

**IN THE COURT OF APPEALS OF IOWA**

No. 6-713 / 05-1896  
Filed October 11, 2006

**IN RE THE MARRIAGE OF ROBERT SPEARMAN  
AND VERONICA SPEARMAN**

**Upon the Petition of  
ROBERT SPEARMAN,**  
Petitioner-Appellant/Cross-Appellee,

**And Concerning  
VERONICA SPEARMAN,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,  
Judge.

Petitioner appeals and respondent cross-appeals from provisions of the  
decree dissolving their marriage. **AFFIRMED AS MODIFIED.**

Jeffrey Mains of Mains Law Office, P.L.C., Des Moines, for appellant.

Linda Channon Murphy of Murphy & Parks, P.L.C., Des Moines, for  
appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

**HUITINK, P.J.**

Petitioner Robert Spearman (Robb) appeals from the provisions of the decree dissolving his marriage to respondent Veronica Spearman. Veronica cross-appeals. We affirm as modified.

**I. Background Facts and Proceedings**

Robb and Veronica met in 2001 through a website for use only by members of their church. They were married in January 2002 in Chile and returned to Des Moines to live. Veronica had never been married. Robb has a twelve-year-old son from a previous marriage; he and Veronica have no children together.

Robb and Veronica separated in June 2002 when Robb literally threw both Veronica and her belongings out of their residence. Robb filed for a dissolution of marriage in October 2003. Between the time the parties separated and entry of the decree in June 2005, Robb gave Veronica \$1000. Veronica continued to carry Robb on her employer-furnished medical insurance for several months after they separated.

Veronica was born in Concepcion, Chile. She was forty-one years old at the time of trial. She obtained the equivalent of bachelor's degrees in management and English in Chile. She held a management position with a foreign company in Chile and traveled within Chile and the United States. In April 2002 Veronica started working for The Principal Financial Group in Des Moines, earning \$31,300 per year. She has received yearly bonuses and has health insurance and a 401(k) plan through her employment. Robb received

medical benefits through Veronica's health insurance for several months following the parties' separation.

Robb was forty years old at the time of trial. He received an associate's degree in 1986, and later obtained insurance and real estate licenses. He owns two businesses, Real Estate Concepts and Robb Spearman, LLC. Robb formed Real Estate Concepts with a partner in 2000 and acquired his partner's interest in the business in June 2002. He formed the LLC in 2000 to hold rental and investment property. The respective balance sheets for these entities indicate Real Estate Concepts has a \$293,337 net worth and Rob Spearman, LLC has a \$753,777 net worth. According to Robb's financial affidavits, his net monthly income ranged from \$1300 to \$1800.

The June 2005 decree dissolving the parties' marriage includes the following findings of fact:

[T]he evidence is not sufficient to show there should be either a substantial distribution of property in this matter or an award of support in this matter. Both parties can become self-supporting at a standard of living at least comparable to what existed during the marriage. The parties have an education at level fairly equal to the other with [Veronica] having a slight edge. As stated earlier, the court can find no contributions by [Veronica] to the business of [Robb] which requires a substantial division, if at all, of the assets of those businesses between [Robb and Veronica].

The court does note, however, that [Veronica] was forced from the marital home and was, therefore, unable to share in the benefit of living at such home. [Veronica] had to endure on her own the costs and expenses of a separate residence, as well as food and clothing. The living expenses of [Veronica] were placed at \$1,858.84 per month based upon [her] financial affidavit filed March 7, 2005.

Following Veronica's motion to amend or enlarge the findings of fact and conclusions of law, the court filed an amended and substituted decree in October

2005. In relevant part, the decree ordered Robb to pay Veronica (1) \$2500, the cost associated with actions necessary to record and/or enforce the decree in Chile; (2) \$33,459.12 for living expenses due to Veronica “being forced from the marital home and living on her own for approximately thirty-six months”; and (3) Veronica’s reasonable attorney fees. In an order filed November 2005, the court set the amount of attorney fees at \$15,000.

