FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-527 / 88-1792

IN RE THE MARRIAGE OF JANE VICTORIA DENMAN AND JESSE RICHARD DENMAN

Upon the Petition of

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JANE VICTORIA DENMAN,

Appellant,

And Concerning

JESSE RICHARD DENMAN,

Appellee.

Appeal from the Iowa District Court for Clarke County, Richard Morr, Judge.

Appellant wife appeals from the decree of dissolution of marriage providing for the disposition of assets of Jane and Jesse. **AFFIRMED AS MODIFIED.**

Jeffrey A. Schlei of Isaacson & Clarke, P.C., Des Moines, for appellant.

John P. Dollar of Bowers, Wilson & Dollar, Des Moines, for appellee.

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

HABHAB, J.

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Appellant wife appeals certain economic provisions of the district court's decree dissolving her marriage to Jesse. Jane asserts the trial court erred in not awarding her one-half of the joint-tenancy assets. We affirm.

Jane Victoria Denman and Jesse Richard Denman were married on January 3, 1984. Jesse had been married twice before and Jane once before this marriage. On December 28, 1983, the parties executed an agreement called a "Prenuptial Financial Agreement." The document concerned itself with the distribution of marital and nonmarital property in the event of a divorce or death of the parties. The parties provided a detailed financial statement of their property.

In substance, the prenuptial agreement provides that each of the parties would have no claim on the property of the other party held separately prior to the marriage. The agreement also provides for the waiver of spousal rights in each party's estate. In addition, any bequest or gift from one party to another would not constitute a waiver of the agreement, "except to the extent of the interest so transferred to the other party and this agreement shall not defeat the right of such other party to receive such transferred interest."

The agreement also provides that in the event of a dissolution action, no alimony, support or attorneys' fees

shall be paid. Each party would retain his or her own property and the household furniture and furnishings would be granted to Jane Victoria Denman.

On June 2, 1988, Jane filed this petition for dissolution of the parties' marriage. As there were no children born of the marriage, the major dispute at trial concerned the disposition of the parties' assets.

During the marriage, the parties' purchased a mortgage-backed security guaranteed by the Government National Mortgage Association. Title to the security was taken by the parties as joint tenants. In addition, the parties purchased a farm in Clarke County as joint tenants during the marriage. Both the farm and the security were purchased with the proceeds from the sale of some of Jesse's premarital assets. The district court awarded these assets solely to Jesse. No other assets of the parties are disputed in this matter.

At the time of the dissolution hearing, Jesse was sixty-one years old and Jane was forty-five. Jesse had been a businessman, but was not currently employed. He lived off investment income. He had suffered a heart attack in 1986 requiring by-pass heart surgery. He was physically active, but did suffer occasional chest pains.

Jane was in good health. During the marriage she had obtained a teaching certificate and had also worked on a masters degree from Iowa State University in counseling.

She expected to complete her masters degree in the summer of 1989. Jane was working as a substitute teacher and as a part-time mental health counselor. Her combined income from these two positions was approximately $9,200 per year.

I.

To resolve the issues presented by the parties we turn to well-established principles. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

II.

Antenuptial contracts are looked upon favorably by the law, and are construed liberally in order to carry out the intentions of the parties. See In re Parish's Estate, 236 Iowa 822, 830, 20 N.W.2d 32, 36 (1945). The purpose of such contracts is to fix the interests of the respective parties in the property of the other.

III.

This court noted in the case of In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984), that "[a]

transfer of property into joint tenancy where one party furnishes all of the consideration is presumed to be a gift to the other of one-half interest in the property." A significant number of courts in other jurisdictions have adopted a similar view. See Brown v. Borland, 230 Neb. 391, 432 N.W.2d 13, 17 (1988); In re Marriage of Ackerman, 168 Ill. App. 3d 438, 522 N.E.2d 317, 321 (1988); Quinn v. Quinn, 512 N.E.2d 848, 852 (R.I. 1986); Trattles v. Trattles, 126 Wisc.2d 219, 376 N.W.2d 379, 382 (Wisc. Ct App. 1985); Sloan v. Sloan, 132 Ariz. 414, 646 P.2d 299, 300 (Ariz. Ct. App. 1982); Osborne v. Osborne, 384 Mass. 591, 428 N.E.2d 810, 818 (1981). However, this presumption may be rebutted by clear and convincing evidence to the contrary. See Turner v. Lambert, 198 Iowa 507, 510, 199 N.W. 415, 416 (1924).

Here, outside of Jesse's testimony to the contrary, the record is devoid of any evidence upon which to rebut the presumption that a gift of one-half interest in the aforementioned farm and security occurred when Jesse took title to them as joint tenants. As such, we find that a gift of one-half interest in the farm and security to have taken place. Since the farm and security no longer were separately held premarital properties, they were no longer subject to the parties' antenuptial agreement's claims prohibition. The gift of one-half interest in the farm and security caused those properties to be transmutted from

individual property into marital property. See Quinn, 512 N.E.2d at 852. They are then subject to equitable division pursuant to Iowa Code section 598.21(1).

As it relates to these two assets, we note that each was purchased with funds from the sale of property owned by Jesse prior to marriage. Under the circumstances, we do not believe that Jane is entitled to any of the funds from Government National Mortgage Association. But, since improvements were made to the farm after acquisition, we conclude that Jane is entitled to an additional $5,000.

We modify the decree to award Jane a $5,000 lump sum payment in lieu of her interest in the farm and security. Costs of this appeal are assessed equally between the parties.

AFFIRMED AS MODIFIED.