

IN THE COURT OF APPEALS OF IOWA

No. 16-2211
Filed November 22, 2017

**IN RE THE MARRIAGE OF TIMOTHY J. GALLES
AND DEBRA M. GALLES**

**Upon the Petition of
TIMOTHY J. GALLES,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
DEBRA M. GALLES,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Cherokee County, Don E. Courtney,
Judge.

Petitioner and Respondent appeal and cross-appeal from the district court's
findings and decree in this dissolution of marriage action. **AFFIRMED AS
MODIFIED AND REMANDED.**

Alice S. Horneber of Horneber Law Firm, P.C., Sioux City, for appellant.

George W. Wittgraf of Wittgraf Law Firm, Cherokee, for appellee.

Considered by Vaitheswaran, P.J., Bower, J., and Blane, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2017).

BLANE, Senior Judge.

The parties appeal and cross-appeal from the district court's findings and decree in this dissolution-of-marriage action. Debra M. Galles contends the court did not properly value and equitably distribute their property and debts, included or failed to exclude inherited and gifted property, failed to award her a portion of Timothy Galles's IPERS pension benefits, erred in allowing property equalization payments to be made in three installments, failed to require the parties to file jointly their 2015 tax returns, failed to award adequate alimony, and failed to award adequate attorney fees. On cross-appeal, Timothy contends the trial court erred in awarding alimony and attorney fees to Debra.

A. Procedural Background.

On July 20, 2015, Timothy filed a petition for dissolution of marriage. Debra filed her answer on August 10. Trial was held on March 3, 2016, before the district court. The court issued a decree on November 29. Debra filed a timely notice of appeal on December 27. Timothy filed a notice of cross-appeal on December 29.

B. Factual Background.

The parties married on September 10, 1988, and separated in late September 2014. At trial, Timothy was sixty-three years old and a 1971 graduate of Remsen St. Mary's High School in Remsen. After Timothy graduated from high school he became employed with Hoover Oil as a mechanic. When Hoover Oil was sold, he purchased a partnership in a bar/restaurant in Marcus, which he operated until 1983. At that time Timothy found employment with Means Oil, formerly Hoover Oil, and worked for them as a mechanic from 1983 to 1989. Starting in 1989 he was employed with the City of Marcus, and remained there for

twenty years, serving in several capacities, including street superintendent, public works director, and city foreman.

Debra was born in 1956 and is a 1975 graduate of Marcus Community High School in Marcus. After her graduation from high school she worked in nursing homes and restaurants. For approximately seventeen years she worked for K-Products in Marcus, during which time she sustained a work injury which resulted in four surgeries—two on her arm and two on her wrist. These resulted in a workers' compensation permanent partial disability award. Debra was unable to return to employment with K-Products because of her physical limitations. At that point Debra became employed with Heartland Care Center in Marcus. She is employed full time as a cook, working from thirty to thirty-five hours per week, making between thirteen and fourteen dollars per hour. In 2015, she earned \$24,920. If she works an average of sixty-four hours per pay period, which is every two weeks, she qualifies to obtain health insurance through her employer.

No children were born to this marriage. However, Debra did bring a twelve-year-old child into the marriage. The child lived with the parties full-time. Debra never received any child support from the natural father of the child.

After Timothy retired from the City of Marcus, he became employed at Marcus Lumber Company in the fall of 2009 in their plumbing and heating department. He works a forty-hour work week and is paid \$17.30 per hour. When he reached sixty-two years of age, he collected several Social Security checks before realizing he could only work twenty to twenty-five hours per week without being penalized. If he worked less than full time he would lose all benefits offered through his employer, including insurance coverage. He repaid the Social Security

Administration for the payments received and went back to full time, forty hours per week. His intention is to retire when he is sixty-four because his job is physically demanding, but part-time work is possible.

Upon his retirement from the City of Marcus in 2009, Timothy began receiving IPERS benefits and continues to receive those monthly. He has elected to receive his full IPERS benefits with no payment upon his death to anyone else.

