

IN THE COURT OF APPEALS OF IOWA

No. 1-820 / 11-0213
Filed November 23, 2011

**IN RE THE MARRIAGE OF JESSICA MARIE GEORGE-AYERS
AND ANTHONY JAMES AYERS**

**Upon the Petition of
JESSICA MARIE GEORGE-AYERS,**
Petitioner-Appellee,

**And Concerning
ANTHONY JAMES AYERS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge.

Anthony Ayers appeals from the economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Russel A. Neuwoehner of Lange & Neuwoehner, Dubuque, for appellant.

Natalia H. Blaskovich of Reynolds & Kenline, L.L.P., Dubuque, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

DANILSON, P.J.

Anthony Ayers appeals from the economic provisions of the parties' dissolution decree. We modify only to award the parties their respective IPERS accounts and reduce the equalization payment to an equitable sum of \$9000. We affirm as modified.

I. Background Facts and Proceedings.

On November 18, 2010, after three years of marriage, the parties were in district court litigating the equitable distribution of their marital assets. Anthony Ayers and Jessica Marie George-Ayers started living together—and sharing expenses—in June 2005. They were married in October 2007. The only issues before the trial court were the “marital interest” in and the equitable distribution of (1) the real estate owned by Anthony prior to the marriage; (2) the parties' respective IPERS accounts; and (3) the vehicles owned by the parties. The parties agreed Anthony would retain the house; Jessica would keep the Hyundai she brought to the marriage; and Anthony would keep the Lumina, which was purchased from Jessica's grandfather.

A. *The house.* The evidence produced at trial showed that in 2004 the house was appraised at \$123,000, with a mortgage of \$78,000. The court observed the parties had made improvements to the house both during their marriage and before they were married. Those improvements involved \$9575 in “major improvements” such as windows and waterproofing, and \$1650 in “minor ‘face-lift’ types of enhancements.” The parties refinanced the house in 2009 borrowing an additional \$10,000, which they received in cash. Some of these

funds were used for home improvements.¹ The district court determined the “best fair marketable price” for the house at the time of trial was \$148,000. The current mortgage was approximately \$85,000. The court concluded:

Based on the parties’ joint efforts, their joint financial contributions, and the consideration of a reasonable fair market value, each of the parties is entitled to one-half of the equity for the increased value, less a reasonable rate of labor expense [which the court found to be \$1000].

B. IPERS. Jessica is a 9-1-1 dispatcher, and Anthony is a school custodian. Jessica acknowledged the IPERS accounts were based on “work history, plus your income” and she contributed what was “standard.” She had contributed to her IPERS account for more years than Anthony. Jessica’s IPERS account increased in value during the marriage from \$16,468 to \$27,315; Anthony’s account increased from \$2909 to \$9000. The court concluded the increased value of the accounts “shall be divided equally.”

C. Vehicles. The parties owned two vehicles outright at the time of the dissolution trial: a 1999 Chevrolet Lumina, which they purchased from Jessica’s grandfather for \$5000—the final two payments of about \$400 occurred after they were married; and a 2004 Hyundai Santa Fe, which Jessica purchased for \$20,000—about \$5000 of which was paid off after they married. The court found Jessica “made more of a financial contribution to [Anthony’s] vehicle, which enabled the title to be clear within one month of the marriage.” And the court concluded “[e]quity dictates that she is entitled to some reimbursement for the funds utilized for the asset [Anthony] will retain title to once the marriage is

¹ Jessica testified about \$7500 was left after improvements were made on the house. After the parties separated, Jessica had the credit union transfer \$3500 from the account to Anthony, she retained the rest.

dissolved.” The court concluded the “equitable share of the vehicles considered pre-marital as a result of [Jessica’s] use of personal funds for the payment is \$6785 (half of the current Blue Book values of each of the vehicles).”²

The district court entered a decree of dissolution and, after considering Anthony’s motion for reconsideration, ordered Anthony to pay an equalization payment of \$26,622.³

Anthony appeals, contending his equalization payment should be no more than \$5622. In response, Jessica contends the trial court’s distribution was equitable.

II. Scope of Review.

An action for dissolution of marriage is an equitable proceeding, so our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Discussion.

Under our statutory distribution scheme, the first task in dividing property is to determine the property subject to division and the proper valuations to be assigned to the property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Vieth*,

² We are unsure where this figure comes from. According to the exhibits, the Blue Book value of the Hyundai in “good” condition was \$8570; the value of a 1999 Lumina in “good” condition was \$2200. One-half the combined value would be \$5385. Even if one would utilize the values of those vehicles in “excellent” condition, the maximum amount of one-half these Blue Book values would be \$5760. In any event, we disagree with the district court that equity dictates reimbursement.

³The court initially ordered an equalization payment of \$31,372. The court thereafter considered Anthony’s Iowa Rule of Civil Procedure 1.904 motion and decreased that amount by \$4750, “agree[ing] with the Respondent as to the balance of the home equity funds” and “that the value of the Hyundai should be divided.”

591 N.W.2d 639, 640 (Iowa Ct. App. 1999). Because the parties do not challenge the district court's valuation of the assets here, we focus on the district court's determination of what property was subject to division and its distribution of those assets. The "fighting issue" is the proper amount of the equalization payment to be paid by Anthony to Jessica.

In a dissolution of marriage, the court makes an equitable distribution of "all property, except inherited property or gifts" after considering numerous statutory factors, including the length of the marriage, contributions of each party to the marriage, the age and health of the parties, each party's earning capacity, and any other factor the court may determine to be relevant to any given case. Iowa Code § 598.21(5) (2009); see *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). "The determining factor is what is fair and equitable in each particular circumstance." *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996).

Upon our de novo review, we affirm the award of the Hyundai Santa Fe vehicle to Jessica and the Chevrolet Lumina to Anthony. We do not believe Jessica should receive any "reimbursement for the funds utilized" to purchase the Lumina, as found by the district court because nearly all of the purchase price was paid prior to marriage. Both parties will leave the marriage with a vehicle unencumbered by debt; in Anthony's case the vehicle is eleven years old and valued about \$6000 less than Jessica's vehicle.

We modify to award the parties their respective IPERS account without any direct offset. See *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982) (“Where the accumulated property is not the product of the joint efforts of both parties or where, as here, one party brings property into the marriage, there need not necessarily be a division. This is especially true where the marriage was of short duration.”); *In re Marriage of Hass*, 538 N.W.2d 889, 893 (Iowa Ct. App. 1995) (noting “[a]n additional factor in dividing appreciated property acquired before the marriage is whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties”). We believe in lieu of offsetting the difference in the gains and contributions as the district court chose to do, because this was a short marriage and the difference in the value of the accounts is not significant, each party should be awarded his or her respective IPERS account. Moreover, the difference in value may be given appropriate consideration in the overall property division via the equalization payment.

Considering the short duration of the parties’ marriage, their combined efforts and contributions to the value of the house including Anthony’s father’s labor, Jessica’s receipt of funds from the refinanced mortgage, Anthony’s obligation on the mortgage, Jessica’s financial contributions towards Anthony’s child, their premarital assets, the assets awarded to them, and their respective earning capacities, we conclude Jessica is entitled to an equalization payment but modify the sum to award her the amount of \$9000. In all other respects not delineated, the decree is affirmed. Costs on appeal are taxed to Jessica.

AFFIRMED AS MODIFIED.