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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JANET A. HERLEIN AND CLINTON L. HERLEIN

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Upon the Petition of)
JANET A. HERLEIN,) Filed September 6, 1984
Petitioner-Appellant,)
And Concerning)
CLINTON L. HERLEIN,) 4-251 / 83-1165
Respondent-Appellee.)

Appeal from the Iowa District Court for Story County - Dale E. Ruigh, Judge.

Petitioner appeals from the decree dissolving the parties' marriage. AFFIRMED.

C. A. Pasley of Pasley, Singer, Pasley, Holm, Timmons & Mathison, Ames, Iowa, for petitioner-appellant.

Greg W. Steensland, Ames, Iowa, for respondent-appellee.

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

Petitioner appeals from the decree dissolving the parties' marriage. She claims: (1) the trial court's division of property did not give her proper credit for gifts to her individually during the marriage; and (2) the child support award to her was inadequate. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Property Division. Petitioner, Janet Herlein, and respondent, Clinton Herlein, were married in February of 1979. Later the same year Janet's grandmother moved in with the couple. During this three-year marriage Janet received gifts in excess of $93,000 from her grandmother. At the time of trial all of the gifted money and interest earned therefrom had been dissipated by the parties to remodel and furnish the parties' residence, acquire golf club memberships, make contributions to athletic programs, fund an interior decorating business which has since failed, and maintain an artificially high standard of living for the parties.

Iowa Code section 598.21(2) provides:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

Janet claims that the trial court erred in not setting aside the value of the gifts for her benefit despite the fact that the vast majority of the gifts she received were expended by the parties or are not retained in any tangible investment or improvement specifically traceable to the gifted money.

The trial court found that aside from contributions to the parties' residence, the only remaining asset clearly identifiable as stemming from the gifted money

was a $5,000 limited partnership interest in Heritage Cablevision. This asset was awarded to Janet. As for the residence, the court found that the grandmother made a gift of $5,000 to apply on the down payment and contributed approximately $10,000 to remodel and redecorate the house. The court also found that Clinton contributed approximately $13,500 toward the purchase price. Therefore, the court ordered that after December 31, 1985, the house should be sold and the net proceeds divided equally between the parties.

Our de novo review of the record reveals that there is substantial support for the trial court's findings. We conclude that the division made by the trial court is equitable under the circumstances. We decline to award Janet all of the equity in the parties' residence as compensation for gifted money extravagantly spent or unwisely invested. To do so would unfairly shift all of the responsibility for dissipation of the gifts onto Clinton.

II. Child Support. The parties have a daughter, Adriana, born December 9, 1980. The trial court ordered Clinton to pay $200 per month child support. Janet argues that this award is too low.

Both parties have a legal obligation to support their child. However, this duty is to be apportioned according to the reasonable ability of each parent to contribute. In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981). The factors to be considered by the court when fixing child support are found in Iowa Code section 598.21(4).

In this case both parents are relatively young and worked outside the home during the entire length of the marriage. In 1981 Janet earned $17,220 and Clinton earned $22,084. Neither the parties nor the child can expect to enjoy the same standard of living as they did during the marriage. We find that the trial court's award was equitable.

AFFIRMED.