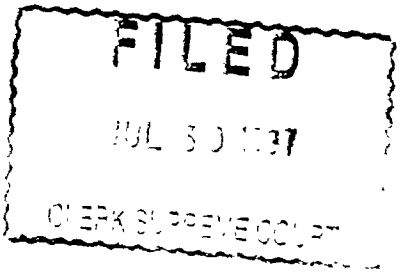
IN THE COURT OF APPEALS OF IOWA

No. 6-732 / 96-604

000363

IN RE THE MARRIAGE OF SHEILA K. PETERSON AND SCOTT A. PETERSON



Upon the Petition of
SHEILA K. PETERSON,
Appellant/Cross-Appellee,

And Concerning
SCOTT A. PETERSON,
Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Sheila Peterson appeals and Scott Peterson cross-appeals the supplemental decree dividing the marital property. **AFFIRMED.**

James L. Wagner of Gartelos, Wagner & Ament, Waterloo, for appellant.

Curtis J. Klatt of Dunakey & Klatt, P.C., Waterloo, for appellee.

Considered by Habhab, C.J., Streit, J., and Perkins, S.J.*

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

PERKINS, S.J.

Sheila and Scott Peterson were married on September 24, 1988. Two children were born of the marriage. No issues involving the children are at issue on appeal.

Scott brought the following assets into the marriage: (1) a motorcycle, net equity $700, (2) Warren Transport pension, net equity $18,293, (3) a Nissan Pathfinder, net equity of $5500, and (4) a savings account of $2978. Sheila had the following assets: (1) a pension, net equity $594, and (2) savings bonds, $176. Scott also owed $19,053 and $367 in loans from Warren Credit Union. Sheila owed student loans, but the total pre-marital amount could not be readily determined from the record or briefs.

In 1989, Sheila and Scott purchased a home for $38,000, $8000 of which was gifted from Scott's parents. In 1990, Scott left his employment at Warren Transport, and rolled over his retirement account into an IRA investment. In August 1994, Sheila filed a dissolution petition. The court entered a partial decree in November 1995 dissolving the marriage.

At the time of trial on January 24, 1996, Sheila was thirty-three years old and Scott was thirty-five. Sheila was employed as a registered nurse, earning a net monthly income of $2314. Scott was employed at Nurtiject Systems performing seasonal work, earning a net monthly income of $1027. The value of the Warren pension was $38,000. The value of the marital home was between $56,000 and $60,000, but was encumbered by mortgages totaling approximately $32,650.

000365

The court awarded Sheila (1) the marital home, (2) a Chevy Nova, (3) her life investors insurance, (4) her IDS policy, (5) savings bonds, (6) a Covenant Credit Union account, (7) her pension, and (8) certain household goods and personal property. It awarded Scott (1) the Pathfinder, (2) the motorcycle, (3) his life investors insurance, (4) his IDS policy, (5) savings bonds, and (6) various household goods and personal property. It ordered Sheila to pay Scott $6000 representing his portion of the equity in the home. It also granted Sheila primary physical care of the children, and ordered Scott to pay child support.

The court overruled both parties' Iowa Rule of Civil Procedure 179(b) motions. Sheila appeals, and Scott cross-appeals. Sheila contends that the court erred in awarding Scott $6,000, and a deletion of that award would result in an equitable distribution of marital property.

Scott argues the trial court erred in its determination of the net equity of the marital home. He contends it should not have subtracted (1) part of the second mortgage because it was used to pay the remainder of Sheila's pre-marital student loan or (2) the selling costs because Sheila has no intentions of selling the home. He believes the net equity is between $26,250 and $30,250. He argues he should be award one-half of the home equity because (1) Sheila has a higher net monthly income, (2) she has a greater earning capacity, (3) she received a majority of the household furniture and assets, and (4) his extensive home improvements increased

its value. He further argues that he should be awarded $3839 from the Covenant Credit Union account.

Both parties substantially disagree as to the total value of the court's distribution of the property.

The standard of review on appeal of a property division in a dissolution of marriage action is de novo. *In re Marriage of Willcoxsin,* 250 N.W.2d 425, 427 (Iowa 1977). Inequitable property division in a dissolution should be corrected by appeal. *In re Marriage of Knott,* 331 N.W.2d 135, 37 (Iowa 1983). Iowa Code section 598.21 directs that upon a judgment for dissolution a court shall divide all property neither inherited nor gifted solely to one spouse, equitably between the parties.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell,* 437 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of property should be made in consideration of the criteria codified in section 598.21(1). *In re Marriage of Estlund,* 344 N.W.2d 276, 280 (Iowa App. 1983).

We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court,

especially when considering the credibility of witnesses but are not bound by them. Iowa R. App. P. 14(f)(7).

Sheila in her appeal claims the $6,000 lien awarded to Scott as his share of the equity in the home makes the property division inequitable.

Scott in his cross-appeal claims that he should have one-half of the equity in the home or $13,125 or $15,125 depending on the value assigned to the house for the division of property.

After careful consideration of all the issues raised by the appeal and cross-appeal we conclude that under the facts of this case the trial court reached the correct result and the case is affirmed.

Each party shall pay their own attorney fees and the costs on appeal are equally divided.

AFFIRMED.