IN THE COURT OF APPEALS OF IOWA

No. 6-579 / 05-2123
Filed February 28, 2007

IN RE THE MARRIAGE OF CHERYL ANN SWENSON AND CRAIG ROBERT SWENSON

Upon the Petition of
CHERYL ANN SWENSON, n/k/a CHERYL ANN LARSEN,
Petitioner-Appellant/Cross-Appellee,

And Concerning
CRAIG ROBERT SWENSON,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Cheryl Swenson appeals several provisions of a dissolution decree; Craig Swenson cross-appeals. **AFFIRMED AS MODIFIED.**

Suellen Overton, Council Bluffs, for appellant.

Jon E. Heisterkamp and Jennifer K. Sewell of Peters Law Firm, P.C., Council Bluffs, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

VAITHESWARAN, J.

Cheryl Swenson appeals the property distribution, spousal support, and attorney fee provisions of a dissolution decree. Craig Swenson cross-appeals from several provisions of the decree.

I. Background Facts and Proceedings

Cheryl and Craig married in the spring of 2002. They separated two years and seven months later.

Cheryl petitioned for a dissolution of the marriage. The district court entered several temporary orders. Among them was an order holding Craig responsible for all loan payments on the parties' home, a truck, and a tractor, and denying Cheryl's request for temporary spousal support, in light of the debt allocation.

Following trial, the district court set aside some property to each party and divided other property. The court denied Cheryl's request for spousal support and trial attorney fees.

Cheryl moved for a new trial and/or an enlarged or amended judgment or decree. The district court made several changes to the decree. Of the divisible property, Craig received assets valued at $71,377 and Cheryl received assets of $40,134. The court ordered Craig to make an equalizing payment to Cheryl of $15,621.50. These appeals followed.

II. Cheryl's Appeal

A. Property Distribution

The district court's division of the parties' property is governed by Iowa Code section 598.21(1) (2005). That provision sets forth several well-established

factors, which will not be repeated here. *See* Iowa Code § 598.21(1)(a)-(m). Cheryl takes issue with certain parts of the district court's property distribution plan. We will address each.

1. Home Equity. During the marriage, Cheryl and Craig purchased a home for $215,000. The down payment of $49,710 came from the payout to Craig of "performance units" under a 1994 employee stock incentive plan. The parties refer to this house as the Carson residence.

The district court awarded the Carson residence to Craig, reasoning,

> The $49,710 paid down on the Carson property was from Craig's 1994 stock options which he cashed in 2004. Because the equity in the Carson property resulted from use of a premarital asset, that equity will not be treated as a marital asset.

Cheryl contends the court should not have allocated 100% of the home equity to Craig. She also maintains that she contributed premarital assets to improve the home, including $28,000 "she received from the [sale] of her home." Finally, she notes that the stock options matured during the marriage.

We are not persuaded by these arguments. With respect to the improvements to the Carson residence, both parties used money that arguably came from the sale of premarital assets, but both parties commingled those proceeds. In addition, there is scant evidence that Cheryl's monetary contributions increased the value of the home. Therefore, this factor adds little to the analysis.

Several other factors are more pertinent. First, although Craig received the stock money during the marriage, Cheryl conceded this money was his. She also admitted that the entire down payment came from this stock money.

Second, Craig was held responsible for the debt on the home. After eight months of living in the home, Craig began making all the monthly mortgage payments and eventually assumed exclusive liability for the encumbrance of $172,000. Given these factors, we conclude the district court acted equitably in awarding all the equity in the Carson residence to Craig.

The question then becomes whether the down payment should have been excluded from the divisible estate. We address this question in subpart 4.

2. Value of Ford Taurus. In 2003, Craig received an inheritance of $25,000. Craig testified he used a little over $2000 of this money to purchase a 2001 Ford Taurus. On his affidavit of financial status, he listed the market value of the vehicle as $6000.

The district court declined to treat the vehicle "as a marital asset." The court instead found it was purchased with inherited funds and was not part of the property subject to division. Cheryl argues this disposition was inequitable. She urges us to divide the value of the vehicle between the parties.

Our dissolution statute excludes inherited property from the property division "except upon a finding that refusal to divide the property is inequitable to the other party . . . ." Iowa Code § 598.21(2). We need not reach this exception because we find no evidence that the car was purchased entirely with inherited funds. Therefore, we conclude the Ford Taurus should not have been excluded from the property subject to division. *See* Iowa Code § 521.21(1).

