

**IN THE COURT OF APPEALS OF IOWA**

No. 1-507 / 11-0020  
Filed September 21, 2011

**IN RE THE MARRIAGE OF  
LANCE LEE MEYER  
AND DEANNE RENEE MEYER**

**Upon the Petition of  
LANCE LEE MEYER,**  
Petitioner-Appellant,

**And Concerning  
DEANNE RENEE MEYER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Franklin County, Colleen D. Weiland, Judge.

Lance Meyer appeals from the district court's ruling dissolving his marriage to Deanne Meyer. **AFFIRMED AS MODIFIED.**

G.A. Cady, III and Megan R. Rosenberg, Hampton, for appellant.

Dani L. Eisentrager, Eagle Grove, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**VOGEL, P.J.**

Lance Meyer appeals from the district court's ruling dissolving his marriage to Deanne Meyer. He asserts (1) the distribution of property was inequitable, (2) he was not given credit for contributing his premarital property in acquiring the parties' residence, (3) the award of rehabilitative spousal support was inappropriate, and (4) he should not have been ordered to pay \$1000 of Deanne's attorney's fees. We affirm in part, but modify to set aside to Lance his premarital funds.

**I. Background Facts & Proceedings**

Lance and Deanne Meyer were married in July 1999 and separated in November 2009. No children were born of the marriage. At the time of trial, Lance was forty years old and in good health. He has been a corn and soybean farmer for twenty years, farming together with his brother, Mitchell, for the most recent twelve to fourteen years. In January 2010, that arrangement ended and the brothers divided their mutually owned farm equipment. At the time of trial, Deanne was thirty-nine years old and in good health. She has a "certificate in accounting" and worked full-time during most of the marriage.

Lance filed a petition for dissolution of marriage in October 2009 and the matter came on for trial on June 30, 2010. On September 1, 2010, Lance petitioned the district court to reopen the case and present additional evidence. His request was granted and the court heard additional evidence on October 13, 2010.<sup>1</sup> On November 22, 2010 the district court issued its ruling, in which the

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<sup>1</sup> Lance presented additional evidence regarding the termination of three of his farm leases beginning in March 2011. Lance testified these leases total approximately 363

court divided the parties' assets and liabilities, entered judgment against Lance in favor of Deanne of \$125,000, ordered Lance to pay Deanne spousal support in the amount of \$500 per month for thirty-six months, and ordered Lance to contribute \$1000 to Deanne's attorney fees.<sup>2</sup> Lance appeals.

## II. Standard of Review

A decree for the dissolution of marriage is reviewed in equity. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). "Although we decide the issues raised on appeal anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses." *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003). We review the district court's award of attorney fees for abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

## III. Analysis

### A. Distribution of Property

Upon dissolution, the parties to a marriage are entitled to a "just and equitable share of the property accumulated through their joint efforts." *In re Marriage of Hoffman*, 493 N.W.2d 84, 87 (Iowa Ct. App. 1992). In determining what constitutes a "just and equitable share" of property, Iowa courts do not require the division of property to be equal, or based on a percentage. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998). The

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acres and would result in a loss of 1815 bushels of soybeans and 53,700 bushels of corn. He also presented a recalculated, higher income projection for 2010 based on higher corn and soybean prices in two sales contracts for corn and soybeans. Lance also testified regarding new furniture he purchased in July 2010.

<sup>2</sup> On Deanne's Iowa Rule of Civil Procedure 1.904 motion, the district court enlarged its findings such that the \$125,000 equalization payment was to be paid in increments of \$25,000 by October 1 of each calendar year, beginning in 2011.

distribution of property should also be made considering the factors set forth in Iowa Code section 598.21(5) (2009). *In re Marriage of Dieger*, 584 N.W.2d 567, 568 (Iowa Ct. App. 1998).

The district court did not assign a value to three pieces of equipment: the John Deere 9400 tractor, the John Deere 7000 planter, and the Kinze 2300 16/31 row planter because of the disputed values presented at trial. However, it then increased the total value of the agricultural equipment from \$238,000 to \$300,000 to account for these items. Lance argues that the district court's distribution of property was inequitable because the court "incorrectly and arbitrarily increased the value of [his] farm equipment" for no articulable reason, then proceeded to divide the property based on the higher figure. Deanne asserts the district court's distribution of property was equitable, specifically noting that the \$62,000 increase in the value of Lance's farm equipment was justified as the evidence supporting the value of the disputed equipment was "confusing and unconvincing."

