

IN THE COURT OF APPEALS OF IOWA

No. 23-0644
Filed March 27, 2024

**IN RE THE MARRIAGE OF AARON M. CLARK
AND ROCHELLE R. CLARK**

**Upon the Petition of
AARON M. CLARK,**
Petitioner-Appellant,

**And Concerning
ROCHELLE R. CLARK,**
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary,
Judge.

Aaron Clark appeals financial and support provisions of the decree
dissolving his marriage to Rochelle Clark. **AFFIRMED AS MODIFIED.**

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant.

Michele Lewon of Michele Lewon, P.L.C., Sioux City, for appellee.

Considered by Bower, C.J., Langholz, J., and Vogel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2024).

BOWER, Chief Judge.

Aaron Clark appeals the financial and support provisions of the decree dissolving his marriage to Rochelle Clark. Upon our review, we affirm as modified.

I. Background Facts and Proceedings

Aaron and Rochelle were married in 1998 and are the parents of four adult children. Rochelle, born in 1974, graduated high school and completed some college courses. She has worked in finance at banks and wealth management companies for fifteen years and spent eight years as a real estate leasing agent. She currently works for a wealth management company earning \$38,000 annually. Rochelle also works up to fifteen hours per week at Bath and Body Works. Her income usually goes toward groceries and everyday expenses for the youngest child, who is attending college.

Aaron, born in 1969, graduated from Morningside College with a degree in sociology. He has worked for the Sioux City Police Department as a police officer since 1992. He makes approximately \$77,000 annually.¹ Aaron also does part-time security work and sells woodwork items at a consignment store. He historically pays for health insurance for the family and covers other periodic costs. He is also helping the parties' youngest child pay for college.

Aaron hopes to retire by age fifty-five, though he has health conditions that may accelerate his retirement; he testified he takes twelve medications a day for his medical conditions, including "heart failure, diabetes, high blood pressure, and high cholesterol." When he does retire, Aaron will receive payments from the

¹ Although the district court determined Aaron's 2020 income was \$90,000, the tax records reveal his income was just over \$77,000.

Municipal Fire and Police Retirement System of Iowa (MFPRSI), a pension system for municipal firefighters and police officers. He also has two deferred compensation accounts and a defined benefit retirement plan.

On December 9, 2021, the district court entered a dissolution decree in which the court granted each party \$167,238 in marital assets; granted each party one-half of the value of the marital portion of the MFPRSI pension; awarded Rochelle a portion (\$9914.27) of Aaron's deferred compensation retirement accounts,² \$800 per month in transitional spousal support,³ and \$2500 in attorney fees. Aaron appeals, claiming the court did not equitably divide the MFPRSI pension and retirement funds, incorrectly awarded spousal support in addition to the division of his retirement funds, and erred in ordering him to pay Rochelle \$2500 in attorney fees.

II. Standard of Review

"Dissolution-of-marriage actions are reviewed de novo." *In re Marriage of Towne*, 966 N.W.2d 668, 674 (Iowa Ct. App. 2021). "Accordingly, we examine the entire record and adjudicate anew the issue of the property distribution." *Id.* (citation omitted). We give weight to the findings of the district court, particularly about the credibility of witnesses, but we are not bound by them. *Id.* The district

² At the time of trial, Aaron had two deferred compensation accounts, valued at \$72,427.22.

³ The decree was modified on temporary remand for the district court to rule on Rochelle's posttrial motion to clarify the transitional alimony provision, which was pending when Aaron filed his notice of appeal. The court awarded Rochelle "transitional alimony from Aaron in the amount of \$800.00 per month beginning January 1, 2022, and continuing until Aaron retires from the Sioux City Police Department and Rochelle begins receiving her share of Aaron's pension benefit, either party dies, or Rochelle remarries awarded."

court is granted considerable latitude, and we will interfere in its rulings in dissolution matters only where there has been “a failure to do equity.” *In re Marriage of Pazhoor*, 971 N.W.2d 530, 537 (Iowa 2022); *see also In re Marriage of Gust*, 858 N.W.2d 402, 416 (Iowa 2015).

We review the district court’s award of trial attorney fees for an abuse of discretion. *Towne*, 966 N.W.2d at 680.

III. Property Division

Aaron first challenges the court’s division of the parties’ assets, claiming the court failed to consider the value of personal property previously divided by the parties and improperly awarded Rochelle one-half of the marital portion of his MFPRSI pension and a portion of his other retirement benefits.

The parties in a dissolution action “are entitled to a just and equitable share of the property accumulated through their joint efforts.” *In re Marriage of O’Rourke*, 547 N.W.2d 864, 865 (Iowa Ct. App. 1996). An equitable division is not necessarily an equal distribution of the assets. *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985). Instead, the court must determine what is equitable under the circumstances considering the factors listed in Iowa Code section 598.21 (2022). *See id.*

The parties’ pretrial stipulation valued the total marital assets at \$342,851.78. The stipulation provided no value for “household contents, equipment & personal effects,” and Aaron proposed their son’s college expenses

of \$12,000 be considered a marital debt.⁴ Aaron asked the court to consider “the value of the property” he left in the marital home when he moved out, “which is the fridge, the stove, the washer and dryer, all—the computer, everything. I didn’t take a single stitch of furniture or anything from the house, just my tools out of the garage.” He estimated the value of the items remaining in the house at \$7500 and what he took from the garage at \$3500.