Having found the vehicle was subject to equitable division, we nevertheless are satisfied that the district court appropriately allocated this asset to Craig. The car was purchased by Craig with money from his separate

account.[1] It was purchased approximately ten months prior to the parties' separation. Under these circumstances, we conclude he was entitled to it. *See In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005) (noting the circumstances and underlying nature of property are factors in determining an equitable division). *See also In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989) (stating party does not have claim to "mathematically certain portion" of inherited property even where marriage was long).

We recognize that this allocation would increase the value of Craig's assets by $3000. If this were a lengthy marriage or one in which the total assets are not "so great as to enable each partner to continue to live the same lifestyle with something less than half the total," we would modify the decree to provide for an offsetting payment from Craig to Cheryl. *Id.* Because the marriage was short and Cheryl came away with enough assets to support herself in a comfortable lifestyle, we decline to modify the decree based on Craig's receipt of the Ford Taurus.

3. Value of Ford Mustang. In 1975, Craig purchased a 1964 Ford Mustang. At the time of trial, the Mustang was in "10,000 pieces," as it underwent restoration at a body shop. Craig testified he used some of his inheritance money to pay for the restoration. At the time of trial, he owed the body shop $9000. He estimated the value of the disassembled car was $500. Cheryl, on the other hand, valued the car at $8000.

The district court concluded that "Craig's opinion as to the value of the Mustang is more credible than Cheryl's." On appeal, Cheryl takes issue with this

[1] Cheryl was only listed as a beneficiary.

statement. She maintains the value must be $8000 because Craig put so much money into the vehicle during the marriage. However, she furnished no independent evidence of the car's value. In addition, she did not counter Craig's assertion that he invested in the car not because he thought the value would increase but because the vehicle had sentimental value to him. We conclude the district court acted equitably in valuing the vehicle at $500. *See In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006) (deferring to trial court's fact findings as to value of a vehicle).

We disagree, however, with the district court's decision to exclude the $500 value from the divisible estate. *See id*. at 247. That sum should have been included because, by Craig's own admission, neither the purchase cost nor the renovation cost was paid entirely with inherited funds. However, for the reasons stated in subpart 2, we see no reason to modify the decree to reimburse Cheryl for this increase in the assets allocated to Craig.

4. Craig's Bemis Stock. Craig was a long-time employee of Bemis Company. He participated in the Bemis stock incentive plan. In 1997, Craig was awarded 2000 "performance units" in a 1994 stock incentive plan. His payout was $99,020, which resulted in a payment of $62,382.60 after taxes. Craig used these funds to make a property settlement payment to his first wife and, as noted, to make a down payment on the Carson residence.

Craig also was awarded 2000 "performance units" under a 2001 stock incentive plan. One thousand units were awarded during the marriage. These performance units split during the marriage, giving him a total of 4000 units.

None of these units were to mature before 2007. As to these units, the district court found,

> Craig received the first 1000 shares under the Stock Incentive Plan prior to the marriage, and as such those shares are premarital property. The next 1000 shares Craig received during the marriage. Both sets of shares were given pursuant to the 2001 Stock Incentive Plan. The stock split occurred during the marriage. Craig does not have the right to cash any of those shares now. It is speculative what Craig will receive when he is able to cash those shares. The Court concludes that the 4000 shares of Bemis stock is premarital property with speculative value. As such it will not be divided as marital property.

On appeal, Cheryl argues she has an interest in the 4000 units that have not yet matured, and in the 2000 units Craig cashed out during the marriage.

With respect to the units that were cashed out during the marriage, Craig was awarded those shares in 1997, long before his marriage to Cheryl. Receipt of those units was based on his performance with the company. The portion of the cashed out amount that remained in some form at the time of trial was $49,710. This was the amount of the down payment on the Carson residence. The district court treated this amount as a premarital asset belonging to Craig and declined to include it in the divisible estate. We conclude the amount should have been included in the estate. *Sullins*, 715 N.W.2d at 247.

We turn to the question of whether the property distribution scheme must be modified in light of this included sum. Although the addition of the home's down payment substantially increases the value of the assets awarded to Craig, we conclude the decree need not be modified. This was a short marriage. As our court has stated: "If a marriage lasts only a short time, the claim of either party to the property owned by the other prior to the marriage or acquired by gift

or inheritance during the brief duration of the marriage is minimal at best." *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995). Additionally, Cheryl made no contribution to Craig's acquisition of the "performance units" that resulted in this cash payment. *See In re Marriage of McNamer*, 452 N.W.2d 812, 814 (Iowa Ct. App. 1990) (stating court should consider "the contributions and sacrifices made by each toward the acquisition of the property during the marriage"). Finally, Cheryl received a healthy payment of more than $15,000 to compensate her for the unequal distribution.