The district court's valuation of assets will not be disturbed when it falls within the permissible range of the evidence. *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997). "Moreover, appellate courts defer to a trial court's valuations when accompanied by supporting credibility findings or corroborating evidence." *In re Marriage of Keener*, 728 N.W.2d 188, 194 (Iowa 2007) (citing *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999)).

Lance directs our attention to four pieces of farm equipment which he claims were not properly valued. We must therefore determine whether the disputed values assigned to that farm equipment fall within the permissible range

of evidence presented to the district court and then whether the ultimate distribution was equitable.

### **1. John Deere 9400**

The district court listed the value of the John Deere 9400 tractor as “unknown,” noting it was subject to a debt of \$24,686. At trial, Lance’s brother, Mitchell, testified the John Deere 9400 had been sold. Although Mitchell did not recall exactly when it was sold, he thought it was in the then current 2010 tax year, and that he and Lance each received a check for \$32,500 as the divided proceeds. Lance testified that the tractor had been sold in January, but rather than pay off his portion of the loan on the tractor, he used his proceeds to pay other bills. Although both Mitchell and Lance testified that the John Deere 9400 tractor had been sold, exhibits presented at trial conflict with this testimony.

In Lance’s trial exhibit 4, “Asset/Debt Division,” the John Deere 9400 is not listed as an asset, but he does list a promissory note to Peoples Savings Bank in the amount of \$24,686.13, indicating it is for the “John Deere 9400.” Lance’s “Affidavit of Financial Status” similarly does not list the John Deere 9400 as an asset, but the debt on the note is listed. Lance’s trial exhibit 6, which reflects Lance and Mitchell’s division of jointly owned farm equipment, does not list the John Deere 9400 as an asset. However, the “Agricultural Financing Statement” Lance maintains with Peoples Savings Bank, dated February 25, 2010, lists a John Deere 9400T as an asset with a value of \$30,000. This is inconsistent with Lance’s testimony that the tractor was sold in January 2010.

Lance Haupt, a loan officer at Peoples Savings Bank, testified that although the assets and corresponding values on the bank’s financial statements

are usually filled out by customers and only occasionally by the bank, Haupt filled out the 2010 form for Lance Meyer. Haupt also confirmed that in the event that he does fill out a financial statement for a customer, the customer will inspect the statement and if both parties agree the financial statement is accurate, both will sign off on it. Lance signed the statement. Haupt noted that he was unaware that Lance sold the John Deere 9400, which served as collateral for the loan on that piece of equipment. Haupt did indicate, however, that when the bank has a security interest in collateral and the collateral is sold, it is the bank's standard practice to require that payment be made directly to the bank. Further, a loan account statement from Peoples Savings Bank, prepared on June 25, 2010, indicates that the \$24,686.13 loan on the John Deere 9400 remained outstanding, and also referenced a security agreement with the John Deere 9400 as collateral.

While we recognize that the tractor may have been sold prior to trial, Lance did not produce any evidence—such as a sales receipt or copy of a check or any other form of payment—beyond Mitchell's testimony to corroborate the alleged sale. See, e.g., *Keener*, 728 N.W.2d at 195 (recognizing that in valuing property subject to equitable division, “anecdotal evidence is simply an insufficient basis upon which to determine fair market value”). The district court noted that it was “hampered by incomplete and differing descriptions of the equipment in the various exhibits.” On our review of the record, we agree with the district court and Deanne that the record is confusing and the testimony conflicting. Unable to improve on the district court's analysis, we affirm the district court's inclusion of this asset.

## 2. Kinze 2300 Planter

The record is also conflicted with respect to the Kinze 2300 16/31 row planter. The district court valued the planter as “unknown (subject to \$13,229 debt)”. Lance argues the Kinze 2300 planter should not have been included as an asset because it went to Mitchell in the division of the farm equipment, and Lance only assumed the debt of \$3000.

