FILED
APR - 8 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CHERYL A. BITKER AND LOREN G. BITKER

UPON THE PETITION OF CHERYL A. BITKER,	)	Filed April 8, 1983
Petitioner-appellee,	)	
AND CONCERNING LOREN G. BITKER,	)	2-449 2-67988
Respondent-appellant.	)	

Appeal from Cerro Gordo DistrictCourt, John F. Stone, Judge

Respondent-husband appeals from economic provisions of the parties' dissolution decree, asserting that both the property division and the alimony award were inequitable. Petitioner-wife has requested attorney fees on appeal. AFFIRMED AND MODIFIED.

Richard P. Minette, Clear Lake, for respondent-appellant.

R. L. Stephenson of Beck, Pappajohn, Shriver & Stephenson, Mason City, for petitioner-appellee.

Considered en banc.

OXBERGER, C.J.

Respondent-husband appeals from economic provisions of the parties' dissolution decree, asserting that both the property division and the alimony award were inequitable. Petitioner-wife has requested attorney fees on appeal. We affirm as modified.

The parties were married in 1965 and were, respectively, 37 and 38 at the time the decree was entered. The wife, Cheryl, is a dental hygienist who has not worked while raising the parties' four children, now aged 11, 7, 3, and 1. The husband, Loren, is a real estate salesman with 1981 gross income of $17,844.21 from real estate sales. Both parties received inheritances during the marriage which were used for family expenses, with Cheryl's inheritance amounting to $5,000 more than that of Loren. Cheryl was awarded custody of the children and child support of $500 per month to be reduced proportionately as each child becomes emancipated, married, or self-supporting; Loren was also ordered to pay as child support 30 percent of his gross income in excess of $17,844.21 and alimony of $150 per month. Cheryl was awarded property valued at $55,524 including Loren's coin collection, valued by the trial court at $1,100. The total amount includes a lump sum of $9,670, which in part reflects a $5,000 credit for a portion of her inheritance. Loren was awarded property valued at $76,395 including silverware valued by the trial court at $6,000.

I. Scope of Review

Our review of dissolution proceedings is de novo. Iowa R. App. P. 4. We review the facts as well as the law, and, from the credible evidence, determine rights anew on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 88 (Iowa 1978). While we give weight to the trial court's findings of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Distribution of Property

Citing In re Marriage of Winegard, 278 N.W.2d 505 (Iowa 1979), Loren argues that he should be awarded a portion of the stock which Cheryl inherited—namely, a proportionate share of those shares which were derived from stock splits and stock dividends as well as dividend reinvestments during their marriage. He also cites this court's pronouncement that "[i]n general, gifts and inheritances should be permitted to remain with the intended recipient." In re Marriage of Wallace, 325 N.W.2d 827, 832 (Iowa App. 1981).

We fail to see how our precedents support Loren's contention that the additional shares Cheryl has accumulated through the natural growth of the stock she inherited should be divided between the two of them. This is not to say that there are not circumstances under which we would find it appropriate to divide property derived from gifts or inheritances between the parties to a marriage, as we did in Wallace. However, the circumstances of this case are very different from those in Wallace, and do not, in our judgment, lend themselves to the kind of solution advocated by Loren.

Loren disagrees with the trial court's judgment that he pay to Cheryl $9,670 as part of the property division. The court evidently imposed this obligation upon Loren in an attempt to achieve parity between the total awards made to Loren and to Cheryl. The court evaluated the property awarded to Loren at $76,395, while Cheryl was receiving property having a value of $55,524. Part of the $9,670 judgment was $5,000 of inheritance which Cheryl had contributed to the family. The remainder was designed to balance the value of the properties awarded to the parties. We do not find that this was inequitable, and we therefore affirm that part of the court's judgment.

Loren also asks this court to award him a coin collection and to award to Cheryl a set of silverware, reversing the trial court's award of these items of personal property. In his brief, Loren evaluates the coin collection at $1,100 and

the silverware at $6,000. Cheryl, however, placed the value of the silverware at $600, and in his financial statement, Loren initially valued the coin collection at $7,000, reducing it to $1,100 in his testimony with the explanation that portions of it had been sold and that a decline in the market price of silver had further reduced it.

In Wallace, we said:

> Any item that is reasonably likely to possess far greater sentimental value to one party than to the other, such as . . . the fruits of hobbies (such as stamps or coin collections. . .), should remain, as far as is reasonably possible, in the possesion of the party to whom the sentimental value is the greatest.

Id. at 832

From Loren's testimony, however, it would appear that the coin collection was intended primarily to be an investment vehicle rather than a hobby. From Cheryl's resistance to Loren's desire to exchange the silverware for the coins, it is obvious both that the silver has no particular sentimental value to her and that she continues to believe that it has significantly less monetary value than the coins. It also appears that the court's award of these items was designed to further its goal of achieving financial equity between the parties. Under the circumstances, we are reluctant to disturb the court's decision.

III. Alimony and Child Support

In awarding alimony, we apply the criteria of Iowa Code section 598.21 (3)(1981), and are guided by the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding fault; In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). In awarding alimony, we consider also how the propery has been divided. In re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974).

Taking these factors into account, as well as Loren's ability to pay, we conclude that the court's award of alimony in the amount of $150 per month is not unreasonable. However, as the children advance in age and become less dependent

upon their mother for full-time attention, it is reasonable to expect Cheryl to find regular gainful employment. We therefore modify the court's decree by ordering that Loren's obligation to pay alimony be terminated on the fourth anniversary of the decree.

The court ordered Loren to pay $500 per month child support. In addition, he was ordered to pay 30 percent of his gross income in excess of $17,844.21 as child support. We find that this latter provision is inequitable. In place of this provision, we substitute the following:

> Child support payments shall be automatically adjusted each year on the anniversary date of the trial court's decree to reflect any increase or decrease in the National Consumer Price Index as published by the United States Department of Commerce for the most recent twelve-month period for which data are available, provided that Loren's actual gross income for that period has increased by at least the same percentage. If Loren's gross income increases by a lesser percentage, then child support payments shall increase by this lesser percentage. However, this cost-of-living adjustment shall not be used to reduce Loren's support obligation below the amount established in the trial court's decree.

See In re Marriage of Stamp, 300 N.W.2d 275 (Iowa 1980).

IV. Attorneys Fees

Cheryl has requested that Loren be ordered to pay attorney fees in the amount of $1,000. Considering the parties' assets and ability to pay, we order Loren to contribute $600 toward Cheryl's attorneys fees.

V. Summary

The decree of the trial court is modified as follows: (1) Loren's obligation to pay alimony will terminate on the fourth anniversay of the decree; (2) the amount of child support payments will vary according to the Consumer Price Index as well as Loren's gross income. Loren is further ordered to contribute $600 toward Cheryl's attorneys fees. The trial court's decree is affirmed in all other respects.

AFFIRMED AS MODIFIED.