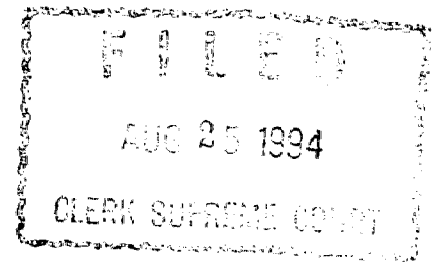


IN THE COURT OF APPEALS OF IOWA

No. 4-003 / 92-1653



IN RE THE MARRIAGE OF JEAN L. GOINGS AND DAVID A. GOINGS

Upon the Petition of
JEAN L. GOINGS,

Petitioner-Appellee,

And Concerning
DAVID A. GOINGS,

Respondent-Appellant.

Appeal from the Iowa District Court for Chickasaw
County, John Bauercamper, Judge.

The husband appeals from the property division
provisions of the parties' dissolution decree. **AFFIRMED.**

Judith O'Donohoe of Eggert, Erb, Ott, O'Donohoe & Frye,
Charles City, for appellant.

Jerry H. Folkers of Dunkelberg, McKinley & Folkers,
Osage, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink,
JJ.

HABHAB, J.

Jean and David Goings were married in 1975. They have two children: Kyle Goings, born on May 1, 1982; and Tyler Goings, born on March 26, 1985.

Jean was thirty-five years old at the time of the dissolution hearing. She has a part-time job as a home economics coordinator at Northern Iowa Area Community College (NIACC) and she has net monthly income of approximately \$1,000. She obtained a college degree and a master's degree during the marriage.

David was thirty-seven years old at the time of the dissolution hearing. From 1975 to 1986, David worked in a farming partnership with his parents, Lewis and Juanita Goings. Throughout the marriage he continued to have close financial ties to his parents. At the time of the hearing, David and his parents had a small business breeding and selling dogs. In September 1991, David quit his job at George Hormel & Company to become a full-time student at NIACC in a registered nursing program.

In 1989, David's parents were in financial difficulty and were in danger of losing their farm. Lewis and Juanita wanted to remain in their home on the farm, and they wanted David and Jean to purchase the farmland. David and Jean purchased the farm for \$165,000. They obtained a mortgage for \$103,000. They received \$37,500 from Lewis and Juanita and \$8,500 from David's grandmother, Nellie Jensen. These sums were applied to the purchase price and other costs.

Lewis and Juanita live in the house on the farm property without paying any rent to David and Jean. At one point, the parties considered transferring the house to Lewis and Juanita, but a deed was never prepared.

The parties separated in May 1990 and Jean filed a petition for dissolution of marriage in September 1990. The parties entered into a stipulation which provided for joint legal custody, with Jean having primary physical care. The district court entered a dissolution decree on April 16, 1992, which incorporated the parties' stipulation. All other issues were reserved for later proceedings.

On September 28, 1992, the district court entered a supplemental decree. David was ordered to pay child support of \$440 per month. The court determined the funds received from David's parents and grandmother were gifts to both parties, and not a loan as claimed by David and his family. The parties were ordered to sell the farm and their residence in Nashua, Iowa. The proceeds are to be divided equally, but Jean is to be reimbursed for one-half of all house payments, insurance and taxes she paid during the parties' separation. After subtracting the outstanding debts, the parties should receive about \$138,000 from the sale of these properties. Of the parties' other assets, the court divided these assets to award Jean assets worth \$12,148 and ordered her to pay debts of about \$14,737. David was awarded assets worth \$9,240 and ordered to pay debts of \$9,387.

Jean filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). She asked the decree be clarified to specify that she be reimbursed from David's share of the sale proceeds for the house payments she had made. The district court granted her motion.

David filed an appeal and Jean filed a cross-appeal. However, Jean later voluntarily withdrew her cross-appeal.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

David contends the district court should have found the money the parties received from his parents and grandmother was a loan. He points out that both his mother and grandmother testified they considered the payments to be a loan. He asks that \$45,200 of the net equity in the farm be set aside to him, and he be required to hold Jean harmless from any attempts to collect on the debt.

The first question to be addressed is whether the funds received by the parties were a gift or a loan. In re Marriage of Urban, 359 N.W.2d 420, 427 (Iowa 1984). In determining whether funds received by the parties should be considered a loan, a court must determine whether the parties intended that the funds be repaid. Id. If the funds were a gift, the question arises whether the funds

constituted a gift to one party only or to both parties. Id. The intent of the donor and the circumstances of the gift control whether a gift is to be set off in the dissolution. In re Marriage of Hoffman, 493 N.W.2d 84, 89 (Iowa App. 1992).

The trial court determined the funds received by the parties from David's parents and grandmother were a gift to Jean and David. The court noted there were no notes, mortgages, or loan agreements to document the existence of a loan. The only evidence to show the payments were a loan was the testimony of David, his mother, and his grandmother. The trial court is in the best position to judge the credibility of the witnesses and we will not second guess the court on issues of credibility. In re Marriage of Hanson, 475 N.W.2d 660, 662 (Iowa App. 1991).

The record here shows David and his parents were not credible regarding financial issues. David and Juanita admitted they had entered into a sham transaction designed to make Jean think David had sold his breeding dogs when he had not done so, after she had asked him to sell the dogs. Juanita testified the family had done similar things on other occasions in order to hide their financial dealings from Jean. Additionally, within a few days after the parties' separation, David wrote checks worth \$2,847 to his parents. However, neither David nor Juanita could remember what the checks were for.

We conclude there is insufficient credible evidence to show the funds received by Jean and David from David's parents and grandmother were a loan. We affirm the district court's conclusion the funds were a gift to both parties.

David raises a second argument regarding the property distribution in which he contends the trial court awarded a disproportionate amount of the sale proceeds from the parties' residence to Jean. The court ordered that from David's share of the sale proceeds, Jean should be reimbursed for one-half of all house payments, insurance and taxes she had paid on the house during the parties' separation.

The result of the court's order is Jean and David are each responsible for one-half of the specified expenses of the marital residence incurred during their separation. We note David had no housing costs during this period of time because he was living with his parents. We conclude the district court's order is equitable.

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 Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. Id. The determining factor is what is fair and equitable in each particular circumstance. Id.

We determine the property division as set forth by the district court is fair and equitable. We affirm. Costs of this appeal are assessed to David Goings.

AFFIRMED.