

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF
GLENDA LUANNE CAMPBELL AND KENNETH KEITH CAMPBELL

FILED

MAR 09 1988

CLERK SUPREME COURT

Upon the Petition of	)	
GLENDA LUANNE CAMPBELL,	)	Filed March 9, 1988
Petitioner-Appellant,	)	83
And Concerning	)	<u>7-598</u>
KENNETH KEITH CAMPBELL,	)	<u>87-400</u>
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Wapello County (CD 3671-1285),
James P. Rielly, Judge.

Petitioner appeals the trial court's findings of fact, conclusions of law,
and directions for decree in this dissolution of marriage action. **AFFIRMED**
AS MODIFIED.

Theodore F. Sporer of Watson & Peterson, Des Moines, for petitioner-
appellant.

Thomas M. Walter of Johnson, Bauerle, Hester & Walter, Ottumwa, for
respondent-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

Petitioner, Glenda Campbell, in this interlocutory appeal approved by the Iowa Supreme Court, appeals the trial court's findings of fact, conclusions of law, and directions for decree in this dissolution of marriage action. She asserts the trial court erred by failing to set aside the value of her pension plans at the time of the marriage, and the trial court's division of property is inequitable.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

In determining the equity of the trial court's property division, we apply the factors enumerated in Iowa Code section 598.21(1). In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985). We note that the property division need not be equal, but rather must constitute an equitable and just award under the circumstances. Id.

At the time of their marriage in 1979, Glenda contributed approximately \$27,000 and respondent, Kenneth Campbell, contributed \$5,000. At trial the court determined the parties had nearly \$107,000 in assets available for distribution. The trial court thereupon credited the parties with the amounts each had contributed to the marriage and divided the remainder equally. Since the parties had stipulated to which of them would receive the actual, physical assets, the court achieved this division by ordering Glenda to pay Kenneth the excess in value of the assets she actually received over the value to which she was entitled. The amount of this excess value was calculated to be \$18,086.73.

Glenda contends this property division is inequitable because the increase in the parties' net assets was allegedly due primarily to her savings and investment efforts. She asserts Kenneth, by contrast, squandered his money and made

a minimal contribution to the joint marital funds. She concludes, therefore, she should have been given a larger percentage of the parties' property.

We find, as apparently did the trial court, that Kenneth's contribution to the joint marital funds was more substantial than alleged by Glenda. Over the course of this marriage the value of the parties' net assets increased by approximately \$70,000. During this period, Glenda's net income was approximately \$82,000 and Kenneth's net income was approximately \$122,000. Under these facts, we do not find credible Glenda's claim that she paid virtually all of the parties' household and living expenses and still managed to save enough to accumulate most of the parties' increase in net assets. We believe both parties contributed significantly to the joint marital funds, through both savings and payment of the parties' expenses. Accordingly, we uphold the trial court's decision to divide the increase in net assets equally.

We find, however, the trial court erred slightly in determining the amount of Glenda's contribution to the marriage by failing to credit her for the amount of a pension plan she had at that time. Although Iowa Code section 598 21(1) does not require such property to be excluded, we believe equity so dictates in this case. We therefore modify the amount of Glenda's payment to Kenneth to be \$15,507.99. This amount shall be paid in five equal annual installments in the sum of \$3,101.60 with interest on the unpaid balance at ten percent per annum. The dates for these payments shall be as provided for in the decree of dissolution. Similarly, payment of this indebtedness shall be secured by the lien ordered in the decree.

Each party shall be taxed one-half of the costs of this appeal.

AFFIRMED AS MODIFIED.