The district court considered all the pertinent statutory and equitable factors and set out its distribution of marital assets and liabilities in a table attached to the decree. The court made no findings as to the value of personal property, though at the close of trial told the parties, “[I]f either one of you have something that belongs to the other property [sic], make sure you exchange those.” The court did not include the son’s education debt in the division of property. The court ruled Rochelle was entitled to one-half of the marital portion of Aaron’s pension and retirement benefits and divided the parties’ assets and liabilities as proposed by Rochelle. The resulting distribution meant each party received \$167,238.34.⁵ The court ordered Aaron to pay \$2500 of Rochelle’s estimated \$6500 in attorney fees.

Aaron claims the division of his pension and retirement accounts is unfair because he will only receive social security benefits of \$138 per month while Rochelle will get significantly more—her expected social security benefit is \$1576 per month. We are not convinced there is any inequity in awarding Rochelle the marital portion of Aaron’s retirement benefits. “Under Iowa law pensions are

⁴ Rochelle testified she had no say in her son’s decision to attend college, had no knowledge of the cost, and was not aware Aaron was paying any portion of the cost. She asserted, “This is not a marital debt.”

⁵ Rochelle’s portion was one penny higher.

characterized as marital assets, subject to division in dissolution actions just as any other property.” *In re Marriage of Branstetter*, 508 N.W.2d 638, 640 (Iowa 1993); *accord In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003) (noting the retirement system for police officers and fire fighters are subject to division in a dissolution proceeding).

Rochelle submitted evidence Aaron’s basic MFPRSI member monthly payment will be \$5276. Aaron offered no evidence to the contrary. The district court’s division of the marital assets, including the division of Aaron’s pension, is equitable.

IV. Spousal Support

Aaron next challenges the district court’s determination spousal support in the amount of \$800 per month was warranted. Aaron argues the district court failed to adequately account for his health conditions, his age, and the marital asset division when determining whether spousal support was appropriate. To the contrary, the district court outlined the purposes of spousal support, the four recognized types of support, and noted “[u]nder these facts, there is support for transitional or rehabilitation alimony as well as traditional alimony. The trial court clearly sees the first [four] years of alimony as transitional or rehabilitation alimony and thereafter as traditional alimony.” The court then considered each of the relevant factors listed in Iowa Code section 598.21(3), indicating Aaron’s health impacted its consideration. The court also noted, “Following a marriage of long duration, it may be appropriate to award alimony even though there has been an award of substantially equal property distribution, especially where the disparity in

earning capacity is great.” Our review indicates the court thoughtfully considered all relevant matters and found this case warranted an award of spousal support:

This is a [twenty-three]-year marriage. During this marriage, Aaron has earned considerably more than Rochelle. Presently his annual income is over two times that of Rochelle’s annual income. Aaron is eligible after [thirty] years of service with the police department to retire and draw his pension. That could happen as early as one to three years. Aaron resists paying spousal support, but it is merited due to the parties past earnings history and the disparity between their earnings. Granting Rochelle alimony would help her financially until such time as Aaron retires and they both begin to receive a portion of his pension.

Upon our de novo review, we find no failure to do equity in ordering Aaron to pay spousal support. However, because the decree did not accurately reflect Aaron’s income, we modify the decree to slightly decrease the amount of spousal support ordered to \$700 per month. Rochelle’s current take-home pay is \$982 twice monthly; her estimated monthly expenses at the time of trial were \$3101. Aaron submitted a personal monthly budget listing his monthly income as \$5400 and his expenses as \$4638 (including \$1000 per month for his son’s college). It is clear Rochelle’s income is inadequate to cover her expenses, while Aaron has the ability to contribute to her support. Aaron’s voluntary contributions to his son’s college education cannot be used to avoid paying spousal support. We affirm the order of spousal support and duration but modify the amount to \$700 per month.

V. Attorney Fees

Aaron finally claims the district court should not have ordered him to pay \$2500 towards Rochelle’s attorney fees. He asserts Rochelle has access to assets she could sell to pay her attorney fees. Aaron also argues because he was

already helping pay for some of Rochelle's living expenses and their son's college expenses, he should not be responsible for attorney fees as well.

"Whether attorney fees should be awarded depends on the respective abilities of the parties to pay." *Towne*, 966 N.W.2d at 680 (citation omitted). "Trial courts have considerable discretion in awarding attorney fees." *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). We find no abuse of that considerable discretion considering Aaron's greater ability to pay. The award was reasonable.

VI. Appellate Attorney Fees

Rochelle requests appellate attorney fees. Appellate attorney fees are not a matter of right. *In re Marriage of McDermott*, 827 N.W.2d 671, 687 (Iowa 2013). We may award appellate attorney fees based on the needs of the party seeking the award, the other party's ability to pay, and the merits of the claims made on appeal. *Id.* Rochelle has been required to defend the district court's ruling, which we have affirmed or modified in her favor. Aaron's income is considerably higher. Based on the record before us, we determine Aaron should pay \$2100 in appellate attorney fees. The costs of the appeal are assessed to Aaron.

AFFIRMED AS MODIFIED.