

**IN THE COURT OF APPEALS OF IOWA**

No. 1-499 / 10-1745  
Filed July 27, 2011

**IN RE THE MARRIAGE OF  
TIMOTHY JOSEPH SCHUSTER  
AND LORI SUSAN SCHUSTER**

**Upon the Petition of  
TIMOTHY JOSEPH SCHUSTER,**  
Petitioner-Appellee,

**And Concerning  
LORI SUSAN SCHUSTER,**  
Respondent-Appellant.

---

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,  
Judge.

Lori Schuster appeals from the economic provisions of the parties'  
dissolution decree. **AFFIRMED.**

Michael B. Oliver of Oliver Law Firm, P.C., Windsor Heights, for appellant.  
Theodore P. Sporer of Sporer & Flanagan, P.L.L.C., Des Moines, for  
appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

Lori Schuster appeals from the economic provisions of the parties' dissolution decree. Because we find no failure to do equity, we affirm.

**I. Background Facts.**

Lori and Timothy Schuster were married about thirty months before they separated. They have no children together. During their marriage, about \$10,500 was given to Lori's daughter out of the couple's joint account for her room and board at school. A Pontiac Grand Am purchased during the marriage was given to Lori's daughter. Timothy's son received a Chevy Cavalier. Timothy's daughter is driving the 2003 Honda vehicle Lori brought to the marriage.

Each came into the marriage with investment or retirement accounts. At the time of dissolution, Lori's accounts had declined in value, while Timothy's Iowa Public Employees' Retirement System (IPERS) account had increased in value. Timothy contributed \$413 per month to his IPERS account at the time of trial. At the time of the dissolution trial, Lori's net monthly income was about \$4100; Timothy's net monthly income was about \$4600. Lori owned a home before she and Timothy were married. The mortgage payments for that house during the marriage were paid from the couple's joint account. They did some remodeling with Timothy providing some of the labor. Prior to the dissolution trial, the house was sold and Lori received all the proceeds from the sale. With those proceeds, Lori placed a \$30,000 down payment on a new residence solely in her name and paid \$17,000 toward the debt owed on a 2009 Civic purchased earlier.

Two credit cards (a Chase card and a Discover card) were used by Lori and Timothy during the marriage, both with Lori as the sole responsible party and Timothy as an authorized user. Lori's cosmetic surgery charges (\$11,600) were placed on the Chase credit card. Timothy's 1993 Harley Davidson FXR motorcycle was paid off with this card as well (\$3338). The parties' paid about \$12,500 on the Chase card during the marriage, but at the time of trial more than \$14,000 was still owed.

In its findings of fact, conclusions of law, and dissolution decree, the district court emphasized the short duration of the marriage in determining no spousal support was warranted, and awarding each party their personal retirement and investment accounts. The court awarded Timothy two motorcycles (a 2008 Harley Davidson was purchased during the marriage, which at the time of trial was encumbered by a loan in excess of \$9000). Lori was awarded two cars (the 2009 Civic and the 2003 Honda she brought to the marriage) and the new residence. The court ordered Timothy to pay the debt on a Military Star credit card and \$3000 toward the debt on the Chase credit card. Lori was responsible for the remainder owing on the Chase and Discover cards. The court declined to award Lori attorney fees.

Lori now appeals, contending the distribution of debts is inequitable. She also argues the court erred in not awarding her a portion of Timothy's IPERS account or attorney fees.

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

We review dissolution cases de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Although we decide the issues raised on appeal

anew, we give weight to the trial court's factual findings, especially with respect to the credibility of the witnesses. *Id.*

### **III. Property Division.**

Lori complains the court should have awarded her a portion of Timothy's IPERS account as its value increased some \$70,000 during the marriage.

"Pensions are divisible marital property." *Sullins*, 715 N.W.2d at 247. Indeed, all property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. *Id.*; see Iowa Code § 598.21(1) (2009). The task of the district court is to distribute the marital property equitably. Partners in marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). The property should be distributed based on what is equitable under the circumstances and considering criteria listed in Iowa Code section 598.21(5). *See id.* We look at the decree as a whole in determining what is equitable. *See In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). The district court is afforded wide latitude, and we will disturb the property distribution only when there has been a failure to do equity. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005).

Viewing the decree as a whole, we find no failure to do equity in the district court's division of property. The parties were married in January 2007 and separated in July 2009, after approximately thirty months. The marriage ended after about forty-five months, as the decree was entered in September 2010. Timothy's IPERS account was opened fifteen years before the parties were married and was valued at \$117,755 at the date of their marriage. Contrary

to Lori's suggestion, contributions of joint funds during the marriage did not increase the value of the account \$70,000. The court awarded Lori a residence and two cars and she retained her pension and investment accounts. Timothy was awarded two motorcycles and his IPERS account. Lori received all proceeds from the sale of the house, even though joint funds were used to make mortgage payments on that house during the course of the marriage and Timothy contributed work to remodel that home. Joint funds were also used to make contributions to an investment account for Lori. Joint funds were used to pay for Lori's daughter's school expenses. Considering all the circumstances, we find it equitable that Timothy was awarded his IPERS account in its entirety.

Lori argues that Timothy should be responsible for more credit card debt. The parties separated in July 2009 and the dissolution trial was in July 2010. Lori contends the parties charged about \$15,000 on the Chase card during the marriage and paid more than \$12,000 on that card. The court ordered Timothy to pay \$3000 of the Chase debt. Nothing in this record convinces us the division of debts was inequitable. See *Sullins*, 715 N.W.2d at 251 ("Even though a debt may have been incurred by a party for family expenses, it is not inequitable to order that party to be responsible for the entire amount of the debt as long as the overall property distribution is equitable.").

#### **IV. Attorney Fees.**

The district court found each party was responsible for their own attorney fees. "Whether attorney fees should be awarded depends on the respective abilities of the parties to pay." *Sullins*, 715 N.W.2d at 255 (quoting *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994)). The parties have similar

net monthly incomes and ability to pay attorney fees. We find no abuse of discretion in the court declining to award Lori trial attorney fees.

**V. Appellate Attorney Fees.**

Both parties seek an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* We award no attorney fees.

In summary, viewing the decree as a whole and finding no failure to do equity, we affirm. Costs are taxed to Lori.

**AFFIRMED.**