

IN THE COURT OF APPEALS OF IOWA

No. 17-0444
Filed November 22, 2017

**IN RE THE MARRIAGE OF CATHERINE MARY BELL
AND THATCHER JON BELL**

**Upon the Petition of
CATHERINE MARY BELL,**
Petitioner-Appellee,

**And Concerning
THATCHER JON BELL,**
Respondent-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, DeDra L. Schroeder, Judge.

Thatcher Bell appeals following the economic provisions of the decree dissolving his marriage to Catherine Bell. **AFFIRMED.**

Sarah A. Reindl of Reindl Law Firm, Mason City, for appellant.

Richard S. Piscopo Jr. of Yunek Law Firm, P.L.C., Mason City, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ.

DOYLE, Judge.

Thatcher Bell appeals following the entry of the decree dissolving his marriage to Catherine Bell. Thatcher argues the property division and spousal support provisions of the decree are inequitable.

I. Background Facts and Proceedings.

Catherine and Thatcher were married in 2005 and have one minor child together. In June 2016, the parties separated and Catherine filed a petition to dissolve the marriage. The parties stipulated to joint legal custody of their child with Catherine having physical care. They also agreed upon a regular visitation schedule between Thatcher and the child.

The matter came to a trial in February 2017 to allow the court to determine the division of property and spousal support, among other issues. At the time, Catherine was forty-four years old and worked full time as a billing specialist, earning \$13.75. She owed approximately \$30,000 in student loan debt from the associate's degree she had earned during the marriage, with \$400 monthly payments coming due beginning in March 2017. Thatcher was forty-one years old and had earned a high school diploma. He worked for various railroad companies during the marriage and has a pension. Catherine will automatically receive one-half of Thatcher's pension.

The district court entered a decree dissolving the parties' marriage in March 2017. The court determined Catherine's annual income to be \$28,600 and Thatcher's annual income to be \$75,360. After valuing and dividing the parties' assets and debts, the court ordered Thatcher responsible for approximately \$31,000 of the marital debt and Catherine responsible for approximately \$23,000

of the marital debt. The court also awarded Catherine the parties' 2016 federal and state tax refunds, estimated to be \$3979, and awarded Thatcher his 401(k) account, which the court valued at \$8886. Finally, the court ordered Thatcher to pay Catherine rehabilitative spousal support in the amount of \$1000 per month for a period of five years, and \$750 per month thereafter for spousal support for a period of an additional five years.

Thatcher appealed.

II. Scope and Standard of Review.

We review dissolution of marriage cases de novo. See Iowa R. App. P. 6.907; *In re Marriage of Mauer*, 874 N.W.2d 103, 106 (Iowa 2016). We give weight to the district court's fact findings even though they are not binding. See Iowa R.App. P. 6.904(3)(g); *Mauer*, 874 N.W.2d at 106. We will disturb the district court's findings only if they fail to do equity. See *Mauer*, 874 N.W.2d at 106. Because we base our decision on the unique facts of each case, precedent is of little value. See *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009).

III. Discussion.

Thatcher challenges the economic provisions of the dissolution decree, advancing three arguments on appeal. Thatcher claims Catherine is not entitled to an award of spousal support because she failed to prove her need and his ability to pay. He also claims Catherine wasted marital assets by allowing the marital home to enter foreclosure. Finally, Thatcher argues the resulting division of property and the award of spousal support is inequitable under the circumstances.

A. Property Division.

Iowa Code section 598.21(5) (2016) requires an equitable division of property in dissolution-of-marriage cases. See *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007). Although the partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts, we do not require an equal division or percentage distribution. See *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). “The determining factor is what is fair and equitable in each circumstance.” *Id.* The legislature has set out what the court is to consider in making this determination. See Iowa Code § 598.21(5)(a)-(m).

In determining an equitable division of property, the court also considers whether a spouse’s conduct after separation “results in the loss or disposal of property otherwise subject to division at the time of divorce.” See *In re Marriage of Kimbro*, 826 N.W.2d 696, 700-01 (Iowa 2013) (quoting *In re Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa Ct. App. 1997)). Before the start of trial, Thatcher submitted his proposal concerning the division of property and spousal support, in which he asked the court to

[t]ake into consideration that [Catherine] committed egregious waste of the marital estate by not paying the mortgage on the homestead during the pendency of this proceeding despite being awarded substantial spousal maintenance and child support and claiming the mortgage as an expense necessitating an award of spousal maintenance. [Catherine] and her counsel did not respond to [Thatcher] and his counsel’s efforts to list the homestead for sale.

