

**IN THE COURT OF APPEALS OF IOWA**

No. 3-672 / 12-1746  
Filed October 2, 2013

**IN RE THE MARRIAGE OF BELINDA PEIFFER  
AND KEVIN PEIFFER**

**Upon the Petition of  
BELINDA PEIFFER,  
n/k/a BELINDA VOELSCHOW,**  
Petitioner-Appellant,

**And Concerning  
KEVIN PEIFFER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Washington County, Myron L.  
Gookin, Judge.

Petitioner appeals the division of property in the parties' dissolution  
decree. **AFFIRMED.**

Lars G. Anderson of Holland & Anderson, L.L.P., Iowa City, for appellant.

Katie Mitchell of Tindal Law Office, P.L.C., Washington, for appellee.

Heard by Vogel, P.J., and Danilson and Tabor, JJ.

**VOGEL, P.J.**

Belinda Peiffer, now known as Belinda Voelschow, appeals the division of property in the parties' dissolution decree. She claims the district court should have awarded her a portion of the value of rental properties Kevin Peiffer owned before their marriage. In the alternative, she argues the court should have awarded her at least a portion of the increase in value of those properties. Kevin requests attorney fees for this appeal. We affirm the district court's division of property and deny the request for appellate attorney fees.

**I. Background Facts & Proceedings**

Kevin and Belinda were married in April 2005 and it was a second marriage for both parties. They each brought assets to the marriage. Kevin owned six rental properties as well as the home the parties used as the marital residence. Kevin testified that at the time of the marriage his net worth was \$683,364. Belinda owned a home in La Porte City, and other assets, but testified she did not know the premarital value of those assets. However, Kevin testified Belinda had a premarital net worth of \$98,916.

At the time of the dissolution hearing in May 2012, Kevin was fifty-three years old. He had a high school degree and had completed a post-high school course in auto mechanics. In 2004, Kevin had back surgery, which left him unable to do continuous hard physical labor. Throughout the marriage Kevin's primary source of income was rental payments received from his properties.<sup>1</sup> The parties' tax returns showed these properties were operated for a net loss.

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<sup>1</sup> In addition, Kevin engaged in some small carpentry work. He also received approximately \$31,000 in loan repayments from his brother during the marriage.

Belinda was fifty-two years old at the time of the dissolution hearing. She had a college degree and had completed most of the credits for a master's degree. Belinda was employed as a teacher for the Iowa Braille School, where she had an annual income of about \$60,000. Belinda was in good health.

During the parties' marriage, Kevin sold one of his rental properties. The proceeds of \$52,326 were used for everyday expenses.<sup>2</sup> Belinda sold her home in La Porte City and received proceeds of \$71,500. A portion of those proceeds were reinvested in a property in Jesup, Iowa, which the parties also used as rental property. In addition, the parties refinanced the marital residence and a portion of those funds were used to obtain two additional rental properties.

The parties agreed to a division of assets and liabilities that would give Belinda the Jesup property and Kevin the other rental properties, which represented his source of income. This resulted in Kevin receiving assets of \$931,038 and liabilities of \$153,957, giving him a net worth of \$777,081. Belinda received assets worth \$232,158, and liabilities of \$14,800, giving her a net worth of \$217,358. The parties disputed whether Belinda would receive a cash property settlement to offset the award of the rental properties to Kevin. In the alternative, Belinda sought to receive a portion of the increase in value of the rental properties during the marriage.

The district court allocated the assets and debts to the parties according to their agreement. The court determined Belinda should receive a cash property settlement of \$64,000. This amount represented \$15,000 as her interest in the

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<sup>2</sup> Kevin also testified that during the marriage he sold a pickup truck he brought to the marriage, and the proceeds were used for the couple's expenses.

increased value of the marital residence and \$49,000 as her interest in the rental properties obtained during the marriage. After the cash property settlement, Kevin received net assets valued at \$713,081 and Belinda received net assets valued at \$281,358. The court noted that while “Kevin leaves the marriage with substantially more value than Belinda, Kevin entered the marriage with substantially more value than Belinda.” The court found Belinda received a significantly higher percentage of growth in net worth during the marriage than had Kevin. The court also noted that Belinda was leaving the marriage with very little debt.

Both Belinda and Kevin filed motions to reconsider pursuant to Iowa Rule of Civil Procedure 1.904(2). The district court determined that the rental properties Kevin brought to the marriage had only a minimal increase in value during the marriage. The court also found, “even assuming these properties increased in value during the marriage, the Court continues to conclude that the relatively short period of the marriage militates against an award of value to [Belinda] for these properties.” Belinda now appeals the decision of the district court.