Lance testified at trial that the Kinze 2300 planter was originally bought for \$23,000, with a \$10,000 down payment. Lance’s February 25, 2010 “Agricultural Financing Statement,” filed with Peoples State Bank and signed by Lance, listed the Kinze 2300 planter as an asset valued at \$12,500. At trial, Lance testified the “reason [the Kinze 2300] is on the bank statement yet is [because it’s] the one that the banker had slid over from the previous year.” Lance, however, also admitted that despite the brothers’ division of equipment in January 2010, he did not update the machinery on the financing statement by the time it was prepared. Mitchell testified that he received the Kinze 2300 in the brothers’ division of farm assets, but that Lance assumed the \$3000 of remaining debt. Lance’s trial exhibit 6, dated January 29, 2010, also listed the Kinze 2300 planter as an asset received by Mitchell in the brothers’ division of farm equipment.

Despite the consistent testimony between Lance and Mitchell, the district court suspected “some effort to transfer or hide equipment assets,” and in a corresponding footnote explained,

The court so concludes based on Lance and his brother’s recent split of equipment as evidenced in Lance’s exhibit 6, the timing of which is suspicious. Also, some of the equipment that exhibit 6 shows as belonging to Mitch[ell] is subject to loan contracts—security agreements wherein Lance is named as the

buyer. Some or all of these contracts were entered into after the brothers' split agreement was executed."

Moreover, when asked on cross-examination whether the brothers' split in January 2010 had anything to do with Lance's divorce, Mitchell stated, "No, it did not. I'm just going to leave the answer at that."

We give weight to the findings of the district court because it was able to observe the demeanor of the witnesses and evaluate their credibility. See *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997) ("We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying."). Here, the district court was suspicious of Lance and Mitchell's division of farm equipment just five months before trial. The district court also noted that it spent "inordinate time reviewing and comparing the several exhibits related to agricultural equipment."

The record certainly contains conflicting evidence regarding the status of the Kinze 2300 planter. There is uncertainty regarding who owns the planter, what the correct value of the planter is, or if the testimony given even refers to the Kinze 2300 planter, or another Kinze planter owned by Lance. Because we give weight to the findings of the district court, we agree with its determination that the Kinze 2300 planter remained an asset of Lance.

### **3. Steiger 270**

Lance also faults the district court for including the Steiger 270 tractor in calculating his net worth because he claims it too had been sold. Lance testified at trial that he used \$13,000 of the sale proceeds from the Steiger 270 as a down

payment on the new John Deere 8400 combine. Again, the district court was faced with conflicting information because Lance's "Affidavit of Financial Status," which was signed one day before trial—June 29, 2010—listed the Steiger 270 as an asset. The court valued the tractor at \$12,000, which corresponds with the valuation in Lance's affidavit. With little evidence to the contrary, we affirm the district court's inclusion and valuation of the Steiger 270 at \$12,000.

#### **4. John Deere 1243 Corn Head**

Lance next asserts that while the district court was correct in valuing the John Deere 1243 corn head at \$9000, it was incorrect in failing to consider the debt attached to that equipment.

Lance testified at trial that the debt he owes on the corn head is between \$16,000 and \$17,000. However, trial exhibits did not indicate this debt exists. The corn head debt was not included on Lance's "Affidavit of Financial Status," nor on his original exhibit 4, "Asset/Debt Distribution." It was not until trial that Lance updated and entered into evidence trial exhibit 4A, which included a handwritten entry for the \$16,000 debt related to the corn head.

There was also no record of the \$16,000 corn head debt on the John Deere Credit Customer Account Inquiry for Lance, nor an entry on Lance's loan account detail from Peoples Savings Bank. Without any additional evidence regarding the corn head debt, the district court's exclusion of the \$16,000 debt was "within the permissible range of the evidence" because it simply was not accounted for in any of the trial exhibits except 4A, which was an amended version of Lance's trial exhibit 4. *Driscoll*, 563 N.W.2d at 643.

## 5. Valuations and Distributions Summary

It was Lance's burden to produce clear proof of the valuations of the property under his control. See *In re Marriage of Ales*, 592 N.W.2d 698, 703 (Iowa Ct. App. 1999) (recognizing the evidentiary concept that "a person in possession of facts necessary to prove an issue, in this case economic need, should have the burden of proving those facts"). Lance does not appeal regarding the unknown value of the John Deere 7000. However, for purposes of determining whether the district court was in the range of permissible evidence, we find the district court could have used a maximum figure of \$24,000 in valuing the John Deere 7000, as that was the sale price listed on the John Deere loan contract and security agreement signed on February 20, 2010 and entered into evidence. The maximum values that could be assigned the three pieces of equipment with unknown values are therefore \$32,500 for the John Deere 9400, \$12,500 for the Kinze 2300 planter, and \$24,000 for the John Deere 7000, for a total of \$69,000. The district court's upward adjustment of \$62,000 was therefore within the permissible range of evidence. Considering the conflicts in the record and the credibility determinations made by the district court, we affirm the valuations of the assets and the distribution made.

