

**IN THE COURT OF APPEALS OF IOWA**

No. 1-126 / 10-1495  
Filed April 27, 2011

**IN RE THE MARRIAGE OF  
KASEY LEIGH LAMBERT  
AND RONALD PAUL LAMBERT, JR.**

**Upon the Petition of  
KASEY LEIGH LAMBERT,  
Petitioner-Appellee,**

**And Concerning  
RONALD PAUL LAMBERT, JR.,  
Respondent-Appellant.**

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Appeal from the Iowa District Court for Decatur County, Peter A. Keller,  
Judge.

Ronald Lambert Jr. appeals from the district court's rulings dissolving his  
marriage to Kasey Lambert. **AFFIRMED AS MODIFIED.**

Zoshua Z. Zeutenhorst of Elverson, Vasey & Peterson, L.L.P., Des  
Moines, for appellant.

Carol A. Clark of Clark Law Office, Lamoni, for appellee.

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

**VOGEL, P.J.**

Ronald Lambert Jr. appeals from the district court's ruling dissolving his marriage to Kasey Lambert. He argues the court erred in its division of assets, in setting the visitation schedule, and awarding attorney fees to Kasey. Our only disagreement with the district court is how the visitation was structured, given the distance between the residences of the parties. As we agree with the district court's equitable resolution to all other issues, we affirm.

**I. Background Facts and Proceedings.**

Ronald and Kasey were married in January 2006 and one child was born of the marriage, R.C.L., in 2007. Kasey also has an older child from a prior relationship. Kasey was twenty-two years of age at the time of trial, and Ronald twenty-seven. Ronald had been serving in the United States Navy for nine years as a machinist second class, qualified in submarines. He was frequently on maneuvers at sea for sixty to eighty days at a time, followed by four to five months stationed stateside. The district court found his annual income—which included certain military benefits—to be \$56,134. Kasey worked at various jobs during the marriage and at the time of trial was earning \$580.24 bi-weekly.

During the marriage the parties purchased a home in Igor, Virginia, with Kasey's grandparents providing \$5000 towards the down payment. Because Kasey was a minor when the home was purchased, only Ronald's name appeared on the title and the mortgage. Kasey's parents also provided the couple \$15,000, which according to Kasey's mother's testimony, was intended to be used to buy furniture, a computer and a vehicle for Kasey's use. The district

court found both the \$5000 and the \$15,000 to be gifts to the parties, rather than loans.

The parties separated in August 2008 when Kasey moved to Lamoni, Iowa, to be near her extended family. Sometime after that, Ronald moved to Georgia. Kasey filed a petition for dissolution of marriage in October 2009. After a trial on the issues, the parties were granted joint legal custody of R.C.L., with Kasey having physical care and Ronald visitation. The court awarded each party the property and assets in their possession and awarded Kasey a \$9500 property settlement. The court further awarded Kasey \$2500 in attorney fees, and required Ronald to pay the costs of the action. Ronald appeals.

## **II. Standard of Review.**

In this equity case our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005). This is because the trial court has a first-hand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

## **III. Division of Assets.**

Ronald asserts the court's division of assets was inequitable as he should not have been ordered to pay Kasey \$9500. This amount represents one-half of

two gifts the couple received during the marriage; one from Kasey's grandparents of \$5000, and one from Kasey's parents of \$15,000.

Assets and debts of the marriage should be equitably, but not necessarily equally, divided under the circumstances after considering the criteria delineated in Iowa Code section 598.21(5) (2009). *In re Marriage of Driscoll*, 563 N.W.2d 640, 642 (Iowa Ct. App. 1997). To the extent funds provided by an outside source were gifts to both parties, they become marital assets and are subject to equitable distribution in the decree. *In re Marriage of Vrban*, 359 N.W.2d 420, 427 (Iowa 1984).

Ronald's primary disagreement with the district court's award is that both financial gifts were used during the marriage, but gone by the time of trial, leaving nothing to divide. Kasey does not dispute (1) that the \$5000 for the down payment of the marital home was not available for distribution, as the mortgage had been foreclosed and there were no proceeds subject to division, or (2) the \$15,000 was spent during the marriage. We agree that generally, only those assets remaining and valued at the time of trial are available for distribution between the parties. *Locke v. Locke*, 246 N.W.2d 246, 252–53 (Iowa 1976). However, there are equitable exceptions to this basic premise. See, e.g., *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 106 (Iowa 2007) (allowing for some cash to be added to the asset ledger when one spouse made a prima facie case for dissipation and the other failed to rebut it). Kasey's mother testified the \$15,000 was provided for the purchase of a computer, furniture, and a vehicle for Kasey. However, Ronald sold the second vehicle and admitted he took the major furniture and some large appliances with him to Georgia. In order

for Kasey to leave what she described as an abusive situation, her mother provided her with additional funds to purchase yet another vehicle. When she left, Kasey was not able to take anything out of the house, except what would fit into the vehicle, primarily clothing and small items for herself and the children.

