

**IN THE COURT OF APPEALS OF IOWA**

No. 1-813 / 11-0057  
Filed December 21, 2011

**CRYSTAL M. BLANCHARD,**  
Petitioner-Appellant,

**vs.**

**JEFFREY A. HOUDEK,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Worth County, Colleen D. Weiland,  
Judge.

Crystal Blanchard appeals from the district court's ruling that declined to  
divide property accumulated by unmarried persons after cohabitation.

**AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Braun & White, L.L.P., Charles  
City, for appellant.

Richard N. Tompkins, Jr. of Tompkins Law Office, Mason City, for  
appellee.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

**VOGEL, J.**

Crystal Blanchard appeals from the district court's ruling that declined to divide property accumulated by unmarried persons after cohabitation. She asserts the district court erred in not clearly ruling whether it had jurisdiction to address the property issues. She alternatively contends the district court erred in not equitably dividing the property. We find the court made a clear ruling that it did not have subject matter jurisdiction under our constitution or statutes, and because a separate legal theory, which would provide subject matter jurisdiction, was neither pleaded nor raised, we affirm.

**I. Background Facts and Proceedings**

Crystal Blanchard and Jeffrey Houdek began to cohabit in the fall of 1998. Shortly after the parties' son, J.H., was born in February 1999, Blanchard moved, securing her own residence. Nonetheless, the relationship between Blanchard and Houdek continued, and the two resumed their cohabitation in 2000. The parties' daughter E.H. was born in 2006. In May 2008, the parties separated, but maintained an on-again-off-again relationship until May 2009.

In 2002, Houdek purchased a house, using the equity from his former house. Only his name was shown on the buyer's closing statement and on the warranty deed. Blanchard and Houdek disputed who paid for various improvements to the house. The parties also purchased several vehicles, a boat, a camper, and other personal property during the course of their relationship.

On October 6, 2009, Blanchard filed a petition in equity for "Joint Legal Custody, Physical Care, Child Support, and Division of Property." The matter came on for hearing on September 23, 2010. Prior to taking any evidence,

Houdek disputed the district court's authority to decide the property issues to which the district court stated:

We will be taking evidence on that today. Right now my position is that I don't have authority to do that, but I may be convinced otherwise and at least we have it in the record as offer of proof in the event that I stick with that position.

On December 9, 2010, the district court ruled as to legal custody and physical care of the children, as well as other related issues such as visitation and child support. As to the property division the district court found:

The court does not generally have authority to divide property accumulated by unmarried persons based upon cohabitation. *In re Marriage of Martin*, 681 N.W.2d 612, 619 (Iowa 2004). The court further concludes that Blanchard did not timely assert or successfully show an alternative legal basis for property division or settlement, including theories of contract, unjust enrichment, resulting or constructive trust or joint venture.

On January 4, 2011, Blanchard filed a notice of appeal. On March 21, 2011, Blanchard filed a motion for limited remand pursuant to Iowa Rule of Appellate Procedure 6.1004. In the motion for limited remand, Blanchard stated:

The movant, Crystal M. Blanchard is requesting that the Appellate Court grant a limited remand of the property issues to the district court for entry of an order granting the motion of the Respondent/Appellee's counsel *for dismissal of the property claims due to lack of subject matter jurisdiction*.

(Emphasis added). Our supreme court denied the motion on April 27, 2011.

## **II. Standard of Review**

Our review of actions tried in equity is de novo. *Green v. Wilderness Ridge, L.L.C.*, 777 N.W.2d 699, 702 (Iowa 2010). We review questions of jurisdiction, authority, and venue for correction of errors at law. *In re Marriage of Engler*, 532 N.W.2d 747, 748 (Iowa 1995).

### III. Subject Matter Jurisdiction and Authority

Blanchard contends the district court erred in not clearly ruling whether it had jurisdiction to decide the property issues in this case.<sup>1</sup> As sub-issues, she asserts jurisdiction was “conferred” on the court by the pleadings or waived during the trial. Central to her claim is her position that the jurisdictional issue is not one of general subject matter jurisdiction, but involves the question of whether the court has authority to consider the property issue in this particular case.

Our supreme court has distinguished questions involving subject matter jurisdiction and questions involving authority as follows:

Courts may raise the issue of subject matter jurisdiction at any time. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court’s attention. The parties themselves cannot confer subject matter jurisdiction on the court. Rather, subject matter jurisdiction is conferred by constitution or statute.

The Iowa district court is a court of general jurisdiction. It is empowered by the Iowa Constitution to hear all cases in law and equity. The legislature may prescribe regulations for the manner in which jurisdiction is exercised, but it cannot limit the court’s jurisdiction.