Robb appeals, arguing the district court erred by (1) ordering him to pay Veronica “significant funds for living expenses following dissolution of this short-term marriage,” and (2) awarding Veronica attorney fees. Veronica cross-appeals, arguing (1) Robb’s “refusal to accurately disclose his financial condition is spoliation of evidence and justifies an inference that he has substantial assets as stated in his balance sheets,” (2) the district court erred by “refusing to award Veronica property equivalent to one-half of her out-of-pocket medical expenses,” (3) the district court erred by “failing to award a portion of the growth of Robb’s retirement account [the LLC],” and (4) the district court erred in “failing to award Veronica a portion of the growth of Real Estate Concepts.” Veronica also requests appellate attorney fees.

## **II. Scope of Review**

Our scope of review in this equitable action is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.14(6)(g). We accord the trial court considerable latitude in resolving economic provisions of a dissolution decree and will disturb a ruling only when

there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

### **III. Property Division**

Upon the dissolution of marriage, the court must divide the property of the parties equitably, taking into consideration a number of factors, including the length of the marriage, property brought to the marriage by either party, each party's contribution to the marriage, and the parties' ages, physical health, and earning capacities. Iowa Code § 598.21(1) (2005). 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 factors set forth in section 598.21(1), few support a property award in Veronica's favor. This is a marriage of short duration, with the parties separating after less than five months. "If a marriage lasts only a short time, the claim of either party to the property owned by the other prior to the marriage . . . is minimal at best." *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995). In addition, "[a]n equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship." *Id.* at 893. Robb brought considerably more assets into the marriage than Veronica. The district court found, and we agree, that Veronica made no contributions to Robb's businesses. Therefore, Veronica's arguments on cross-appeal related to an award of a portion of the growth of either Robb's

LLC<sup>1</sup> or Real Estate Concepts are wholly without merit. As we have previously stated,

Where the accumulated property is not the product of the joint efforts of both parties, or where, as here, one party brings property into the marriage, there need not necessarily be a division. This is especially true where the marriage was of short duration.

*Id.* (quoting *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982)).

To the extent the district court's award of "living expenses" was based on Robb's behavior in throwing Veronica out of the marital home and other alleged incidents of verbal or physical abuse by Robb, the award was inappropriate. "Domestic abuse is not included as a factor to be considered in the division of property in a dissolution action." *In re Marriage of Goodwin*, 606 N.W.2d 315, 323-24 (Iowa 2000); *see also In re Marriage of Helmle*, 514 N.W.2d 461, 463 (Iowa Ct. App. 1994) ("We do not reward or punish either party on the basis of fault.").<sup>2</sup>

We agree with the district court's conclusion that "the evidence is not sufficient to show there should be either a substantial distribution of property in this matter or an award of support in this matter." The marriage was short, and the majority of the property held at the time of the dissolution was property Robb brought to the marriage. Veronica made no contributions to any growth in

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<sup>1</sup> Although Robb testified his property investments through the LLC are primarily for his retirement, Veronica cites no legal authority to support the proposition that a limited liability company may be considered a "retirement account" for the purposes of property division in a dissolution of marriage. Regardless of the label placed on the LLC, our conclusion related to its division remains the same. Robb owned the LLC prior to the marriage, and Veronica did not make any contribution to its growth during the marriage.

<sup>2</sup> For similar reasons, in addition to those set forth previously, an award of one-half of Veronica's out-of-pocket medical expenses, as she urges on cross-appeal, would be inappropriate.

Robb's businesses during the marriage. Both parties are employed and able to support themselves. Therefore, we modify the dissolution decree to eliminate the \$33,459.12 award to Veronica.

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

##### **A. Trial Attorney Fees**

An award of trial attorney fees rests in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). The amount of fees awarded must be fair and reasonable, and based on the parties' respective abilities to pay. *In re Marriage of Coulter*, 502 N.W.2d 168, 172 (Iowa Ct. App. 1993).

As mentioned, the district court ordered Robb to pay \$15,000 of Veronica's attorney fees. An affidavit from Veronica's attorney showed a total of \$16,690 of attorney fees incurred by Veronica. Although Robb repeatedly failed to produce requested information regarding his financial status, Veronica's demands for detailed information related to Robb's businesses were unreasonable due to the remote prospects for a significant property division. Thus, the fees awarded were unfair and unreasonable under the circumstances. We conclude the district court abused its discretion in its award of attorney fees. Accordingly, we modify the decree to reduce the award to \$5000.

##### **B. Appellate Attorney Fees**

An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of

the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). We deny Veronica's request for appellate attorney fees. Costs shall be divided equally between the parties.

**AFFIRMED AS MODIFIED.**