

IN THE COURT OF APPEALS OF IOWA

No. 2-451 / 92-222

FILED

OCT 27 1992

IN RE THE MARRIAGE OF COLETTE MAYFIELD AND
JOHN MAYFIELD

CLERK SUPREME COURT

Upon the Petition of

COLETTE MAYFIELD,

Petitioner-Appellee,

And Concerning

JOHN MAYFIELD,

Respondent-Appellant.

Appeal from the Iowa District Court for Scott County,
Max R. Werling, Judge.

John appeals from the economic provisions of the
parties' dissolution decree following a remand of this case
to the district court by the Iowa Court of Appeals.
AFFIRMED.

Thomas J. Pastrnak of Heninger & Heninger, P.C.,
Davenport, for appellant.

Carol A. H. Freeman of Lane & Waterman, Rock Island,
Illinois, for appellee.

Heard by Donielson, P.J., and Sackett, J., and Keefe,
S.J.*

*Senior Judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

PER CURIAM

Respondent-appellant John Mayfield appeals the economic provisions of his dissolution decree. We affirm.

This case was remanded by this court to the trial court to determine child support, property division and alimony. In re Marriage of Mayfield, 477 N.W.2d 859 (Iowa App. 1991). John has appealed from the order on remand. He challenges the alimony award and property division.

The history of this marriage is set out in Mayfield, 477 N.W.2d at 860-61.

John challenges the property division contending the property division was not equitable because it set aside to Colette certain property as inherited property. John relies on In re Marriage of Havran, 406 N.W.2d 450 (Iowa App. 1987), and In re Marriage of Butler, 346 N.W.2d 45 (Iowa App. 1984). However, in In re Marriage of Hoffman, No. 2-162/91-9200 (filed Sept. 29, 1992), p. 11-12, we said:

We have held a gift given specifically to one spouse and subsequently placed in joint ownership becomes a marital asset. In re Marriage of Havran, 406 N.W.2d 450, 451 (Iowa App. 1987). Dennis clearly intended some gifts to be made available to the marital unit for its use and benefit. See In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). However, we do not find the fact that these gifts given to Dennis were placed into joint ownership to be controlling.

In In re Marriage of Butler, we held the district court did not err by failing to set aside for the husband's benefit a sum equal to his disability award. 346 N.W.2d at 47. However, part of our decision relied upon a presumption that "[a] transfer of property into joint tenancy where one party furnishes all the consideration is

presumed to be a gift to the other party of one-half interest in the property." Id. (citation omitted).

However, we now deem Butler to be contrary to Iowa Code section 598.21(2) (1991), which provides that gifts and inheritances are always to be retained in the dissolution by the recipient, absent a finding of inequity. More specifically, the intent of the donor and the circumstances of the gift or inheritance control whether the gift or inheritance is to be set off in the dissolution. The form of the acknowledgment, i.e., joint tenancy, is not controlling. To the extent Butler is contrary to this view, Butler is hereby overruled.

We affirm the trial court on this issue.

John's next contention is that the award of \$600 a month alimony is excessive. This was a twenty-year marriage. Colette had a Masters degree at marriage. John completed his dental school after marriage. See In re Marriage of Francis, 442 N.W.2d 59, 62-63 (Iowa 1989). Colette assumed major responsibility for the home and children, and absented herself from the job market and attendant FICA coverage during most of the marriage. See In re Marriage of Friedman, 466 N.W.2d 689, 692 (Iowa 1991); In re Marriage of Bethke, 484 N.W.2d 604, 608 (Iowa App. 1992).

Alimony is deductible to John. We consider tax consequences to the parties. See In re Marriage of Hogeland, 448 N.W.2d 678, 680 (Iowa App. 1989). We find the award made by the trial court equitable. See In re Marriage of Hitchcock, 309 N.W.2d 432, 437-38 (Iowa 1981); In re Marriage of Hayne, 334 N.W.2d 347, 350-51 (Iowa App. 1983).

We award no attorney fees on appeal.

AFFIRMED.