Timothy purchased a residence on North Ash Street in Marcus, Iowa, in July of 1977 for \$24,500. In 2005, the home was remodeled, which was financed with Timothy's inheritance of \$33,800.86 from his parents and gifts from his older brother.

During the marriage, the parties shared responsibility for maintaining the residence with Timothy paying the bills and doing repair work. Debra did the laundry, housecleaning, buying groceries, and cooking. During the first half of the marriage the parties each maintained their own checking accounts and shared a joint savings account. Timothy paid for maintenance around the house out of his account and Debra paid for groceries and clothes out of her account. Eventually the parties began sharing joint checking and savings accounts until the fall of 2014 when Debra left the residence. The parties kept a significant amount of cash in the home and when Debra left Timothy wrote her a check for \$7000, half of that cash amount.

At the time of separation at the end of September 2014, Debra moved into her deceased mother's home located on North Maple in Marcus. The home was owned in joint tenancy by Debra's parents. Upon her mother's death, Debra, with the consent of her siblings, moved into the home after making payment to the Iowa

Department of Human Services in the amount of \$2332.80 for medical assistance debt incurred by her father and owed by her mother. Upon payment of that debt, she began making rental payments to her four sisters beginning in November of 2014. She pays rent of \$300 four out of every five months.

Debra submitted a proposed division of assets and liabilities. With some exceptions, the parties agreed with the division of assets as outlined in the exhibit but disagree on values. Debra's financial affidavit itemizes her expenses at \$2131 per month. Following their separation, Timothy continued to pay for Debra's health and car insurance and paid for the maintenance of her car.

C. Standard of Review.

Dissolution cases are reviewed de novo. See Iowa R. App. P. 6.907; *In re Marriage of McDermott*, 827 N.W.2d 671, 676 (Iowa 2013). “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.” *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006) (citation omitted). “Ordinarily, a trial court’s valuation will not be disturbed when it is within the range of permissible evidence.” *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). We review an award of attorney fees for an abuse of discretion. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 484 (Iowa 2012). An abuse of discretion occurs when the district court exercises its discretion “on grounds or for reasons that are clearly untenable or to an extent clearly unreasonable.” *Id.* “A ground or reason is untenable when it is not supported by substantial evidence or when it is based on erroneous application of the law.” *Id.*

D. Discussion.

I. WHETHER THE TRIAL COURT ERRED IN FAILING TO AWARD DEBRA ONE-HALF OF THE IPERS BENEFITS.

Timothy earned an IPERS pension while employed by the City of Marcus. During the entirety of that employment he was married to Debra. His IPERS payment is \$1201.23 per month. We also note that Timothy elected an IPERS benefit that pays him the full amount and does not pay any amount to a survivor upon his death.

IPERS is a defined benefit program and is therefore a pension. *Sullins*, 715 N.W.2d at 249. “Pensions are divisible marital property.” *Id.* at 247. Such pensions are to be divided in a dissolution action. *See In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996). The trial court here failed to divide the IPERS pension. Division may be in one of two manners—the present-value method or the percentage method. *See id.* It is normally desirable to divide a defined-benefit plan by using the percentage method. *Sullins*, 715 N.W.2d at 250 (“[T]he better way to divide and distribute the IPERS account is to use the percentage method normally applicable to cases involving IPERS.”).

The trial court’s only mention of IPERS in the decree was in relation to alimony, stating: “Even if Timothy were to retire on his social security, distributions from retirement accounts, and IPERS benefits, the Court finds he can afford \$300 per month alimony payments to Debra.” On our de novo review, we find that the trial court erred in failing to order division of Timothy’s IPERS pension by entry of a qualified domestic relations order (QDRO). The QDRO should divide Timothy’s IPERS benefit equally between the parties from the date of the original dissolution decree. Since Timothy has received the full IPERS payments from the date of the

decree, the amended decree should provide for Timothy to pay Debra one-half of the IPERS payments he has received from that date.

