

IN THE COURT OF APPEALS OF IOWA

No. 9-053 / 08-0965
Filed March 26, 2009

**IN RE THE MARRIAGE OF
STACY MICHELLE GUBBELS
AND JEFF GERHARD GUBBELS**

**Upon the Petition of
STACY MICHELLE GUBBELS,**
Petitioner-Appellee,

**And Concerning
JEFF GERHARD GUBBELS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson, Judge.

Jeff Gubbels appeals the property distribution provisions of a dissolution decree. **AFFIRMED.**

Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellant.

Joseph J. Hrvol of Joseph J. Hrvol, P.C., Council Bluffs, for appellee.

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

VAITHESWARAN, J.

Jeff Gubbels appeals the property distribution provisions of a dissolution decree.

I. Background Facts and Proceedings

Jeff and Stacy Gubbels married in 1997 and divorced eleven years later. At trial, the couple presented differing valuations of certain assets. Following trial, the district court dissolved the marriage and proceeded with a property division.

The court valued a 1968 Chevrolet Camaro that Jeff claimed he sold to his brother, as well as eighteen racing greyhound dogs in which the Gubbels had an ownership interest. Jeff was awarded “any interest the parties may have in his 1968 Camaro.” He was also awarded the dogs. Finally, Jeff was assigned as assets several withdrawals from the couple’s account as well as \$6800 in payments on a credit card account he owned jointly with his mother.

The court set aside to Stacy assets she inherited from her father or purchased with inherited funds. The court next valued the family home and awarded it to Stacy. As Stacy received substantially more than Jeff, the court ordered that Stacy make an equalizing payment to Jeff of \$24,987.50.

II. Analysis

On appeal, Jeff contends that “Stacy invented illusory assets to be placed on [his] side of the distribution.” Specifically, he takes issue with the district court’s treatment of (A) the Camaro, (B) the eighteen dogs, (C) the cash withdrawals and credit card payments, and (D) the couple’s house. We will

address these arguments, taking into consideration the factors set forth in Iowa Code section 598.21(5) (2007).

A. Camaro

Jeff asserts that the Camaro was sold before the dissolution proceedings began and, accordingly, was not an asset subject to division. Alternately, he argues that, if it was subject to division, its value was \$1500 rather than \$10,000, as the district court found.

The district court thoroughly analyzed this issue, including with its fact finding a determination that Jeff was not credible. The court's finding was as follows:

Jeff also owned a 1968 Chevrolet Camaro automobile which he alleges was sold to his brother Tim for \$1,500 during the pendency of this action. There is considerable dispute as to the condition of the vehicle at the time of the "sale." Stacy alleges that Jeff had previously told her the vehicle was worth in excess \$20,000, while Jeff disputes that assertion and places the value far lower. Having reviewed the evidence, observed the witnesses, and the relative candor of the parties, the Court believes the Camaro is a marital asset which was sold for far less than its fair market value, which the Court places at \$10,000.

We generally defer to a district court's credibility findings because the court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). Here, the record amply supports the district court's findings, including its credibility determination.

Jeff's brother, Tim, testified that he would have to replace the engine, even though it had recently been replaced. Additionally, Tim testified that he insured the vehicle for \$10,000. The district court could have found that these facts undercut Jeff's assertion of the car's value. Indeed, on our de novo review

of the record, we are convinced that the court could have assigned the Camaro a value as high as \$20,000, based on Stacy's testimony. The court chose a number that was in the mid-range of the figures presented by the parties and was supported by the insured value of the car. We find no reason to disagree with this valuation.

B. Racing Greyhounds

Jeff also takes issue with the district court's valuation of the eighteen greyhounds. He alternately asserts that the court should have ordered the dogs sold and divided the proceeds equally between the parties.

The district court found as follows:

It is clear from the record that partial ownership of these dogs was negotiated and arranged by Jeff. This ownership interest has resulted in \$18,000 to \$24,000 per year in income over the past several years. These dogs have value not only as items of personal property but, also, as income producers. The court has been asked to establish a fair market value for these animals. Based upon all the evidence, the Court believes that the fair market value of the ownership interest which these parties possess in the eighteen dogs which are currently racing, is \$40,000. Since Jeff negotiated the parties' position and is the most informed concerning the parties' status in the relationship, he should be awarded these eighteen dogs free and clear of any claim by Stacy therein.

