FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BONNIE L. KUHRTS and LOREN J. KUHRTS,

UPON THE PETITION OF BONNIE L. KUHRTS,

Petitioner-Appellee,

AND CONCERNING LOREN J. KUHRTS,

Respondent-Appellant.

Filed August 29, 1985

5-310
84-1752

Appeal from the Iowa District Court for Cherokee County, J. H. Andreasen, Judge.

Respondent-husband appeals from the decree dissolving the parties' marriage, challenging the property and alimony awards. **AFFIRMED AS MODIFIED.**

James L. McDonald of McDonald, Sayre & Wittgraf, Cherokee, for respondent-appellant.

Wallace Miller, Jr., of Miller, Miller, Miller & Green, Cherokee, for petitioner-appellee.

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

This appeal concerns the property and alimony provisions of the parties' divorce decree. We affirm as modified.

The parties were married for thirty-seven years when the decree was entered. Their children are adults, petitioner-wife is fifty-seven years old, and respondent-husband sixty years old. The respondent, Loren Kuhrts, is in good health and has been employed as a farmer. He farms forty acres and an additional 240 acre area he rents from his mother. He also owns a cafe in partnership and has been engaged in construction work. He hopes to retire in two years. The petitioner, Bonnie Kuhrts, has a medical condition which requires her to purchase medication each month, needs dental work and may need future surgery. She has worked in the home, caring for the couple's household and their children. When the parties separated, Loren did not keep current with temporary support payments and Bonnie moved in with her mother. She obtained training as a nurse's aid, but found the job market in Cherokee difficult. Bonnie is currently employed as a part-time clerk at a K-Mart store and earns approximately $100 per month.

The average income for the parties over a five-year-period prior to trial is $8596.59. In 1983 income totaled $112. If Loren retires in two years, he will receive approximately $381 per month in social security benefits.

While the couple was married, they had what both parties describe as a good life-style. They entertained frequently, took vacations to Hawaii, Puerto Rico, and Canada, purchased a new car every other year, and remodeled their kitchen. As a result of their higher standard of living, they have a considerable number of debts and limited assets.

The parties stipulated to the value of most of their assets. In addition to the farm owned by Loren and the equipment on it, Loren has a remainder

227

interest in eighty acres of farm land, subject to a life estate in his mother. This land is particularly valuable since it is unencumbered. Its present value is $102,395. His mother is eighty-five years old and the court noted the estimated life span of an eighty-five-year-old woman is 5.18 years. Loren also received a partial interest in a money market account from his mother of $4000.

The court gave Bonnie her bank accounts, a 1973 Ford LTD, one of their life insurance policies, and the parties' interest in a growth fund. Bonnie was ordered to pay debts of $1881.75. Loren was awarded the personal property in his possession, the remaining life insurance policies, their forty acres they owned, and his bank accounts. The court determined it should consider the inheritance expectancy Loren would receive along with the gift from his mother. It awarded Bonnie a $40,000 lien on the inheritance property, to be paid within six months after Loren's mother died. It further awarded Bonnie $400 per month in alimony, to decrease by the amount of any social security she would receive in the future, and to end if she remarried or died. Loren takes exception to inclusion of his inheritance expectancy in determining the property settlement, and in the award of alimony.

The property award set out by the court results in the following division of the couple's assets:

Bonnie		Loren	
Assets		**Assets**	
Accounts	$ 213	Accounts	$ 230
Ford	500	Personal Property	37,830
Life Insurance Policy (cash value)	3,672	Life Insurance Policy	6,562.60
Growth Fund	2,000	Forty Acres	50,000
	$6,385		$ 94,622.60
		Inherited Property	$102,395
		Money Market Gift	4,000
			$201,017.60
Debts	$1,881.75	**Debts**	$ 92,473.98

Net Worth	$4,503.25	**Net Worth**	**$ 2,148.62**
		With Inheritance and Gift	$108,543.62

When the property Loren is to receive later is included, along with the gift, it is evident that there is inequity in the division of assets, considering the length of the couple's marriage, contributions made by Bonnie, and other factors set out at section 598.21(1) of the Code. When the inheritance is not considered, Loren has received slightly less than Bonnie.

Section 598.21(2) of the Code provides for the exclusion of inherited property, unless the court finds that refusal to divide the property would be inequitable. Here, the court found equity required consideration of the property, and we agree. The evidence shows that the couple increased their standard of living when they found out Loren would receive the property after his mother's life estate. As a result of these expectations, there are fewer assets to divide. We noted in In re Marriage of Wallace, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981), that with the passage of time, the benefits of inherited property naturally result in increased expectations of the other spouse. We said "if it would take half of (the property inherited by one partner) to maintain a reasonably close semblance of the style of life to which they have both become accustomed, then the court would be justified in ordering such an even division of available assets." Id. Here, Bonnie's life-style has been dramatically reduced. Her contributions to the 37-year marriage have been significant. We find the property award was just.

We also agree that an award of alimony is warranted. Loren says he is broke and cannot make payment of $400 per month. He further argues that Bonnie is in a position to support herself.

Bonnie faces medical bills on a salary of $100 per month. Her ability to find work as a nurse's aid in the community is speculative and she currently

is forced to reside with her mother to meet her expenses. We modify the alimony award to provide Bonnie $350 per month. This is one-half of Loren's average current income of $716 per month. However, we find that when the property settlement is paid, Bonnie will be in a better position to support herself. Accordingly, we modify the award so that it will end when the property settlement is paid to her in full. We retain that part of the court's award that if Bonnie should begin receiving social security retirement benefits, the monthly alimony award shall decrease by the amount she receives per month in benefits. We further modify the award to provide it also shall end if Bonnie remarries, cohabitates with an unrelated adult male, or either she or Loren dies. All other aspects of the court's award are affirmed.

AFFIRMED AS MODIFIED.

All judges concur except Hayden, J., who dissents.

HAYDEN, J. (dissenting in part)

I respectfully dissent from the majority's decision to include the inheritance expectancy Loren would receive along with the gift of $4,000 from his mother. The inheritance is a remainder interest in 80 acres of farm land. It has not vested in Loren.

I do not find that the facts of this case justify the inclusion of Loren's inheritance and the gift in the property division between the parties and I would modify the trial court's decree in this respect. Therefore, the majority's decision to modify the alimony award to end when the property settlement is paid to Bonnie in full would be moot.

I agree with the majority otherwise.