

**IN THE COURT OF APPEALS OF IOWA**

No. 6-987 / 06-0557  
Filed March 14, 2007

**IN RE THE MARRIAGE OF RANDALL J. SHANKS  
AND TERESA E. SHANKS**

**Upon the Petition of  
RANDALL J. SHANKS,**  
Petitioner-Appellant/Cross-Appellee,

**And Concerning  
TERESA E. SHANKS,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Ronald H. Schechtman and Joel E. Swanson, Judges.

Both parties in a dissolution action appeal several provisions of the district court's decision in a bifurcated trial. **AFFIRMED.**

John M. French of Peters Law Firm, P.C., Council Bluffs, for appellant.

Susan Larson Christensen of Law Office of Susan Larson Christensen, Harlan, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VAITHESWARAN, J.**

Randy and Teresa Shanks decided to marry. Before the marriage, Randy, a practicing attorney, presented Teresa with a prenuptial agreement he prepared. He later made revisions to the document. Teresa, a non-attorney, signed the agreement without the benefit of Iowa counsel but after consulting a Nebraska attorney.

Randy and Teresa married in April 1998 and separated in November 2004. During the month of separation, Randy petitioned for a dissolution of the marriage. The district court entered orders awarding Teresa \$2500 per month in temporary spousal support and \$15,500 in attorney fees.

The district court scheduled a bifurcated trial. The first portion was devoted entirely to the question of the validity of the prenuptial agreement. After considering the testimony of both parties and “agoniz[ing]” over the decision, the district court invalidated the agreement. In the second portion of the trial, the parties presented evidence on property-related issues and spousal support.

Following trial, the district court divided the parties’ assets. The court also ordered Randy to make an equity payment to Teresa of \$150,000. The court declined to extend the temporary spousal support award.

Both parties moved for an expanded ruling. After this ruling was entered, both parties appealed.

On appeal, the parties raise the following issues: (1) the validity of the prenuptial agreement, (2) the district court’s treatment of tax returns, (3) the district court’s property distribution scheme, (4) the district court’s spousal support award, and (5) attorney fees.

## ***I. Prenuptial Agreement***

Both parties state that our review of the prenuptial agreement is at law. See *In re Marriage of Spiegel*, 553 N.W.2d 309, 313 (Iowa 1996). Therefore, we will review the agreement pursuant to this standard.<sup>1</sup>

The district court made exhaustive findings of fact, some supportive of upholding the prenuptial agreement and others recognizing the imbalance in bargaining power between Randy and his non-attorney spouse. Ultimately, the court concluded that this imbalance militated in favor of invalidating the agreement. Neither party seriously contends that the court's fact findings are unsupported by the record. Instead, they disagree on the legal conclusion that flows from those findings. We find it unnecessary to detail the fact findings here. Suffice it to say that they find support in the record and they do not require us to uphold the prenuptial agreement as a matter of law. As the prenuptial does not control the property distribution,<sup>2</sup> we turn to the district court's resolution of the financial issues.

## ***II. Tax Returns***

In a post-trial motion, Randy asked the district court to enter an order requiring Teresa to sign joint income tax returns for 2004 and 2005. The district court declined the request, reasoning as follows:

The Petitioner offers to the Court argument that signing a joint tax return for the 2005 tax year will provide some benefit. The Respondent argues that she has already filed the 2005 tax return,

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<sup>1</sup> In *Spiegel*, the court stated the prenuptial agreement would be construed like other contracts, but the court reviewed the fairness of the agreement and its procurement de novo. *Spiegel*, 553 N.W.2d at 316.

<sup>2</sup> The prenuptial agreement also purported to waive Teresa's right to spousal support, but Randy conceded at trial that this provision was invalid.

has further assisted in obtaining certain grants or loans for her children based upon her current tax returns, and is not inclined to offer any assistance for a tax advantage to the Petitioner. The Court is not in a position to require parties in dissolution proceedings to file a certain type of tax return, and accordingly, that request will be denied.

