FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF ROY W. MESSERSCHMIDT
AND BETTY J. MESSERSCHMIDT

209

Upon the Petition of)

ROY W MESSERSCHMIDT,)

Petitioner-Appellant,)

Filed November 30, 1987

And Concerning)

7-509
87-440

BETTY J. MESSERSCHMIDT,)

Respondent-Appellee.)

Appeal from the Iowa District Court for Dallas County (2475), Gene L. Needles, Judge.

Appeal from the economic provisions of the dissolution of marriage decree.

AFFIRMED AS MODIFIED.

Lorna A. Gilbert of Davis, Hockenberg, Wine, Brown, Koehn & Shors, Des Moines, for petitioner-appellant.

Gary R. Hassel and Roger J. Kuhle, Des Moines, for respondent-appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J. 210

Petitioner Roy appeals from the decree dissolving the parties' marriage. He claims the trial court should have set off to him the property he received as gifts or inheritances during the marriage, Betty's alimony award is excessive, and the trial court should not have awarded Betty any attorney fees. Betty requests attorney fees on appeal. We affirm and modify the trial court.

Roy, age 60, and Betty, age 61, were married in 1947. They have raised three children who are all now adults. Roy's health is good, Betty is in poor health. During the first three years of marriage Betty worked, but since then has devoted herself to caring for the home and family. Roy completed his college degree at Drake University and has worked for his father's bank. Until the last few years his father required Roy to work for a reduced salary. At time of trial Roy was president of the bank and earned $75,000 annually.

During the marriage, Roy received as gifts from his father a farm, stock, and cash. Betty also received cash gifts from Roy's father. Roy's father died while this action was pending. Roy will receive a substantial inheritance from his father's estate.

The trial court awarded Betty $2,000 toward her attorney fees and $1,700 per month alimony until she cohabited with another person or Roy retired or either party died. The trial court also awarded Betty half of Roy's pension when he retires. The trial court concluded Betty should receive one-third of the property Roy received as gifts or inheritances during the marriage plus one-half of the parties' marital property. It therefore awarded Betty the parties' condominium, the furniture in her possession, a car, $33,000 in certificates of deposit, and a property settlement of $217,633.50. The trial court awarded

Roy the gift farm, the furniture in his possession, a car, the remaining certificates of deposit, a bank account, an IRA, some stock, and his interest in his father's estate

Section 598.21(2), Code of Iowa (1985) 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.)

Section 598.21(3), Code of Iowa (1985) states:

Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

a The length of the marriage.

b The age and physical and emotional health of the parties.

c The distribution of property made pursuant to subsection 1.

d The educational level of each party at the time of marriage and at the time the action is commenced.

e The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

f The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

g The tax consequences to each party.

h Any mutual agreement made by the parties concerning financial or serve contributions by one party with the expectation of future reciprocation or compensation by the other party.

i The provisions of an antenuptial agreement.

j Other factors the court may determine to be relevant in an individual case.

Our review is de novo Iowa R. App. P. 4.

We delete from the decree the provision that awards Betty half of Roy's pension when he retires We modify the alimony award to Betty as follows: Betty is awarded $1,700 per month alimony until Roy retires, then it shall be adjusted upward or downward to the amount of one-half of Roy's pension at retirement The alimony shall terminate upon Betty's remarriage, or upon cohabitation with another person, or upon the death of either Betty or Roy.

We affirm the amount of attorney fees awarded to Betty at trial and direct Roy to pay Betty $1,000 to apply upon her appellate attorney fees. Cost of appeal are taxed to Roy

AFFIRMED AS MODIFIED

Schlegel, P J , concurs, Sackett, J., dissents.

I dissent

I would affirm the trial court