However, the court never ruled on Thatcher’s claim Catherine wasted an asset. In dividing the parties’ assets and debts, the court noted the marital residence was in foreclosure, valued the residence at \$55,130, and found the parties owed \$58,081

on the mortgage. The order makes no finding concerning waste and the court did not allocate the home to either party in the property division.

Thatcher never filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) asking the court to address his claim regarding the alleged property dissipation. This is the proper means for preserving error on an issue that a party has properly raised but on which the court failed to rule. *See Homan v. Branstad*, 887 N.W.2d 153, 161 (Iowa 2016). “When a district court *does not* rule on an issue properly raised, a party must file a motion requesting a ruling in order to preserve error for appeal.” *Tetzlaff v. Camp*, 715 N.W.2d 256, 259 (Iowa 2006). Because the district court did not address Thatcher’s dissipation claim and Thatcher failed to bring the deficiency to the court’s attention, the issue is not preserved for our review.

B. Spousal Support.

Thatcher also challenges the court’s award of rehabilitative spousal support to Catherine. He argues that Catherine failed to prove she needs spousal support and that he has the ability to pay it.

Iowa Code section 598.21A outlines the factors the court must consider in determining whether to award either party spousal support. These factors include the length of the marriage, the age and health of each party, the property distribution, and the parties’ educational levels and earning capacities. *See* Iowa Code § 598.21A(a)-(e). “[F]air and equitable consideration of the section 598.21A(1) criteria ordinarily places some degree of emphasis on the duration of the marriage and the earning capacities of the spouses as demonstrated by the historical record.” *Mauer*, 874 N.W.2d at 107.

In awarding Catherine spousal support, the district court considered the parties relative earnings and found, "Thatcher's earnings are significantly higher than Catherine's earnings." The court considered the length of the parties' marriage, noting they were married in 2005. It also considered the overall property division, noting that it was "primarily dividing debts based upon both parties' poor spending habits." On this basis, the court determined equity required Thatcher to pay Catherine \$1000 per month in rehabilitative alimony for a period of five years, with the alimony payments reduced to \$750 for an additional five years thereafter.

Upon our de novo review, we conclude the spousal support awarded by the district court is equitable. The parties leave the marriage with significant debt and few assets. Although they will share in Thatcher's pension, the parties were both in their early forties at the time of dissolution. There is a significant disparity in their earnings, with Thatcher earning \$75,360 per year in contrast to the \$28,600 annual income earned by Catherine. Thatcher testified that after his withholdings and union dues, his monthly net income is around \$4400. His expenses include a \$500 rent payment, a \$600 truck payment, and bills for "cable, Internet, heat and electricity." After making his rent and truck payments, Thatcher is left with approximately \$3300 per month for the remainder of his expenses, including spousal and child support payments. In contrast, Catherine's adjusted net monthly earned income was estimated to be just over \$2000, and Catherine testified her monthly expenses averaged between \$1800 and \$1900. On this record, it was equitable to award Catherine spousal support of \$1000 per month for a period of five years and \$750 per month for five years thereafter.

C. Conclusion.

We assess an award of spousal support together with the property division to determine their sufficiency. See *Hazen*, 778 N.W.2d at 59. Doing so here, we find they are equitable. Thatcher earns an annual income of \$75,360 and the court held him responsible for approximately \$31,000 in debt. Catherine earns an annual income of approximately \$28,600 and the court held her responsible for approximately \$23,000 in debt in addition to the \$30,000 she owes in student loan debt. Although the court divided the marital debts almost equally, there is a great disparity in the parties' earnings. Thatcher's income has been stable while Catherine is just beginning a new career. Because Thatcher earns almost \$50,000 more than Catherine does, the court ordered Thatcher to pay her rehabilitative spousal support. The result is equitable.

IV. Appellate Attorney Fees.

Catherine requests an award of her appellate attorney fees. Whether to award appellate attorney fees is a discretionary decision. See *In re Marriage of Davis*, 608 N.W.2d 766, 773 (Iowa 2000). In making this determination, "we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal." *Id.*

We decline to award Catherine her appellate attorney fees.

AFFIRMED.