

**IN THE COURT OF APPEALS OF IOWA**

No. 1-525 / 10-1472  
Filed August 10, 2011

**IN RE THE MARRIAGE OF TINA L. BRYSON  
AND MELVIN D. BRYSON**

**Upon the Petition of  
TINA L. BRYSON  
n/k/a TINA L. GALVAN,**  
Petitioner-Appellee,

**And Concerning  
MELVIN D. BRYSON,**  
Respondent-Appellant.

---

Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

Melvin Bryson appeals from the spousal support and property division  
provisions of the decree dissolving the parties' marriage. **AFFIRMED AS  
MODIFIED.**

Robert A. Nading II of Nading Law Firm, Ankeny, for appellant.

Tina L. Galvan, West Des Moines, pro se.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

**DOYLE, J.**

Melvin Bryson appeals from the spousal support and property division provisions of the decree dissolving his marriage to Tina Bryson. He claims the decree failed to do equity between parties to a “non-conventional marriage which operated non-conventional businesses in not always the most organized manner.” We affirm.

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

Melvin and Tina’s relationship began more than thirty years ago when they were teenagers, although they did not marry until November 1995. Tina became pregnant with the parties’ first child when she was fifteen years old. She quit high school, and the couple moved in with Melvin’s mother. A second child was born a couple years later. Both children are now adults.

Melvin’s father owned a strip club in Des Moines. Tina worked there as a dancer while Melvin attended community college. When Melvin’s father died in 1996, Melvin began managing the business. Tina assisted him. In June 2000, Melvin formed a corporation to run and operate the strip club. A subsidiary of this corporation was later developed to operate a limousine rental business. The parties purchased several other strip clubs in the following years, with different corporate entities. They also purchased several parcels of real estate, commercial and residential.

Much of the proceeds from these businesses were cash. Money was routinely moved between various accounts—business and personal—without regard to its source. The parties’ joint personal income tax returns for 2005 through 2008 listed income for Melvin only. His average gross annual income for

those years, before business-related deductions, was \$120,128.50. Melvin and Tina led a comfortable lifestyle and accumulated a sizeable amount of personal property, including numerous fur coats, jewels, and paintings.

The parties separated in March 2008. Tina filed a petition for dissolution of marriage the following year. An order to preserve assets was entered, along with a temporary support order requiring Melvin to pay Tina \$2500 in spousal support per month. Melvin failed to pay the temporary spousal support, causing Tina to file a contempt action. Later, despite the order to preserve assets, Melvin sold a Hummer limousine for \$40,000, real estate in Ames for \$43,331.32, and a club in Denison for \$42,000, and spent a \$78,000 sales tax refund for one of the corporations. Tina filed another contempt action, which was heard at the trial on the dissolution petition in May 2010.

At trial, Melvin claimed the income from the couple's various business ventures had dramatically decreased since the parties separated. He testified all of the businesses were operating at a loss and worth nothing. Tina countered that Melvin was deliberately trying to devalue the businesses. She presented a chart showing that as the trial date approached, the deposits into the business accounts substantially decreased. Neither party presented any expert testimony as to the value of the businesses.

Following the trial, the district court entered a detailed and lengthy decree dissolving the parties' marriage and finding Melvin guilty of contempt for the sale of the Ames real estate and Denison club, which resulted in an \$85,331.32 depletion in marital assets. Melvin was unable to explain where those funds

were expended, although he did testify \$15,000 from the sale of the Denison club was reinvested in a club in Davenport.

The court took Melvin's depletion of assets into account in dividing the parties' property, awarding him the sale proceeds of the Ames real estate and Denison club, minus the \$15,000 reinvested in the Davenport club. The court also awarded Melvin all of the businesses, along with the debt associated with those ventures, which the parties stipulated totaled \$156,588. No value was placed on the businesses due to the lack of evidence presented by the parties.