We turn to the 4000 performance units Craig received under the 2001 Stock Incentive Plan. All these units should have been included in the divisible estate. *See Sullins*, 715 N.W.2d at 247. However, we agree with the district court that they were properly allocated to Craig. *See In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002) (stating "the division of property is based upon each marriage partner's right to a just and equitable share of the property accumulated as a result of their joint efforts"); *cf. In re Marriage of Dieger*, 584 N.W.2d 567, 569 (Iowa Ct. App. 1998), ("It was Darrell's devotion to the company, being a long-time employee many years prior to the marriage, that the board extended to him the rare opportunity to purchase the stock. For his premarital efforts and contribution, Darrell should be appropriately credited."). For the reasons set forth above, we decline to modify the decree to equalize the property distribution based on the allocation of the 4000 units to Craig.

5. Craig's Bemis Pension. Craig participated in Bemis's pension plan. Cheryl asked the district court to enter a qualified domestic relations order awarding her a share of the pension. Although the court cited an opinion addressing

retirement plans, the court did not specifically rule on this request. The absence of a ruling does not preclude review in this case because Cheryl brought this omission to the attention of the district court. *See Madden v. City of Eldridge*, 661 N.W.2d 134, 138 (Iowa 2003).

Cheryl argues she should have received a share of Craig's pension because she "was not awarded a property settlement representative of what she brought into the marriage, let alone what the parties accumulated during the marriage."

We agree that the value of the pension retained by Craig should have been explicitly considered in the overall property distribution plan. *See Sullins*, 715 N.W.2d at 247 (stating "[p]ensions are divisible marital property"); *In re Marriage of Fall*, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999) ("The allocation of a pension, like the allocation of all other property interests, comes only after the pension has been considered in the overall scheme of an equitable division."). However, the fact that the court did not make specific reference to the pension in its distribution provisions does not require modification of the decree. On our de novo review, we note that Cheryl was afforded half the accumulation in an investment retirement account Craig had through his employer. She also received a significant cash payment to equalize the property distribution, notwithstanding the brevity of the marriage. *See In re Marriage of Knust*, 477 N.W.2d 687, 687 (Iowa Ct. App. 1991) (declining to divide separate retirement accounts following a two-year marriage). Under these circumstances, we conclude the district court was not obligated to divide Craig's pension to ensure an equitable property distribution scheme.

6. Cheryl's Retainer Fee. Cheryl paid her attorney a $4500 retainer fee. The district court allocated this asset to her. On appeal, Cheryl makes the following argument: "Instead of including Cheryl's long since depleted retainer fee as a marital asset, the trial court should have awarded Cheryl attorney fees." We address the attorney fee issue below. With respect to her argument that this sum was not subject to division, she does not explain why. Therefore, we will not address this aspect of her argument.

7. Cheryl's VISA Debt. The district court ordered Cheryl to pay the debt of $4727 on her VISA credit card. Cheryl owned this VISA card before the marriage, but she maintains it was used during the marriage for joint expenses such as the wedding itself.

The account history reveals that the card included premarital debt as well as post-separation debt. It is true that the card was also used for joint expenses during the marriage. However, Craig testified that his cards were used in this fashion as well, yet all the debt on his cards was assigned to him. Under these circumstances, the district court acted equitably in allocating the debt on Cheryl's card to her.

8. Various Accounts. Cheryl maintains that, during the marriage, "Craig opened, utilized and closed a number of accounts." She requests that the court "award her one-half of the cash" in the accounts.

(a) TD Waterhouse account. Craig had an investment account with TD Waterhouse. The district court made the following findings with respect to this account:

> Cheryl . . . is correct that [Craig] once had a TD Waterhouse account. However records contained in Exhibit 40 show that account was closed in July 2004. There is no marital asset at TD Waterhouse to divide.

