IN THE COURT OF APPEALS OF IOWA

No. 0-555 / 09-1761
Filed August 25, 2010

**IN RE THE MARRIAGE OF LARRY JAMES BEARCE JR.
AND DAWN MARIE BEARCE**

**Upon the Petition of
LARRY JAMES BEARCE JR.,**
Petitioner-Appellant,

**And Concerning
DAWN MARIE BEARCE,**
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs, Judge.

Larry James Bearce Jr. appeals from the physical care and property settlement provisions of the decree dissolving his marriage to Dawn Marie Bearce. **AFFIRMED.**

A.J. Thomas, Anamosa, for appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Larry and Dawn Bearce (now forty-six and forty-three respectively) were married in June 1995. The couple had a son in February 1996.

During the marriage, Larry worked within the aviation field as both a pilot and an airplane mechanic. At the time of dissolution, he was employed as a pilot for Aegon earning $88,000 per year. Dawn was employed at Spencer Gifts as a store manager earning $37,753 annually.

In January 2008, Larry filed a petition for dissolution of marriage. The petition went to trial on September 21-23, 2009. The district court granted Larry and Dawn joint legal custody of their son; Dawn received physical care of him subject to reasonable visitation by Larry. Additionally, the court divided the parties' property. To equalize its distribution, the court awarded Dawn $20,500 of Larry's 401(k) through a Qualified Domestic Relations Order.

Larry now appeals. He argues the district court should have ordered shared physical care of their son. Additionally, he contends the court's property division was inequitable because the court overvalued his airplanes, tools, and parts and failed to give him credit for a premarital asset.

Upon our de novo review of the record, we agree with the reasons and conclusions set forth by the district court in its exhaustive, clearly written, and well-organized twenty-one-page decision. That decree directly answers the contentions now raised by Larry on appeal. The district court appropriately addressed the parties' ability to communicate and support each other's relationship with their son, their son's need for stability and continuity, and each of the statutory factors set forth in Iowa Code section 598.41(3) (2007) in making

the determination that shared physical care was not in the son's best interests. *See In re Marriage of Hansen*, 733 N.W.2d 683, 700 (Iowa 2007) (listing these factors to be considered in determining whether joint physical care is appropriate). Furthermore, the district court's valuations of certain assets were well within the permissible range of the evidence presented at trial. *See In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997). And the evidence supports the district court's conclusion that Larry failed to establish the claimed premarital asset. In any event, such an asset would only be a factor to consider in the property division, and not automatically reserved for Larry. *See In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Accordingly, we affirm the district court's decree pursuant to Iowa Court Rule 21.29(1)(*d*).

Dawn requests appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the appellate court's sound discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Given our disposition of this case, and the parties' difference in earnings, we award Dawn appellate attorney fees in the amount of $1500. Costs on appeal are assessed to Larry.

AFFIRMED.