

**IN THE COURT OF APPEALS OF IOWA**

No. 0-358 / 09-1666  
Filed July 28, 2010

**IN RE THE MARRIAGE OF LARAE BLOEMENDAAL  
AND JAMIE BLOEMENDAAL**

**Upon the Petition of  
LARAE BLOEMENDAAL,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
JAMIE BLOEMENDAAL,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Sioux County, Edward A. Jacobson, Judge.

Jamie Bloemendaal appeals, and LaRae Bloemendaal cross-appeals, from various provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Rene Charles Lapierre of Klass Law Firm, L.L.P., Sioux City, for appellant.

Randy L. Waagmeester of Waagmeester Law Office, P.L.C., Rock Rapids, for appellee.

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

**VAITHESWARAN, P.J.**

Jamie Bloemendaal appeals, and LaRae Bloemendaal cross-appeals, from various provisions of a dissolution decree.

***I. Background Facts and Proceedings***

Jamie and LaRae Bloemendaal married in 1996 and divorced in 2009. The parties stipulated to joint physical care of their two children, a stipulation that the district court adopted. On the disputed issue of child support, the court ordered Jamie to pay LaRae \$521 per month. On the question of spousal support, the court ordered Jamie to pay LaRae \$500 per month for sixty months. As for the property division, the court declined to allocate five disputed debts; ordered Jamie to repay LaRae half of a federal income tax refund; approved an agreement to assign the home to Jamie, subject to his payment of the mortgage; declined to require Jamie to pay LaRae for her share of the \$7298 in home equity; and concluded Jamie should pay LaRae \$568.75 to equalize their agreed-upon personal property distribution. Finally, the court ordered Jamie to pay LaRae \$1000 for her trial attorney fees. The court also noted that Jamie had yet to pay LaRae \$2000 in temporary attorney fees, but took “no action regarding that failure, as there is no contempt before it.”

Both parties filed motions to enlarge and amend the ruling. The court denied the motions.

In their appeals, the parties take issue with the district court’s spousal support award, property division, and trial attorney fee award. Jamie additionally challenges the child support calculation. We turn to these issues.

## **II. Spousal Support**

As noted, the district court ordered Jamie to pay LaRae spousal support of \$500 per month for sixty months. The court characterized the award as rehabilitative support to allow LaRae “to seek training or education which will provide her with the opportunity to make a greater income in the future to support herself.” LaRae argues the court should have awarded her “traditional alimony payments of \$1000.00 while the child support obligations exist in this case, and thereafter monthly alimony payments of \$1500.00.” Jamie counters that the court should not have awarded any spousal support. Although our review is de novo, the district court is given considerable latitude in determining spousal support. See *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). “We will disturb that determination only when there has been a failure to do equity.”

*Id.*

The district court made the following findings and conclusions in support of its award:

[T]he marriage is one of average duration of approximately 13 years. At the present time LaRae is a healthy 33-year-old retail clerk at the Casey’s General Store and a cook and orders preparer. She works 40 hours per week at \$8.25 per hour. Although her prior income tax returns have not shown it, her wages for this year should be between \$16,000 and \$17,000. She is a bright young woman and there is no evidence that her current earning level is at capacity, assuming she had adequate training to improve her station in life.

Jamie earned \$37,388 and \$41,800 in 2008.

....

The court finds that if LaRae pursues a career, [she] has no less income potential than Jamie, although clearly he has earned the bulk of the income during the marriage. The court finds that rehabilitative alimony for a period of five years is sufficient for LaRae to establish herself in the marketplace and provide for herself thereafter.

While the court does not dispute that LaRae may be entitled to some rehabilitative alimony, the court does not believe she's entitled to the same for life, at her current able-bodied age of 33 years, nor does the court believe that she is entitled, nor that Jamie can afford to pay her \$1000 per month currently and \$1500 per month when the children are emancipated.

These findings are fully supported by the record. As for the court's conclusions, we agree that LaRae was not entitled to traditional spousal support, given her relative youth and good health and Jamie's limited ability to pay the amount she requested. *See In re Marriage of Stark*, 542 N.W.2d 260, 262–63 (Iowa Ct. App. 1995) (balancing recipient's need with payor's ability to pay). While we recognize that she did not earn as much as Jamie, the district court accounted for this fact by rejecting Jamie's request for no spousal support award and by affording her rehabilitative spousal support for five years. *See In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008) ("The goal of rehabilitative spousal support is self-sufficiency and for that reason 'such an award may be limited or extended depending on the realistic needs of the economically dependent spouse.'" (citation omitted)). We conclude the court's award was equitable.

### **III. Property Division**

**A. Allocation of debts.** Both parties take issue with the district court's failure to allocate responsibility for five debts totaling \$13,509. Jamie asks for an equal division of an \$8188 credit card bill used to pay family expenses. He requests that the remaining four bills totaling \$5321 be assigned to LaRae alone because those bills were for medical services she received. LaRae, on the other hand, seeks to have Jamie pay all these debts, asserting he "has a superior ability to pay . . . due to his superior income and earning capacity."

The term “property division” incorporates assignment of responsibility for debts. *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa Ct. App. 1996). In declining to allocate the debts, the district court relied on LaRae’s testimony that she was contemplating bankruptcy. The court stated,

its failure to allocate certain debt to one party or the other was a direct result of the parties’ disagreement as to whether or when one or both of them would file for protection under the United States Bankruptcy Code.

