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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WILLIAM E. RYAN AND RITA M. RYAN

Upon the Petition of)
WILLIAM E. RYAN,)
Petitioner-Appellee,) Filed April 8, 1983
And Concerning)
RITA M. RYAN,) 2-460 / 2-68361
Respondent-Appellant.)

Appeal from Mahaska District Court - James D. Jenkins, Judge.

Respondent wife appeals from economic provisions of the parties' dissolution decree. AFFIRMED AS MODIFIED.

M. H. Pothoven of Clements, Blomgren & Pothoven, Oskaloosa, for respondent-appellant.

Garold Heslinga of Heslinga & Heslinga, Oskaloosa, for petitioner-appellee.

Considered en banc.

DONIELSON, J.

Respondent wife appeals from economic provisions of the parties' dissolution decree. On appeal she asserts (1) that for purposes of determining the marital property subject to division, the husband should not have been credited for money received as gifts which had been spent during the course of the marriage; (2) that the evidence established that gifts allegedly made to the husband alone during the course of the marriage were, in fact, joint gifts to the wife as well and, therefore, were subject to division; (3) that some of the gifts to the husband, if not joint gifts to the wife as well, were in turn given by the husband to the wife during the course of the marriage; and (4) that the provision of the decree terminating the husband's alimony obligation upon his retirement should be clarified to clearly provide that the termination will occur only upon his retirement from any gainful employment. We affirm as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. It is our responsibility to review the facts as well as the law to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Guardianship of Sams, 256 N.W.2d 570, 573 (Iowa 1977).

I.

The parties, William and Rita Ryan, were married in 1957. They were, respectively, 49 and 47 years old at the time the decree was entered. Three children were born of the marriage and a child by a previous marriage of William was adopted by Rita. All children have reached the age of majority and no longer live with their parents. Rita was a housewife and beautician during the course of

the marriage but, due to health problems, is not now capable of employment. In the opinion of her doctor, she will never become capable of more than part-time employment. William is director of a local YMCA with net pay of $1,402 per month. During the marriage $27,527 was received as gifts from the husband's parents.

In the final decree the trial court deducted the $27,527 from the parties' net worth and equally divided the remainder. Rita was awarded alimony of $550 per month terminable upon her remarriage, death, or co-habitation with another, or the husband's death or retirement. Rita then instituted this appeal.

II.

Rita contends the property division is inequitable due to the fact that the court set aside $27,527 to William as gifts made to him by his parents before determining the amount of marital property subject to division. She asserts that the $27,527 in gifts should have been included in the property subject to division.

Our analysis is governed by § 598.21 which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968)(modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1976)). The ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). With regard to gifts received by a party, section 598.21(2) provides that

> [p]roperty 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.

Based on our de novo review, we find that the court's refusal to divide the gifts made by William's parents among both William and Rita is inequitable. William testified at trial that much of the money given by his parents was given to both himself and Rita. The gift of $15,000 was given to the parties to be used as the down payment on the home which they purchased in joint tenancy. The gift of stocks were also held in joint tenancy. Moreover, of the total $27,527 claimed as gifts to William, $11,000 had been spent by the time of the dissolution.

The court refused to find that the gifts were to both parties, noting that the form of ownership of property does not control and that no gifts would have come in Rita's direction "had it not been for the parent-child relationship between the donors and [William]." The court thus found that it would not be inequitable to refuse to consider the gifts as marital property.

While it is true that the gifts were made by virtue of William's parent-child relationship, we do not believe this supports the court's conclusion that the "gifts were made to [William] and [William] alone." Based partly on William's own testimony, we believe that at least part of the gifts were made to benefit both parties and their marriage. By disagreeing with the trial court's division, we do not intimate that all gift property which is held in joint tenancy would be subject to division under section 598.21(2). We only hold that a refusal to divide the gifted property in the instant case would be inequitable. Accordingly, we modify the award in the following particulars: Rita shall be awarded the marital home valued at $46,000 subject to the encumbrances totaling $23,000, plus the Datsun automobile valued at $1500. The $5863 debt against Rita and in favor of William is eliminated. With the exception of these modifications, the property division is affirmed.

III.

Rita also challenges the alimony award to the extent that it is to expire upon William's retirement. Having considered the factors set forth in section 598.21(3), we believe that this is an appropriate case for alimony and further believe that the alimony provision should be modified to provide that the alimony shall not terminate automatically upon William's retirement from any full-time employment. See also In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975). It is apparent from the record that William may retire from his present employment when he reaches the age of 55. Any change in his employment status which substantially alters his ability to meet the support obligation may be heard on an application to modify the decree if such should become necessary. We thus modify the decree to provide that alimony shall continue until Rita dies, remarries, or cohabits with another or until William dies.

In all other respects, the decree is affirmed. The costs of this appeal shall be divided equally.

AFFIRMED.