

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 4 1986

CLERK SUPREME COURT

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SHIRLEY A. MICKLE,

)

Plaintiff-Appellee/
Cross-Appellant,

)

Filed June 4, 1986

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vs.

)

ELMER W. TAYLOR,

)

6-102

Defendant-Appellant/
Cross-Appellee.

)

85-111

Appeal from the Iowa District Court for Warren County (No. EQ 20180)

- Michael J. Streit, Judge.

Defendant appeals from judgment entered by trial court involving property
of unmarried cohabitants. **AFFIRMED.**

P. F. Elgin of Elgin, Hoyman, Clogg & Patin, Indianola, for defendant-
appellant/cross-appellee.

James F. Fowler of Wilson, Goodhue & Fowler, Indianola, for plaintiff-
appellee/cross-appellant.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

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The parties, Shirley Mickle and Elmer Taylor, cohabited without marriage beginning in 1978 through 1982, with some interruptions. Both during and before their cohabitation, the parties commingled their property. Shirley provided funds to apply toward living expenses, toward Elmer's farm mortgage debt, toward the purchase of a mobile home for the parties to live in, and toward the purchase of a recreational horse. Elmer also provided funds for various purposes. The extent of the parties' respective financial contributions to their joint endeavors was disputed.

After the parties' relationship and cohabitation ended, Shirley sued Elmer to recover the value of her capital contributions to the parties' joint purchases. After a hearing, the trial court awarded Shirley title to the mobile home and an additional judgment of \$10,516. The trial court also directed that the horse and its colts be sold, with the proceeds to be divided evenly between the parties. The trial court relied on an unjust enrichment theory to enter the judgment.

Elmer has appealed from the trial court's judgment in favor of Shirley. Elmer contends Shirley's contributions to their joint endeavors were irrevocable gifts, and that Shirley is therefore not entitled to any recovery of those contributions. He also challenges some of the trial court's specific factual conclusions about the extent of the parties' respective contributions; he argues he should be given credit for an old mobile home traded in on the new one, and for expenses of raising the parties' horse. Finally, he contends the trial court acted inequitably by taxing costs against him.

Shirley has cross-appealed. She contends the trial court should have granted her request for partition of Elmer's forty-acre farm. She also challenges some of the trial court's factual conclusions about the extent of the parties' respective contributions.

Our review is de novo. Iowa R. App. P. 4. While we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Appeal

At the outset we note the Iowa law involving unmarried cohabitants is in a formative stage and that this opinion is limited to the specific facts as presented. Two recent cases involving unmarried cohabitants provide guidance for our decision.

In Slocum v. Hammond, 346 N.W.2d 485 (Iowa 1984), the plaintiff sought one-half the value of the property allegedly acquired during the period she cohabited with the defendant. During the period while the parties were cohabiting, defendant negotiated and purchased a tract of land and constructed a home on such land valued between \$170,000 and \$220,000. Notwithstanding the plaintiff's assertions to the contrary, the court found she did not pay any costs associated with purchasing or constructing the residence, assume any financial responsibility by signing the note, mortgage, or named as a grantee on the deed, nor contribute any capital for a down payment on the property. The plaintiff was deemed only to have provided certain gratuitous services. Thus, her petition for partition of the residence was denied. This case did not mention any judicial hostility toward addressing claims of unmarried cohabitants generally, but based on the facts presented, the sought-after relief was denied.

In Menten v. Bengt, 366 N.W.2d 577 (Iowa 1985), the parties cohabited continuously for eight years except for an eight-month separation period. The action was originally filed as a dissolution of marriage under Iowa Code Chapter 598; however, on the morning of trial, the woman amended her petition by indicating that the parties were never married. The court stated:

Although the petition in this case was initially framed as a petition for dissolution of marriage under Iowa Code chapter 598, it does not follow from that fact that the court, in hearing the amended petition, was limited to only the equity jurisdiction conferred by that statute. A court may take jurisdiction of a case in equity if the allegations of the petition state a claim cognizable in equity. See McAnulty v. Peisen, 208 Iowa 625, 635-36, 226 N.W. 144, 149 (1929). Because we believe that the petition, as amended, in this case stated claims cognizable in equity, we conclude that the trial court had jurisdiction to hear the case.

Paragraphs 11, 12, and 13 of the petition read as follows:

* * *

13. The property owned by the parties, both real and personal, if any there be, should be divided equitably between the parties.

These allegations are sufficient to support the exercise of equity jurisdiction.

* * *

A court of equity may also partition real and personal property. Iowa R. Civ. P. 270-98. In Slocum v. Hammond, 346 N.W.2d 485, 494-95 (Iowa 1984), which involved unmarried cohabitants, we ordered a partition petition dismissed but in that case no substantial evidence existed in the trial record to support the petition. Regardless of how the parties' marital status affected the court's jurisdiction to hear the case under chapter 598 (an issue we need not and do not decide), paragraphs 11 through 13 of the petition stated claims within the equity jurisdiction of the court. Ronald does not contend the statement of Peggy's claims was an inadequate pleading. Under this record, the trial court did not err in denying Ronald's motion to dismiss.

* * *

We have no occasion to pass on questions involving unmarried cohabitants that might arise under a different pleading and procedural record.

Id. at 579-80.

Now, we have the opportunity to add another piece to the emerging mosaic in this area of the law. Elmer attempts to distinguish this case from Menten

because this case was never filed as a dissolution action; whereas Menten was filed as a dissolution action. We find this is a distinction without meaning. Our law clearly provides Iowa courts jurisdiction in appropriate circumstances to divide property of unmarried cohabitants. Compare Menten, 366 N.W.2d at 579, with Slocum, 346 N.W.2d at 494-95.

