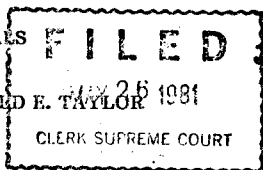


IN THE IOWA COURT OF APPEALS



IN RE THE MARRIAGE OF RUTH E. TAYLOR AND RONALD E. TAYLOR

Upon the Petition of)

RUTH ELIZABETH TAYLOR,)

Petitioner-Appellant,)

And Concerning)

RONALD EUGENE TAYLOR,)

Respondent-Appellee.)

Filed May 26, 1981

1-126
2-65605

Appeal from Allamakee District Court - L. John Degnan, Judge.

Petitioner-wife appeals from economic provisions of the parties' dissolution decree asserting that the trial court erred in considering property given to her by her parents as marital property and in not valuing the husband's interest in a retirement pension plan. AFFIRMED.

James Burns of Miller, Pearson, Gloe, Burns & Beatty, P.C., Decorah, Iowa, for petitioner-appellant.

John J. Bauercamper of Jacobson, Bristol, Thomson & Bauercamper, Waukon, Iowa, for respondent-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-wife appeals from economic provisions of the parties' dissolution decree. She asserts that the trial court erred in considering property given to her by her parents as marital property and in not valuing the husband's interest in a retirement pension plan. She also claims that the division of property was inequitable. Our review is *de novo*. Iowa R. App. P. 4. We affirm.

Ronald and Ruth Taylor were married in 1957. Three children were born to the marriage, the youngest of whom, born in 1964, is still a minor. Ruth filed this petition for dissolution on May 25, 1979. Under the trial court's decree of August 21, 1980, custody of the minor child was awarded to Ronald who was directed to pay all necessary support. Ruth was awarded personal property having a total value of \$98,127, while Ronald was awarded property valued at \$124,298 and was ordered to pay debts totaling \$38,500 for a net award of \$85,798. No alimony was awarded and each party was ordered to pay his or her own attorney fees. Ruth brought this appeal, challenging various aspects of the division of property.

I. Ruth first argues that the trial court should not have included in the marital estate certain cash gifts from her parents. She refers to section 598.21(2), The Code 1981:¹

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."

Ronald claims that the cash gifts in question, especially a \$60,000 gift in 1976, were gifts to him and Ruth and the family jointly. We agree with Ronald. Earl Wimmer, Ruth's father, testified that the various monetary gifts were intended for the benefit of the whole family and not for Ruth alone, although the checks were written in her name. Gracia Wimmer, Ruth's mother, testified to the same effect as Earl. Under these circumstances, we conclude that the gifts were given for the benefit of the marital unit and that the trial court properly considered them in dividing the marital property. The proscription in section 598.21(2) is therefore not applicable.

¹ Chapter 598 of the Code was substantially revised by Acts, 1980 Session, 68th G.A., ch. 1175, which became effective on July 1, 1980. Since the decree in this case was issued after this effective date, we apply the provisions of chapter 598 as revised.

II. Ruth also claims that the trial court erred in failing to consider and place a value on Ronald's interest in a retirement pension plan at his place of employment. She points to that portion of section 598.21(1), The Code 1981, which provides as follows:

... The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

* * *

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

She also cites In re Marriage of Schissel, 292 N.W.2d 421 (Iowa 1980), which refers to military retirement benefits as an asset to be considered in dividing the marital property.

Under the facts of this case, we agree with the trial court that Ronald's interest in the retirement plan is not amenable to valuation and consideration as a marital asset. Ronald is now 44 years old, but he is not entitled to benefits until his employment at the Postville State Bank terminates and he reaches age 55. He could not testify as to how much the benefits would be since the amount received will depend on many factors. He also said that if he dies before retirement, all of the funds contributed by the bank (he made no contributions to the retirement plan himself) would revert to the bank. We concur with the court that Ruth failed to present sufficient evidence to assign any value to Ronald's interest in the plan. We do not construe section 598.21(1)(i) to require consideration of such an interest which is not reasonably susceptible to any means of valuation. Nor do we think that Schissel requires a contrary result for, in that case, the level of benefits to be paid the husband under his military pension plan was known.

III. In light of our conclusions above, we also reject Ruth's claim that the division of property was inequitable. Given the length of this marriage, the significant contributions made by both parties to the marriage and the other relevant factors listed in section 598.21(1), the trial court was justified in attempting to divide the marital property on an approximately equal basis. We are also satisfied that this goal was achieved since Ruth received property having a total value of \$98,127 while Ronald was awarded property having a net value of \$85,798. Finding no reason to modify the decree, we affirm. Costs are to be divided equally between the parties. Each party shall pay his or her own attorney fees on appeal.

AFFIRMED.