

IN THE COURT OF APPEALS OF IOWA

No. 7-558 / 96-1562

000309

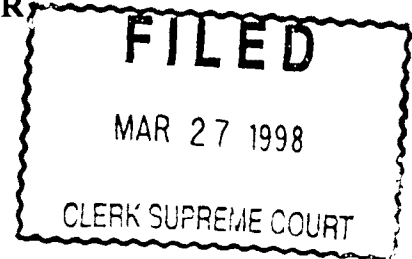
**IN RE THE MARRIAGE OF DANETTE RUTH POTTER,
AND GARY L. POTTER**

Upon the Petition of
DANETTE RUTH POTTER,

Appellant,

And Concerning
GARY L. POTTER,

Appellee.



Appeal from the Iowa District Court for Jones County, Lynne E. Brady, Judge.

Danette Potter appeals the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Brian T. Fairfield of Norton & Norton, P.C., Lowden, for appellant.

Nick Strittmatter of Locher, Locher & Strittmatter, Monticello, for appellee.

Considered by Cady, C.J., and Huitink, and Mahan, JJ.

CADY, C.J.

The trial court dissolved Danette and Gary Potter's twenty-three year marriage in June 1996. At that time, Danette was forty-eight years old with approximately \$29,000 in gross annual income. Gary was fifty-nine years old and laid-off from Rockwell-Goss. He received weekly unemployment benefits of \$224.

From 1976 to 1986 the couple rented a portion of Gary's family home from his parents, who lived in another part of the home. The monthly rent was much less than comparable housing in the area. During that time, Gary and Danette maintained and improved the home. His parents provided the materials for the improvements, but Gary and Danette provided the labor. In 1986 Gary's mother gave the home to Gary alone, reserving use of her apartment so long as she could live there independently. At the time of the gift, the home was valued at \$32,900. The court found the value of the home at the time of the dissolution to be \$51,750, divided the net increase in value as a marital asset, but set aside to Gary the \$32,900 gifted value as a gift not subject to distribution in the dissolution.

When the parties separated in 1992, they divided a \$29,000 savings account with Danette receiving \$15,000 and Gary \$14,000. She subsequently used \$2,000 of the cash when purchasing a car and much of the balance to purchase appliances and furniture for her separate household. The trial court awarded Danette the \$15,000 from the joint savings account and also the \$2,000 marital equity in her car as part of

her share of the marital assets. In dividing the personal property and household appliances and furniture, the court awarded each party the items in their possession with the exception of certain specified items in the marital home, including antiques from Danette's family, which were awarded to Danette.

Both parties had contributed to retirement accounts and pensions during the marriage. The court awarded Danette her 401k at Lefebure and Gary the proceeds of his 401k which he had withdrawn. The court found Gary had pension rights at Harnishfeger and Rockwell Goss. It also found Danette had pension rights at Rockwell and Lefebure. The court ordered all the pensions divided by qualified domestic relations orders.

Danette appeals. She asserts the trial court erred in setting aside all of the pre-gift value of the home to Gary, in including the equity in her vehicle as marital property, in valuing the household contents and personal property, and in finding she had two pensions to be divided.

We review dissolutions of marriage de novo. *In re Marriage of Vrbanc*, 359 N.W.2d 420, 423 (Iowa 1984); Iowa R. App. P. 4. We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Liebich*, 547 N.W.2d 844, 847-48 (Iowa App. 1996); Iowa R. App. P. 14(f)(7). 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, 473 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.* When distributing the property, we take into consideration the criteria codified in Iowa Code section 598.21 (1997); *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App.1983).

The Marital Home. Property inherited by either party or received as a gift is the property of that party and is not subject to division in a dissolution except upon a finding a refusal to divide the property would be inequitable. Iowa Code § 598.21(2). We also consider the intent of the donor and the circumstances of the gift in determining whether to set aside the property. *In re Marriage of Hoffman*, 493 N.W.2d 84, 89 (Iowa 1992).

Under the circumstances in this case, we do not find it inequitable for the value of the marital home at the time it was gifted to Gary to be set aside to Gary and not divided as a marital asset. We find Danette is entitled to half the increase in value of the home between the time of the gift and the dissolution, as did the trial court, and affirm the award to her of \$9,425 $(\$51,750 - \$32,900 / 2)$.

The Camry Equity. When the parties separated in 1992, they divided a bank account, with Danette receiving \$15,000. The evidence submitted at trial reveals she spent part of that amount to purchase a Toyota Camry. The court awarded Danette her portion of the bank account and the vehicle, finding \$2,000 of the value of the

vehicle to be marital property. In our review of the evidence, we find the trial court erred in its calculations, awarding Danette both the cash and the property purchased with the cash. This essentially is dividing the same marital property twice. We therefore modify the distribution of the trial court by not considering the \$2,000 equity in the vehicle as marital property, since it is accounted for in the bank account division.

The Household and Personal Property. Danette argues the trial court erred in valuing the household items and other personal property. The court explicitly found the value of the distributed items to be essentially equal. The household items included antiques from Danette's family and some purchased by the parties. Upon careful evaluation of the items awarded to each party, including their sources, we hold the trial court did not err in its equitable distribution of the property. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App.1984). We note Danette was awarded the antiques she specifically requested.

The Pensions. Pensions are considered subject to division just as any other marital asset. *In re Marriage of Branstetter*, 508 N.W.2d 638, 640 (Iowa 1993). The trial court found Gary had pensions at Rockwell-Goss and Harnishfeger. It also found Danette had pensions at Rockwell and Lefebure. The court treated these pensions

separately ~~from~~ the parties' 401k's. It awarded the parties their own 401k's (or the funds traceable to such retirement account) and ordered the pensions divided equally between the parties by qualified domestic relations orders.

From our review of the evidence, we find Danette had a 401k at Lefebure valued at \$1,436. We do not find any evidence of another pension plan at Lefebure. We therefore modify the decree to clarify that the qualified domestic relations orders do not apply to Danette's Lefebure 401k, but only to her Rockwell pension plan and to Gary's pensions at Rockwell-Goss and Harnishfeger.

Reconciliation. The trial court found Danette received \$3,436 in property and Gary received \$26,850. It ordered Gary to pay Danette half the difference to equalize the awards ($\$26,850 - \$3,436 / 2 = \$11,707$). Based on our modifications above, we order Gary to pay Danette half the difference, which we calculate to be \$12,707 ($\$26,850 - \$1,436 / 2 = \$12,707$) and modify the decree accordingly.

Costs of this appeal are divided equally between the parties.

AFFIRMED AS MODIFIED.