II. WHETHER THE TRIAL COURT ERRED IN FAILING TO AWARD DEBRA \$35,000 OF THE VALUE OF THE MARITAL HOME.

Both parties agreed at trial that the value of the marital home was \$75,000. Prior to the marriage, Timothy purchased the home on North Ash Street for \$24,500. He had a thirty-two-year mortgage with monthly payments of \$164. At his level of payment, Timothy had reduced the mortgage principal to some extent when the parties married in 1988.¹ During the marriage, the parties paid off the mortgage. At trial Debra proposed that Timothy be awarded \$40,000 of the home equity and that she be awarded \$35,000, apparently to recognize Timothy's additional equity from paying on the mortgage for eleven years before their marriage.

Timothy presented evidence that he inherited \$33,800.86 from his parents and received \$25,640 in gifts from one of his brothers. The trial court accepted Timothy's testimony and did not divide this property, citing Iowa Code section 598.21(6) (2015): "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" The trial court found that Timothy used his inheritance and gifts to remodel and make significant improvements to the

¹ Neither party presented evidence as to the value of the residence, Timothy's equity, or the outstanding amount of the mortgage in 1988 when the parties married.

residence.² The court awarded the marital home to Timothy, stating: “By awarding the home to Timothy the Court gives him credit for the inheritance received from his family and [gifts] from his brother.”³

Inherited or gifted property stands as an exception to the statutory mandate of equitable distribution. Inherited property is normally awarded to the individual spouse who owns the property, independent from the equitable distribution process. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). But this exclusion is not absolute; inherited property may be divided if equity demands it in light of the circumstances of a spouse or the children. *Id.*

Debra argues that Timothy failed to show the amount spent on the remodel or that the remodel was paid for by inheritance or family gifts. She claims that they took out a loan for the remodeling and that Debra assisted in repaying the loan. Our review of the record does not support this contention. Timothy deposited his inheritance and gifts into the parties’ joint account and then paid for the remodeling out of that account.

Based upon our de novo review, the trial court applied the correct legal analysis to determine Timothy was entitled to the inheritance and family gifts as his separate, nonmarital property. It appears inheritance and gifts were used for

² The parties made additions to the existing home with a full basement under the additions, rebuilt the kitchen, converted the three-season room to a four-season room, built a new garage, replaced flat roofs with pitched roofs, installed a new roof, new siding, and new gutters.

³ We note that there was no evidence as to the actual amount spent on the improvements to the residence. We further note that one-half of the home equity would be \$37,500. Timothy’s inheritances and gifts totaled \$59,440.86, which would more than offset the equity in the marital residence to which Debra would otherwise be entitled. In effect, the trial court did not set off the full amount of Timothy’s inheritance and gifts.

improvements to the residence, which resulted in a significant increase in its value.

We find no basis to change the decree in this regard.

III. WHETHER THE TRIAL COURT ERRED IN FAILING TO INCLUDE THE VALUE OF PERSONAL PROPERTY AWARDED TO TIMOTHY, FAILING TO CORRECTLY VALUE PERSONAL PROPERTY IT AWARDED, AND IN INCLUDING DEBRA'S NONMARITAL INHERITANCES AND GIFTS.

The trial court awarded Debra specified personal property valued at \$11,040. and awarded Timothy specified personal property valued at \$46,905. Debra initially complains that the trial court failed to include in the distribution certain personal property that should have been awarded to Timothy. Specifically, Debra contends Timothy took Debra's paychecks away from her for the six months before their separation and kept those monies in accounts over which he maintained control as to how the money was spent. Debra listed this amount in her list of assets as \$10,723. The trial court neither lists this amount in the findings or decree nor addresses why it was not included in the distribution.