The district court found that Kasey suffered verbal and emotional abuse during the marriage, such that she, “had to leave and abandon [the] personal property” in the homestead. Further, the court found, “[Ronald] let the homestead go into foreclosure.” The district court opinion strongly suggests that because Kasey was unable to protect the monetary gifts—indeed was forced to abandon most all of the marital assets—it awarded Kasey one-half of the monies her family had gifted to the parties during the marriage. Kasey’s situation is not to be confused with the prohibited practice of simply awarding a spouse who has suffered domestic abuse additional assets. *See In re Marriage of Goodwin*, 606 N.W.2d 315, 323–24 (Iowa 2000) (refusing to increase an alleged abuse victim’s assets, as such would introduce the legislature’s 1970 rejection of fault into a dissolution of marriage action).

We do not view the district court’s award to Kasey as compensation for allegedly suffering in an abusive marriage, but rather compensating her for having to abandon marital assets, and thus having no ability to preserve them so that the assets would be available for distribution at the time of trial. *See In re Marriage of Crosby*, 699 N.W.2d 255, 257 (Iowa 2005) (adding back to valuation the amount of husband’s actions in devaluing homestead). The district court’s award to Kasey of one-half the value of her family’s two monetary gifts made during the marriage was equitable and we affirm.

#### **IV. Visitation.**

Ronald next asserts the district court erred in setting the visitation schedule. The district court granted Ronald visitation of two weeks in the summer, and time to be scheduled during R.C.L.'s spring break and Christmas break (beginning on or after December 27). It also ordered the following to take place in Iowa: the first and third week-end of every month, alternating years for Memorial Day and Labor Day, and every Father's Day. Transportation costs to be paid by Ronald.

Citing Iowa Code section 598.41(1)(a), Ronald argues this schedule does not provide R.C.L. with "maximum continuing physical and emotional contact" with him, and fails to consider the distance between Lamoni, Iowa, where Kasey resides, and St. Marys, Georgia, where Ronald resides when not deployed. He argues that requiring visitation to occur in Iowa on an every-other weekend basis is both restrictive and costly. He requests we modify to allow him summer visitation, "commencing the second Monday after the last day of the child's school year and ending no later than Friday, the week before the first day of the child's school year." He also requests Christmas visitation every Christmas break, with visits to alternate between commencing on December 23 to December 26 and that the cost of transportation be split equally between the parties.

The district court had this exchange with Ronald:

THE COURT: The visitation, I think it's difficult to craft a schedule under the circumstances. But this child belongs to both of you, and you need to be able to communicate yourselves or through family with regard to additional visitation that may be agreed to by the parties because he does, [R.C.L.], deserve a relationship with both of you.

....

RONALD: Just given the military schedule perhaps just a certain allotted amount of time with there being a talk about a period throughout the year, maybe just as the Court says he's to spend five months out of

the year with me or four months out of the year and it's communicated between us, too.

THE COURT: I'm not doing that. . . . I'm going to trust that you have time available that you can communicate about possible visitation times which are outside the scope of the ordered visitation times.

Additional reasoning was not made in the final decree as to the every-other weekend schedule. We do agree with Ronald that visitation in Iowa every-other weekend is both impractical and costly given the distance between the residences of the parties.

Iowa code section 598.41(1)(a) provides:

The court may provide for joint custody of the child by the parties. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, *which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents* after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

(emphasis added).

To provide R.C.L., "the opportunity for the maximum continuing physical and emotional contact with both parents," we modify the district court's order to allow Ronald an additional two weeks summer visitation under like provisions as in the original decree.<sup>1</sup> We strike the every-other weekend visitation, and instead provide that Ronald shall have liberal visitation with R.C.L. in Iowa, provided he gives Kasey a minimum of seven day's advance notice. We decline to modify the remaining portions of the visitation schedule and encourage the parties to work together

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<sup>1</sup> Ronald shall provide Kasey with a thirty-day notice of when he expects to exercise said additional two weeks visitation. It shall not start until one week after school is out and shall conclude two weeks before school resumes. There shall be a minimum of two weeks separating the two, two-week visitations.

regarding visitation so that R.C.L. may enjoy the most benefit of being with each of his parents. Given the disparity of income levels, costs of transportation to be paid by Ronald is affirmed.

**V. Attorney Fees.**

Ronald next asserts the district court erred by awarding trial attorney fees to Kasey. Although Kasey was employed at the time of trial, she was earning considerably less than Ronald. Considering the respective needs of the parties and their ability to pay, we find no abuse of the trial court's considerable discretion in the reasonable amount awarded to Kasey of \$2500. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006).

Both parties seek attorney fees on appeal. We review the needs of each party seeking the attorney fees, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We decline to award attorney fees on appeal to either party. Costs on appeal assessed one-half to each party.

**AFFIRMED AS MODIFIED.**