Cheryl takes issue with these findings, contending that there were "unaccounted funds of $198,885.10" that should have been considered part of the divisible estate. We cannot agree. Craig opened the account in September 2003. He testified he put $10,000 or $11,000 of his inheritance money into the account and used the funds to buy and sell stock. At the end of 2003, Craig received a statement that he had $53,615.99 in proceeds from broker barter and exchange transactions. By July of 2004, however, the account only contained $8500. That sum was transferred to another account and the account was closed. Craig's tax returns indicate a loss of $1677 on the stock transactions. This evidence supports the district court's conclusion.

(b) Wells Fargo account. Craig testified that he owned a Wells Fargo account prior to the parties' marriage. He also testified he closed the account and moved all the funds to a Metro Credit Union account.

On appeal, Cheryl contends that approximately $32,000 that was deposited into this account should have been included in the divisible estate. Like the district court, we see no basis for doing so. The account statements reveal that this account had a zero balance well before the parties separated and more than two years before the original decree was entered. Cheryl did not trace the funds that were once in this account to assets owned at the time of trial, nor did she suggest that they were in Craig's possession after the separation. Under

these circumstances, we conclude the district court acted equitably in declining to consider this account.

(c) Marine State Bank account. Craig had an account with Marine State Bank. Craig testified he opened this account prior to the marriage, and closed it during the marriage because "Cheryl didn't like the way [he] was managing [his] accounts." He stated the money in the account was moved to his Metro Credit Union account. Cheryl takes issue with these assertions. She contends "he closed the account on April 25, 2003 with a balance of $8,041.62." and this sum "should be counted as a marital asset." As the account was closed approximately twenty months before the parties separated and neither the account nor funds transferred from the account were in existence at the time of trial, we conclude the district court acted equitably in declining to include this account in the divisible estate.

(d) Edward Jones account. Craig had an account with Edward Jones. With respect to this account, the district court found as follows:

> That account was funded in early 2004, when Craig sold some of his Bemis stock. Exhibit 20 shows that Craig withdrew $50,000 from the Edward Jones account on March 1, 2004, leaving a balance of $2,253. The remaining balance of $2,253 was withdrawn June 21, 2004. The Edward Jones account had no balance as of the date of trial. The withdrawal of $50,000 was used for the down payment on the Carson property. The $2,253 was otherwise spent.

Cheryl concedes that $2253 was transferred to Craig's Metro share account, discussed below, to increase the balance in that account to $3383.08 as of the separation date. She appears to contend that this sum was dissipated during the period of separation, stating rhetorically, "What happened to the balance of the

monies?" However, she cites no evidence to support this contention. As noted below, we agree the $400 balance in the Metro share account at the time of trial should have been included in the divisible estate, but we decline to adjust the total distribution for the reasons stated earlier.

(e) Metro Credit Union account. Cheryl argues that Craig failed "to account for the more than $24,819.23 going into the savings account." However, she does not argue that the funds were wasted or purposefully dissipated and she does not argue that this amount was in the account at the time of trial and should have been equitably divided.

On our de novo review of the record, we note that this account was in the name of Craig, with Cheryl listed as a beneficiary. The share account contained $3383.08 as of November 30, 2004 and Craig listed a balance of $400 at the time of trial. Although it appears the district court did not account for this balance in dividing the property, we decline to modify the decree to provide for an additional $200 distribution to Cheryl.

9. Cash from Closing of Jaynes Circle Home. Prior to the marriage, Craig purchased a house for $114,500. The parties refer to this house as the Jaynes Circle home. When Craig and Cheryl married, Craig refinanced the property to add Cheryl's name. At the time of closing, Craig received a check for $1918.33. Cheryl's sole contention on appeal is that this sum "represents both parties (sic) efforts in the refinancing of the mortgage." Cheryl does not explain how or why this sum should affect the district court's property distribution. Therefore, we cannot analyze this argument.

10. Cost of Carson Home Refinance. Craig refinanced the Carson residence during the divorce proceedings. The refinancing costs totaled $2753.00. Cheryl argues she should not be responsible for these costs. Craig responds that the refinancing "was to Cheryl's benefit in that her name was no longer listed as a responsible party on the note, so Cheryl was not obligated to pay it." We agree with Craig.

11. Cash Values in Life Insurance Policies. Cheryl asks the court to divide the accumulation of cash values in two life insurance policies. Assuming without deciding that this issue was preserved for review, Craig's affidavit of financial status states that he had term life insurance policies with no cash value. Therefore, we reject this contention.

12. Cheryl's Ford Expedition. The district court awarded Cheryl a 2003 Ford Expedition acquired during the marriage. On appeal, Cheryl contends this vehicle should have been set aside to her as a premarital asset. She notes that the purchase price included a trade-in value of "a little over $6,000" for a Ford Explorer she bought prior to the marriage. She also argues that she made all the payments on the Expedition.

