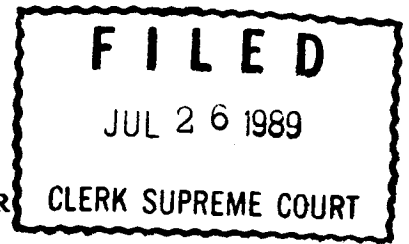


IN THE COURT OF APPEALS OF IOWA
IN RE THE MARRIAGE OF ELROY PANBECKER
AND WINNETTA PANBECKER



Upon the Petition of)
ELROY PANBECKER,)
 Petitioner-Appellant/)
 Cross-Appellee,)
And Concerning)
WINNETTA PANBECKER,)
 Respondent-Appellee/)
 Cross-Appellant.)

494

9-201
88-258

Appeal from the Iowa District Court for Pocahontas
County (CD 22-038), Mark S. Cady, Judge.

Both parties appeal from the economic provisions of the
decree of dissolution of marriage. **AFFIRMED ON BOTH
APPEALS.**

Steve Hamilton, Storm Lake, for petitioner-appellant/
cross-appellee.

Dan T. McGrevey, Fort Dodge, for respondent-appellee/
cross-appellant.

Considered by Oxberger, C.J., and Hayden and Sackett,
JJ.

PER CURIAM

This is a twenty-year marriage. The parties have two children. One child is emancipated. The other was sixteen years of age at the time of trial.

Both parties have worked hard and long hours to become established in farming and raising their children. They have both worked at other jobs when they were not working on the farm. Their farming operation has been successful because of their hard work, personal industry, and joint efforts. The value of the parties' assets, as calculated by the trial court, is \$429,900. Their liabilities amount to \$124,450.

The trial court awarded Winnetta property and monies valued in excess of \$155,000. Elroy was awarded property and monies valued at \$212,000 and debts in the sum of \$55,000. His net distribution was approximately \$157,000. He was ordered to pay Winnetta's attorney \$1,500 to apply upon her trial attorney fees and Elroy was assessed the court costs at trial.

Winnetta, age 39, is attending Buena Vista College and is enrolled in a nursing program. She stated she wants to obtain a master's degree in administration following graduation from her two-year nursing course. She works part time as an ambulance driver, medical technician, and nurse's aid. Elroy was ordered to pay Winnetta \$350 per month alimony for thirty months.

During the course of their marriage Elroy's father gave him approximately \$30,000 and Winnetta \$650. Elroy is unable to trace specifically what he used the money from these gifts for. He testified he spent it on the house, farm machinery, operating expenses, or buying a farm. He claims on appeal the cumulative sum of the monetary gifts from his father should be set aside to him.

Section 598.21 of the Code of Iowa specifies in considerable detail the criteria to be considered by a trial court in dividing property in dissolution cases. Code section 598.21(2) provides for the consideration and distribution of inherited or gifted property. We recite it as follows:

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.

In the case of In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982), our supreme court addressed the matter of gifted and inherited property in dividing the assets of a marriage and we quote as follows:

As noted, the requirement to set aside to a party the property which has thus been inherited or received as a gift is not absolute. Division may nevertheless occur to avoid injustice. A number of factors might bear on a claim that property should be divided under this exception. These include:

(1) contributions of the parties toward the property, its care, preservation, or improvement;

(2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;

(3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;

(4) any special needs of either party;

(5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

Other matters, such as the length of the marriage or the length of time the property was held after it was devised or given, though not independent factors, may indirectly bear on the question for their effect on the listed factors. Still other matters might tend to negative or mitigate against the appropriateness of dividing the property under a claim that it falls within the exception.

Here, the parties were married nearly twenty years, both worked hard on the farm and at part-time jobs off the farm, both contributed to their marital estate and economic welfare. In addition, Elroy used the gifted money he received in buying a farm, machinery, operating expenses, or spent it on the house. We note Elroy was awarded the farm and machinery. These factors mitigate toward not setting aside \$30,000, more or less, to Elroy as representative of the accumulated sum of monetary gifts he received during the parties' marriage.

Also, Elroy complains, the property division does not reflect the \$6,500 he contributed toward Winnetta's educational expense. In addition, he claims the trial court erred in dividing equally the current farm income.

We determine these claims have no merit and affirm the trial court in its property division in all respects.

Winnetta contends, in her cross-appeal, she should have an additional property award of \$16,587.87 to make a 50/50 division of assets. She also claims her alimony should be increased to \$500 per month for six years. The trial court awarded her \$350 per month alimony for thirty months.

Upon our de novo review of this appeal, we determine the trial court was fair and reasonable in its division of property, award of alimony, assessment of attorney fees, and costs.

Each party shall pay his or her own attorney fees on appeal. Costs of appeal are taxed one-half to appellant and one-half to appellee/cross-appellant.

AFFIRMED ON BOTH APPEALS.