

IN THE COURT OF APPEALS OF IOWA

No. 4-582 / 94-214

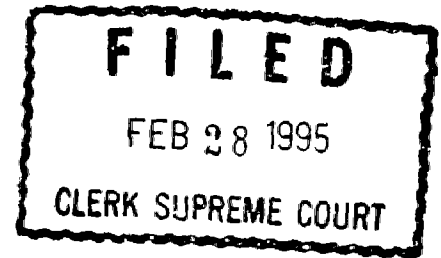
IN RE THE MARRIAGE OF CLAREEN JOYCE BYL AND
ROGER DEAN BYL

Upon the Petition of
CLAREEN JOYCE BYL,

Appellant,

And Concerning
ROGER DEAN BYL,

Appellee.



000115

Appeal from the Iowa District Court for Appanoose
County, James D. Jenkins, Judge.

Clareen Byl appeals from the asset division of the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Michael C. Vinyard of Vinyard & Curran, Ottumwa, for
appellant.

Sidney E. Drake of Drake, Wilson & Jay, Centerville,
for appellee.

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

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CADY, J.

Clareen Byl (Claire) appeals from the decree dissolving her marriage with Roger Byl. The sole issue on appeal is whether the trial court erred in including gifts from Claire's parents in the property division. With some modification, we affirm the trial court's judgment.

Claire and Roger were married in September 1972. Claire is forty-three years old. She has a master's degree and works as a librarian at Centerville Elementary Schools. She earns \$1,558 per month. Roger is also forty-three years old. He has a degree in chemistry and is employed as a quality control manager. His net monthly salary is \$2,676. The parties have three children, Scott, Roger, and Jeremy.

Claire and Roger's twenty-two year marriage was dissolved in January 1994. The principal dispute between the parties at trial was how to handle gifts from Claire's parents. The district court found that Claire's parents' monetary gifts spanned a twenty-one year period and totaled \$90,796. Claire requested the gifts be set aside for her in accordance with Iowa Code section 598.21(2) (1993).

The district court rejected Claire's request and divided the gifts between the parties. The court stated any other disposition would be unfair and inequitable. The court also determined Claire placed the gifts into joint tenancy accounts with Roger and as a result "the law presumes [she] made a completed gift of one-half of the

amount to [Roger]." The court concluded this presumption was not rebutted by any evidence on the record.

Claire appeals. She contends the district court incorrectly treated her parental gifts as marital property based on joint tenancy. She also argues there was no evidence indicating it would be inequitable for the court to set her gifts aside prior to asset division.

Roger argues the gifts were properly included as marital property regardless of the presumption followed by the trial court since it would be inequitable to exclude the gifts from the property division. In support of this contention, Roger points to the length of the marriage, the increased living standard enjoyed by the parties as a result of the gifts, and the commingling of the gifts with marital assets.

I. Scope of Review

Our review of this equitable action is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the findings of the trial court, but are not bound by them. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

II. Division of Gifts

The partners in a marriage are "'entitled to a just and equitable share of the property accumulated through their joint efforts.'" In re Marriage of Wertz, 492 N.W.2d 711,

713 (Iowa App. 1992) (quoting In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987)). The distribution of the parties' property should be equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1) (1991). Wertz, 492 N.W.2d at 713. (citing In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983)).

The division of gifts and inheritance received by a party during the marriage is governed by Iowa Code section 598.21(2). It 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 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.

The controlling factors in determining whether the property constitutes marital property for purposes of dividing the property at dissolution include the intent of the donor and the circumstances surrounding the inheritance or gifts. Wertz, 492 N.W.2d at 714. Whether the inheritance or gifts were placed in joint ownership is not controlling. Id.

In fixing the property division, the trial court found Claire had received \$90,796 in monetary gifts from her parents over the course of the marriage. It also determined her parents intended to give the gifts to Claire for her use and not to the family. Finally, the court found Claire had placed the assets in joint ownership and

it would be inequitable not to divide them between the parties.