The court accepted Tina's valuation of the parties' real estate, finding her values more reliable than the values offered by Melvin. She was awarded real estate with a net value of \$253,222.24, while Melvin was awarded real estate with a net value of \$60,242.88.<sup>1</sup> Melvin was ordered to pay any outstanding real estate taxes due on the properties awarded to Tina. Other assets awarded to Melvin, including numerous cars, miscellaneous household items, artwork, and fur coats, were valued at \$87,000, resulting in a total property award of \$217,574.20 for Melvin. Tina was awarded other similar assets, valued together at \$44,700, for a total property award of \$297,922.24.<sup>2</sup>

---

<sup>1</sup> The parties owned six different parcels of real estate. Melvin was awarded two of these. One, located at 2210 Ashworth Road in West Des Moines, was valued at \$280,000 and subject to an encumbrance of \$183,350, for a net value of \$95,650, while the other, located in Marshalltown, was valued at \$225,000 and subject to an encumbrance of \$211,407.12, for a net value of \$13,592.88. The district court imposed a \$50,000 lien on the Ashworth property, which Melvin was to pay to Tina "within 30 days of sale if the home is sold, refinanced, transferred, or within a period of three (3) years of the date of this decree, whichever occurs first." The court further ordered if the lien was not paid within three years of the decree, "the home shall be sold at auction."

<sup>2</sup> The district court stated its allocation resulted in a near equal division of assets, with about \$290,000 being awarded to each party. Our totals differ, though we used the values assigned by the court to the various items of property.

With respect to the parties' debts, in addition to those already mentioned, Melvin was ordered to bear responsibility for an \$11,000 debt in Tina's name for a car he drove, as well as any money owed on the parties' personal state and federal taxes for 2008 and 2009. Tina was assigned debt for loans from her family, several credit cards, and car loans. Finally, Melvin was ordered to pay Tina \$1500 per month in spousal support for fifteen years.

Melvin appeals, claiming the district court erred in ordering him to pay Tina spousal support and in dividing the parties' property and debts.

## ***II. Scope and Standards of Review.***

Our scope of review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

## ***III. Discussion.***

Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The determining factor is what is fair and equitable in each particular circumstance. *Id.* Property division and spousal support should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998).

**A. Spousal Support.**

Melvin claims the district court erred in ordering him to pay Tina spousal support. He argues the court (1) impermissibly considered the parties' premarital relationship, (2) speculated as to Melvin's income, and (3) erred in finding Tina needed support to become self-sufficient. We disagree on all counts.

Iowa Code section 598.21A(1) (2009) lists factors for the court to consider in deciding whether to award spousal support. See *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996) (stating any form of spousal support is discretionary with the court). Melvin is correct that this section does not include in its list of factors the premarital relationship of the parties but instead directs the court to consider the length of the marriage. See Iowa Code § 598.21(A)(1)(a); *In re Marriage of Spiegel*, 553 N.W.2d 309, 320 (Iowa 1996). While the district court mentioned the parties "have been together for essentially all of their adult lives," it recognized the parties had been "formally married" for only fifteen years and listed the length of the marriage, not the period of cohabitation, as a factor in its decision. We accordingly reject this argument.

We also reject Melvin's argument that the court speculated as to the level of his income. Unlike an award of child support, a party's exact income need not be determined for the purposes of spousal support. Instead, the court must consider each party's earning capacity and present standards of living, as well as the ability to pay and the relative need for support. See *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). The court considered each of these factors, finding Melvin earned on average \$100,000 gross per year. The parties' joint tax returns for 2005 through 2008, which listed income for Melvin only,

support this figure.<sup>3</sup> We defer to the court's finding that Melvin's claims to a much lower income were not credible.<sup>4</sup> See *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984) (stating appellate courts must "pay very close attention to the trial court's assessment of the credibility of witnesses" due to that court's ability to observe them in person).

