IN THE COURT OF APPEALS OF IOWA

No. 1-463 / 10-1832
Filed July 27, 2011

IN RE THE MARRIAGE OF DAWN RENEE BALLSTAEDT AND DAVID J. BALLSTAEDT III

Upon the Petition of

DAWN RENEE BALLSTAEDT,
Petitioner-Appellee,

And Concerning

DAVID J. BALLSTAEDT III,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner, Judge.

David J. Ballstaedt III appeals from the decree dissolving his short-term marriage to Dawn Renee Ballstaedt. **AFFIRMED AS MODIFIED.**

David J. Ballstaedt, III, Cedar Rapids, appellant pro se.

Dawn Renee Curtis, Cedar Rapids, appellee pro se.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

David J. Ballstaedt III appeals from the decree dissolving his short-term marriage to Dawn Renee Ballstaedt. David contends the district court did not properly value and divide the parties' assets. Dawn has not filed an appellate brief. We affirm as modified.

BACKGROUND. Dawn, born in 1978, and David, born in 1975, were married in March of 2006. No children were born to the marriage but Dawn has two daughters from a prior marriage. The parties' marriage was dissolved on November 8, 2010. The district court divided personal and real property, allocated debt, ordered David to pay Dawn an $8526.98 equalization payment, and ordered David to pay $2000 toward Dawn's attorney fees.

SCOPE OF REVIEW. Our standard of review in appeals from dissolution decrees is de novo. Iowa R. App. P. 6.907; *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). Iowa is an equitable division state. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). An equitable division does not necessarily mean an equal division of each asset. *Id*. Rather, the issue is what is equitable under the circumstances. *In re Marriage of Webb*, 426 N.W.2d 402, 405 (Iowa 1988). The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id*. The determining factor is what is fair and equitable in each circumstance. *In re Marriage of Swartz*, 512 N.W.2d 825, 826 (Iowa Ct. App. 1993). The distribution

of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(5) (Supp. 2009). *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). While an equal division of assets accumulated during the marriage is frequently considered fair, it is not demanded. *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007).

David is representing himself. We do not utilize a deferential standard when persons choose to represent themselves. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa Ct. App. 1995); *Metropolitan Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991). "The law does not judge by two standards, one for lawyers and another for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk." *Kubik*, 540 N.W.2d at 63 (citations omitted).

Dawn has failed to file a brief. Where a party fails to file an appellate brief we have a number of options available to us due to this failure. *Bosch v. Garcia*, 286 N.W.2d 26, 27 (Iowa 1979). On the failure of the appellee to file a brief, the appellant is not entitled to a reversal as a matter of right, but the court may, within its discretion, handle the matter in a manner most consonant with justice and its own convenience. *Bowen v. Kaplan*, 237 N.W.2d 799, 801 (Iowa 1976). We need not search the record to find a theory upon which to affirm the judgment and may confine ourselves to the objections raised by the appellant, or treat the failure to file a brief as a concession of the truth of the facts as stated by appellant, or even as a confession of error, if the appellant's brief appears reasonably to sustain such action. *See id*.

In this case, we elect both to limit our consideration to the issues and arguments in the appellant's brief, *see Jefferson Cnty. v. Barton-Douglas Contractors, Inc.*, 282 N.W.2d 155, 157 (Iowa 1979), and not go beyond the ruling of the trial court in searching for a theory upon which to affirm its decision. *See Pringle Tax Serv., Inc. v. Knoblauch*, 282 N.W.2d 151, 153 (Iowa 1979). With these principles in mind we consider the arguments David has advanced.

EQUITY OF PROPERTY DIVISION.[1] David contends Dawn received a net value of $19,614 and with the equalization payment he was required to make she received $30,140.98, but he received $23,352.38. He contends this is not equitable. David challenges certain valuations established by the district court.

David also contends the court valued a backhoe at $20,000 that David bought for $7500 because it had flood damage and he repaired it. He contends he does not have the backhoe and there is evidence that he may have difficulty getting it returned. The district court did not accept his argument on this issue. "Ordinarily, a trial court's valuation will not be disturbed when it is within the range of permissible evidence." *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). We generally defer to the trial court when valuations are supported by accompanying credibility findings or corroborating evidence. *Id.* There is evidence supporting the district court's value.

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[1] The issues presented by David for review are (1) whether the trial court erred in law and abused its discretion in favor of Dawn given the facts and evidence presented in this case, and (2) whether trial judge abused his discretion and erred in the valuation of the parties' assets, debts and equitably divided these between the two parties.

The stated issues are confusing, as is David's brief, but after assessing his briefs we believe the issue David wants us to consider is whether the property division was equitable.

David contends he was not given sufficient credit for property he brought to the marriage. "Our law, however, does not give credit to a party for the value of property owned prior to the marriage." *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994). Rather, the property David brought into the marriage "is only a factor to consider together with the other relevant factors in determining an equitable property division." *Id.*

David asks that we assess more value to his interest in a home he owned at the time of marriage that the parties lived in prior to their separation. At time of the marriage the home was subject to two mortgages. David had purchased it in early 2004 for about $105,500. Considerable work was done on the house both before and during the marriage and at the time of trial it was assessed for tax purposes at $127,836. The district court found that $5000 of the value of the house was brought by David into the marriage. David argues his equity at the time of marriage was $20,000 not $5000. He argues he did substantial work on the home and paid for improvements prior to marriage as well as after marriage. After our de novo review, we conclude the district court equitably determined David's premarital credit.

David contends that the district court should have ordered returned to him a 1.5 carat diamond ring that he brought to the marriage. The district court said: "It does not appear from the evidence the ring was ever gifted to Dawn . . . although David did establish that the 1.5 carat diamond ring was a premarital asset paid for in its entirety with premarital funds, and that it was not gifted to

Dawn." We believe the ring should be returned to David and modify the decree accordingly.

We have considered David's other arguments and affirm as modified. Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.