

**IN THE COURT OF APPEALS OF IOWA**

No. 9-040 / 08-0650  
Filed March 11, 2009

**IN RE THE MARRIAGE OF AUTUMN DAWN LEININGER  
AND NICHOLAS ADAM-LEO LEININGER**

**Upon the Petition of  
AUTUMN DAWN LEININGER,**  
Petitioner-Appellee,

**And Concerning  
NICHOLAS ADAM-LEO LEININGER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

A husband appeals his dissolution decree, contending that the district court erred in finding that he had dissipated marital assets and ordering judgment against him. **AFFIRMED.**

Mark Rater, Council Bluffs, for appellant.

Michael Murphy of Murphy and Murphy Law Offices, P.C., Council Bluffs, for appellee.

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

**VAITHESWARAN, J.**

Nicholas Leininger appeals the property distribution portion of his dissolution decree. He contends the district court acted inequitably in concluding he dissipated assets and in ordering judgment against him for \$23,693.47.

***I. Background Facts and Proceedings***

Autumn and Nicholas Leininger married a day before Autumn was to leave for military training and a deployment to Iraq. Before leaving, Autumn agreed to have her military pay deposited into a joint checking account she held with Nicholas. Over a period of nineteen and a half months, she deposited \$69,603.01 into that account and Nicholas deposited \$22,331.17.<sup>1</sup>

During the next year and a half, Nicholas withdrew a total of \$69,718.10 from the account, despite his earlier assurances that he would save Autumn's earnings for a down-payment on a home.

When Autumn returned to the United States, she told Nicholas she wanted a divorce. Nicholas gave her \$14,618.62 that he had transferred out of the joint account and into his separate account.

Autumn filed a dissolution petition which proceeded to trial on the sole issue of the "determination of petitioner's military pay with improper expenditures to be refunded and proper expenditures to be considered in the division of assets that's already occurred between the parties." The district court found that Nicholas wasted the couple's assets. The court awarded Autumn \$23,693.47 in

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<sup>1</sup> There is some question whether this entire sum represented Nicholas's earnings or whether a portion represented withdrawn funds that were simply redeposited.

addition to the \$14,618.62 Nicholas returned to her. The sum was to be paid in monthly installments of not less than \$500. This appeal followed.

## ***II. Analysis***

Courts are to consider several factors in deciding on an equitable distribution of property, including the length of the marriage, the property each party brought to the marriage, and the contribution of each party to the marriage. Iowa Code § 598.21(5) (2007). Assets and liabilities are generally valued at the time of dissolution. See *In re Marriage of McLaughlin*, 526 N.W.2d 342, 344 (Iowa Ct. App. 1994). Dissipation of assets is also a proper consideration in distributing marital property. *In re Marriage of Fennelly*, 737 N.W.2d 97, 104 (Iowa 2007).

Nicholas and Autumn were married for approximately two years and were apart for all but approximately three weeks of that period. Prior to the marriage, Nicholas was unemployed and Autumn supported him. Neither had measurable assets. During the short marriage, Autumn furnished about seventy-eight percent of the parties' joint earnings but spent less than ten percent, while Nicholas furnished approximately twenty-two percent of the joint earnings<sup>2</sup> but spent at least seventy-eight percent. While some of his expenditures were for necessities such as food and gasoline, a significant portion was unaccounted for. For this reason, we agree with the district court that Nicholas wasted the couple's assets. See *Fennelly*, 737 N.W.2d at 106 (considering the timing of cash

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<sup>2</sup> This percentage assumes that all of Nicholas's deposits represented his earnings.

advances and husband's vague explanation in setting aside certain debts to the husband).<sup>3</sup>

A related question is whether the district court acted equitably in awarding Autumn \$23,693.47 to account for this dissipation. We believe this sum is well within the range of evidence. See *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973) ("The valuation found by [the] trial court was well within the permissible range of the evidence and we are not inclined to disturb it."). Nicholas single-handedly spent most, if not all, of Autumn's military earnings. While he voluntarily returned a portion of those earnings, the returned sum represented a fraction of Autumn's financial contribution to this short marriage. Notably, the district court limited its award to \$23,693.47 because this was all that Autumn requested, but intimated that equity might have justified an even greater award. Given the facts as outlined above, we fully concur with the district court's judgment on this issue.

**AFFIRMED.**

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<sup>3</sup> Nicholas argues that the court should have only considered assets dissipated after he knew of the impending divorce. He cites no Iowa authority for this proposition. On our de novo review, we find no reason to quarrel with the district court's consideration of Nicholas's expenditures throughout the short marriage.