Timothy argues on appeal that Debra did not preserve this issue for appeal by failing to file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) to enlarge or amend the findings, judgment or decree. "[W]e have repeatedly said that a [rule 1.904(2)] motion is necessary to preserve error 'when the district court *fails to resolve* an issue, claim, or other legal theory properly submitted for adjudication.'" *Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (emphasis in original) (citation omitted). Under the supreme court's prior holdings, we must agree with Timothy. Debra has not preserved this issue for our review by failing to file a rule 1.904(2) motion to enlarge or amend.

Next, Debra argues that the trial court failed to include on Timothy's side of the distribution ledger the IPERS payments he received from the time of their separation to the date of the trial, which she calculates to be \$21,618. Timothy does not challenge preservation of this issue.

We must reject Debra's claim. First, the record shows that the parties during the latter half of their marriage deposited their incomes, including the monthly IPERS pension, into a joint checking account. The trial court noted in its findings: "Since the separation Timothy has continued to pay for Debra's health and car insurance and had paid for the maintenance of her car." Timothy used part of his income, including IPERS, to help support Debra during their separation. Also, Debra did not present evidence of Timothy's expenses during the separation and did not make a claim Timothy dissipated or secreted assets during the separation. Any IPERS payments Timothy received during the separation that were not expended would remain in the bank accounts and were subject to division of assets. Second, Debra did not file an application for temporary support as provided for in Iowa Code section 598.11, where the court could have required Timothy to pay an amount to Debra that could have included IPERS in the calculation. Finally, pensions are not subject to division prior to the dissolution, but are to be divided with other assets as of the date of the dissolution trial. This "means that courts divide the property of the parties *at the time of divorce*, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the parties." *Schriner*, 695 N.W.2d at 496 (emphasis added). All property of the marriage that exists at

the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. *Id.* (citing Iowa Code § 598.21(1)).

Debra next claims that the trial court did not divide certain checking and savings accounts, those being: Farmers State Bank checking, \$1500.00; Farmers State Bank savings, \$16.07; Farmers State savings, \$1400.00; Farmers State checking, \$2715.38; and American Bank, \$7082.98. At trial the parties submitted Form B, the Stipulation of Assets and Liabilities. On page 3 of the exhibit, Timothy lists the Farmers State Bank checking, \$2715.38; the Farmers State Bank savings, \$16.07; and American Bank, \$7082.98. Debra claimed on the exhibit that the Farmers State Bank savings account contained \$1400; the Farmers State Bank checking \$1500.00; and the American Bank account was “unknown” amount.

The decree states: “Form B - Stipulation of Assets and Liabilities attached to the Pretrial Stipulation, and as reflected in Respondent's Exhibit 111, reflects that the parties have agreed upon the recipient of many of the assets and items of personal property. The parties do have a disagreement as to the value of some of the items.” The stipulation lists these accounts as marital assets contributed to by both parties. A review of the trial court decree shows that there was no distribution of these specific accounts and they are not taken into consideration in determining an equitable distribution of assets and liabilities.⁴

Assuming Timothy's figures, at the time of trial these accounts contained a total of \$9814.43. The parties stipulated these are marital assets, and these

⁴ The trial court did note that the parties kept a significant amount of cash around the home and that when Debra moved out and the parties separated, Timothy wrote her a check for \$7000 as her one-half of the cash. This, however, does not account for distribution of the bank accounts.

accounts should be divided. Debra is entitled to one-half of these accounts, or \$4907.22.⁵

Next, Debra argues that the trial court did not correctly value the personal property awarded to the parties, adopting in almost every instance Timothy's value as opposed to hers. Debra points out that the trial court awarded assets, which she valued at \$44,100.00 and Timothy valued at \$22,790.00, to Timothy, and assigned a total value of \$24,847.00. In Debra's opinion, the trial court's award resulted in Timothy receiving, along with the personal property, a \$19,253.00 windfall.