Cheryl's argument is contrary to this State's distribution scheme. *See Sullins*, 715 N.W.2d at 247. As our highest court has recently stated, a district court "may not separate the asset from the divisible estate and automatically award it to the spouse that owned the property prior to the marriage." *Id.* Instead, "[p]roperty 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."

Schriner, 695 N.W.2d at 496. In light of these principles, we conclude the district court acted equitably in including the Ford Expedition in the divisible estate and in then awarding it to Cheryl.

13. Craig's 2005 Bonus. Cheryl next contends that the district court should have awarded her a portion of Craig's 2005 bonus. The district court did not address this issue either in its original or its amended decree. However, because Cheryl brought the issue to the court's attention in a post-trial motion, we conclude error was preserved. *See Madden*, 661 N.W.2d at 138.

On our de novo review we see no basis for such an award. The parties separated in late 2004, before any 2005 bonus accrued. Therefore, Cheryl could not have contributed anything towards the acquisition of the bonus. *See In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). Additionally, a bonus, if any was to be given, was not to be paid until February 2006, after the amended decree was entered in this case. While Cheryl claims we may derive a sum for distribution based on the amounts of Craig's past bonuses, we are unwilling to take this step in light of Craig's testimony that he did not expect a bonus for 2005. Specifically, Craig stated Bemis was "down by almost $6 million." He unequivocally stated "[t]here will not be a bonus." Assuming without deciding that a bonus is a divisible asset, we conclude its receipt was speculative. *Cf. In re Marriage of Lalone*, 469 N.W.2d 695, 698 (Iowa 1991) (bonus received after separation, but before trial, treated as income, not marital property).

B. Spousal Support

At trial, Cheryl sought spousal support of $2000 per month for three years. On appeal, she has reduced her request to $300 per month for three and a half years.

In denying her original request, the district court stated,

> During 2002 through 2004, Cheryl had average earnings of $61,540. She is on pace to earn in the upper $60s for 2005. She has a two year degree and a four year degree. She has been engaged in her career for more than twelve years. She has substantial assets. This was a relatively short marriage. Although Craig has greater earning capacity than Cheryl, she has done nothing to enhance his earning capacity. Cheryl is not a dependent spouse. There is no evidence that Cheryl's health problem will impair her earnings. Cheryl's request for spousal support should be denied.

Our review of the district court's alimony award is de novo, but we give the court considerable latitude in making the determination under Iowa Code section 598.21(3). *See In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). "We will disturb that determination only when there has been a failure to do equity." *Id.*[2]

Cheryl's request can best be described as one for rehabilitative alimony. *See In re Marriage of Olson*, 705 N.W.2d 312, 316 (Iowa 2005). This type of stipend is designed to support an economically dependent spouse through a limited period of re-education or retraining. *Id.*

[2] Craig apparently argues that this issue was not preserved for review because Cheryl did not file an amended petition adding this claim after the district court gave her leave to do so. However, as the district court pointed out, leave was granted, the issue was discussed extensively during trial, and Craig could not have been surprised by Cheryl's pursuit of this issue. For these reasons, the district court allowed an amendment during trial to conform to the proof. We conclude error was preserved.

As the district court stated, Cheryl was simply not an economically-dependent spouse. At the time of trial, she was fifty years old, had two nursing degrees and a bachelor's degree in health care management, and had been working as a medical case manager for the previous twelve years. In 2000, Cheryl earned approximately $50,000; in 2001, approximately $54,000; in 2002, approximately $58,000; in 2003, approximately $63,000; and in 2004, approximately $68,000. In short, she was well-educated and well-established in her career.

We acknowledge that Cheryl's affidavit of financial status lists monthly expenses of $5552.50 and net income of only $3684.98. Her attorney cites this as evidence of her "tenuous financial position." On our review of her expense itemization, we conclude that Cheryl is capable of self-sufficiency without spousal support. *Id.* (stating goal of rehabilitative alimony was self-sufficiency). Indeed, Cheryl conceded at trial that she was supporting herself and could support herself.

Notwithstanding this trial concession, Cheryl contends the parties' disparate earnings warrant an alimony award. Craig does not dispute that he earned $93,000 annually at the time of trial and between $108,000 and $207,000 in the previous five years. While these sums are significantly higher than Cheryl's highest earnings during this period, this factor is one of many the district court was obligated to consider. *See* Iowa Code § 598.21(3). The other cited factors, as well as the brevity of the marriage, support the court's denial of a spousal support award.

