

IN THE COURT OF APPEALS OF IOWA

No. 7-922 / 07-1103
Filed May 14, 2008

**IN RE THE MARRIAGE OF JEFFREY E. TIGGES
AND CATHY J. TIGGES**

**Upon the Petition of
JEFFREY E. TIGGES,**
Petitioner-Appellant,

**And Concerning
CATHY J. TIGGES,**
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

Petitioner appeals the property division and a tort award in the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Jennifer A. Clemens-Conlon of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for appellant.

Robert J. Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

Heard by Eisenhauer, P.J., and Baker, J., and Nelson, S.J.*

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

NELSON, S.J.**I. Background Facts & Proceedings**

Jeffrey and Cathy Tigges were married in 1999. They lived together for several years before the marriage. They have one child, Ashley, who was born in 1992. The parties each had a previous marriage, and their children from those marriages lived with them.

In 1989 Cathy inherited a home on Hennepin Street in Dubuque and about \$52,500 in cash. The cash was used for expenses during the course of the marriage. The parties began living together at the Hennepin Street property in 1991. In 1994 Jeffrey purchased three lots on Inwood Avenue. The parties placed a modular home on the property and added a garage. They moved to the Inwood Avenue property in 1994, and began renting out the Hennepin Street property. During the marriage the parties accumulated large credit card debts.

Throughout the marriage Jeffrey operated a business, Quality Auto Sales, that sold and repaired vehicles. Due to a previous problem, the dealer license for the business was in Cathy's name, but it is clear she had minimal involvement in the business. The parties bought property on Peru Road in 2001, and Jeffrey moved the business there. Quality Auto Sales has not shown a profit for several years. After the parties separated Jeffrey began a new business called Quality Auto Repair and Sales at the same location, and Cathy does not have the dealer license for this business. Jeffrey has scleroderma, a disease which causes inflammation of the joints and which has no cure. With medication Jeffrey's symptoms were under control at the time of the dissolution hearing.

Cathy began working at Rite Hite Doors, Inc. in about 2005, where she earns \$24,750 per year. In addition, Cathy testified she had a part-time job as a waitress on weekends. Furthermore, Cathy receives rental income of about \$385 (after taxes) per month from the Hennepin Street house. Cathy is in good health.

Jeffrey filed a petition for dissolution of marriage on August 7, 2006. The parties agreed to joint legal custody of Ashley, with Cathy having physical care. In addition to the economic issues submitted to the court, however, Cathy included a claim for tortious invasion of privacy. Cathy claimed that without her knowledge Jeffrey had videotaped her in their home with a motion-sensitive camera.

The district court issued a dissolution decree for the parties on May 29, 2007. The court ordered Jeffrey to pay child support of \$100 per month. The court set aside to Cathy the Hennepin Street house she had received as an inheritance. As marital property, the court awarded Cathy the Inwood Avenue property, worth \$130,000, and the responsibility for the first mortgage on it (\$57,604), her vehicle (\$4000), four credit union accounts (\$1523), and household goods. She was ordered to pay one credit card debt (\$5556). In total, Cathy received net marital assets worth about \$72,263.

The court awarded Jeffrey the property on Peru Road (\$90,000), his business (\$8100), his business accounts (\$1206), his vehicle (\$12,000), a boat (\$5000), his weight equipment (\$3500), two lawnmowers (\$300), and household goods. Jeffrey was made responsible for the second mortgage on the Inwood

Avenue property (\$63,504), the mortgage on the Peru Road property (\$65,803), and all other credit card debt (\$85,352). The court stated the credit card debt was assigned to Jeffrey because “this debt was primarily incurred by him, much of it in the support of his business, and all without the knowledge of the respondent.” In total, Jeffrey received a negative net award of about \$100,054, which is to say he received more debt than assets.¹ The court also awarded Cathy \$22,500 on her tort claim against Jeffrey. Jeffrey appeals the economic provisions of the parties’ dissolution decree.

II. Standard of Review

In this equitable action, our review 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. Jeffrey contends the district court should have set aside to him the assets he brought to the marriage, including the Inwood Avenue property, his weight equipment, and one of the lawn mowers. He also points out that he was operating Quality Auto Sales prior to the marriage. He asserts he brought assets to the marriage worth \$112,204, and asks that these be set aside to him.

In Iowa, “courts divide the property of the parties at the time of divorce, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the parties.” *In re*

¹ We have not included Jeffrey’s claimed debts to his relatives, Jerry Tigges and Ralph Tigges. There was no evidence to show these debts would be due at any specific time.

Marriage of Schriner, 695 N.W.2d 493, 496 (Iowa 2005). Under Iowa Code section 598.21(6) (Supp. 2005), inherited and gifted property should be excluded from the marital estate, unless such exclusion is inequitable. This means the property included in the divisible estate includes not only property acquired during the marriage, but also property brought to the marriage by a party. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Property brought to the marriage is merely one factor for the court to consider in making an equitable distribution of the marital estate. *Schriner*, 695 N.W.2d at 496.