*Schott v. Schott*, 744 N.W.2d 85, 87–88 (Iowa 2008) (internal citation and internal quotation marks omitted). Unlike subject matter jurisdiction, “the failure to properly invoke the authority of the court in a particular case may be obviated by

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<sup>1</sup> The theory Blanchard ultimately advances is one of authority, but as our courts have noted, “lack of authority to hear a case” and “jurisdiction”—which are distinguishable from subject matter jurisdiction—are used interchangeably. See *State v. Wiederien*, 709 N.W.2d 538, 540 (Iowa 2006) (noting that lack of authority to hear a case is also referred to as lack of jurisdiction of the case).

consent, waiver, or estoppel.” *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 874 (Iowa 2007).

On appeal, Blanchard is challenging the district court’s authority—and not subject matter jurisdiction—to divide the property she and Houdek accumulated during the course of their relationship. In *In re Marriage of Martin*, our supreme court discussed the division of property as it relates to unmarried persons who cohabit. 681 N.W.2d 612, 619 (Iowa 2004). The court stated that not all of the rights and remedies provided under Iowa Code chapter 598 (2009), regarding the dissolution of marriage, were available to unmarried persons, and therefore district courts derived no authority under that chapter to divide property of unmarried persons. *Id.* It further articulated,

The court also has no broad equitable powers to divide property accumulated by unmarried persons based on cohabitation. . . . Cohabitation alone is insufficient to invoke the authority of courts to resolve property claims.

Notwithstanding, courts do have authority to adjudicate property claims of unmarried persons who cohabit. Persons who cohabit tend to accumulate property and the rights of the person to such property may become disputed when the cohabitation ends. We have previously held that courts have jurisdiction over such claims. *However, the parties must allege a recognized legal theory outside marriage to support property claims between unmarried cohabitants*, including claims of contract, unjust enrichment, resulting trust, constructive trust, and joint venture.

*Id.* (internal citation omitted and emphasis added).<sup>2</sup>

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<sup>2</sup> The language of *Metten v. Benge*, which preceded *Martin* and was also cited in *Martin*, permitted a court of equity to partition property owned by unmarried persons who cohabitated, holding that where a petition “stated claims cognizable in equity, we conclude that the district court had jurisdiction to hear the case.” *Metten v. Benge*, 366 N.W.2d 577, 579 (Iowa 1985). *Martin* refined *Metten* by clearly requiring the proper pleading—that is a defined cause of action apart from general equitable principles—to obtain the subject matter jurisdiction of the court to divide property accumulated by unmarried persons who cohabit. *Martin*, 681 N.W.2d at 619.

Although Blanchard asserts the district court had authority to divide the property she and Houdek accumulated, the initial question is whether it had subject matter jurisdiction to entertain the property dispute. As noted above, subject matter jurisdiction is conferred by constitution or statute. *Schott*, 744 N.W.2d at 87. Iowa does not have a constitutional or statutory provision that provides for the division of property of unmarried persons who cohabitate. See *Martin*, 681 N.W.2d at 619 (recognizing that “[t]he court . . . has no broad equitable powers to divide property accumulated by unmarried persons based on cohabitation”). Nothing in Iowa Code section 598 gives the court jurisdiction to make property awards to unmarried, cohabitating parties.<sup>3</sup> Because subject matter jurisdiction “refers to the power of a court ‘to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court’s attention,’” and no constitutional provision or statute provides for the class of cases regarding the division of property of unmarried persons who cohabitate, the district court has not been conferred subject matter jurisdiction on this issue. See, e.g., *State v. Madicino*, 509 N.W.2d 481, 482 (Iowa 1993) (noting that where the Iowa Code “clearly confers jurisdiction on the district court to hear cases” concerning a particular issue, the court has subject matter jurisdiction).

In this case, the district court lacked subject matter jurisdiction to specifically divide the property accumulated by unmarried persons who

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<sup>3</sup> We note that at no time did either party claim to be in a common law marriage which could have triggered the jurisdictional benefits of Iowa Code chapter 598. However, we mention this chapter of the Iowa Code because it provides the court with subject matter jurisdiction to divide the property of married persons. Iowa Code § 598.21.

cohabitate. In addition, Blanchard failed to advance a separate legal theory on which the district court could divide the property accumulated by the parties.<sup>4</sup> See *Martin*, 681 N.W.2d at 619 (enumerating potential theories to support property claims between unmarried cohabitants, including “claims of contract, unjust enrichment, resulting trust, constructive trust, and joint venture”). Because the district court did not have subject matter jurisdiction to divide property accumulated by unmarried persons who cohabitate, nor the authority to adjudicate the property issues because a separate legal theory that would provide subject matter jurisdiction and authorize the court to adjudicate the property issues was not raised, the district court did not err in declining to divide the property accumulated by Blanchard and Houdek during the course of their relationship. Moreover, because we agree with the district court, we need not discuss Blanchard’s alternative argument that the district court erred in not equitably dividing the property. We therefore affirm.

**AFFIRMED.**

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<sup>4</sup> Of course, the parties are free to resolve their property disputes without court intervention. For example, during the trial, Houdek’s counsel stipulated Blanchard could have certain items of property, including a camper, fishing pole, tent lounge chair, toys, bike, bike rack, and hammock. Houdek also stated at trial that he had no problem with Blanchard keeping the Ford Freestar minivan.