Finally, we do not agree with Melvin that the district court erred in awarding Tina rehabilitative spousal support because she "had no plan or intention to rehabilitate herself." See *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008) ("Rehabilitative spousal support is 'a way of supporting an economically dependent spouse through a limited period of re-education or retraining following divorce, thereby creating incentive and opportunity for that spouse to become self-supporting.'" (citation omitted)). Although the court characterized its award of spousal support to Tina as rehabilitative, "there is nothing in our case law that requires us, or any other court in this state, to award only one type of support." *Id.* at 827. Instead, what we are required do is consider the factors listed in section 598.21A when considering a spousal support award. *Id.* Upon doing so, we agree with the district court that Tina established a need for spousal support due, in part, to her limited education, lack

---

<sup>3</sup> Tina was identified as a homemaker with no income on the parties' joint tax returns. But both Melvin and Tina agreed she played an integral role in managing the couple's businesses during their marriage. Upon separating from Melvin, however, Tina was foreclosed from participating in the businesses, and at the time of the trial was working part-time in a temporary job earning \$11.50 per hour.

<sup>4</sup> In discussing Melvin's nebulous income, the court stated:

Based on the financial ventures of these parties, the Court finds it unlikely that Melvin has accurately recorded or reported all of his income. Indeed, in several cases he cannot account for tens of thousands of dollars. And in one instance he cannot explain where nearly \$100,000 in sales proceeds went.

of work experience outside the couple's adult-entertainment businesses, and corresponding lower earning capacity. See Iowa Code § 598.21A(1)(d), (e), (f); *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997) (noting a substantial disparity in earnings and earning capacity is enough alone to warrant an award of spousal support). As the district court found, although Tina is business savvy, the combination of her

limited skill set and the fact that her entire employment history basically exists within the couple's businesses, puts her at a disadvantage in the working world. She does not have the education to be able to find a job in another industry. Tina will need some form of financial assistance during the transitional period following the divorce.

For these reasons, we affirm the court's award of spousal support. See *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996) (stating "considerable latitude" is afforded to the district court in making a spousal support award despite our de novo review). We turn next to the court's division of property.

### ***B. Property Division.***

Melvin claims the district court's division of the parties' property was deficient in the following respects: (1) "Tina failed to meet her burden of proof establishing any value of the closely held corporations of Melvin," (2) the court erred in not adopting the tax-assessed value of real estate in Marshalltown, (3) the court erred in considering property that was stolen before trial as assets to be divided, and (4) substantial marital debt was not taken into account. We will discuss each item in turn.

**1. Value of corporations.** "Before dividing the marital property, a court must identify all of the assets held in the name of either or both parties as well as



the debts owed by either or both of them.” *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007). “The assets should then be given their value as of the date of trial.” *Id.* The purpose of doing so is to assist the court in making equitable property awards and allowances. *Id.* Due to the nature of closely-held corporations, determining a value is often a difficult, if not impossible, task. See *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa Ct. App. 1991). The law accordingly provides “much leeway to the trial court.” *Id.*

We begin by rejecting Melvin’s argument that because “Tina sought to gain an advantage by placing a value on [the] businesses, the burden was hers to prove that the businesses had some value.” “Both parties to a dissolution are required to disclose their financial status.” *In re Marriage of Williams*, 421 N.W.2d 160, 164 (Iowa Ct. App. 1988). “To hold otherwise would in numerous instances weigh heavily against the marriage partner not in business.” *Id.*

Here, unfortunately, there was a dearth of evidence as to the value of the couple’s corporations. The district court consequently found:

Thirty-Three S. Main, Inc., Parking Unlimited, Inc., A-1 Limo, The Body Shop, Hollywood 1016 Inc., and The Amsterdam Gentleman’s Club have some value. These businesses all clearly have tangible assets and a stream of income. The Court does not have sufficient evidence before it to assign exact values to these businesses and valuation of closely held businesses is a matter best left to financial experts. This Court, therefore, will not be assigning a numerical value to these businesses.

Melvin argues this was in error, as the evidence presented at trial established the corporations were operating at a loss and worth nothing. Tina makes no response to this argument beyond asserting the court’s “division was fair.”

