

**IN THE COURT OF APPEALS OF IOWA**

No. 7-333 / 06-1697

Filed June 13, 2007

**IN RE THE MARRIAGE OF TRACY A. SALKIL  
AND JAMES L. SALKIL**

**Upon the Petition of  
TRACY A. SALKIL,**  
Petitioner-Appellant,

**And Concerning  
JAMES L. SALKIL,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,  
Judge.

Petitioner appeals the property division provisions of the parties'  
dissolution decree. **AFFIRMED AS MODIFIED.**

Patricia Zamora of Zamora, Taylor, Alexander, Woods & Frederick,  
Davenport, for appellant.

Kyle D. Williamson of Williamson Law Office, Davenport, for appellee.

Considered by Mahan, P.J., Eisenhauer, J., and Beeghly, S.J.\*

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

**BEEGHLY, S.J.*****I. Background Facts and Proceedings.***

James and Tracy Salkil were married in 1998. They lived together for several years before they were married. They have two minor children. The parties lived in a home owned by Tracy's parents.

James had sporadic employment. He became involved in drug use and drug dealing. Tracy asked James to leave the home in September 2004, and he moved out. James was subsequently arrested for drug dealing. He was released from prison in February 2006, then spent seventeen weeks in a residential correctional facility. At that time, James moved in with his girlfriend, Samantha.

During the marriage, Tracy went to school to become a registered nurse. She worked in the cardiac unit of a hospital, and has annual income of about \$35,700. James obtained employment at Moline Welding, Inc., and has annual income of about \$20,800.

Tracy filed a petition for dissolution of marriage in December 2005. At the dissolution hearing, held in August 2006, Tracy claimed there was a marital debt for rental payments to her parents, and she asked that James be made responsible for part of this debt. James claims he left certain items of personal property at the home when he moved out two years earlier, and he asked for their return. Tracy testified those items no longer existed.

The district court issued a dissolution decree for the parties. The parties agreed to joint legal custody, with Tracy having primary physical care. James was ordered to pay child support. The court found Tracy's parents' forbearance

in collecting rent constituted a gift to Tracy, and there was no real expectation the debt for rental payments would be paid. The court did not assess any debt to James for rental payments. The court determined Tracy should pay James \$9380 for his items of personal property that were lost.

Tracy filed a post-trial motion pursuant to Iowa Rule of Civil Procedure 1.904(2). She asserted the district court had mistakenly found James had lived with her for seventeen weeks after he got out of prison and before he moved in with Samantha. The court surmised Tracy was upset because James left her to live with Samantha, and she destroyed his personal property. The court declined to modify the decree. Tracy appeals.

## ***II. Standard of Review.***

Our review in this equitable action is de novo. Iowa R. App. P. 6.4. “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. Division of Property.***

**A.** Tracy contends the district court should not have ordered her to pay James \$9380 for property which he claimed he left at the parties’ home when he moved out in September 2004. She states the property was lost or destroyed. Tracy points out James never asked for the property to be returned to him during the two-year period the parties were separated.

The district court found Tracy “was somewhat unhappy with James when he moved out of her house early last summer, and that while the items may indeed have been destroyed, it was not unintentional on her part.” We determine

the district court misinterpreted the evidence concerning when James had last lived in the marital home. Tracy testified James got out of prison in February 2006 and seventeen weeks later moved in with Samantha. The district court found James had lived with Tracy for those seventeen weeks, but the record shows he was in the residential correctional facility during that time. In James's testimony, he agreed he had been away from the home for two years prior to the hearing held in August 2006.

Furthermore, it is the net worth of the parties at the time of trial that is relevant in adjusting their property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989); *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). We do not use the date of separation unless the unique circumstances of the case make it equitable. *In re Marriage of Campbell*, 623 N.W.2d 585, 588 (Iowa Ct. App. 2001). Here, the items of personal property sought by James were no longer in existence at the time of the dissolution hearing. The assets' value at that time was zero.

We conclude the district court should not have ordered Tracy to pay James \$9380 for personal property previously owned by him which was lost or destroyed during the course of the marriage. We modify the dissolution decree to eliminate this provision.

**B.** Tracy asks to have James made responsible for a share of the debt for rent which she claims is due to her parents. We agree with the district court that Tracy has not shown the debt for unpaid rent would be collected by her parents. The evidence shows the parties had been behind in making rental payments for

several years, but Tracy's parents had not taken steps to collect the unpaid rent. We affirm the district court on this issue.

***IV. Attorney Fees.***

Both parties seek attorney fees for this appeal. An award of appellate attorney fees is not a matter of right, but rests within our 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 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 each party shall pay his or her own appellate attorney fees.

***V. Conclusion.***

We affirm as modified. Costs of this appeal are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**