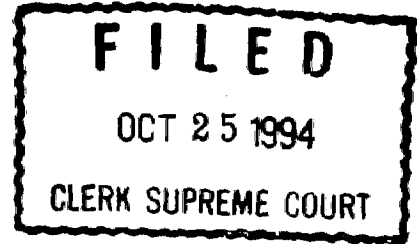


IN THE COURT OF APPEALS OF IOWA

No. 4-258 / 93-1331



IN RE THE MARRIAGE OF DAVID D. STEVE AND KATHLEEN A. STEVE

Upon the Petition of
DAVID D. STEVE,

Appellant,

And Concerning
KATHLEEN A. STEVE,

Appellee.

Appeal from the Iowa District Court for Johnson County,
William L. Thomas, Judge.

The appellant challenges the economic provisions of the
parties' dissolution decree. **AFFIRMED.**

Jay H. Honohan of Honohan, Epley, Braddock & Brenneman,
Iowa City, for appellant.

Sharon A. Mellon of Mellon & Spies, Iowa City, for
appellee.

Considered by Donielson, C.J., Cady, J., and Schlegel,
S.J.*

*Senior judge from the Iowa Court of Appeals serving
on this court by order of the Iowa Supreme Court.

DONIELSON, C.J.

Appellant appeals three aspects of the economic provisions of a dissolution decree. Our review is de novo, Iowa R. App. P. 4, and, upon our review of the record, we affirm the trial court.

David and Kathleen Steve were married on May 11, 1968. They have two adult children, Vernon and Nicole. At the time of the dissolution trial Nicole was 21 years of age and enrolled as a student at Kirkwood Community College.

During the course of the marriage the parties accumulated approximately 1.3 million dollars worth of real estate, much of which they used as business or rental property. Prior to the April 21, 1993, dissolution trial, the parties had stipulated as to the value and distribution of nearly all of their assets. Six issues were presented for resolution by the trial court, and David now appeals from the trial court's ruling on three of those issues.

I. Award of Judgment to Equalize Property Division.

To equalize the division of assets between the parties, the trial court entered a judgment in Kathleen's favor for the sum of \$145,613. This judgment was to be secured by a mortgage against one of the properties awarded to David. The judgment is payable when David remarries, dies or the property against which the mortgage is held is sold. David seeks to have this judgment set aside on

appeal. He contends Kathleen was awarded real estate that had more income-producing capacity than the property awarded him and equity does not require an equal division of the assets.

Where a marriage is one of long duration and both parties have contributed to the acquisition of assets, it is appropriate to order the equal division of their property. See, e.g., In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The parties stipulated as to the value of their numerous pieces of real estate, and, in doing so, both were aware of the income produced by each of the properties.

David expressed a preference for retaining the family home, the antique automobiles and the warehouse in which the vehicles were stored. He could sell or put these properties to a higher use for the purpose of maximizing their income potential, but it is his choice whether to do so or not, and Kathleen cannot be expected to subsidize that choice. We believe the income potential of the properties was inherent in the values assigned to them. Equity warranted an equal division of the marital assets and the trial court's decision to impose a judgment in favor of Kathleen will not be set aside.

II. Medical Costs.

During the parties' separation David informed Kathleen he was terminating their Blue Cross Blue Shield insurance

coverage because of its cost, and Kathleen objected. The coverage was dropped and Kathleen incurred \$4,035 in uninsured medical expenses. The trial court ordered David to assume this liability. On appeal David claims it is inequitable to order him to pay this expense when he would have paid for alternate coverage had Kathleen obtained it.¹

Issues of cost and preexisting conditions can affect the availability of health insurance. The absence of coverage can have catastrophic consequences. We concur with the trial court's finding that David canceled the insurance coverage without Kathleen's consent and should be liable for her medical expenses resulting therefrom.

III. College Expenses.

A trial court may, in its discretion, order parents to provide support for their adult child's educational expenses. See In re Marriage of Phares, 500 N.W.2d 76, (Iowa App. 1993). However, such support must cease when a child attains 22 years of age. Iowa Code § 598.1(6) (1993). David and Kathleen's daughter, Nicole, was 21 years of age at the time of the dissolution trial. Evidence revealed that over the years Nicole's parents had given her savings, CD and mutual fund interests in excess of \$19,000. She also had bank stock of an unknown value

1. The parties subsequently entered into a stipulation which required David to provide medical insurance coverage for Kathleen. However, the issue of who should pay her prior uninsured medical expenses remained in dispute.

and a car worth \$14,000. Children can be required to use their own assets to pay for their college education. In re Marriage of Steele, 502 N.W.2d 18, 22 (Iowa App. 1993). We affirm the trial court's decision not to order the provision of educational support for Nicole.

IV. Attorney Fees.

Kathleen seeks an award of attorney fees on appeal. An award of attorney fees is not a matter of right but rests within the court's discretion. We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We believe Kathleen has the means to pay her appellate attorney fees and equity does not require that David be ordered to pay all or part of them on appeal.

AFFIRMED.