

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 25 1983

CLERK SUPREME COURT

IN RE MARRIAGE OF JAMES WILSON WALLING AND QUITA DARLENE WALLING

412

Upon the Petition of)

JAMES WILSON WALLING,)

Filed October 25, 1983

Petitioner-Appellee,)

And Concerning)

QUITA DARLENE WALLING,)

3-274
2-69130

Respondent-Appellant.)

Appeal from Ringgold District Court - Van Wifvat, Judge.

Respondent-wife appeals from the division of property in the trial court's decree of dissolution. AFFIRMED.

Paul J. Boysen, Jr., of Camp, Harsh & Boysen, Creston, Iowa, for respondent-appellant.

John D. Lloyd of Reynoldson, Van Werden, Kimes, Reynoldson & Lloyd, Osceola, Iowa, for petitioner-appellee.

Considered by Oxberger, C.J., Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

SCHLEGEL, J.

The respondent-wife appeals from the division of property in the trial court's decree of dissolution. She asserts that the trial court should have considered certain real property to be a marital asset rather than a gift from the petitioner-husband's mother. We affirm.

In equity matters such as this, we review the facts as well as the law *de novo* and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the trial proceedings. Locke v. Locke, 246 N.W.2d 246, 249 (Iowa 1976). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). The only issue presented on appeal is the disposition of certain farm land.

The parties were married in 1975. Quita brought no assets into the marriage while James brought only a truck valued at \$6,000, plus a gun collection. The asset at issue here is an eighty-acre farm with a recently constructed house located on it. The farm was purchased jointly by the parties in 1977 using as a down payment proceeds from the sale of a truck, payments for which had been made by James's mother. The mother made all payments required by the contract of sale for the real estate, and made additional gifts of \$133,620.87 during the marriage. Title to the real property was transferred to the wife solely for no consideration in 1979 in an apparent attempt to avoid liens as a result of a prior child support obligation. Title was transferred to James's mother in 1981 for no consideration.

By the time of the trial, the parties had assets valued at approximately \$9,100, net of debts and excluding the farm. The value of the farm was approximately \$62,000. The trial court awarded Quita approximately \$7,000 of property in value. She was also awarded \$6,000 in alimony over a thirty-month period to enable her to complete her work on a bachelor's degree. The trial court

found that the gifts from James's mother were, for the most part, gifts to James individually, and refused to treat the property as a marital asset subject to division.

Our analysis begins with Iowa Code section 598.21 (1981), which codified many aspects of our prior case law. A justified property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d at 251. Upon our *de novo* review, we find that the real property at issue here was not intended to be a marital asset but rather it was intended to be James's separate property. As Quinta testified, the parties were "prespending" James's inheritance.

That decision, however, does not end our analysis. 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 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.

Although the property may have been a gift only to James, division may nevertheless occur to avoid injustice. Factors which might bear on a claim that property should be divided under this exception are set out in In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982).

Quita asserts that she contributed to the enhancement of the property in helping construct a new house and make other improvements. The evidence, however, shows that most of the work in improving the property was done by independent contractors. The parties, in fact, lived in Arizona and Alaska from the time they bought the property until the year before this action was filed. Furthermore, the contractors were paid from funds received from James's mother. We find nothing to support that there are special circumstances that make it unfair to award James all interest in the farm that the parties may have. See In re Marriage of Wood, 325 N.W.2d 774, 775 (Iowa Ct. App. 1982).

Finally, we also reject Quita's argument that Iowa Code section 598.21(2) only applies to gifts made solely for estate planning purposes. The statute does not distinguish between estate planning purposes and other purposes which a donor may have for giving a gift to one of the parties.

We conclude in our **de novo** review of the property division that the trial court's decision was equitable.

AFFIRMED.