Ordinarily, a trial court's valuation will not be disturbed when it is within the range of permissible evidence. *In re Marriage of Wiedemann*, 402 N.W.2d 744, 748 (Iowa 1987). In ascertaining the value of property, its owner is a competent witness to testify to its market value. *Holcomb v. Hoffschneider*, 297 N.W.2d 210, 213 (Iowa 1980). Although our review is de novo, we ordinarily defer to the trial court when valuations are accompanied by supporting credibility findings or corroborating evidence. *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999).

Hansen, 733 N.W.2d at 703.

Upon our de novo review, we find the trial court's valuations to be within a permissible range. The items listed are used property such as furnishings, appliances, equipment, sporting goods, and the like usually acquired over the course of a marriage. The trial court's values fall somewhere between the value claimed by each party. Debra does not specifically point to any one item and present evidence that would convince us that the trial court's valuation was clearly wrong. We find no reason to assign different values.

⁵ Since each party receives one-half these accounts, this does not change the calculation of the equitable distribution.

Next, Debra asserts that the trial court included in her awarded marital assets items that even Timothy acknowledged were inherited or gifted to her. These include an “elephant” collection, china, crystalware, and guns. Timothy again argues that Debra did not preserve this issue since she failed to file a motion to enlarge under Iowa Rule of Civil Procedure 1.904(2). However, we do not agree on this point since the trial court did address these items by specifically including them in the distribution of personal property.

In the decree, the court awarded the “elephant” collection (\$750), the china (\$50), and the eight-piece crystalware set (\$50) to Debra as marital assets. Since these were inherited and gifted items, they were not marital property and should not have been included in the distribution. The \$850 should also be deducted from Debra’s award; instead of \$11,040, her total should be \$10,190.

The remaining issue regards the guns. The court also awarded “guns” to Timothy as a marital asset with a value of \$1200 and does not mention anywhere else in the decree whether these were inheritances or gifts. On her financial affidavit, Debra lists “guns” under “other assets,” with joint ownership and a value of \$5000. On the stipulation of assets and liabilities, the parties listed “guns” as acquired during the marriage going to husband with a disputed value—Debra at \$5000 and Timothy at \$3500.

In trial testimony, Timothy stated that he owned two guns before the marriage—a 1100 Remington automatic 12-gauge shotgun and a .22 Winchester semi-automatic rifle. Also, that he inherited two guns during the marriage—a model 101 Winchester 12-gauge and a model 31 Remington 12-gauge. Timothy also acknowledged that Debra had inherited two guns during the marriage, but he

could not recall their make or model. He volunteered to return those guns to Debra. Debra testified generally about the guns, identifying them in two photos, which show a total of ten rifles or shotguns. Debra did not specifically identify the guns she inherited or give an estimate of their value.

We find that the decree should be corrected to award the pre-marriage and inherited guns to the respective parties. The parties agree and understand which guns those are. Since the trial court awarded guns to Timothy and assigned a value of \$1200, significantly less than what both Debra and Timothy valued all of the guns, we find that the trial court awarded the guns constituting marital property to Timothy with the value of \$1200.

IV. WHETHER THE TRIAL COURT ERRED IN FAILING TO CONSIDER DEBRA'S CREDIT CARD DEBT IN ITS DIVISION OF ASSETS AND DEBTS.

The trial court found "Debra's credit card debt for \$1,300.00 shall be Debra's responsibility." Debra contends that the trial court should have divided this account as a liability of the parties. The record supports that Debra incurred the \$1300 on this credit card after the parties separated and used it for purchases personal to her. Although incurred during the marriage and technically marital debt, the credit card balance need not be divided. *See Hansen*, 733 N.W.2d at 704 ("[W]e believe it is equitable to require [petitioner] to assume this liability as the level of debt was incurred without [respondent]'s knowledge and without his consent."). The court may also determine that debt incurred during separation for personal expenses may be treated as individual debt. *See In re Marriage of Etnyre*, No. 03-0591, 2003 WL 23008940, at *3 (Iowa Ct. App. Dec. 24, 2003). We find no basis to include Debra's credit card debt in the distribution of marital assets and liabilities.