On appeal, Randy argues that the district court could have entered his requested order pursuant to a statutory provision authorizing the consideration of “tax consequences” in a dissolution proceeding. See Iowa Code § 598.21(1)(j) (2003). Teresa responds that, if she had agreed to sign joint returns, her oldest child’s eligibility for college aid would have been adversely affected. The record supports her contention. On our de novo review, we decline to modify this portion of the decree.

### ***III. Property Distribution***

Both parties appeal the property distribution provisions of the decree. Randy argues that we should modify the distribution scheme based on (1) the assets Teresa acquired during the marriage, (2) the spousal support and attorney fee payments she received while the action was pending, and (3) the fact that Teresa waived her right to certain assets under the prenuptial agreement. Teresa contends the district court did not consider (1) certain accounts and household items and (2) the wages she gave up by working for Randy’s law firm without compensation.

On our de novo review, we are not persuaded by Randy’s arguments. The district court considered the fact that Teresa brought fewer assets into the marriage by awarding Randy a larger share of the assets. The district court also considered the spousal support award in arriving at an equitable property

distribution scheme. Finally, the court considered and rejected Randy's attempt to utilize the provisions of the invalidated prenuptial agreement.

Turning to Teresa's cross-appeal, the record contains limited evidence on whether the accounts she would like to have included in the divisible estate contained assets available for distribution at the time of trial. As for the household goods she seeks to have included, the district court stated that the parties divided those items appropriately while the action was pending. Additionally, the court stated it considered the values of those items "in establishing an equity payment as set forth in the Decree." We conclude the court acted equitably in declining to expressly allocate these additional items.

We are left with Teresa's assertion that the property settlement did not account for her lost wages. Teresa worked full-time for her husband's law firm both before the marriage and for a period of time during the marriage. At some point, Teresa reduced her hours, but she could not recall precisely when she did so. She also did not clarify the number of hours she worked, although Randy testified he thought she worked three days per week from approximately 9:00 a.m. to 3:00 p.m., with a long lunch.

During the marriage, the law firm's accountant advised Randy to stop paying Teresa wages in order to save on social security taxes. Randy heeded this advice. He stopped paying wages and he stopped contributing to a retirement account on her behalf. Teresa asserts that, in light of this action, the district court should have increased her equity payment by \$163,243. According to her accountant, this was the amount of her foregone wages, adjusted for long-term inflation.

On our de novo review, we note that the accountant derived this figure from Teresa's full-time earnings of \$25,000 annually. The figure is not an accurate reflection of Teresa's earnings during the marriage. Because the record contains limited evidence of Teresa's actual part-time hours and how long those hours were in place, we decline to modify the decree based on her foregone wages.

#### ***IV. Rehabilitative Alimony***

The district court ordered Randy to pay Teresa rehabilitative alimony of \$2500 per month from November 2004 through April 2006. In her cross-appeal, Teresa contends the district court should have awarded her spousal support for an additional seven months. It is established that we will not modify an alimony award unless there has been a failure to do equity. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). We cannot conclude that the district court's decision to terminate alimony in April 2006 rather than in November 2006 amounted to a failure to do equity.

#### ***V. Attorney Fees***

The district court ordered Randy to pay \$15,500 of Teresa's trial attorney fees. Teresa sought the payment of an additional sum totaling \$10,060.48. The district court denied this request. On appeal, Teresa contends the court should have ordered Randy to pay the additional sum based on "unique family law issues" in this case.

Our review of the district court's ruling on attorney fees is for an abuse of discretion. *In re Marriage of Wessels*, 542 N.W.2d 486, 491 (Iowa 1995). We discern no abuse. In temporary orders, the district court initially required Randy

to pay Teresa \$8000 based on his higher earnings and the “grave issues” in the case. Later, the court ordered the payment of an additional \$7500 based on the “difficulties with ongoing discovery.” We find no reason to disagree with the district court’s conclusion that these amounts were “sufficient.”

Teresa also asks for \$15,909.12 in appellate attorney fees. She cites her obligation “to defend the district court’s decisions on appeal.” We decline this request, as Randy’s appeal of the district court’s ruling on the validity of the prenuptial agreement was not frivolous.<sup>3</sup>

**AFFIRMED.**

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<sup>3</sup> The parties agree a second notice of appeal is moot.