The assets brought into the relationship by Shirley are far greater than those provided by the plaintiff in Slocum. We also cannot find any merit in Elmer's contention that the financial transactions involving Shirley's funds to purchase the mobile home for the parties to live in should be characterized as a gift. Accord Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983) ("The donor must have a clear intention to pass all right, title and dominion over the gift to the donee."). To be a gift in an equitable proceeding, Elmer had to establish such fact by clear, convincing, and satisfactory evidence. See generally Meredith v. Cockshoot, 235 Iowa 213, 220, 16 N.W.2d 221, 225 (1944). This Elmer failed to do.

In 1978, the parties both signed a sales agreement to purchase a mobile home for \$19,278. The seller reduced the price to \$16,422 in return for Elmer's former mobile home, which was valued at \$2,856. Title was issued to the parties as joint owners. Shirley paid the entire purchase price of \$16,422, the license fee of \$70, and three years of homeowner's insurance coverage of \$741. Shirley also paid for a porch and appliances, including a washer and dryer.

The trial court awarded Shirley \$10,517 as judgment for the \$7,953 payment she made to retire Elmer's real estate mortgage and \$500 in property taxes plus interest. The trial court found that Elmer received a \$6,000 benefit from living in Shirley's mobile home while she was not living there, but negated this amount by cancelling out Elmer's \$2,856 equity in the mobile home. We believe this was an adequate way of handling the home equity issue.

The trial court employed its equitable powers to find Elmer was unjustly enriched by Shirley. The law of unjust enrichment provides:

Although what constitutes "unjust enrichment" will vary from case to case, we are guided in our analysis by several well-settled principles. * * * As stated in the Restatement, Restitution, Section 1 at page 12: "A person who has been unjustly enriched at the expense of another is required to make restitution to the other." Additionally, a person is unjustly enriched if the retention of a benefit would be unjust. And a person should not be allowed to profit or enrich himself inequitably at the expense of another. (citations omitted)

Key Pontiac, Inc. v. Blue Grass Savings Bank, 265 N.W.2d 906, 908 (Iowa 1978); see also 66 Am. Jur. 2d Restitution and Implied Contracts §§ 3, 54 (1973).

We cannot find any deficiencies in the trial court's use of its equitable authority in this instance. We find no reason, however, to award Shirley \$700 for unspecified costs.

Elmer also maintains that even though the horses which were part of the joint venture are to be sold, he should be reimbursed for the \$800 it cost to raise the horses. The trial court found no evidence existed of any expenses paid by Elmer, yet the trial testimony indicated Elmer did claim expenses of \$800.

We address this issue even though we are not required to do so. See Iowa R. App. P. 14(a)(3). Nevertheless, we find that trial courts are not required to make a perfectly equal division of assets in a case of this sort and we choose not to disturb the trial court's decision. We take a similar stance in determining that taxation of all costs to Elmer was reasonable. See Wymer v. Dagnillo, 162 N.W.2d 514, 519 (Iowa 1968).

II. Cross-Appeal.

Shirley seeks to partition the real estate so as to satisfy her judgment. Her concern stems from the fact that Elmer has taken the tires off the mobile

home she was awarded, which may make it a fixture, and she is concerned that she will be unable to collect the amount awarded in the constructive trust.

We cannot grant the relief Shirley seeks. First, Shirley shall be able to remove the mobile home from Elmer's land because the mobile home did not become a fixture to the real estate when Elmer took its tires off. Compare Durband v. Noble, 182 Iowa 1271, 1273, 166 N.W. 581, 581 (1918) (machine and feed sheds placed upon posts and "blocked up" were not fixtures) with Ford v. Venard, 340 N.W.2d 270, 272 (Iowa 1983) (mobile home held to be attached to realty where a foundation was poured, concrete blocks set, steel girders aligned on the blocks, and a crane set the home on the foundation). The mobile home, along with the porch and appliances, is an asset which Shirley will be able to physically repossess. Authority exists for the proposition that if an unmarried cohabitant contributes any money towards the purchase of property or signs documents of ownership, a partition action can be justified, Nelson v. Nevel, 154 Cal. App. 3d 132, 138-39, 201 Cal. Rptr. 93 (1984) (title registered in man's name only, but woman allowed to amend complaint to allege amount she paid towards purchase of residence); Brooks v. Kunz, 637 S.W.2d 135, 138-40 (Mo. Ct. App. 1982) (because both parties signed a note and deed of trust, each could be held jointly and severally liable, so partition was ordered even though the woman contributed no funds to purchase the property), yet we do not find the present circumstance warrants such measures because a partition would work an undue hardship on Elmer. The difficulty with partition is that such a device would not only guarantee Shirley would get the mobile home, but it would also cause Elmer's real estate to be sold with the proceeds being distributed. Shirley paid the final installment of \$7,953 in September of 1978 to retire Elmer's mortgage on the real estate because Elmer mortgaged this property in June of 1977 to build a machine shed for \$8,500. Shirley, however, did not

have any ownership interest in such property nor did she pay any money toward the purchase price. See Jones & White v. Park, 220 Iowa 903, 905, 262 N.W. 801, 802 (1935). Thus, we deny her partition action. Johnson v. Moser, 72 Iowa 523, 524, 34 N.W. 314, 315 (1887).

We also have no reason to believe Elmer will not honor his obligation to pay \$10,517 to Shirley. While we can understand Shirley's concern to have the security of knowing she will be paid the \$10,517, we cannot order a partition of Elmer's real estate to satisfy her concerns.

AFFIRMED.