FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LAURA M. LOVELAND AND VERN B. LOVELAND

Upon the Petition of	)	
LAURA LOVELAND,	)	
Petitioner-Appellee,	)	Filed April 26, 1983
And Concerning	)	
VERN B. LOVELAND,	)	3-20 / 2-68742
Respondent-Appellant.	)	

Appeal from Butler District Court - Ralph F. McCartney, Judge.

Respondent husband appeals and petitioner wife cross-appeals from the economic provisions of the parties' dissolution decree. AFFIRMED.

Ivan J. Ackerman and David M. Engelbrecht of Engelbrecht, Ackerman & Hassman, Waverly, for respondent-appellant.

Gary J. Boveia, Waverly, for petitioner-cross-appellant.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

DONIELSON, J.

Respondent husband appeals and petitioner wife cross-appeals from the economic provisions of the parties' dissolution decree. On appeal respondent husband asserts: (1) that the wife should not have been awarded attorney fees for trial; (2) that a car purchased with proceeds from an inheritance he received should not have been awarded to the wife; (3) that the trial court should not have allowed as an offset against a certificate of deposit awarded to him an amount representing rent allocated to his children by a previous marriage for the time that they lived in the wife's home during the marriage; and (4) that the evidence was insufficient to support an offset in the amount of $3,000 for damage to the wife's carpet allegedly caused by the husband's children. Petitioner wife asserts that the offset based on damages to her home should have been higher and that she should be awarded attorney fees for this appeal. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give them weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner, Laura Loveland, and respondent, Vern Loveland, were married in 1977. Both parties had been married previously and three of Vern's children from his previous marriage lived with the parties in the home brought to the marriage of Laura. The children lived with the parties for a year during which they paid no rent and caused damages to the premises which the wife estimated at $21,000.

Laura is a secretary with a monthly gross income of approximately $1,290

while Vern is a factory worker with a monthly gross income of $1,580.68. Vern earns additional income from the operation of a motel.

Laura brought to the marriage assets with a value of approximately $67,500 including a 1972 Pontiac, while Vern brought to the marriage assets of approximately $70,000 from sale of a farm. From his separate assets the husband purchased, inter alia, a $12,000 certificate of deposit and a 1977 Chevrolet which was used by Laura during the marriage.

Among other provisions, the decree provided that Laura was to receive the 1977 Chevrolet and attorney fees of $400. Vern was awarded the $12,000 certificate of deposit subject to offsets of $3,600 for rent allocated to the husband's children during the time that they lived in the wife's home and $3,000 for damages caused by the children at that time. This appeal followed.

II.

Initially Vern contends that Laura should not have been awarded the 1977 Chevrolet because it was purchased with money Vern inherited. Our analysis of property division provisions is governed by § 598.21 which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968)(modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1976)). The ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). With regard to inherited property received by a party, section 598.21(2) provides that

> [p]roperty 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.

The cost of the 1977 Chevrolet was estimated to be $5,000 and was valued at $4,000 at the time of trial. The trial court found, and we agree, that Vern purchased the car as a gift for Laura. She drove the car throughout the marriage. We agree with Laura that it would be inappropriate to characterize the car as inherited property under these circumstances. The real property inherited was sold for cash which, in turn, was used by Vern to purchase the car for Laura. We agree that this was a purchase made within the marriage for Laura's benefit and, therefore, refuse to set it aside as inherited property.

III.

Both parties contend that the court erred in dividing the proceeds from the certificate of deposit. Laura had cashed a $12,000 certificate of deposit shortly before trial. The court awarded the value of the certificate to Vern but offset against the $12,000 value $3,600 for the rent and $3,000 for damages to Laura's home which resulted from Vern's children living in the house. Vern argues that the court erred in allowing the offset. Laura cross-appeals claiming that the full $12,000 amount of the certificate should have been awarded to compensate her for rent and damages caused by the children.

Based on our de novo review, we find that the trial court was correct in offsetting $6,600 total for rent and for damages caused to the house. There is sufficient evidence to support this offset amount. However, we do not believe the entire $12,000 certificate amount would be appropriate for the purpose of repair. Some of the damage to the house must be considered normal wear and tear caused by the parties and Vern's three children living there. The rent figure should take this into account. The additional damage, consisting primarily of cigarette burn

holes in the carpet and furniture and damaged woodwork, is sufficiently compensated by the $3,000 awarded. We thus affirm the trial court on this issue.

IV.

Finally, Vern argues that the court erred in awarding Laura her attorney fees. Laura seeks her attorney fees in connection with this appeal. Attorney's fees are not recoverable as a matter of right, but depend upon one party's financial needs and the other party's ability to pay. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). The trial court has considerable discretion in awarding such fees at trial. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). Likewise on appeal, our primary consideration in making an award of attorney's fees is the parties' resources. We believe the trial court considered the parties' financial needs and abilities in determining that Vern should pay Laura's attorney fees. The parties shall pay their own attorney's fees on appeal and shall each pay half the court costs.

Having considered all of the parties' contentions, we affirm the decree.

AFFIRMED.