

IN THE COURT OF APPEALS OF IOWA

No. 0-034 / 09-0836
Filed February 24, 2010

**IN RE THE MARRIAGE OF CYNTHIA KAE CHRISTY
AND NEIL THOMAS CHRISTY**

**Upon the Petition of
CYNTHIA KAE CHRISTY,**
Petitioner-Appellee,

**And Concerning
NEIL THOMAS CHRISTY,**
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, E. R. Meadows,
Judge.

The respondent appeals the property division provisions of a dissolution
decree. **AFFIRMED AS MODIFIED.**

Allan C. Orsborn of Orsborn, Milani & Mitchell, L.L.P., Ottumwa, for
appellant.

Richard J. Gaumer of Gaumer, Emanuel, Carpenter & Goldsmith, P.C.,
Ottumwa, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

Neil Christy appeals from the decree dissolving his and Cynthia Christy's marriage. On appeal, he asserts the district court erred in regard to the property division. We review the provisions of the dissolution decree de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

Cynthia and Neil were married in 2001. The parties separated and Cynthia filed a petition for dissolution of marriage in September 2007. A trial was held on November 6, 2008, and January 23, 2009. At trial, Cynthia requested that the majority of the assets and liabilities be awarded to Neil. Neil asked that the business assets and liabilities be awarded to Cynthia. Otherwise, he requested that the majority of the parties' assets be auctioned or sold, with the proceeds used to pay the parties' debts. The district court awarded each party certain personal assets, and the majority of the assets were to be sold at auction with the proceeds used to pay the parties' debts and any remaining funds or debt to be split equally between the parties.

Neil first argues that three pieces of antique furniture should not have been awarded to Cynthia, but instead sold at auction with the parties' other assets. Cynthia agrees. Therefore, we modify the decree to reflect the parties' agreement that the three pieces of antique furniture be sold and the proceeds split equally between the parties.

Neil next argues that he should have been given "some credit" for real estate he owned prior to the marriage. Cynthia asserts that this claim is not

preserved. We agree. Neil did not raise this issue at trial,¹ but rather made this request for the first time in his posttrial motion pursuant to Iowa Rule of Civil Procedure 1.904(2). A party cannot use a motion pursuant to rule 1.904(2) to introduce new issues that were not previously raised before the court. See *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995) (finding a rule 1.904(2) motion is permitted so that a finding may be enlarged or modified based upon evidence already in the record, but cannot be used for a party to retry issues based upon new facts).

Nevertheless, even had Neil's request been preserved, we find the property division is equitable. See *Sullins*, 715 N.W.2d at 247 (discussing that equitable distribution requires that court divide the parties' property in an equitable manner in light of the particular circumstances of the parties). At the time of the parties' marriage, both Cynthia and Neil owned real property and had little debt, other than on Neil's real property. During the marriage, both the parties' real estate was either sold or mortgaged extensively. Cynthia and Neil managed to accumulate debt totaling approximately \$300,000, of which a significant amount was incurred for a business they owned and operated. The district court carefully examined the evidence presented and applied the appropriate law, which resulted in an equitable distribution of the parties' property and debts.

Finally, Neil argues that he should have been awarded the cash in the business account for work he did for the business in 2008. He did testify that if

¹ In fact, Neil was asked whether the auction would include "whatever you owned prior to marriage" and he responded, "Everything either one of us has owned prior to now, whatever."

there was anything left as far as profit in the account, he had probably “earned a little money in there somewhere along the way.” However, he also testified that certain business expenses remained to be paid from the account, such as insurance expenses and sales tax. The 2008 business tax return had not been completed, and the business owed income tax as well. As the district court found, the business records were in disarray and as a result, the value of the account was unknown. With no clear evidence of the account’s value, the district court’s ruling that the funds in the account be used to satisfy the parties’ debts and any remaining proceeds split between the parties was equitable. Therefore, we affirm as modified. Costs on appeal are assessed to Neil.

AFFIRMED AS MODIFIED.