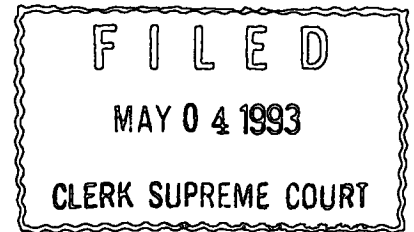


IN THE COURT OF APPEALS OF IOWA

No. 2-511 / 91-1987



IN RE THE MARRIAGE OF DONNA L. LOPEZ AND DENNIS P. LOPEZ

Upon the Petition of

000365

DONNA L. LOPEZ,

Appellant,

And Concerning

DENNIS P. LOPEZ,

Appellee.

Appeal from the Iowa District Court for Scott County,
Kristin L. Hibbs, Judge.

The wife appeals certain economic provisions of the
parties' dissolution decree. **AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander &
Preacher, Bettendorf, for appellant.

Margaret T. Lainson of Meardon, Sueppel, Downer &
Hayes, Iowa City, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM 000366

Dennis and Donna Lopez were married on April 28, 1973. They had two children, Shannon S. Lopez, born on June 30, 1974, and Justin P. Lopez, born on July 21, 1977. The parties lived in Davenport, Iowa, during the marriage.

Donna was thirty-eight years old at the time of the trial. She is employed at the Scott County Courthouse as the jury manager where her income is about \$19,475 and she has net monthly income of about \$1,220. Donna finished two years of college and is certified as a paralegal. She testified she would like to complete her college degree. She expected this would take her about four years if she attended college part-time and continued to work.

Dennis was forty-one years old at the time of the trial. He is a chiropractor and is on the faculty at Palmer College, where he earns about \$38,000 and has net income of \$2,285 per month. Dennis also is in private practice part-time as a chiropractor. The district court found his net income from private practice was about \$1,190 per month. Thus, Dennis has total net monthly income of \$3,475.

The parties separated in April 1990. Donna filed a petition for separate maintenance on June 6, 1990. Dennis filed a counter-petition for dissolution of marriage on June 20, 1990. The hearing in the case was heard on June 12 and 13, 1991.

The district court entered a decree of dissolution on September 10, 1991. The court awarded the parties joint legal custody of the children, with Donna having primary physical care. Dennis was ordered to pay child support of \$1,050 per month. Donna was awarded rehabilitative alimony of \$300 per month for forty-eight months.

In dividing the parties' property, Donna was awarded property worth about \$125,901, which included the marital residence. She was ordered to pay debts of \$72,238, which gave her net assets worth \$53,663. Dennis was awarded property worth about \$68,000, which included his office equipment and goodwill. He was ordered to pay debts of \$34,000, which gave him net assets worth \$34,000. The court then gave Dennis a lien on the marital residence for \$9,500, payable upon sale of the property, Donna's remarriage, or Justin's graduation from high school, whichever occurs first. Each party was ordered to pay his or her own attorney fees. Donna appealed.

Our review of this equitable action is de novo. See 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).

Donna contends the district court's property distribution is not equitable. She states she received

gifts worth about \$7,025 from her father during the marriage and these should be set aside to her. She also disputes the value of several assets awarded to Dennis, including jewelry, an automobile, the business checking account and accounts receivable. She claims the property settlement of \$9,500 to Dennis should be eliminated.

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.

The items Donna received as gifts from her father were household items, such as furniture and appliances. We determine the gifts from Donna's father were made to the family, and were not intended to be used by Donna alone. We find the value placed on the assets awarded to Dennis are within the permissible range of the evidence and we will not disturb it on appeal. See Russell, 473 N.W.2d at 246. We also find the accounts receivable from Dennis's private practice was properly considered as income, and not as an asset. We affirm the property distribution as set forth by the district court.

Donna asks for attorney fees of \$2,850 for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the

parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own attorney fees.

We affirm the decree of dissolution entered by the district court. Costs of this appeal are assessed to Donna Lopez.

AFFIRMED.