IN THE COURT OF APPEALS OF IOWA

No. 6-654 / 96-0215

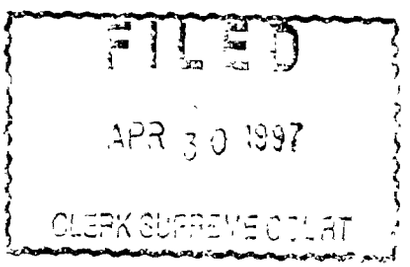
IN RE THE MARRIAGE OF DENISE M. PHELPS AND DENNIS R. PHELPS

Upon the Petition of
DENISE M. PHELPS,

Petitioner-Appellee,

And Concerning
DENNIS R. PHELPS,

Respondent-Appellant.



Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge.

Dennis Phelps appeals the court's order dividing marital property and awarding alimony. **AFFIRMED AS MODIFIED.**

Sharon A. Mellon of Mellon & Spies, Iowa City, for appellant.

John W. Hayek of Hayek, Hayek & Brown, L.L.P., Iowa City, for appellee.

Heard by Habhab, C.J., and Sackett and Cady, JJ.

SACKETT, J.

Respondent-appellant Dennis R. Phelps appeals challenging the economic provisions of the decree dissolving his long-term marriage to petitioner-appellee Denise M. Phelps. Dennis contends (1) his mother should have been repaid money he borrowed from her; (2) Denise should not have been awarded alimony; and (3) the trial court did not attribute sufficient value to the household goods awarded. We affirm as modified.

In this equity action, our scope of review is de novo. Iowa R. App. P. 4. Our duty is to review the entire record and determine rights anew from the credible evidence on issues properly presented and preserved. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981); *In re Marriage of Stepp*, 485 N.W.2d 846, 848 (Iowa App. 1992). We give weight to the fact findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Dennis was fifty-two at the time of trial and Denise was fifty. At the time of their marriage in 1968, Dennis was working full-time and attending college on the G.I. Bill. He received a bachelor of science degree from Cal State in 1971. Two sons were born to the parties, who are now adults.

Denise is a high school graduate. She has worked outside the home during much of the marriage and currently is employed as a secretary with the Iowa City

School District. She earns about $20,000 per year and has health and pension benefits.

Dennis has been employed outside the home during most of the marriage in middle management positions at a salary in the mid-fifty thousands. However, in 1989, he was laid off from a position because the company he worked for was downsized. He has had temporary employment since then despite efforts to obtain a full-time job in his field. Currently, his wages have been about the same as Denise's. It is undisputed that his prospects for such future employment are not promising. Dennis suffers from depression.

The trial court found the parties to have assets of about $175,000 which were divided equally. Dennis appeals.

Dennis first contends the trial court did not give him proper credit for nearly ninety thousand dollars he claims came into the marriage from his mother. Dennis contends he owes his mother $89,726 and this money should be paid back. Denise contends any money from Dennis's mother was a gift or they have paid it back. The trial court found the money that came from Dennis's mother was a gift or an advance on his inheritance. The trial court did not give him credit in any way for the money. Dennis contends in doing so the trial court interjected fault in the proceedings and sexual stereotypes that it was Dennis's responsibility to provide the greater share of financial support for the household.

Iowa Code section 598.21(1) (1995) states, "The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties." However, Iowa Code section 598.21(2) provides an exception "upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage."

Generally, gifts or inheritances received by a party during the marriage are not subject to a property division unless the failure to do so would be inequitable to the other party. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989); Iowa Code § 598.21(2). There are a variety of factors a court must weigh to determine how such property should be treated. *Muelhaupt*, 439 N.W.2d at 659; *In re Marriage of Vrban*, 359 N.W.2d 420, 427 (Iowa 1984). The question is whether it was equitable to divide the money that came from Dennis's mother with Denise. *See In re Marriage of Oler*, 451 N.W.2d 9, 11 (Iowa App. 1989). Denise relies in part on the claim this is a long-term marriage in contending it should be divided.

Clearly, money from Dennis's mother came into the marriage. Much of it was used for obligations on the parties' personal residence. There is a note evidencing some $30,000. Also, money from Dennis's mother was used to make payments on the family home after Dennis had vacated it. There is no evidence Dennis's mother intended to make a gift to Denise. Whether the money was a gift or a loan, we will not decide. In either case, the record supports a finding it should be set aside to

Dennis. We modify to provide that Dennis is responsible for any and all debts the parties may have to his mother arising out of the marriage relationship. Dennis shall hold Denise harmless on any such debts.

There is a dispute as to the amount that came from Dennis's mother and the amount paid back. From our review, we determine forty thousand dollars shall be set aside to Dennis as gifted property or as money to be repaid to his mother. There is evidence to support a finding that money from his mother went into the house. Dennis therefore should receive $107,000 in assets and Denise should have $67,500.[1] We modify the decree to do so.

Dennis next contends the trial court should not have ordered he pay $100 per month alimony. He contends there is no justification for an alimony award under this record. At the time of trial, Denise was employed in secure employment earning an annual salary of $20,000; additionally, she had employee benefits, including health insurance. Denise had only requested a token amount of alimony of one dollar per year in case Dennis found good employment. Since Dennis was hit with downsizing of middle management six years ago, despite job searches he has had substantial periods when he has not been employed. He has no health insurance coverage. Denise removed him from her family health insurance plan eleven months before the divorce was finalized. He is being treated for depression.

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[1] The adjustment shall be made from the proceeds from the sale of the residence.

In awarding alimony, we look to the particular circumstances of this case. The mandate is to achieve an equitable and just result under the circumstances. *See In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). We look to each party's earning capacity and the standard of living the parties have maintained, as well as Dennis's relative ability to pay. *See In re Marriage of Imhoff*, 461 N.W.2d 343, 345 (Iowa App. 1990). We look to the factors of section 598.21(3). This was a long-term marriage. *See In re Marriage of Bethke*, 484 N.W.2d 604, 609 (Iowa App. 1992). Dennis currently earns less and has less stability in his employment potential than Denise. An award of alimony to her under this record is not justified. We modify to delete the award of alimony.

Dennis further contends the trial court incorrectly valued household goods set aside to Denise at $1612 when they should have been valued at $7015. We have considered his argument but find no reasons to modify the value placed on these assets by the trial court.

We award no attorney fees on appeal. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.