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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JEANETTE M. KLUNDER AND GERALD D. KLUNDER

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Upon the Petition of	)	
JEANETTE M. KLUNDER,	)	Filed November 20, 1984
Petitioner-Appellee,	)	
And Concerning	)	
GERALD D. KLUNDER,	)	4-378 84-259
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Cerro Gordo County - B. C. Sullivan, Judge.

Respondent appeals the property division of the parties' dissolution decree and the retention of jurisdiction by the trial court for potentially awarding alimony to the wife. Petitioner requests attorney fees for this appeal. AFFIRMED.

William L. Springer, Marshalltown, Iowa, for respondent-appellant.

Robert S. Kinsey III of Brown, Kinsey & Funkhouser, Mason City, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

Respondent, Gerald Klunder, appeals the property division of the parties' dissolution decree and the retention of jurisdiction by the trial court for potentially awarding alimony to the wife. Petitioner, Jeanette Klunder, requests attorney fees for this appeal. We affirm.

Our review in this equity case is de novo. Iowa R. App. P. 4. Although not bound by the trial court's fact findings, we give weight to them, especially when considering the credibility of the witnesses. Iowa R. App. P. 14(f)(7).

I. Property Division. Gerald argues the trial court erred in setting off to Jeanette a workman's compensation award she received and placed in a bank account during the marriage. We affirm the trial court's decision. In doing so, we do not decide whether the dicta in this court's decision of In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa Ct. App. 1984), obligated the trial court to set aside the award. Rather, we note that the trial court also set off to Gerald all future proceeds from his unliquidated tort claim which arose during the marriage. We affirm because the mutual set offs, when viewed in light of the rest of the property division, were equitable.

Gerald also challenges the trial court's division of the marital property. He claims, in essence, that the trial court incorrectly determined the value of the parties' two houses. We give deference to the trial court, which was able to observe the expert witnesses and judge their credibility on the issue of the value of the real estate. See Iowa R. App. P. 14(f)(7). We therefore affirm.

II. Retained Jurisdiction. Gerald complains the trial court improperly retained jurisdiction for potentially awarding alimony to Jeanette in the future. The Iowa Supreme Court discourages the practice of retaining jurisdiction to modify divorce decrees without a showing of a change in circumstances, but has not forbade the practice. In re Marriage of Schlenker, 300 N.W.2d 164, 165 (Iowa 1981). Consistent with that attitude, only decrees that unequivocally provide for

later review without the necessary showing of a change in circumstances are construed as authorizing such review. Id. at 166. In this case, the decree did not explicitly state that the decree could be modified without a substantial change in circumstances. We therefore hold the decree can be modified only upon a showing of change in circumstances. See id.

We also consider whether the decree can be modified to award alimony in the future. The general rule was stated by the Iowa Supreme Court as follows:

> Interpretations of similar predecessor statutes have evolved the familiar Iowa rule that "if the decree in a divorce action is silent upon the question of alimony . . ., or if the decree provides that no alimony is allowed . . ., the decree can not be thereafter modified so as to allow . . . alimony, although there may be a change in the circumstances of the parties . . . ."

In re Marriage of Carlson, 338 N.W.2d 136, 139 (Iowa 1983) (quoting Duvall v. Duvall, 215 Iowa 24, 27, 244 N.W. 718, 719 (1932)). However, in Handsaker v. Handsaker, the court ruled that a decree, which did not order alimony payments, but which purported to retain jurisdiction to reopen the matter if certain conditions were not met, made sufficient provision for alimony to allow modification upon a showing of a material change in circumstances. 223 Iowa 462, 463-66, 272 N.W. 609, 609-11 (1937). The decree in this case is such that, under the Handsaker ruling, Jeanette can be awarded alimony if she makes the necessary showing of a material change in circumstances, and such showing demonstrates the propriety of an award of alimony.

III. Attorney Fees. Jeanette requests that we require Gerald to pay her attorney fees for this appeal. We decline to do so. The record does not indicate that Jeanette is unable to pay her own attorney fees or that Gerald should be required to pay her fees. It is equitable that Jeanette and Gerald each pay their own fees.

AFFIRMED.