On our de novo review, we are persuaded that the district court's \$40,000 valuation of the dogs was equitable. Stacy presented evidence that the dogs were worth \$60,000. This evidence was based on the opinions of other dog owners who Jeff conceded would be familiar with their worth. While the district court could have adopted Jeff's \$10,000 estimate of their value based on the age of the dogs and their racing classifications, we affirm the valuation, as it was

within the permissible range of the evidence. See *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973).

C. Cash Withdrawals and Credit Card Payment.

The court assessed to Jeff cash withdrawals of \$4000, \$6000, and \$1500, as well as the \$6800 in payments made on Jeff's credit card. Specifically, the court found as follows:

By way of explanation, Jeff has indicated that the [credit] card was a relative's and that much of the money removed went to pay for family expenses after he lost his job. There is little or no evidence that the [credit] card was a relative's and that much of the money removed went for any expenses related to his family. Likewise, the \$4000 cash withdrawal on November 13, 2007, the \$6,000 transfer to another account on November 19, 2007, and the \$1,500 cash withdrawal on January 30, 2008, all predate losing his job.

Jeff takes issue with these findings. He contends that the couple continued to live together while the proceedings were pending and Jeff continued to pay the family's living expenses. He also points to Stacy's failure to contradict his testimony that his mother furnished the funds to pay the credit card balance.

The dissipation of assets is a proper consideration when dividing property. See *In re Marriage of Fennelly*, 737 N.W.2d 97, 104 (Iowa 2007). On our de novo review, we find support for the district court's determination that Jeff could not tie the cash withdrawals to legitimate household expenditures. See *id.* at 106. ("Ted failed to prove the cash advances were the result of legitimate household and business expenses. Although all debt is not wasteful, we find this amount unreasonable because he failed to adequately explain it.").

Jeff's testimony is instructive. When asked whether he removed \$20,000 from the couple's joint account between November 2007 and February 21, 2008,

he responded "I could have." When asked whether the money was used to pay for bills, he responded, "some of it could have been bills." He then proceeded to explain that \$10,000 of the money was lent to his brother. While he suggested that most of it was paid back, he provided no documentation to support this assertion. He also did not claim that he re-deposited his brother's payments into the joint account.

With respect to the credit card, Jeff acknowledged that he was the primary owner and his mother was only the secondary owner of the card. He also acknowledged that the bank statement came to him. While he asserted that his mother forwarded him the money to pay the balance, he again furnished no documentation to support this assertion.

Based on this record, we conclude that the district court acted equitably in assigning to Jeff the value of the cash withdrawals and the credit card payment.

D. House

The district court valued the couple's house at \$154,000, but deducted the potential costs of a sale, leaving net equity of \$142,500. Jeff contends that the district court should not have deducted the sale expenses, as Stacy did not intend to sell the home. Alternately, he argues that the district court should not have credited Stacy with premarital assets.

The district court thoroughly explained its rationale for dealing with the house. The court stated:

[T]he net equity [in the home] would include costs of sale of at least 5 percent, which reduces the equity by approximately \$11,500 resulting in net equity of \$142,500. Rather than computing net equity, the Court could have determined that Stacy brought assets into the marriage valued at \$11,500 since she owned a home

beforehand and Jeff did not. It is clear from the testimony that, after the marriage, each of the parties invested money and labor into the home to make it saleable at an increased price, however, it had some value at the time of the marriage for which Stacy could be given credit. Under either the net equity approach used by the Court herein or the pre-marital asset approach, the result would be the same.

We discern no inequity in the court's findings. Although the record does not contain evidence that Stacy intended to sell the house, the court was well within its authority to alternately afford Stacy a credit of \$11,500 for the home that she brought into the marriage. See Iowa Code § 598.21(5)(b); *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). That property was purchased for \$30,000 and was sold for \$60,000. While the labor of Jeff and his mother contributed to the increase in value, the district court effectively took that fact into account by only affording Stacy a credit of \$11,500 rather than a credit for the full appreciation of \$30,000. Accordingly, we affirm the district court's valuation of the house.

AFFIRMED.