C. Attorney Fees

Cheryl requested trial attorney fees. In denying her request, the district court stated,

> The award of attorney fees is discretionary, and it depends on the division of assets and award of support. Though Craig has greater earning capacity than Cheryl, Cheryl has substantial income. She is receiving substantial assets.

"Ordinarily, an award of attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *In re Marriage of Francis*, 442 N.W.2d 59, 67 (Iowa 1989).

Cheryl earned $68,000 per year at the time of trial. She received a lump sum property settlement of $15,621.50, as well as other assets. In light of this evidence, we discern no abuse of discretion in the court's ruling. For the same reason, we deny Cheryl's request for appellate attorney fees.

III. Craig's Cross-Appeal

A. COBRA Premiums

At trial, Cheryl asked for an order requiring Craig to cover her under his employer's health insurance plan. In its enlarged ruling, the district court granted this request, ordering Craig to pay COBRA premiums for three months.

On our de novo review of the record, we conclude Craig should not have been ordered to make these additional payments. Cheryl acknowledged that she had her own health insurance coverage through her employment. She also acknowledged that, as of the time of trial, she had not used Craig's plan. She simply requested this coverage to ensure that she would have no uncovered bills from an upcoming foot surgery. Under these circumstances, we are not

convinced Craig should have to bear the cost of this coverage, which amounted to $335.62 per month. We modify the amended decree to remove this obligation. To the extent the premiums have already been paid, Cheryl shall reimburse Craig for those costs.

B. Property Distribution

The district court allocated the following debts to Craig:

> Chase credit card with a balance of $13,641, Discover credit card with a balance of $1,369, MBNA credit card with a balance of $10,244, Wells Fargo with a balance of $516, federal and state income taxes for 2005, the mortgage for the Carson property, the encumbrance on the 2004 3500 Dodge Ram, any debt owing for the Mustang, taxes due in 2005 for the Carson property, and any bill relating to utilities, maintenance, upkeep or repair of the Carson property.

In his cross-appeal, Craig argues the district court "should have reduced his net assets by $16,902 in marital debt when determining the overall property settlement." Specifically, he maintains that much of the credit card debt that was assigned to him was incurred during the marriage for home improvements and entertainment.[3] In his view, if this debt were considered, his cash disbursement to Cheryl would be $7874.45, as opposed to the $15,621.50 ordered by the district court.

We decline to alter the property distribution based on this debt. Craig concedes that all the credit cards at issue were in his name. He further concedes that $10,000 to $11,000 of the debt on those cards was premarital.

[3] He also argues that the 2005 property taxes on the home "should have been considered in determining the overall property settlement." We note, however, that the home was awarded to Craig and he was held "responsible to pay all mortgage payments, *taxes,* utilities, insurance and other maintenance for said property after March 1, 2005." (emphasis added).

Although he states generally that receipts attached to some of the credit card statements will disclose jointly incurred debt, he does not identify the specific receipts or total them up.

The district court chose to assign all the credit card debt on Cheryl's card to her and all the debt on Craig's cards to him, notwithstanding that the cards contained a combination of premarital debt and household debt incurred during the marriage. Given the record created by the parties, we believe the court acted equitably in allocating the debt in this fashion.

C. No-Contact Order

In a separate case, Cheryl requested and was granted a chapter 236 restraining order. She asked the district court in this matter to extend the order. In a post-trial ruling the district court concluded,

> Though no evidence of assaultive behavior was presented, Cheryl requested a no contact order. Craig did not strenuously contest Cheryl's request, although he questioned her need for a protection order. Cheryl's request should be granted.

Craig takes issue with this ruling, noting that

> [n]o evidence was presented relating to the circumstances of that order, whether it was by consent, whether there had ever been an actual finding of any domestic abuse, whether there had been any violations of the order, or whether there would be any justification for continuation of any protection order.

Cheryl concedes much of this argument. She admits the chapter 236 restraining order was not offered into evidence and she admits the record does not indicate whether the chapter 236 restraining order was based on court findings or consent. In light of these concessions, we conclude the district court's entry of

the protective order was not supported by the evidence. The amended decree is modified to delete any references to a protective order.

Costs are taxed to Cheryl.

AFFIRMED AS MODIFIED.