We agree with Melvin that the district court erred in finding the corporations had some unknown value. See *Dennis*, 467 N.W.2d at 808 (stating it is the “province of the trial court to determine the value of marital property”). Melvin testified at trial that two of the corporations were inoperable. Of the remaining four, two were subsidiaries of the others. Melvin testified these corporations’ liabilities exceeded their assets. The corporate tax returns support this testimony, showing the companies either had no taxable income or operated at a loss for the past several years in which tax returns were filed. We accordingly agree with Melvin the corporations were worthless. See *id.* at 809 (noting the trial court “is free to consider any and all evidence of the value” of the corporation, including each party’s opinion as to the value of the corporation). However, this conclusion does not necessitate any modification of the property division, as the district court’s calculation of Melvin’s share of the marital property did not take these assets into account.

**2. Marshalltown real estate.** Tina valued the parties’ real estate in Marshalltown at \$225,000, while Melvin valued the real estate at its tax-assessed value of \$168,650. The district court adopted Tina’s valuation, noting it “came from one of Melvin’s financial affidavits.” However, the financial affidavit referred to by the court did not value the Marshalltown property at \$225,000. Instead, the affidavit stated Melvin was purchasing the property on contract for that amount.

At trial, Melvin explained that in order to finance his purchase of the real estate in Marshalltown, he had to deed a property he owned in Des Moines to the lender as collateral. Thus, the \$225,000 contract price encompassed both properties. Melvin testified the actual purchase price for the Marshalltown

property was \$170,000. Based on this evidence, we agree with Melvin that the district court overvalued the Marshalltown property by about \$55,000. To reflect this difference in value, we modify the dissolution decree to delete the \$50,000 lien in favor of Tina on real estate awarded to Melvin. That property, located at 2210 Ashworth Road in West Des Moines, is now awarded to Melvin outright.

**3. *Stolen property.*** Melvin next argues the district court erred in placing a value on items owned by the parties but stolen before the trial. The court specifically declined to consider those items, stating, “Both parties acknowledged that ‘Tina’s fur coat, jewelry and handbags’ were missing. No provision regarding allocation of these items is made.” It then awarded Tina three fur coats belonging to Melvin that were in her possession “to compensate her for the items that are missing.” Melvin received the two remaining fur coats. We find no inequity in this division.

**4. *Marital debt.*** Finally, Melvin argues the district court “did not take into consideration the substantial marital debt when making a division of marital assets.” See *Sullins*, 715 N.W.2d at 251 (noting allocation of marital debts inheres in the property division). We disagree.

In an attachment to his financial affidavit, Melvin listed sixty-four separate debts, most of which appear to be debts of the corporations Melvin was awarded. See *In re Marriage of Novak*, 220 N.W.2d 592, 597 (Iowa 1974) (“Although petitioner was ordered to assume all debts and obligations he also received all collateral securing these liabilities.”). The parties agreed in a pretrial stipulation that Melvin had “approximately \$156,588 in personal debt and debt from operating the businesses,” while Tina “produced bills that show she has

approximately \$21,749 in personal debt,” plus a claimed \$7000 in loans from family members.

The district court considered this evidence in its division of property, though it did not specifically mention each debt claimed by Melvin, stating:

Melvin shall be responsible for any money owed on personal state and federal taxes for the years 2008 and 2009. He shall also be responsible for the GMAC debt affiliated with a car he used to drive. Should any real estate taxes remain outstanding on any of the property awarded to Tina, Melvin shall be solely liable for this debt. Melvin shall be solely responsible for all other debt currently in his name only or incurred since the separation.

Tina shall be solely responsible for the payment of the loans to her family, the Capital One credit card, the Target Visa, the Washington Mutual/Chase card, the GMAC debt affiliated with a vehicle she drove, and the debt owed to Ultimate Auto. Tina shall be responsible for all other debt currently in her name only.

We find this division of the parties' debts was equitable.

#### ***IV. Conclusion.***

We affirm the spousal support awarded by the district court and modify the court's property division to strike a lien provision in favor of Tina on property awarded to Melvin.

Costs on appeal are assessed to Melvin.

**AFFIRMED AS MODIFIED.**