IN THE COURT OF APPEALS OF IOWA

No. 2-194 / 11-0550
Filed April 25, 2012

**IN RE THE MARRIAGE OF SARA J. KRUSE
AND DARYL F. KRUSE**

**Upon the Petition of
SARAH J. KRUSE,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
DARYL F. KRUSE,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

Daryl Kruse appeals and Sarah Kruse cross-appeals the economic provisions of the decree dissolving their marriage. **AFFIRMED.**

Luke D. Guthrie of Roberts, Stevens, Prendergast & Guthrie, P.L.L.C., Waterloo, for appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

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

DOYLE, J.

Daryl Kruse appeals and Sarah Kruse cross-appeals the economic provisions of the decree dissolving their marriage.[1] Our scope of 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).

The parties married in 2002. Each party brought some assets into the marriage. Daryl brought in considerable real estate holdings in Iowa and California, worth over $800,000. Sarah brought in some monies from sales of her real estate holdings, but that money was generally used for her purposes only.

In February 2010, Sarah filed her petition for dissolution of the marriage. Following a trial, the district court entered its decree dissolving the parties' marriage. As a part of the property division, the decree included a lump sum property award of $125,000 to Sarah. Both parties appeal.

Iowa Code section 598.21(5) (2009) requires the court to divide "all property, except inherited property or gifts received by one party" equitably between the parties. "This broad declaration means the property included in the divisible estate includes not only property acquired during the marriage by one or both of the parties, but property owned prior to the marriage by a party." *In re*

[1] We note an all too frequently observed violation of the rules of appellate procedure: failure to place the name of each witness at the top of each appendix page where the witness's testimony appears. *See* Iowa R. App. P. 6.905(7)(*c*).

Marriage of Schriner, 695 N.W.2d 493, 496 (Iowa 2005) (citing *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994)).

Premarital property is not set aside like gifted and inherited property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). The district court should not separate a premarital asset from the divisible estate and automatically award it to the spouse who owned it prior to the marriage. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Rather, property brought into the marriage by a party is merely a factor among many to be considered under section 598.21(5). *Schriner*, 695 N.W.2d at 496. "In some instances, this factor may justify full credit, but does not require it." *Miller*, 552 N.W.2d at 465. Other factors under section 598.21(5) include 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. *See Fennelly*, 737 N.W.2d at 102. The impact of premarital property "on the ultimate division will vary with the particular circumstances of each case." *Miller*, 552 N.W.2d at 465.

We give strong deference to the court which, after sorting through the testimony and economic details of the parties, made a fair division supported by the record. *See In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999).

> This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.

In re Marriage of Benson, 545 N.W.2d 252, 257 (Iowa 1996).

After careful review of the evidence, and considering the above stated factors, we find the district court's property valuation and distribution was equitable in all respects.[2] We accordingly affirm the district court's decree pursuant to Iowa Court Rules 21.29(1)(*a*) and (*e*).

On appeal, Sarah requests an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rest in this court's discretion. *Sullins*, 715 N.W.2d at 255. In arriving at our decision, we consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id*. Upon consideration of these factors, we decline to award Sarah appellate attorney fees. Court costs should be assessed equally to both parties.

AFFIRMED.

[2] Both parties point out that the district court inadvertently failed to take into account a $76,558 lien against one of the parcels of real property subject to division. Even taking this encumbrance into account, we find, considering all appropriate factors, the district court's division and allocation of assets, including the $125,000 lump sum payment to Sarah, to be equitable under the totality of circumstances. Therefore, we will not disturb the property settlement upon appeal.