Under the facts of the present case, we determine the district court properly included within the marital estate the property brought to the marriage by both parties. The court also properly set aside to Cathy, under section 598.21(6), the Hennepin Street property which she inherited.

B. Jeffrey also contends the overall property distribution is inequitable to him. He points out that because the district court allocated most of the debt to him, Cathy received more assets than debt, while he received more debt than assets. He asks to have the debts awarded equitably consistent with the award of assets.

It is clear the parties have more debts than assets. In fact, the debts accumulated during the marriage exceed the assets by about \$27,800. The district court distinctly favored Cathy in the distribution, awarding her assets worth \$72,263 more than the debts assigned to her. The court stated this was “for the reason that this debt was primarily incurred by him, much of it in the support of his business, and all without the knowledge of [Cathy].” In Jeffrey’s

case, even leaving aside the credit card debts of \$85,352, the court assigned to him debt of \$14,702 more than the assets awarded to him.² Taking into account the credit card debts, Jeffrey owes more than \$100,000 over the assets he was awarded.³

We conclude the parties' debts should be more equitably allocated between the parties. The debts were accumulated during the marriage. We note that in the case *In re Marriage of Fennelly*, 737 N.W.2d 97, 105 (Iowa 2007), there was a similar claim that a husband had dissipated marital assets by accumulating a large amount of debt. The wife claimed she was unaware of the extent of the husband's debt. *Fennelly*, 737 N.W.2d at 105. The Iowa Supreme Court stated, "It is not appropriate to label all of Ted's debt as waste because we find Ted's testimony credible to prove at least some of this debt benefitted the family or Ted's firm." *Id.* at 105-06. Thus, debt used for legitimate household or business expenses may be considered marital debt, whether or not the other spouse was aware of the debt. *See id.* at 106.

Although Cathy testified she was unaware of Jeffrey's credit card purchases, she benefitted from the purchases which permitted Quality Auto Sales to continue in business and subsidized the parties' standard of living. We determine that because Cathy was awarded the property on Inwood Avenue, she should be responsible for both mortgages on this property. The second

² The district court determined Jeffrey should be responsible for credit card debts of \$85,352. If we take the credit card debts out of the equation, however, there is still a difference between the awards to Cathy and Jeffrey of \$86,965.

³ During the dissolution hearing, Jeffrey was asked whether he intended to declare bankruptcy. Jeffrey denied that he planned to do so.

mortgage on the property, for \$63,504.68, which the district court assigned to Jeffrey, should be assigned to Cathy. This will reduce Cathy's total net award to about \$8752. Jeffrey's debt load will be reduced from about \$100,054 to \$36,549. Cathy still receives more from the marital estate than Jeffrey, but we find this result to be equitable.

We therefore modify the property distribution as outlined above.

IV. Alimony

Jeffrey asserts the district court should have awarded him alimony. He states that because of his medical condition there is little likelihood he will be able to support himself in the future. The dissolution decree does not address the issue of alimony. Jeffrey did not file a post-trial motion.⁴ In order to preserve error, a party seeking to appeal an issue presented to, but not decided by the district court, must show the matter was brought to the court's attention by a post-trial motion. See *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002). We conclude the issue of alimony has not been preserved for our review.

V. Invasion of Privacy

A. Jeffrey claims the district court improperly awarded damages to Cathy on her tort claim of invasion of privacy. He first claims her action was barred by the statute of limitations. Under section 614.1(2) (2005), the statute of limitations for tort claims is two years. Cathy raised the invasion of privacy claim as a counterclaim on August 23, 2006. Jeffrey claimed Cathy knew of the videotapes in 2004, and presented an e-mail printout dated October 24, 2004, to

⁴ Cathy's post-trial motion filed pursuant to Iowa Rule of Civil Procedure 1.904(2) was overruled by the district court.

support his claim. Cathy denied sending the e-mail. She testified she learned of the videotaping sometime in 2006. We conclude Cathy's claim is not barred by the statute of limitations. There is no evidence Cathy knew of the videotaping prior to August 23, 2004.

B. Jeffrey also contends there is insufficient evidence in the record to support the elements for the tort of invasion of privacy.⁵ Iowa has adopted the tort of invasion of privacy as set out in Restatement (Second) of Torts section 652A(2) (1977), which provides a person's right of privacy is invaded by: (1) an unreasonable intrusion upon the seclusion of another; (2) appropriation of the other's name or likeness; (3) unreasonable publicity given to the other's private life; or (4) publicity that unreasonably places the other in a false light before the public. *Winegard v. Larsen*, 260 N.W.2d 816, 822 (Iowa 1977).

Cathy's claim is based on an unreasonable intrusion upon her seclusion. To recover under this theory, she needed to show Jeffrey intentionally intruded upon "the private seclusion that [she] had thrown about [her] person or affairs" and the intrusion was one that would be highly offensive to a reasonable person. Restatement (Second) of Torts § 652B cmt. c, d; *Stressman v. Am. Black Hawk Broadcasting Co.*, 416 N.W.2d 685, 687 (Iowa 1987). There is no tort if the plaintiff is already in public view. *Stressman*, 416 N.W.2d at 687.

