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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JUDY KAY FRIEDRICH AND ROBERT KURT FRIEDRICH, JR.

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Upon the Petition of)

JUDY KAY FRIEDRICH,)

Petitioner-Appellee/ Cross-Appellant,) Filed November 30, 1987

And Concerning)

ROBERT KURT FRIEDRICH, JR.,) 7-475 / 86-1662

Respondent-Appellant/ Cross-Appellee.)

Appeal from the Iowa District Court for Story County (No. DM 4225), Carl D Baker, Judge.

Respondent husband appeals and petitioner wife cross-appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

David W Benson of Smith, Nutty, Sharp, Benson & Jahn, Ames, for appellant

B Joan White of Tysseling & White, Ames, for appellee.

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

PER CURIAM

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Respondent husband appeals and petitioner wife cross-appeals from the decree dissolving the parties' marriage. On appeal, respondent husband asserts (1) that the trial court's property division is inequitable because the trial court failed to set aside to each party the value of the assets he or she brought to the marriage, and (2) that the trial court should have allowed him to claim the parties' child as a dependent for income tax purposes. On cross-appeal, petitioner wife asserts (1) that the trial court's property division is inequitable because respondent husband received most of the parties' assets, (2) that her child support award is inadequate, and (3) that the trial court should have awarded her attorney fees. Petitioner wife also requests attorney fees on appeal. We affirm.

Petitioner, Judy Kay Friedrich, and respondent, Robert Kurt Friedrich, were married in 1980. Judy brought to the marriage cash and a houseful of furniture, and Robert brought bank accounts, insurance, a partnership in his family's construction business, vehicles, and equity in a townhouse. During the marriage, Robert inherited some farmland and substantial stock in the family construction business. The parties have one child, Richelle, born in 1982. Both parties worked outside the home during the marriage. Judy now works as a data processing manager; she earns $33,500.00 per year. Robert now works in the family construction business; he earns $26,700.00 per year.

In its findings of fact, conclusions of law, and dissolution decree, the trial court set up a joint custody arrangement with Judy have physical care of the parties' child. Robert was directed to pay child support of $350.00 per month, with a yearly cost-of-living adjustment based on the consumer price index. The trial court set aside to Robert his inheritances. It directed the parties to equally divide the net proceeds from the sale of their house. It awarded each party the vehicles in his or her possession and his or her retirement plan,

bank accounts, and insurance policies. (The parties had divided their other personal property before trial.) Each party was directed to pay his or her own attorney fees.

In a posttrial motion, Robert asserted that the decree was silent as to who could claim the child as a dependent for income tax purposes; he asked that he be allowed to claim the child. He also asked the trial court to award him more of the proceeds from the sale of the house because he had brought much more property to the marriage than had Judy. The trial court ordered (1) that the parties follow IRS rules to determine who was to claim the child as a dependent, and (2) that the parties share equally in the net proceeds from the sale of the house because their contributions to the marriage, including property brought to the marriage, income earned during the marriage, and child care provided during the marriage, were equal. Robert has appealed and Judy has cross-appealed from the dissolution decree.

Our review of this equitable action is de novo. Iowa R. App. P. 4.

I. Robert's first contention is that the trial court failed to give the parties credit for the value of assets which each of them brought into the marriage. He claims that since he brought assets into the marriage worth $45,000.00 in excess of those assets brought into the marriage by Judy, he should receive $45,000.00 from the sale proceeds of the house, with Judy to receive the balance. This amount is in dispute: Judy argues she brought $30,000.00 worth of assets into the marriage and that Robert brought $48,000.00 worth of assets into the marriage.

Iowa Code section 598.21(1) (1985) sets forth the factors to consider in arriving at just and equitable division of property. The property brought into the marriage by each party is but one of them. The trial court correctly considered all the factors and concluded "each party had made an essentially equal

contribution to the marriage when the assets brought to the marriage by each party are balanced against contributions made by each party to family income, child care, and other services." The rationale for the trial court's equal division of the sale proceeds was to allow each party the ability to establish a residence for himself or herself and Richelle. We believe the trial court's decision in this regard is equitable.

II. Robert's second argument is that the trial court erred when it did not grant him the right to claim the parties' minor child, Richelle, as a dependent on his income tax return.

The trial court in its order in response to Robert's motion for enlargement and amendment of decree stated that the parties should follow the rules of the Internal Revenue Service concerning who can claim Richelle as an exemption. Under the Tax Reform Act of 1984, the general rule is that a custodial parent is entitled to the tax exemption for the child. I.R.C. § 152(e)(1). Robert does not appear to meet the criteria to qualify as an exception under Internal Revenue Code section 152(e).

We find the trial court did not err in granting the tax exemption for Richelle to the custodial parent, Judy, in accordance with the Internal Revenue Service law.

III. Judy claims on cross-appeal that Robert received over 80% of the assets held by the parties. She contends that Robert was awarded all inherited assets.

Iowa Code section 598.21(2) states the following:

> 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.

In determining an equitable distribution, the court must weigh a variety of factors including 1) contribution toward the property, 2) relationship with donor, 3) contribution to the economic welfare of the parties, 4) special needs of the parties, 5) other matters which affect the basic fairness or appropriateness of dividing the property. In re Marriage of Vrban, 359 N.W.2d 420, 427 (Iowa 1984).

In denying Judy any claim towards Robert's inheritance, the trial court stated:

> First, it is clear that Judy has made no contribution toward the property inherited by Robert, which is in the form of stock in R. Friedrich & Sons and Minnesota farmland. Second, no evidence was offered at trial to show that there was any independent, close relationship between the testator and Judy. Third, in considering separate contributions by the parties to their economic welfare, the evidence is clear that both parties have made an essentially equal contribution. Fourth, neither Judy nor Robert have any special needs which were identified at trial. Fifth, there does not appear to be any other matter which would render it plainly unfair to Judy or Richelle to have the property inherited by Robert set aside for his exclusive enjoyment and use.

We find the trial court was correct in its finding that Robert's inheritance need not be divided. In addition, we take note that the marriage lasted only six years.

Judy also claims she contributed more to the family unit than Robert and therefore she should receive more assets. We agree with the trial court that both parties made essentially equal contributions.

Judy next claims that she did not receive her fair share of non-inherited assets. She asserts that Robert was awarded assets valued at $60,600.00 while she received assets worth $47,000.00. Our case law and statutory law dictates that division of property is to be equitable, not necessarily equal. Iowa Code § 598.21(1); In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984). Based on the factors set out in Iowa Code section 598.21(1), the court in a well-

reasoned opinion divided the property in an equitable manner; we decline to disturb its ruling.

IV Judy argues that she should receive more than $350.00 per month child support for Richelle.

Iowa Code section 598.21(4) (1985) sets forth the criteria to consider in making a child support award. We need not list all the factors here. We find the child support award to be adequate. In addition, Judy is benefited by a provision in the decree for an annual adjustment of this amount based upon inflation and Robert's increase in wages.

V Judy's final assertion is that she should be awarded attorney's fees both at trial and on appeal. Based on the incomes of both parties, we decline to make such an award.

We affirm the trial court in all respects.

AFFIRMED