FILED
JUN 1 5 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PAMELA SUE MILLER AND WILLIAM ALLEN MILLER

Upon the Petition of)
PAMELA SUE MILLER,)
Petitioner-Appellant,)
And Concerning)
WILLIAM ALLEN MILLER,)
Respondent-Appellee.)

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9-183
88-1377

Appeal from the Iowa District Court for Polk County (59-35043), Robert O. Frederick, Judge.

Petitioner has appealed a dissolution decree contending the district court erred by holding a workers' compensation settlement received by the husband during the marriage was the husband's separate property and not subject to division. **AFFIRMED.**

Richard B. Campbell, Des Moines, for petitioner-appellant.

Keith D. Collins, Waverly, for respondent-appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

PER CURIAM

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Petitioner Pamela Sue Miller appeals the trial court's dissolution decree. She contends the court erred by holding that a workers' compensation settlement received by her husband, respondent William Miller, during the marriage, was the husband's separate property and was not subject to division.

In April 1984, at the beginning of this three and one-half year marriage, Pamela brought approximately $6,000 into the marriage while William brought a 1981 Camero and approximately $5,000 in other assets. Upon several occasions, Pamela left the family home and took her part of the money from the parties' joint account. Upon her return, she replaced it. In January of 1985, William suffered an injury at work, consisting of a double compound fracture of the upper arm. He missed some time from work, and was returned to light duty after that.

In July 1986, while Pamela was separated from William, William settled with his employer for $36,000. The proceeds of this settlement were deposited in a joint account from which both William and Pamela could withdraw funds. At the time of that deposit, Pamela had no money in the account because she had withdrawn her funds before she left. In September of 1986, Pamela returned to the marital home and redeposited her money in the account. She started this dissolution action in October 1987.

The trial court awarded the remaining proceeds of the settlement to William, awarded Pamela $6,000 (which she had withdrawn from the joint account), and awarded William a late model car. William was ordered to pay rehabilitative alimony to Pamela at the rate of $200 per month for 36 months.

Pamela cites us to In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984), as a case in which this court divided the results of a settlement from an industrial accident as marital property. In Butler, however, the injured husband invested the proceeds of his settlement award in the parties' residence and some furniture. Under those facts, we found that the investment of the joint money assets indicated a gift of one-half of the proceeds to the other party. In the absence of any evidence that would rebut the presumption that a transfer of property into joint tenancy where one party furnishes all of the consideration is a gift to the other party of one-half interest in the property, see Frederick v. Shorman, 259 Iowa 1050, 1056, 147 N.W.2d 478, 482 (1966), we held it was equitable for the court to require that upon the sale of the house, the net proceeds should be divided equally.

In this case, there is no evidence to show that William intended to make a gift of one-half of the proceeds to Pamela. Pamela was not living with William at the time of the deposit, and had removed her funds from the joint

account. William deposited the funds into the only account he had. The settlement was not made with Pamela by the employer. There is nothing in the settlement of any damages due to Pamela. The evidence indicates that the settlement was on account of the disability and pain and suffering, past and future, suffered by William. Unlike the Butler case where the parties had been married for thirteen years and had three children, this marriage lasted three and one-half years, with long periods of separation, and there were no children.

We believe the division of property was equitable. We affirm the trial court.

AFFIRMED.