V. WHETHER THE TRIAL COURT ERRED IN FAILING TO REQUIRE THE PARTIES JOINTLY FILE 2015 TAX RETURNS AND DIVIDE THE REFUNDS.

The trial court ruled: "The parties separated in the fall of 2014. The Court leaves discretion to the parties as to whether or not they file a joint tax return for tax year 2015." The dissolution trial was held on March 3, 2016. At that time the parties still had time to timely file their 2015 federal and state income tax returns. The decree was not filed until November 29, 2016, well after the 2015 tax return filing deadlines.

Debra presented evidence that the parties had filed joint returns during the marriage and submitted as exhibits the joint returns they had filed in 2012, 2013 and 2014, up to the year of their separation. She argues that in each of those three years the joint returns had produced an income tax refund and that the court should therefore order the parties to file a joint return for 2015 and divide the expected refund.

Debra has not presented evidence that the filing of a joint return in 2015 would actually result in refunds. The tax returns from the three prior years, although suggestive, do not establish this fact. Since the decree was filed after the tax returns were due, and it is not disclosed in this record how the parties handled the filing of the 2015 income tax returns, it was proper for the trial court to leave the filing to the parties' discretion. We find no reason to disturb the trial court's ruling.

VI. WHETHER THE TRIAL COURT ERRED IN ORDERING DEBRA TO BE PAID HER PROPERTY SETTLEMENT IN THREE INSTALLMENTS.

The trial court decree provides:

Judgment is entered in favor of the Respondent, Debra M. Galles and against the Petitioner, Timothy J. Galles for the amount of \$28,843.50. This judgment shall earn interest at the legal rate upon filing of this decree until paid in full. This judgment shall be paid in three installments. The first installment of \$10,000 and interest accrued to that date shall be due February 1, 2017. The second installment of \$10,000 and accrued interest shall be due February 1, 2018, with the final installment with accrued interest shall be due on February 1, 2019. This judgment shall be a lien on Petitioner's real estate until released after payment in full.

The \$28,843.50 was half of the difference in the property distribution.⁶

Debra argues that Timothy was awarded sufficient cash assets to pay in full the equalization payment in one installment. Our review does not prove this out. Timothy would likely have to cash in certain retirement accounts to make an immediate full payment. Payment of a property equalization in installments has been approved by our supreme court, see *In re Marriage of Conley*, 284 N.W.2d 220, 223 (Iowa 1979), as long as the court provides for interest on the delayed payments. Here, the trial court provided for interest. We see no reason to disturb the trial court's decision on this matter.

VII. WHETHER THE TRIAL COURT ERRED IN AWARDING ALIMONY TO DEBRA AND THE AMOUNT OF ALIMONY.

Timothy contends in his cross-appeal that the trial court erred in awarding Debra \$300 per month in alimony and no alimony should have been awarded.

⁶ Based upon our ruling on this appeal, we have reduced Debra's amount she received in the property distribution to \$10,190. The trial court found the difference in retirement accounts awarded to the parties was \$21,822 greater to Timothy. The court then added the difference in the property distribution (\$35,865) to the \$21,822 to arrive at \$57,687. The court then divided this amount to arrive at the equalization payment owed by Timothy to Debra of \$28,843.50. Based on the reduction of \$850, the equalization payment is now \$29,268.50.

Debra contends she was not awarded adequate alimony.⁷ Since we have provided for the division of Timothy's IPERS pension by a QDRO—providing Debra with one-half, or \$600 per month—and Timothy's present income has been reduced accordingly, we apply Iowa Code section 598.21A to determine if Debra is still entitled to alimony. See Iowa Code § 598.21A (setting forth factors for determining spousal support).

Spousal support is not an absolute right. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). Whether spousal support is proper depends on the facts and circumstance of each case. *In re Marriage of Brown*, 487 N.W.2d 331, 334 (Iowa 1992). Division of pensions is to be considered in determining a spouse's claim for alimony. *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994).