We agree with the trial court's initial determination that Claire received gifts of \$90,796. However, the parties placed \$10,000 of this gift in I.D.S. Federal Income Funds and New Dimensions for their three children and stipulated it should not be considered in the property division. Subtracting this amount, Claire's gifts total \$80,796.

Additionally, the trial court's determination that the gifts were subject to an equitable division because they were placed in joint accounts was improper. In Wertz and In re Marriage of Hoffman, 493 N.W.2d 84 (Iowa App. 1992), we specifically held that the transfer of gifts into joint ownership was not the controlling factor for determining whether the property constitutes marital property. Id.; Hoffman, 493 N.W.2d at 89. The factors the court must look at focus on the intent of the donor and the circumstances surrounding the inheritance or gift. Id.

In this case, the evidence clearly indicated Claire's parents intended the gifts for her. Thus, the property does not constitute marital property for the purposes of property division.

We must next determine whether the facts of this case place it within the exception to the general rule of setting aside gifts and inheritance. As noted, property which has been inherited or received as a gift is generally

not subject to division. This premise must yield however, where its application would be unjust. In re Marriage of Geil, 509 N.W.2d 738, 741 (Iowa 1993). Relevant factors effecting the issue 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 affect on the listed factors.

In re Marriage of Van Brocklin, 468 N.W.2d 40, 41-2 (Iowa App. 1991) (quoting In re Marriage of Thomas, 319 N.W.2d 209, 211 (Iowa 1982)).

Under the facts of this case, we conclude it would be inequitable to set aside the entire \$80,796 for Claire. Only \$65,133 are traceable to current monetary assets. The other \$15,663 was used by the parties for automobiles, a golf cart, a down payment on their first home, and various household furnishings. Requiring Roger to retrieve \$15,663 from joint marital assets would place an undue hardship him. Roger was employed throughout the marriage and made significant contributions to the parties economic welfare.

Without his efforts much of the remaining assets Claire has traced to gifts from her parents would have been spent to maintain the family. It is also significant that the marriage lasted almost twenty-two years and the gifts were given throughout the marriage, from July 1973 to May 1992. Additionally, the gifts substantially improved the parties' lifestyle and Roger would suffer if some portion of the gifts was not set aside to him. We conclude it would be unfair and inequitable to set aside the \$15,663 used by the parties as a source of support during the marriage. See Geil, 509 N.W.2d at 741. Thus, we modify the property distribution to account for all of these factors.

The parties assets and debts shall be distributed as follows. This distribution shall include any interest earned since January 10, 1994, the date of the trial court's decree.

GIFTS SET ASIDE FOR CLAIRE:

IDS Investment Account	\$51,685	
Iowa Trust IRA	6,724	
Iowa Trust IRA	<u>6,724</u>	
		\$65,133

CLAIRE'S ASSETS:

Farm Bureau Insurance	\$ 4,500	
1992 Dodge	12,000	
1988 Escort	2,000	
Checking Account	26,000	
Checking Account	26,000	
IDS Annuity	27,408	
IPERS	6,872	
House - Centerville	<u>50,000</u>	
		\$154,780

LIABILITIES

1992 Dodge Caravan debt	\$ 7,164	
House - Centerville	34,860	
Mr. & Mrs. Best	<u>16,000</u>	
		<u>\$58,024</u>

NET: \$96,756

ROGER'S ASSETS

Farm Bureau Investment Acct.	\$51,731	
Northwestern Mutual Ins.	8,452	
Farm Bureau Insurance	11,469	
Dupont Stock	3,564	
Viskase Pension	1,500	
1973 Mustang	3,000	
1993 Dodge	<u>16,500</u>	
		\$96,216

LIABILITIES:

1993 Dodge debt

\$12,500

NET: \$83,716

To equalize the property settlement Claire shall pay Roger \$6520.

We affirm the trial court's dissolution decree as modified.

AFFIRMED AS MODIFIED.