### B. Premarital Assets

Lance next contends the district court erred in failing to give him credit for his premarital property used in acquiring the parties' residence. Deanne asserts the premarital funds were so comingled with marital assets that the district court's findings were equitable. Iowa is an equitable distribution state, where courts divide "all property of the marriage that exists at the time of the divorce, other

than gifts and inheritances to one spouse.” *Sullins*, 715 N.W.2d at 247. “Property brought into the marriage by a party is merely a factor considered by the court, together with all other factors, in exercising its role as an architect of an equitable distribution of property at the end of marriage.” *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005).

Lance entered the marriage owning a residence located on Mitchell Street (“Mitchell property”) in Ackley, Iowa. The couple resided at the Mitchell property from July 1998 until March 2001. Lance and Deanne then moved to Sherman Avenue (“Sherman property”) in Ackley. The Mitchell property was sold for \$14,000 on an installment contract, where the purchaser deposited his installment payments directly into the account Lance and Deanne used to pay their new mortgage on the Sherman property.

The district court did not set aside the \$14,000 in sales proceeds as Lance’s separate property because “Lance’s premarital interest and contribution to home equity has long lost its identification as separate from the marital estate.”

Our case law supports a finding that premarital equity in real property can be set aside and credited to the contributing spouse. *See, e.g., In re Marriage of Fennelly*, 737 N.W.2d 97, 99–100, 102–05 (Iowa 2007) (finding where the parties were married for nearly fifteen years, appreciation on the residence owned by the husband prior to the marriage could be divided equally between the parties, but the husband was still entitled to \$12,000 for his pre-marital equity in the home); *In re Marriage of Jones*, 451 N.W.2d 25, 27 (Iowa Ct. App. 1989) (dividing the marital property so the wife, who purchased and fully paid for the marital home prior to the marriage, received the home and the husband only received

compensation for improvements he made to the home after the parties' marriage).

Premarital property is among the factors the court considers in making an equitable division of property. See Iowa Code § 598.21(5) (listing a total of thirteen factors for courts to consider). At trial, Lance testified the \$14,000 equity in the home he purchased prior to his marriage with Deanne contributed to the parties' ability to pay down the mortgage on the Sherman property. We disagree with the district court's finding that Lance had no identifiable equity in the home. In considering the factors under Iowa Code section 598.21(5), we find that Lance should receive a \$14,000 credit for his premarital equity in the Mitchell property. We therefore modify to set aside \$14,000 to Lance, and reduce the equalization payment to Deanne by \$7000. Lance shall pay \$118,000 to Deanne in increments of \$20,000 by October 1 of each calendar year, beginning in 2011.

### **C. Spousal Support**

#### **1. Lance's Income**

Lance next appeals the district court's order that he pay any spousal support to Deanne. He contends the district court was incorrect in finding that his income averaged \$50,000 a year, instead of \$33,000.<sup>3</sup> To calculate his \$33,000 per year average income figure, Lance excluded the \$126,715 crop insurance payment he received in 2009. We recognize the fluctuating nature of farm

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<sup>3</sup> In determining his income, Lance used only the calculations from his 1040 federal tax return Schedule "F" (Profit or Loss From Farming) for the years 2005 to 2009. Those schedules from 2005 to 2009 show Lance's profit or loss from farming to be as follows: \$4132 in 2005, \$13,216 in 2006, \$19,248 in 2007, \$130,888 in 2008, and \$129,536 in 2009. Using the above figures, Lance's average income from 2005 to 2009 is approximately \$57,751.

income from year to year. *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992). While Lance directs the court's attention to his last five years of net farm income and proceeds to calculate his average annual income as \$33,000, versus the district court's \$50,000 calculation, he cites no authority supporting why a downward adjustment is warranted. Where a party fails to cite authority in support of an issue, the issue may be deemed waived on appeal. Iowa R. App. P. 6.903(2)(g)(3). Because Lance cites no authority and fails to make an argument regarding why his income should be lowered, the issue is deemed waived and we therefore make no determination regarding the amount of Lance's average annual income.

