

IN THE COURT OF APPEALS OF IOWA

No. 6-1084 / 06-0980
Filed March 28, 2007

**IN RE THE MARRIAGE OF KELLI MICHELLE FLECK
AND BRIAN JOSEPH FLECK**

**Upon the Petition of
KELLI MICHELLE FLECK,**
Petitioner-Appellee,

**And Concerning
BRIAN JOSEPH FLECK,**
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, James D. Scott,
Judge.

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

Bradford Kollars and Michele M. Lewon of Kollars & Lewon, Sioux City, for
appellant.

R. Scott Rhinehart of Rhinehart Law, P.C., Sioux City, for appellee.

Considered by Sackett, C.J., and Mahan, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.**I. Background Facts & Proceedings**

Brian and Kelli Fleck were married in October 2003. Kelli filed a petition for dissolution of marriage in January 2006. The parties entered into a pretrial stipulation that provided neither party was entitled to alimony. They also agreed to the value of their assets and liabilities. Furthermore, the parties agreed Brian brought certain assets to the marriage.

The dissolution hearing was held on April 11, 2006. Brian was then twenty-eight years old. He was employed as a construction worker and had annual income of about \$40,000. At the time of the hearing Kelli was also twenty-eight years old. She was employed as a manager of a dental office and her annual income was \$26,000.

The district court's dissolution decree found Brian brought property worth \$8,740 to the marriage, and stated, "[w]hile equity does not require that all of this property be exempt from division, it is one factor." The court did not set aside any of that pre-marriage property to Brian, but did give him a greater amount of the parties' total assets. Brian was awarded total net assets of \$17,395 and Kelli was awarded \$12,630, which included a \$5,000 cash payment to her.

Brian filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) asking the court to reconsider the property division. The court denied Brian's request. Brian appeals the division of property in the dissolution decree.

II. Standard of Review

Our review of this equitable action is de novo. Iowa R. App. P. 6.4. We examine the entire record and decide anew the issues property presented. *In re Marriage of Rhinehart*, 704 N.W.2d at 680 (Iowa 2005). In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Property Division

Iowa is an equitable division state. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Iowa law requires the court to divide marital property equitably between the parties, considering the factors found in Iowa Code section 598.21(5) (Supp. 2005). See *Rhinehart*, 704 N.W.2d 677, 683. There need not be an equal division of property, as long as the division is justified and equitable under the facts of the case. *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

A. Brian contends the district court should have set aside to him the property he brought to the marriage. Brian claims he brought property worth \$16,223 to the marriage. He points out that in the parties' pretrial stipulation they agreed he brought certain assets to the marriage. Brian argues since this was a short marriage, Kelli should not share in the assets he brought to it.

Under section 598.21(5)(b), the property a party brought to the marriage is one factor to consider in determining an equitable division of property. See *Sullins*, 715 N.W.2d at 247. Assets owned by a party prior to the marriage are

not required to be set aside like inherited or gifted property. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998); *In re Marriage of Garst*, 573 N.W.2d 604, 606 (Iowa Ct. App. 1997). “[P]roperty 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 Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005).

In the present case, the district court took Brian’s premarital assets into consideration and awarded him a greater share of the marital assets. We agree with the court’s conclusion that equity does not require setting aside to Brian those assets he brought to the marriage. In denying Brian’s post-trial motion, the court stated:

Even if the total net value of Brian’s premarital property is greater than the Court has found, the fact that property was brought into the marriage is but one factor to be considered. It is not separated from marital property in the same manner as property received by gift or inheritance. Given the parties’ difference in earnings, their contributions to the marriage, and all other factors, equity does not require modification of the decree.

We concur in the court’s conclusions.

B. Brian asks that Kelli be made responsible for one-half of the debts he paid during the parties’ separation. The parties were in the process of purchasing a mobile home when they decided to rent a house. Brian paid the mobile home payment and rent during the separation. He also made payments on a pickup purchased by the parties. He states he paid \$4,514 during this time.

In making an equitable distribution of property, a court must determine the parties’ assets and debts. *In re Marriage of Hagerla*, 698 N.W.2d 329, 333 (Iowa

Ct. App. 2005). The assets and debts of the parties should be given their value as of the date of trial. See *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002).

The court properly determined the amount of the parties' debts on the date of trial. The court was not required to separately assess debts that arose during the period of separation. Further, as Kelli notes, she had costs and expenses which arose during the period of separation and is not seeking reimbursement for those. We determine the district court made an equitable division of the parties' debts.

C. During the trial, Brian testified he owed money to Anthon Oil. He had no idea how much the debt was, however, and had never received a bill. Brian asserts the court should have made each party responsible for one-half of the bill when it is received.

The district court determined, "[t]he parties only speculated as to possible indebtedness and no evidence of the actual debt was presented." We agree with the district court that the evidence of the debt to Anthon Oil was too speculative to make a division of that debt in the dissolution decree. We affirm the division of property and debts as set forth by the district court.

IV. Attorney Fees

Kelli has filed an application seeking attorney fees for this appeal. On a request for appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of*

Wood, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine Brian should pay \$1000 toward Kelli's appellate attorney fees.

AFFIRMED.