

IN THE COURT OF APPEALS OF IOWA

No. 3-419 / 12-1991
Filed August 7, 2013

**IN RE THE MARRIAGE OF KELLI JO MULDER
AND TODD MULDER**

**Upon the Petition of
KELLI JO MULDER,**
Petitioner-Appellee,

**And Concerning
TODD MULDER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

Todd Mulder appeals from the decree dissolving his marriage to Kelli Jo
Mulder. **AFFIRMED AS MODIFIED.**

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellant.

John S. Harding of Harding Law Office, Des Moines, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Todd Mulder appeals from the decree dissolving his marriage to Kelli Jo Mulder. Todd argues the district court erred in awarding Kelli the marital home without requiring her to immediately pay him his share of the equity in the home. He also argues the district court erred when it did not order Kelli to refinance a 2009 Chevrolet Traverse into her name only. Because we find it appropriate to delay payment of Todd's equity share in the home until ninety days after the oldest child graduates from high school, unless Kelli sells or refinances the home, and because we find it equitable to award Kelli the Traverse but remove Todd from any financing obligation, we affirm as modified.

I. Background Facts and Proceedings

Todd and Kelli Jo Mulder's nineteen year marriage ended with the filing of a decree of dissolution of marriage on August 15, 2012. The parties have two children, who were fifteen and thirteen years old at the time of the decree. Following their separation Kelli remained in the marital home with the children and Todd moved into a townhouse. The parties divided most of their personal property prior to trial.

Trial was held to determine the distribution of a small number of personal items, distribution of the equity in their home, child support, and visitation. Following trial the district court entered a decree which found the parties had \$84,343.50 of equity in their home and ordered Kelli to pay Todd his share of the equity within ninety days after their oldest child graduates from high school.

Todd filed a motion to reconsider asking the district court to add certain contingencies to the home equity distribution. Among those requests was that Kelli be required to refinance the home within sixty days of the entry of the ruling. Todd then requested the court order Kelli to pay him his share of the equity in the home should she sell, refinance, remarry, cohabitate, or take on a roommate. Finally, Todd asked that Kelli be required to refinance a motor vehicle jointly owned by the parties. The district court denied the motion.

II. Standard of Review

As an equitable proceeding, we review the decree of dissolution of marriage de novo. Iowa R. App. P. 6.907. Though we are not bound by the district court's findings, we will give them weight. *In re Marriage of Sjulín*, 431 N.W.2d 773, 776 (Iowa 1988).

III. Discussion

A. Marital Home

Todd argues the district court erred in not ordering Kelli to pay him his share of the equity in the home until ninety days after their oldest child graduates from high school. Todd testified he plans to use his share of the equity to purchase a home of his own.

We are directed by the Iowa Code to consider the desirability of awarding the marital home to the party who will have physical care of the children. Iowa Code § 598.21(5)(g) (2011). We presume the parent occupying the family home does so for the benefit of both parties because the children are cared for within the home. *Hunt v. Kinney*, 478 N.W.2d 624, 625 (Iowa 1991). Economic

benefits of occupying the home are ancillary. See *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999). We are to divide the ownership interest in the home equitably while considering the factors set forth in section 598.21(5).

Reviewing the record as a whole, we find the distribution schedule provided by the district court should be modified to require Kelli to pay Todd his share of the equity should she sell or refinance the home prior to the ninety-day graduation provision in the original decree. This will prohibit Kelli from refinancing or selling the home today but delaying payment to Todd until after the oldest child has graduated from high school.

B. Vehicle

Todd also requests Kelli refinance her vehicle so he will have a larger down payment when he purchases a home.

Again, we are guided by the considerations found in Iowa Code section 598.21. The parties own two vehicles, a Chevrolet Traverse and a truck. They decided Kelli should keep the Traverse. The Traverse was barely discussed at trial, and the district court did not address the issue except to award Kelli all right, title, and interest in the vehicle. Our review of the district court ruling is somewhat hindered as we are unaware of the length of the note remaining on the vehicle or Kelli's ability to refinance.

The decree awarded the vehicle and any obligation to Kelli. Unlike the house, Kelli is not required to pay Todd any sum of money which would create a financial disadvantage for the children. We find refinancing the Traverse to

remove Todd's name from the note will create no additional burden on Kelli while allowing Todd the maximum opportunity to finance a new home.

Costs on appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.