## **2. Classification of Spousal Support as "Rehabilitative"**

The district court awarded Deanne "rehabilitative spousal support" in the amount of \$500 per month for thirty-six months. On appeal, Lance focuses on the classification of Deanne's alimony as "rehabilitative," arguing that "the alimony awarded does not meet the criteria for rehabilitative alimony." Our supreme court has recently held:

[T]here is nothing in our case law that requires us, or any other court in this state, to award only one type of support. What we are required to do is to consider the factors mandated by the legislature contained in section 598.21(3) when considering a spousal support award. Therefore, even if we cannot characterize the support award as purely rehabilitative or traditional, . . . the spousal support award we make to [a party] best reflects the factors found in section [598.21A(1)].

*In re Marriage of Becker*, 756 N.W.2d 822, 827–28 (Iowa 2008). Although the support awarded to Deanne may not comport with the exact definition of "rehabilitative alimony" as commonly used, under such precedent we are not

constrained by the district court's classification of the alimony as "rehabilitative." See *id.* at 826, 827–28 (defining rehabilitative spousal support as "a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting").

In this case, Deanne has always worked outside the home, with the exception of a few gaps of unemployment. No mention was made at trial nor in the parties' briefs of Deanne returning to school or obtaining additional training. However, because our focus is not on the character of the support, but whether the factors of Iowa Code section 598.21A(1) are reflected when an award of spousal support is crafted, we do not think it is appropriate to deny spousal support by virtue of the district court classifying the spousal support award in a manner that does not wholly fit within the strict meaning of the term "rehabilitative support."

Iowa Code section 598.21A(1) requires courts to consider ten factors when granting an order for spousal support. Among these factors are the length of the marriage, the distribution of property made under Iowa Code section 598.21, the earning capacity of the party seeking support, the feasibility of the party seeking support to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time needed to achieve this goal, as well as any other factors the court finds relevant in a particular case. Iowa Code § 598.21A(1).

Over the course of the parties' ten-year marriage, Deanne came to rely on Lance financially, despite the fact that she was employed and also had control

over her own bank account. Deanne testified that if she needed money, Lance would give it to her and she was always able to buy what she needed. Since the separation, Deanne has moved out of the marital home and commutes over three hours, round trip, to work each day. She has utilized government programs to revamp her résumé and cover letter, to look for more suitable work, as well as to assist her in making her monthly rent payments. Deanne has not found other employment that pays as much as her current job, and also testified that the government program that pays part of her rent each month will not continue indefinitely. At trial, Deanne's monthly expenses were \$2997 and her monthly net income \$1690. Deanne's gas and oil expenditure comprised \$572 of her monthly expenses, because of her long commute. At the time the record was re-opened on October 13, 2010, Deanne was no longer receiving assistance with her rent, nor was she able to keep paying her outstanding debt obligations. While Deanne will eventually need to become self-supporting, the spousal support ordered will help Deanne in the interim. We therefore affirm the district court's award of spousal support to Deanne in the amount of \$500 per month for thirty-six months.

#### **D. Attorneys Fees**

##### **1. District Court Fees**

The district court ordered Lance to pay \$1000 of Deanne's attorney fees. Lance argues the district court should not have ordered him to pay this amount because he is leaving the marriage with substantial debt, must pay a substantial property settlement to Deanne, and neither party appears to have a greater need than the other.

We find no abuse of the district court's discretion, and therefore affirm the award of attorney fees to Deanne. See *Sullins*, 715 N.W.2d at 247 (stating the standard of review for attorney fees is for abuse of discretion).

## **2. Appellate Court Fees**

Deanne requests appellate attorney fees. "An award of appellate attorney fees is not a matter of right, but rests in our discretion." *Wendell*, 581 N.W.2d at 201. In determining whether appellate attorney fees are warranted, we consider the needs of the requesting party, the other party's ability to pay, and whether the requesting party was required to defend the district court's ruling on appeal. *Id.* Upon consideration of the needs of the parties and in light of our resolution of the claims, we deny Deanne's request for appellate attorney fees. Costs on appeal are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**