Cathy testified that in 2006, she came home from work early one day and saw Jeffrey retrieving a videotape from the drop-down ceiling in the basement. He broke the videotape case, but she was able to have someone fix the

⁵ The parties agree this issue was tried in equity and should be reviewed de novo. See Iowa R. App. P. 6.4.

videotape. Cathy stated she watched the tape with her sister. The videotape was not submitted as an exhibit, but Cathy testified to the contents she viewed. She stated the videotape showed her in the parties' bedroom cleaning out the closet. After a while Jeffrey came into the bedroom to change clothes. She stated she had another videotape which showed "comings and goings out of our bedroom."

Cathy also testified that Jeffrey had drilled a hole in the headboard of the parties' bed and installed a motion-sensitive camera. Furthermore, she testified she was dusting in the bedroom one day and in picking up an alarm clock felt it was hot. In examining the alarm clock she discovered there was a camera in it. Cathy stated that when Jeffrey came home he was upset because the alarm clock was gone. These incidents occurred when the parties were still living in the same house, prior to their separation. After the separation Cathy and her nephews searched the house, but did not find any additional recording equipment.

Jeffrey admitted installing motion-sensitive cameras in the home. He stated these cameras would only tape during the daytime and did not have the capability to tape at night. He testified he installed the equipment because he believed Cathy was taping his telephone calls. He stated he believed he had the right to install this equipment into his own home. Jeffrey denied taping after the parties' separation, stating he no longer had access to the house.

The district court awarded Cathy \$22,500 on the claim of invasion of privacy. In its ruling the district court specifically found the invasion occurred

“after and during the parties’ separation.” The court found Jeffrey engaged in stealthy intrusion into Cathy’s privacy, and this was highly offensive to her. The court determined Jeffrey’s actions caused her mental anguish and suffering.

On our review of the record, we find the incidents testified to by Cathy clearly occurred while the parties were still residing in the same house together as husband and wife. Although Cathy testified she believed Jeffrey might still be taping her actions, there was no evidence to support this supposition. Cathy admitted that she and her nephews were not able to find any additional recording equipment when they searched the house.

Our research revealed very few cases addressing a claim for invasion of privacy between married spouses living in the same home. In *White v. White*, 781 A.2d 85, 92 (N.J. Super. Ct. Ch. Div. 2001), a husband was living in the sun room of the parties’ home. The wife and children came in and out of the room on a regular basis. *White*, 781 A.2d at 92. The New Jersey Superior Court found the husband could not have an expectation of privacy in a computer that was in the sun room, and denied his claim for invasion of privacy based on the wife’s examination of his e-mails. *Id.*; see also *Miller v. Brooks*, 472 S.E.2d 350, 355 (N.C. Ct. App. 1996) (“[A] person’s reasonable expectation of privacy might, in some cases, be less for married persons than for single persons.”).

In *Clayton v. Richards*, 47 S.W.3d 149, 153 (Tex. App. 2001), a wife hired a private investigator to install a video camera in the bedroom of the marital home. She then left on an extended visit with relatives. *Clayton*, 47 S.W.3d at 153. The husband filed a claim for invasion of privacy against the private

investigator. *Id.* at 154. In addressing the private investigator's motion for summary judgment, the court addressed the actions of the wife. *Id.* at 155. The court concluded:

A spouse shares equal rights in the privacy of the bedroom, and the other spouse relinquishes some of his or her rights to seclusion, solitude, and privacy by entering into marriage, by sharing a bedroom with a spouse, and by entering into ownership of the home with a spouse.

. . . .
. . . . It is not generally the role of the courts to supervise privacy between spouses in a mutually shared bedroom. However, the videotaping of a person without consent or awareness when there is an expectation of privacy goes beyond the rights of a spouse because it may record private matters which could later be exposed to the public eye. The fact that no later exposure occurs does not negate that potential and permit willful intrusion by such technological means into one's personal life in one's bedroom.

Id. at 155-56. The court determined the private investigator was not entitled to summary judgment *Id.* at 156.

We conclude Cathy presented evidence that Jeffrey videotaped "private matters which could later be exposed to the public eye." Jeffrey installed motion-sensitive cameras in the parties' bedroom. Cathy was unaware her actions were being recorded. The fact that potentially "private matters" were videotaped means they could possibly be viewed by others. We determine Cathy has shown Jeffrey intentionally intruded upon "the private seclusion that [she] had thrown about [her] person or affairs" and the intrusion was one that would be highly offensive to a reasonable person. Restatement (Second) of Torts § 652B cmt. c, d; *Stressman*, 416 N.W.2d at 687. We affirm the district court's award of damages to Cathy based on the tort of invasion of privacy.

We affirm the decision of the district court, except as specifically modified in this opinion. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.