

**IN THE COURT OF APPEALS OF IOWA**

No. 9-755 / 09-0070  
Filed November 25, 2009

**IN RE THE MARRIAGE OF MELVIN E. MCREYNOLDS  
AND SHIRLEY A. MCREYNOLDS**

**Upon the Petition of  
MELVIN E. MCREYNOLDS,**  
Petitioner-Appellant,

**And Concerning  
SHIRLEY A. MCREYNOLDS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Jasper County, Dale B. Hagen,  
Judge.

A husband appeals the property division and support payment provisions  
of a dissolution decree. **AFFIRMED AS MODIFIED.**

Andrew Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines,  
for appellant.

Robert Stuyvesant of Stuyvesant & Benton, Carlisle, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VAITHESWARAN, P.J.**

Melvin and Shirley McReynolds married in 1997. Two days prior to their wedding, they entered into a premarital agreement which authorized each of them to “have, keep and retain” property that each owned or acquired.

Eleven years later, Melvin petitioned to dissolve the marriage. Following trial, the district court declared the premarital agreement null and void. The court awarded Melvin the home he brought into the marriage, but ordered him to pay Shirley \$7500 for “[t]he reasonable value of her equity in the home.” The court also awarded each party the checking and savings accounts in their names and equally divided an investment account and a certificate of deposit. Finally, the court ordered Melvin to pay Shirley \$500 per month in spousal support until either party died or until Shirley’s remarriage.

On appeal, Melvin challenges the property and spousal support provisions of the decree.

***I. Property***

Melvin (A) takes issue with the \$7500 payment to Shirley for her interest in the home, (B) claims the district court wrongly distributed money that he inherited from his brother-in-law, and (C) points to a scrivener’s error in the court’s award of certain personal property.

***A. Home***

Melvin asserts that the district court should have enforced the premarital agreement and awarded him the home he brought into the marriage without requiring an equity payment to Shirley. Our review of this issue is *de novo*. *In re Marriage of Shanks*, 758 N.W.2d 506, 511 (Iowa 2008).

In declining to enforce the premarital agreement, the district court cited (1) the absence of an attached statement of the parties' assets and (2) the unenforceability of a provision waiving spousal support.

With respect to the statement of assets, there is no question that Shirley was entitled to "a fair and reasonable disclosure of the property or financial obligations of the other spouse." Iowa Code § 596.8(3) (2007); see *Shanks*, 758 N.W.2d at 519. Although no itemized statement of Melvin's assets was attached to the premarital agreement, the agreement referred to the house and indicated it was owned by Melvin. The agreement also provided for Shirley's use of the home should Melvin pre-decease Shirley. Notably, Shirley's attorney reviewed the document and changed "a couple items" before she signed it. See *Shanks*, 758 N.W.2d at 513, 518 (noting spouse encouraged other spouse to seek legal counsel). Additionally, Shirley testified that her attorney explained the provision relating to the home. Finally, while Shirley characterized the agreement as a "hurry-hurry deal," she did not assert that she executed the agreement involuntarily or that the agreement was unconscionable. See *id.* at 512–19. Given the language of the premarital agreement and Shirley's testimony, we conclude Shirley was "sufficiently knowledgeable about [the husband's] financial circumstances to satisfy the [statute]." *Id.* at 519. Therefore, under the provision of the premarital agreement relating to property brought into the marriage, Melvin

was entitled to his house and was not required to make an equity payment to Shirley.<sup>1</sup>

We reach this conclusion notwithstanding the fact that the provision of the prenuptial agreement waiving spousal support was unenforceable. See Iowa Code § 596.5 (“The right of a spouse or child to support shall not be adversely affected by a premarital agreement.”). As Melvin points out, that provision could be severed from the balance of the agreement. See *id.* § 596.8 (“If a provision of the agreement or the application of the provision to a party is found by the court to be unenforceable, the provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application, of the agreement which can be given effect without the unenforceable provision.”).

### ***B. Inherited Property***

Shirley’s sister’s husband devised his entire estate to Melvin. Melvin transferred the cash in the estate to a joint account that he opened for these funds. He stated that Shirley was named on the account so that “if something was to happen to me that was her money.” Melvin paid two years of income taxes from the account, with seventy percent of those taxes based on Shirley’s indebtedness. In commenting on the balance, he stated, “[O]ur intent was when we talked about this was that someday—we always talked about going on a Canada cruise and I thought that money could be used on that.”

When Shirley learned of Melvin’s divorce plans, she withdrew approximately \$12,000 from the joint account and placed it into her personal

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<sup>1</sup> Alternately, we conclude that Shirley was not entitled to a \$7500 payment even if the prenuptial agreement were deemed unenforceable, as Shirley provided no receipts to document her claimed expenditure of \$7500 in home improvements.

checking account. She spent a portion of the money on expenses for her pick-up. At the time of trial, \$4449.95 of these funds remained in her account. The district court awarded this sum to her, without addressing its source or Shirley's depletion of close to \$8000.

On appeal, Melvin takes issue with this disposition. He contends \$12,000 should have been set aside to him. Our review of this issue is de novo. Iowa R. App. P. 6.907 (2009).

Inherited property is excluded from the property subject to division and is usually awarded to the spouse who inherited it unless equity demands otherwise. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005); *In re Marriage of Liebich*, 547 N.W.2d 844, 850 (Iowa Ct. App. 1996). We believe equity demands otherwise.

From the beginning, Melvin treated the inherited funds as if they belonged to both spouses. Although he did not spend the money on daily expenses, he paid Shirley's taxes with it and set aside the balance for a joint vacation. Given his intent to use the funds for Shirley as well as himself, we conclude the district court acted equitably in declining to set aside those funds to Melvin.

### ***C. Personal Items.***

Both parties agree that the decree erroneously awarded Shirley the "non-starred" personal items listed in Respondent's Exhibit D rather than the "starred" items. We modify the decree to reflect the parties' intent.

## ***II. Spousal Support***

Melvin next challenges the district court's award of \$500 per month in spousal support. Although our review of the award is de novo, the district court is

given considerable latitude in making this determination. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). “We will disturb that determination only when there has been a failure to do equity.” *Id.*

We find the award equitable. Shirley was sixty-nine years old at the time of trial and earned \$7.50 per hour in wages for a thirty-seven hour work week. Her only other sources of income were \$958.90 per month in social security benefits and \$119.42 per month in pension funds. She had a history of back problems that required three surgeries during the eleven-year marriage, and she was diagnosed with osteoporosis. She testified that, although she received Medicare benefits, she would require a supplemental health insurance policy that would cost \$125 per month. She also testified she would have to pay an additional \$69 per month for medications.

Melvin was financially capable of providing spousal support in the amount ordered by the court, as he earned \$36,000 to \$37,000 per year, received \$1500 in monthly social security benefits, and owned a home free and clear. For these reasons, we affirm the spousal support award.

### ***III. Disposition***

We affirm the spousal support award. We affirm the property distribution provisions of the decree except (1) the provision requiring Melvin to pay Shirley \$7500 as compensation for the home and (2) the provision relating to division of personal items. We modify the decree to delete the \$7500 payment and to provide that the starred personal items will be awarded to Shirley and the non-starred items shall be awarded to Melvin.

**AFFIRMED AS MODIFIED.**