However, “the dischargeable nature of these obligations will be for the bankruptcy court alone to decide.” *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993).

On our de novo review, we assign the \$8188 credit card bill to Jamie and the \$5321 in medical bills to LaRae. While this division is not equal, it is equitable because it allocates the larger bill to the party with greater earnings. See *id.* at 741 (stating the court’s allocation of debts should fairly reflect the parties’ financial ability to assume them).

**B. Federal income tax refund.** Jamie next asserts the district court should not have ordered him to pay LaRae half the \$3151 federal income tax refund the parties received for the 2008 tax year, because it was spent on family expenses.

Only property existing at the time of the divorce is subject to division. See *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006) (“All property of the marriage *that exists at the time of the divorce* . . . is divisible property.” (emphasis added)). However, a court may consider a party’s dissipation of assets when it makes a property distribution. See *In re Marriage of Goodwin*, 606 N.W.2d 315,

321 (Iowa 2000) (observing “a spouse’s disposal of assets that would otherwise be subject to division in the dissolution may properly be considered in making an equitable distribution of the parties’ property”).

LaRae does not dispute Jamie’s testimony that he used the tax refund to pay for family expenses, specifically their oldest child’s medical bills. Given this evidence that the refund was used to benefit the “joint marital enterprise,” as well as the absence of evidence that Jamie “intended to hide, deplete, or divert the marital asset,” we conclude the refund should not have been divided. See *In re Marriage of Fennelly*, 737 N.W.2d 97, 105 (Iowa 2007).

**C. Cash equalization payment.** LaRae contends the district court should have required Jamie to pay her for her share of the \$7298 in home equity. Jamie counters that he should not have been required to make an equalization payment of \$568.75 for the value of the personal property.

We believe the district court acted equitably in declining to divide the home equity. As the court noted, Jamie had a significant number of financial obligations, including \$521 in child support and \$500 in spousal support per month. See *Siglin*, 555 N.W.2d at 849–50 (noting a party’s ability to meet the financial obligations imposed by a dissolution decree is a relevant factor to consider in determining an equitable division of property). While Jamie received the home, he also was held responsible for the mortgage and certain home-improvement debts. Additionally, as discussed above, we have held him responsible for one of the unallocated debts. Although he has been relieved of the obligation to repay LaRae for her share of the income tax refund, this will not

offset the increased debt load he will bear as a result of the unallocated debts. For these reasons, we decline to reallocate the home equity.

We turn to Jamie's contention that he should not have to make the \$568.75 equalization payment for the personal property division. The district court adopted LaRae's values for these items, which were based on the estimates of an auctioneer. Because those values were within the range of evidence, we affirm the district court's valuation and division. See *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (stating a "trial court's valuation will not be disturbed when it is within the range of permissible evidence").

#### **IV. Child Support**

Jamie asserts the district court should not have ordered him to pay \$521 per month in child support. He notes this figure does not represent the guideline amount of support for the income levels found by the district court. We agree.

The district court found that LaRae had an earning capacity of between \$16,000 and \$17,000. The record supports this finding. Although LaRae's recent tax returns reflected gross income of only \$8000 per year, she testified that she was currently working forty hours per week at \$8.25 per hour, which would result in annual income of \$17,160. While there was evidence that her hours might be reduced upon the return of an ill co-worker, her income, even with the reduced hours, would be significantly more than \$8000 annually.

The district court did not make a determination that if actual earnings were used, "substantial injustice would occur or adjustments would be necessary to provide for the needs of the child or to do justice between the parties." Iowa Ct. R. 9.11(4); see also *In re Marriage of Roberts*, 545 N.W.2d 340, 343 n.2 (Iowa

Ct. App. 1996) (stating child support guidelines in effect at time of appeal should be applied). However, on our de novo review, we believe the use of LaRae's actual earnings as reflected in her recent tax returns would require Jamie to pay more child support than the parties' respective financial situations warrant, thereby doing an injustice to him. Accordingly, we remand to recalculate Jamie's child support obligation using LaRae's income as found by the district court.

**V. Attorney Fees**

**A. Trial attorney fees.** Jamie argues the court should not have ordered him to pay LaRae trial attorney fees because "he did not have the ability to pay these fees in addition to the other obligations he was assuming." An award of trial attorney fees is reviewed for an abuse of discretion. *Sullins*, 715 N.W.2d at 255. Because Jamie earned significantly more than LaRae at the time of trial, we conclude the district court did not abuse its discretion in ordering him to pay some of her attorney fees. *See id.*

**B. Appellate attorney fees.** Appellate attorney fees are not a matter of right, but rest in this court's discretion. *Id.* Given the added debt we have required Jamie to assume, we conclude an award of appellate attorney fees is not warranted.

**VI. Conclusion**

We affirm the spousal support award and cash equalization payment. We modify the dissolution decree to assign responsibility for the \$8188 credit card debt to Jamie and the \$5321 in medical bills to LaRae. We strike the court's order requiring Jamie to pay LaRae half the \$3151 tax refund. We remand the



child support issue to recalculate Jamie's support obligation using LaRae's income as found by the district court. Costs are assessed equally to each party.

**AFFIRMED AS MODIFIED.**