

IN THE COURT OF APPEALS OF IOWA

No. 9-029 / 08-1017
Filed April 8, 2009

**IN RE THE MARRIAGE OF TENNER
REID LILLAND AND WENDY LEE LILLAND**

**Upon the Petition of
TENNER REID LILLAND,**
Petitioner-Appellant,

**And Concerning
WENDY LEE LILLAND,**
Respondent-Appellee.

Appeal from the Iowa District Court for Emmet County, John P. Duffy,
Judge.

Tenner Lilland appeals the economic provisions of a dissolution decree.

AFFIRMED AS MODIFIED.

Scot L. Bauermeister of Fitzgibbons Law Firm, Estherville, for appellant.

James Clarity and Meghan M. Sloma of Clarity Law Office, Spirit Lake, for
appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Tenner Lilland appeals the economic provisions of a dissolution decree.

I. Background Facts and Proceedings

Tenner and Wendy married on the last day of 2003, separated in mid-2005, and divorced in 2008.

Prior to the marriage, Tenner and his brother inherited their childhood home and the acreage surrounding it. Included in the inheritance was approximately one hundred acres of graveled land which, at one point, was subject to litigation.

During the marriage, the couple purchased a van for \$13,000. Wendy traded in her car, valued at \$3000, and the remainder of the purchase price was financed. After the couple separated, Wendy retained the van but Tenner made the monthly payments and paid for insurance on the vehicle. Tenner made the majority of the loan payments and only a few hundred dollars remained to be paid at the time of trial.

When the couple separated, Wendy sold some of her belongings in Iowa and moved the balance to Arizona. Tenner remained on the acreage.

Following trial, the district court awarded Tenner his inherited property, valued at \$480,223. The court ordered him to make a cash payment to Wendy of \$30,000 and ordered him to pay Wendy's trial attorney fees of \$1500.

Tenner moved for enlarged findings and conclusions. See Iowa R. Civ. P. 1.904. He took issue with the cash compensation provision and he requested half the value of the van. Following an apparently unreported hearing, the district court found that, as a result of a post-decree accident involving the van, the

couple received an insurance settlement of \$12,163. The district court ordered the insurance proceeds paid to Wendy and reduced her cash settlement to \$25,000.

On appeal, Tenner argues that the district court (A) should not have compensated Wendy for his inherited property, (B) should have awarded him half the value of the van, and (C) should have treated a bank account as separate property. Tanner also takes issue with the district court's trial attorney fee award.

II. Property Division

Under Iowa's law on dissolutions of marriage, a court

shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering several factors, including the length of the marriage, the contribution of each party to the marriage, and the physical and emotional health of the parties.

See Iowa Code § 598.21(5) (2007). We will begin with the exception for inherited property.

A. Inherited Property

Inherited property is not subject to property division unless the court finds that a failure to do so is inequitable to the other party or the children. Iowa Code § 598.21(6).

The district court stated that inequity would result if Tenner retained his inherited property without making a cash payment to Wendy. The court concluded such a payment would

be in lieu of Wendy's claim for reimbursement for time and money spent on the gravel lease lawsuit; her claim for moving expenses; her claim for replacement of dining room furniture; and her claim of replacement for computer and printer.

On our de novo review, we are not convinced that equity mandated a cash payment to compensate Wendy for Tenner's receipt of inherited property. Tenner inherited the property more than a decade before he married Wendy. Wendy conceded that she lived on the inherited property for only fifteen months. Although she did some painting and yard work and disposed of garbage around the property, her contributions were neither extraordinary nor long-lasting. Additionally, Wendy and Tenner, at ages fifty-seven and sixty respectively, maintained their independence through much of the marriage. Wendy purchased a condominium in Arizona, helped support her college-age children from a previous marriage, and subsisted on a military pension that afforded her more annual income than Tenner earned. Based on this record, we conclude equity did not require a deviation from the general rule that inherited property is to be set aside to the spouse who inherited it.

B. Van

Tenner next maintains that the district court should have awarded each party half the value of the van.

The record reveals that Tenner valued the van at \$7825 but the district court only assigned it a value of \$4500. While Tenner is correct that he made \$8200 in payments on the van, and purchased insurance for it, Wendy also made payments totaling \$6500 and, additionally, traded in her vehicle. Under these circumstances, we conclude the district court acted equitably in not requiring Wendy to reimburse Tenner for half its value.¹

¹ Although we have mentioned the district court's post-trial findings, we decline to evaluate them in the context of this issue, as we have no record for review.

C. Bank Account

The district court set aside to Tenner a savings account containing \$5400. Tenner contends that the source of cash was his inheritance and his sale of hay over the years. He maintains the account should not have been included in the property subject to division. We disagree.

Tenner's own testimony establishes that the account did not exclusively contain inherited funds. Given this testimony, the district court acted equitably in declining to treat the account as separate property. See *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006) (stating all property of the marriage existing at the time of divorce except gifts and inheritances to one spouse are subject to division).

III. Trial Attorney Fees.

Tenner contends the district court should not have awarded Wendy \$1500 in attorney fees. Such an award rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995).

Although Wendy had greater monthly income than Tenner, Tenner had sizable inherited assets. Therefore, we affirm the district court's order requiring Tenner to pay \$1500 of Wendy's trial attorney fee bill.

IV. Disposition

We modify the dissolution decree to delete the cash payment of \$25,000 to Wendy. Costs are taxed to Wendy.

AFFIRMED AS MODIFIED.