

IN THE COURT OF APPEALS OF IOWA

No. 3-434 / 12-0504

Filed June 12, 2013

IN RE THE MARRIAGE OF ANNIE LE AND TIM DAVID LE

Upon the Petition of

ANNIE LE,

Petitioner-Appellee,

And Concerning

TIM DAVE LE,

Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, John D. Lloyd, Judge.

Tim Le appeals, pro se, challenging the property division provisions of a district court decree dissolving his marriage to Annie Le. **AFFIRMED.**

Tim D. Le, Clive, appellant pro se.

Michelle Mackel-Wiederanders of Iowa Legal Aid, Des Moines, for appellee.

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

MULLINS, J.

Tim Le appeals, pro se, challenging the property division provisions of a district court decree dissolving his marriage to Annie Le. He contends (1) Annie violated the Iowa Constitution by trying to make his life miserable, (2) he was denied effective assistance of counsel as guaranteed by the United States Constitution and the Iowa Constitution, and (3) the district court's division of marital property is inequitable. We affirm the district court's order.

I. Background Facts & Proceedings

Tim and Annie met in Vietnam in 2004 and married that same year. They have two children together, A.L. (born 2007) and A.L. (born 2008). At the time of their subsequent divorce, both Tim and Annie were in good health. Tim earned approximately \$31,200 per year while working at Wells Fargo and Annie earned approximately \$19,000 per year as a nail technician—though Tim adamantly disputes the amount of Annie's annual income.

At the time the parties married, Annie owned no property. Tim owned some property but had considerable debt. He filed for bankruptcy in 2005. After he filed for bankruptcy, he obtained \$10,000 in proceeds from the sale of property he had obtained during a prior marriage. He then contributed that \$10,000 toward a \$28,000 down payment on a new home with Annie. Annie also contributed money toward the down payment. For approximately one year during the marriage, Annie served as the sole financial provider while Tim was unemployed.

Annie asserts that she suffered years of physical abuse from Tim. The episodes of domestic abuse culminated in criminal charges against Tim and a civil protective order in favor of Annie in 2010. The temporary protective order granted Annie physical care of the children and exclusive possession of the marital home.

After Tim moved out of the marital home, he made no child support payments and did not otherwise financially support the children. Annie subsequently learned that Tim had taken out several credit cards in her name without her knowledge and accumulated over \$13,000 in debt. Meanwhile, Annie continued to pay the mortgage and care for the children.

In October 2010, Annie filed for divorce. The parties stipulated to joint legal custody with Annie having physical care of the children. They also agreed to sell the marital home and share the proceeds, but disagreed about the proper proportion of those proceeds. The parties also disagreed about the value of the family's two vehicles and the value of the personal property in the marital home.

In February 2012, the district court held a trial on the dissolution of marriage petition. Both parties were represented by counsel at that time. After hearing testimony and receiving exhibits from both parties, the district court ordered the dissolution of Tim and Annie's marriage.

The district court's order contained several provisions dividing the marital estate. The court ordered the sale of the family home, awarded one vehicle to each party, and granted ownership of the personal property to each party based on his or her possession. The court, acknowledging that Annie would receive

more personal property because she was in possession of the marital home, ordered her to pay Tim \$1000 to partially offset the difference. In addition, upon the sale of the home, Tim is entitled to the first \$10,000 of proceeds and the remaining proceeds are to be split equally, subject to credit for any repairs exceeding \$200. Annie is also required to pay \$500 per month as the rental value for the home until it is sold. After finding Tim's annual income to be \$31,200 and Annie's annual income to be \$19,000, the court awarded child support in accordance with Iowa's child support guidelines. The court then allocated one-third of the marital debt to Annie and two-thirds of the marital debt to Tim in rough proportion to their income.

Unpersuaded by the district court's property division, Tim appeals.

II. Error Preservation

Tim argues, "The Petitioner is trying to make my life miserable taking away my rights of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness. She's basically violating the Iowa Constitution." Generally, the appellant's "random mention of an issue, without analysis, argument or supporting authority is insufficient to prompt an appellate court's consideration." *State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999); *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 689 (Iowa 1994). Moreover, an issue not presented to the district court cannot be decided for the first time on appeal. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Tim did not present this issue to the district court. Thus, we find the issue of whether Annie is violating the Iowa

Constitution by trying to make Tim's life miserable is not properly before this court. *See id.*

II. Standard of Review

We review dissolution of marriage proceedings de novo. Iowa R. App. P. 6.907; *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). We give non-binding deference to the trial court's factual findings, especially when considering witness credibility. *Brown*, 776 N.W.2d at 647.

III. Analysis

A. Ineffective Assistance of Counsel

Tim argues, pro se, that he was denied effective assistance of counsel in violation of the United States Constitution and the Iowa Constitution because his attorney failed to verify Annie's annual income. Neither the United States Constitution nor the Iowa Constitution purport to extend the right to counsel to dissolution of marriage proceedings. Tim cites to no authority to support such a proposition. Thus, this issue does not merit appellate review. *See* Iowa R. App. P. 6.903(2)(g)(3).

B. Property Division

Iowa adheres to the principle of equitable division in marital dissolutions. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa 2009). Equitable division does not necessarily mean equal division. *Id.* The key factor governing property division is what is fair and equitable under the circumstances. *Id.* Divisible property includes all marital assets at the time of divorce, excluding gifts and inheritances to one spouse. *In re Marriage of Schriener*, 695 N.W.2d 493, 496

(Iowa 2005). To determine whether property division is equitable, we consider the factors outlined in Iowa Code section 598.21(5) (2011). See *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007).

Tim contends the district court erred in failing to verify Annie's annual income. He asserts that Annie's annual income is \$46,800 and his annual income is only \$31,200. He alleges that her employer paid half of her salary by check and half in cash. He further contends that Annie hid large sums of cash in a safety deposit box. The only evidence Tim offered in support of these allegations was a photograph of a box alleged to contain cash. The district court found Annie's annual income was \$19,000. The district court's finding was based on Annie's testimony, paychecks from Annie's employer, and joint annual income tax returns. We conclude that the evidence presented fully supports the district court's factual findings regarding Annie's income. We will consider the relative disparity of the earning capacity and economic circumstances of each party in determining equitable property division. See Iowa Code § 598.21(5).

Next, Tim argues the district court erred in awarding Annie a car he purchased prior to the marriage. At the time of the divorce, the couple owned two cars—a 1998 Toyota Camry and a 1989 Toyota Camry. The district court awarded Annie the 1998 Camry and awarded Tim the 1989 Camry. Even assuming Tim purchased the 1998 Camry prior to marriage, premarital property is included in the divisible estate and is subject to equitable division. See *Schriner*, 695 N.W.2d at 496.

Finally, Tim asserts the district court erred in dividing certain personal property within the marital home. He contends that the resale value of this property is worth approximately \$5000 and the court should have awarded him half of that value. As we previously articulated, equitable division does not necessarily mean equal division. *Id.* Upon our de novo review, and in light of all the facts and circumstances of this case, we find the district court's property division fair and equitable. See Iowa Code § 598.21(5). Accordingly, we affirm.

AFFIRMED.