

**IN THE COURT OF APPEALS OF IOWA**

No. 7-151 / 06-1302

Filed July 12, 2007

**IN RE THE MARRIAGE OF JEFFERY T. WESTMEYER  
AND CONNIE J. WESTMEYER**

**Upon the Petition of  
JEFFERY T. WESTMEYER,**  
Petitioner-Appellant/Cross-Appellee,

**And Concerning  
CONNIE J. WESTMEYER,**  
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Bremer County, John S. Mackey,  
Judge.

Jeffrey and Connie Westmeyer appeal from the economic provisions of  
the decree dissolving their marriage. **AFFIRMED.**

Ryan J. Rasmussen and Dale Goeke of Hagemann & Goeke, Waverly, for  
appellant.

Gaylen V. Hassman of Engelbrecht, Ackerman & Hassman, Waverly, for  
appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VAITHESWARAN, J.**

Jeffrey and Connie Westmeyer married in 1991 and divorced fifteen years later. The district court awarded Jeff the family home that was purchased from his parents two and a half years earlier. On appeal, Jeff contends the district court should not have included the home in the property subject to division. In a cross-appeal, Connie counters that the value the district court assigned to the home was too low. Jeff also challenges the district court's treatment of a loan and Connie seeks appellate attorney fees.

***I. Home***

The Westmeyer home was built by Jeff's grandparents in 1945. It remained in the family from that point forward. In 2003, Jeff's parents decided the home was too big for them. After consulting with Jeff's siblings, they offered the home to Jeff for \$40,000, which, by all accounts, was significantly less than the market value. The offer and acceptance, as well as the purchase documents, were executed by both Jeff and Connie.

At the time of the purchase, Jeff and Connie agreed that Jeff's parents would move into a mobile home on the property and would have the use of one stall in their three-car garage. This verbal agreement was to remain in effect for the life of Jeff's parents.

At trial, the key question was whether the home was gifted or inherited property that should be set aside to Jeff. On this question, the district court concluded:

[W]hile the evidence barely preponderates to support Jeff's contention that the equity in the real estate should be considered a gift/inheritance to him from his parents, such 'gift/inheritance' was

intended to benefit both he and Connie in the raising of their children, and Connie's contributions toward improvements to the real estate warrant its treatment by the court as a joint marital asset subject to division.

Our review of this ruling is de novo. Iowa R. App. P. 6.4.

We begin with the axiom that “[a]ll property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property.” *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Notwithstanding this axiom, even gifted and inherited property may be divided if “refusal to divide the property is inequitable to the other party or to the children of the marriage.” Iowa Code § 598.21(2) (2005).

We need not address the question of whether the home was given to Jeff alone or to Jeff and Connie together. In either case, there was extensive evidence to support the district court's determination that the property was subject to division for equitable reasons. Jeff's mother agreed with Connie's attorney that the sale of the home was to help Jeff and Connie. She additionally testified, “we figured that they could use the house. We didn't need that big of a house anymore.” While she later equivocated on the question of whether the home was gifted to Jeff alone or to Jeff and Connie together, she did not retract her statement concerning the entire family's need for the home. There was also evidence that Connie's mother paid outstanding taxes on the home and that the parties used proceeds from the sale of a jointly-owned mobile home to improve the property. For these reasons, the district court acted equitably in electing to include the home among the property items subject to division.

This brings us to Connie's cross-appeal. She contends that the home should have been valued at \$105,500 rather than \$78,000, the value assigned by the district court. "Although our review is de novo, we will defer to the trial court when valuations are accompanied with supporting credibility findings or corroborating evidence." *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999).

The district court was faced with differing estimates of the property's value. One realtor opined that the fair market value "would be \$104,000 without the impairment" of the use agreement with Jeff's parents and "\$78,000 with the impairment." Another realtor appraised the home at \$109,000 without the impairment, and \$105,500 with the impairment. The district court adopted the \$78,000 valuation in light of "the significant impact engendered upon valuation by reason of his parents living in the mobile home thereon and utilizing one of the garage stalls." The court's valuation and reasoning are supported by the evidence. We will not disturb either.

## ***II. Loan***

Approximately two to four weeks before trial, Jeff borrowed \$12,000 from his 401k retirement account. The district court did not factor this debt into the property division. On appeal, Jeff contends this sum should have been subtracted from his assets, thereby reducing the amount of his equalizing payment to Connie. We disagree.

Jeff did not properly account for the loan proceeds. Although he testified the money was spent on attorney fees, he could not remember the precise amount of the bill and he provided no statements to verify his assertion.

Additionally, he conceded that some of the loan proceeds remained after the attorney fee payment but his testimony on how it was spent was, at best, vague. We conclude the district court acted equitably in refusing to subtract this debt from Jeff's assets. See *In re Marriage of Williams*, 421 N.W.2d 160, 164 (Iowa Ct. App. 1988) (noting "Iowa courts have disapproved transfers which jeopardize the rights of the other spouse").

### **III. Appellate Attorney Fees.**

Connie asks that we order Jeff to pay all her appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. See *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). We order Jeff to pay \$1000 toward her attorney fee obligation and pay all the court costs. **AFFIRMED.**