estate and also the debt. Lynn was awarded a home she had purchased with the parties' assets after separation. The court reasoned the nearly \$78,000 in assets should be awarded to the children because this represented social security benefits from the older children that had been saved. Sixty thousand dollars of the amount was in a bank account that the trial court ordered Lynn to hold in trust for the three children, to be used only for their education and support, and to divide any balance equally among all three when the youngest reached twenty-two. The balance of the property awarded to the three children was by way of a remainder interest in real estate in which Dale was awarded a life estate.

The rationale for the trial court's decision to make the substantial award to the children was the fact that these investments came from funds accumulated by saving their social security checks. Dale argues these savings were only possible because his wages were used to support this family. There is merit to his argument. His income, and the assets he had at the time of marriage, went to the family expenses. His increase in net worth during the marriage was not substantial. He is entering retirement with a modest net worth. We modify the decree to eliminate the remainder interest of the children in real estate described as:

The SE 1/4 of the NW 1/4, except the 2-1/2 acre homestead, and the NW 1/4 of the SE 1/4; all in Section 16, Township 72 North, Range 20 West of the 5th P.M. in Lucas County, Iowa, subject to easements of record; and the NE 1/4 of the NW 1/4 of Section 16, Township 72 North, Range 20 West of the 5th P.M. in Lucas County, Iowa, subject to easements and reservations of record and subject to the rights of the public in all highways.

We also modify the decree to provide that \$10,000 of the money set aside for the children shall be paid to Dale. Lynn has accepted the trust arrangement and has control over it. Therefore, the issue of whether this was equitable to her is not before us. In all other respects we affirm the trial court's division.

Dale was ordered to pay child support of \$439 per month for his child until she graduated from high school, married

or died. Dale contends the trial court should have applied the child support guidelines to his retirement pay rather than to his pay before retirement. On May 3, 1990, the Veterans Administration had notified Dale they were unable to accommodate him within Rehabilitation Medicine Service on a light duty or restricted duty status, and he had until May 31, 1990, to either (a) apply for disability retirement, (b) apply for optional retirement, or (c) resign, and if he did not select one of these options they would initiate employment removal process based on his inability to perform.

We consider his retirement income plus a reasonable return from his investments in computing his child support obligation. Child support is generally not reduced because of a self-inflicted or voluntary reduction in income. See In re Marriage of Vetterneck, 334 N.W.2d 761, 762-63 (Iowa 1983). We do not consider Dale's retirement at age sixty-one under the circumstances here a voluntary reduction in income. His employer was unable to accommodate his limitations and gave him an option of accepting retirement or having them commence proceedings to terminate his employment. See In re Marriage of Fidone, 462 N.W.2d 710, 712 (Iowa App. 1990). We recognize Dale may qualify for some social security benefits when he reaches sixty-two, which in turn would also qualify his daughter Jennifer for benefits. If that happens, any

social security benefits Jennifer receives should be in addition to the child support ordered here. We apply the child support guidelines and consider Dale's net monthly income under the guidelines to be his pension amount plus \$300 per month as income from his investments. We modify the child support to \$337.50 per month.

In addition to the child support, Dale was ordered to pay one-half of the posthigh school education expenses for this child, including but not limited to room, board, tuition, clothing, and transportation. The payments are to cease when she completed posthigh school education or attained the age of twenty-two years. Dale contends this is excessive. We affirm the provision for Dale's posthigh school contribution, except we limit the tuition amount to that of a public university in the state of the child's residence. When parents are of limited financial means, there is no need to obligate them for college expenses beyond those of attending a state supported institution in the state of the student's residence. See In re Marriage of Linberg, 462 N.W.2d 698, 702 (Iowa App. 1990); In re Marriage of Lieberman, 426 N.W.2d 683, 686 (Iowa App. (1988)).

Each party shall pay his or her own attorney fees and one-half the costs on appeal.

AFFIRMED AS MODIFIED.