## **II. Standard of Review**

In this equity action our review is de novo. Iowa R. App. P. 6.907. In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court’s findings. Iowa R. App. P. 6.904(3)(g). 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. Property Division

In matters of property distribution, we are guided by Iowa Code section 598.21 (2011). 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). In considering the economic provisions in a dissolution decree, we will disturb a district court's ruling "only when there has been a failure to do equity." *In re Marriage of Smith*, 573 N.W.2d, 924, 926 (Iowa 1998) (citations omitted).

In making an equitable division of property, a court considers the factors found in section 598.21(5). These factors 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 property brought to the marriage by each party. *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007). We look to the economic provisions of the decree as a whole in assessing the equity of the property division. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995).

A. Belinda asserts she should be awarded a portion of the value of the rental properties and the marital residence that Kevin brought to the marriage. She points out that the rental properties did not generate much income, and claims the income from her employment contributed to the upkeep of those properties. She also asserts that she was actively involved in the rental business. As to the marital residence, Belinda argues that her employment

income contributed to the funds the parties used to pay the mortgage. She asks to have the cash property settlement increased.

Under section 598.21(5), all property, except inherited property or gifts received by one party, should be equitably divided between the parties. See *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). This means that property owned by the parties prior to the marriage may be included in the property division. *Id.* “Property brought into the marriage by a party is merely a factor to consider 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 the marriage.” *Id.* A court is not automatically required to award premarital property to the spouse who owned it prior to the marriage. *In re Marriage of McDermott*, 827 N.W.2d 671, 678 (Iowa 2013).

The marriage here was of relatively short duration, seven years. See *In re Marriage of Shanks*, 805 N.W.2d 175, 179 (Iowa Ct. App. 2011) (finding marriage of eight years was short to moderate in duration). While both parties brought property to the marriage, Kevin brought considerably more than Belinda. “Where, as here, there is a wide disparity between the assets of the parties at the time of the marriage the length of the marriage is a major factor in determining the respective rights of the parties at the time of the dissolution.” *In re Marriage of Dean*, 642 N.W.2d 321, 326 (Iowa Ct. App. 2002). “The claim of either party to the property owned by the other prior to a marriage of this brief duration is minimal at best.” *Id.* (discussing marriage of one year).

We conclude the district court acted equitably in declining to award Belinda a portion of the pre-marital value of Kevin’s rental properties and the

marital residence. Although the property division favors Kevin, the marriage was of a relatively short duration, and Kevin brought substantially more assets to the marriage. As the district court noted, Kevin's net worth did not increase by much during the marriage, while Belinda had a significantly higher percentage of growth.

B. Belinda raises an alternative argument that the district court should have awarded her a portion of the amount Kevin's rental properties increased in value during the marriage. The court may equitably divide the amount premarital assets appreciated during the marriage. *Fennelly*, 737 N.W.2d at 104. Even if the court awards premarital assets to the spouse that brought those assets to the marriage, the court may award the other spouse a portion of the appreciation in value of those assets. See *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 853 (Iowa Ct. App. 1998).

The parties agreed to the value of the properties at the time of the hearing, but disagreed about the value at the time they were married. Thus, they disagreed about what amount, if any, the rental properties increased in value during the marriage.

The district court recognized the appropriate legal principles, but ruled the rental properties had only a minimal increase in value during the marriage. The court noted specific testimony that the properties were not in good condition. Although Kevin was primarily responsible for extensive renovation to the properties, the evidence revealed one property had a leaking roof and termite infestation, another was a "work in progress," a third was gutted and described as "a pit," a fourth was in the process of being renovated, and a fifth had poor

original construction and was in the process of renovation. The court also noted the properties were never profitable. The court found the properties had not increased in value “to an extent that fairness, equity and good conscience dictate an award of value to [Belinda].”

We will not disturb the district court’s valuation of assets when the valuation is within the permissible range of evidence. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). “Although our review is de novo, we ordinarily defer to the trial court when valuations are accompanied by supporting credibility findings or corroborating evidence.” *Id.* In this case, the district court fully set forth its reasons for determining the rental properties had not increased in value during the marriage. Because the court’s findings are within the permissible range of the evidence, we will not disturb the court’s determination.

While Belinda unquestionably contributed her income to the couple’s business and personal expenses, the court found the parties’ co-mingling of income resulted in a “tangled web of business and personal finances over the seven-year marriage.” See *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa Ct. App. 1997) (declining to delve into the income sources and expense allocations during the marriage). Considering the property division as a whole, we conclude the court equitably divided the parties’ assets and liabilities. Although Kevin received more property than Belinda, he brought substantially more to the marriage, and the marriage was not of a long duration. Furthermore, we defer to the district court’s finding that the property Kevin brought to the marriage only minimally increased in value during the marriage. We affirm the division of property in the dissolution decree.

#### **IV. Attorney Fees**

Kevin requests attorney fees for this appeal. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2008). Upon our consideration of these factors, we decline to award appellate attorney fees in this case.

We affirm the decision of the district court. Costs of this appeal are assessed to Belinda.

**AFFIRMED.**