

IN THE COURT OF APPEALS OF IOWA

No. 9-268 / 08-0731
Filed May 6, 2009

**IN RE THE MARRIAGE OF KATHLEEN HERNANDEZ-GOMEZ
AND MIGUEL HERNANDEZ-GOMEZ**

**Upon the Petition of
KATHLEEN HERNANDEZ-GOMEZ
n/k/a KATHLEEN CONNER,**
Petitioner-Appellant,

**And Concerning
MIGUEL HERNANDEZ-GOMEZ,**
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

The petitioner appeals from the financial provisions of the decree
dissolving the parties' marriage. **AFFIRMED.**

Pamela Vandel, Des Moines, for appellant.

Darren Page, Des Moines, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

Kathleen Hernandez-Gomez, n/k/a Kathleen Conner, appeals from the provision of the decree dissolving the parties' marriage that awarded Miguel Hernandez-Gomez eighty percent of the net proceeds from the court-ordered sale of the former marital home. For the reasons stated herein, we affirm.

In 2001 Kathleen and Miguel were dating each other and planned to get married. Miguel provided Kathleen with approximately \$90,000 so she could buy a house at 2407 Pleasant Street in West Des Moines. They expected that this house would be the marital home when they got married. For several reasons, including Miguel's credit situation, the home was purchased in Kathleen's name and has remained in her name alone. The purchase price of the home was approximately \$150,000, so a loan was originally taken out for approximately \$60,000. In 2004 Miguel moved in the house with Kathleen. Later that year, they were married.

Over time, more money was borrowed against the home. In 2006 the home was refinanced with a loan of \$120,000. Both Kathleen and Miguel made mortgage payments and paid house expenses.

Kathleen and Miguel both work for the U.S. Postal Service. They are at the same pay grade. However, Miguel earns significantly more because he is able to work overtime and, due to some medical conditions (including a stroke suffered during the marriage), Kathleen is not able to work extra hours.

On May 27, 2007, Kathleen filed her petition for dissolution of marriage. The dissolution trial took place on April 2 and 3, 2008. No children were born of the marriage. Other than some lesser items of personal property, the primary

dispute between the parties concerned the equity in the house at 2407 Pleasant Street. Miguel admitted at trial that the \$90,000 payment was not a loan to Kathleen. Kathleen argued that the \$90,000 payment was a gift to her, but the district court found that it was not. Therefore, the district court treated the equity in the home as property to be divided equitably pursuant to Iowa Code section 598.21 (2007).

The district court concluded an equitable division would be for eighty percent of the net proceeds from the sale of the home to go to Miguel and twenty percent to Kathleen. The court considered the facts that Miguel had originally provided the entire equity and had made a significant number of mortgage payments and other payments relating to house expenses, including payments made before he moved into the house.

Kathleen appeals. She argues that the district court erred in not finding that Miguel made a gift to her of the equity in the home. Alternatively, she argues that the eighty/twenty split of the equity was not an equitable division of marital property.

We review the provisions of a dissolution decree de novo. Iowa R. App. P. 6.4; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). “Although we decide the issues raised on appeal anew, we give weight to the trial court’s factual findings, especially with respect to the credibility of the witnesses.” *Sullins*, 715 N.W.2d at 247 (quoting *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003)).

Upon our review, we affirm the carefully reasoned decision of the district court. We agree that this record does not support a finding that the \$90,000 was

a premarital gift to Kathleen, or a loan, but rather an asset that Miguel brought to the marriage. We also agree that the eighty/twenty split of what remains of this equity is an equitable division of the property, taking all relevant factors into account. See *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005) (“[I]n deciding what constitutes an equitable distribution of property, there need not be an equal division if the division is justified and equitable under all of the circumstances and factors set forth in [Iowa Code section 598.21(5)].”). Miguel’s \$90,000 was by far the most significant asset either party brought to the marriage. Kathleen benefited from this asset by getting to live in the house for six years, the first three of them without Miguel. Although Kathleen argues that she paid the great majority of house expenses, including mortgage payments, the record supports the district court’s finding that Miguel paid a substantial number of these expenses both before and during the marriage. Kathleen also benefited when additional loans were taken out against the house (effectively reducing the equity that Miguel had contributed) to pay for both Kathleen and Miguel’s expenses. Finally, it should be noted that the marriage itself was less than three years in duration. See Iowa Code § 598.21(5) (listing relevant factors).

Thus, we agree with the district court that it is appropriate for Miguel to receive eighty percent of the net proceeds from the sale of the house, an amount the record suggests will be much less than the \$90,000 Miguel originally contributed. For the foregoing reasons, we affirm the decision of the district court pursuant to Iowa Court Rule 21.29(1)(a), (d), and (e).

AFFIRMED.