In deciding whether Debra should be awarded alimony, we find her monthly expenses are listed at \$2131, which includes \$600 for housing.⁸ This totals \$25,572 per year. Her annual income was \$24,500. This situation justified alimony. She will now receive an additional \$7200 per year (\$600 per month) from Timothy's IPERS. Her annual income will be \$31,700. Over the three years following the decree, Debra is also to receive property equalization payments from

⁷ Debra incorporates an argument that she should have been awarded more alimony because the court did not set out as her separate nonmarital asset a Bankers Life IRA with a value of \$38,746, which she asserts was a result of her workers' compensation settlement for a work injury. This was not raised directly with the trial court by a rule 1.904(2) motion and is therefore not properly before us. *Meier*, 641 N.W.2d at 539. We also find that we need not address such an argument in light of our decision that Timothy's IPERS must be divided.

⁸ As discussed above, Debra actually pays rent of only \$300 per month, four out of every five months. However, we accept that Debra will likely be eventually required to spend \$600 per month on housing.

Timothy of \$10,000, \$10,000 and approximately \$9268.50,⁹ plus interest. Timothy earns \$32,000 plus his IPERS, now reduced by fifty percent, to \$600 per month or \$7200 per year, for a total gross annual income of \$39,200. Timothy testified he plans on retiring at sixty-four years of age due to the physical nature of his work. Applying all of these facts to the criteria in section 598.21A, we find that the \$300 per month alimony is more than made up by the \$600 per month Debra will receive due to the QDRO dividing Timothy's IPERS pension. The alimony provision in the original decree is eliminated.

VIII. WHETHER THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES TO DEBRA AND THE AMOUNT.

The trial court ordered Timothy to pay \$2500 toward Debra's attorney fees, which is about one-half of her total attorney fee bill of \$4935.50. Debra contends the award should be greater. Timothy argues, with the property distribution and equalization payments, Debra can afford her attorney fees. Debra paid an initial retainer to her attorney out of the \$7000 check that Timothy gave to Debra to pay her for one-half of the cash on hand when they separated.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. "[T]rial courts have considerable discretion in awarding attorney fees." *In re Marriage of Steele*, 502 N.W.2d 18, 22 (Iowa Ct. App. 1993). We are to consider the needs of the party making the request and the ability of the other party to pay. *In re Marriage of Miller*, 524

⁹ The last payment is slightly higher than stated in the original decree based upon our decision excluding Debra's inherited and gifted property.

N.W.2d 442, 445 (Iowa Ct. App. 1994). We review an award of attorney fees for an abuse of discretion. *Schenkelberg*, 824 N.W.2d at 484.

In applying these legal standards and the facts here, where the parties have received adequate liquid assets, we cannot find that the district court abused its discretion. The award of attorney fees was appropriate. We also decline to award Debra appellate attorney fees.

E. Conclusion.

Having addressed all of the issues raised on the appeal by both parties, we find the decree should be affirmed as modified. The parties are each entitled to one-half of the checking and savings accounts and Debra shall receive \$4907.22 from Timothy. Debra is awarded her “elephant” collection, china, crystalware, and two guns as her inherited or gifted property and \$850 is deducted from Debra’s property award—adjusting the value of her award to \$10,190 rather than \$11,040. The property equalization payments from Timothy to Debra shall total \$29,268.50 plus interest. Timothy shall return Debra’s two guns within ten days of the filing of this opinion. The alimony provision is stricken; Timothy shall not be obligated to pay Debra alimony. Timothy is to reimburse Debra for one-half of the IPERS payments he has received from the date of the original decree.

The action is remanded to the district court for entry of a QDRO consistent with this opinion to be submitted by the parties for approval by the court within a

reasonable time as set by the district court. All of the other provisions of the decree shall remain in force.

AFFIRMED AS MODIFIED AND REMANDED.