

IN THE COURT OF APPEALS OF IOWA

No. 2-976 / 12-0842
Filed January 9, 2013

**IN RE THE MARRIAGE OF WARREN PAYNE
AND BROOKE PAYNE**

Upon the Petition of

WARREN EVERETT PAYNE,
Petitioner-Appellant,

And Concerning

BROOKE LYNN PAYNE,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Gary G. Kimes,
Judge.

Warren Payne appeals from the economic provisions of the decree
dissolving his marriage to Brooke Payne. **AFFIRMED.**

Gordon E. Allen of Drake Legal Clinic, Des Moines, for appellant.

Scott D. Fisher, West Des Moines, for appellee.

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

TABOR, J.

Warren Payne claims the district court did not equitably distribute the marital property in the decree dissolving his marriage to Brooke Payne. He also asserts the court abused its discretion in awarding Brooke fees for her trial attorney.

Despite the short duration of the marriage, we agree with the district court's determination that Brooke should receive one-half of the increase in the equity of the marital home. We also find the overall property distribution achieves equity between the parties. In addition, we find no abuse of discretion in the award of \$800 in trial attorney fees to Brooke. Accordingly, we affirm.

I. Background Facts and Proceedings.

Warren and Brooke started dating in 2005, and moved in together in 2006. They were married on July 26, 2008. They have one child in common, who was born in 2008. Brooke has four children from a previous relationship.

About one year after the parties married, Warren lost his job and filed a wrongful termination suit. He reached a settlement with his former employer. Wayne and Brooke lived off the settlement funds. Warren also received unemployment benefits for approximately two years. At the time of the dissolution trial, Warren was working as a subcontractor on an as-needed basis, earning ten dollars per hour. In 2011, his subcontractor income was \$5420.

Although Brooke has worked at restaurants in the past, at the time of trial she was not employed. Instead she stayed at home to care for her five children. She receives \$1320 per month in Social Security payments for her children.

Before the marriage, Warren's father purchased property for him. Warren razed the existing house and built a new home on the property with money he borrowed from his father. Warren then took out a mortgage and repaid his father. Warren testified it took approximately two years—from 2006 to 2008—to complete construction on the home. Both the home and the mortgage are in Warren's name only.

During the marriage, Warren built a two-car garage on the property. Warren testified that he financed the garage project with a settlement he received following a motorcycle accident that occurred during the marriage. He received \$14,000 as reimbursement for damage to his motorcycle, which was purchased before the marriage.

In 2010, before the garage construction, the house was assessed at \$168,900. In 2011, after the garage was built, the house was assessed at \$181,700. At the time of trial, approximately \$109,000 was still owed on the mortgage. Warren estimates the fair market value of the home is between \$140,000 and \$150,000.

During the marriage the parties purchased a Dodge Durango. In May of 2009, when about half the loan on that vehicle was repaid, they purchased a Chevy Trailblazer. They paid off the Durango with the proceeds from the loan on the Trailblazer. The total amount loaned was \$11,967.67. At the time of trial, there was approximately \$4900 remaining due.

The parties separated in November 2010. Warren filed for divorce on March 7, 2011. The court held trial in October 2011, though one of the

subpoenaed witnesses did not appear. The court kept the record open until the witness could be deposed in December 2011.

The court filed the decree dissolving the marriage on February 1, 2012. The parties were granted joint legal custody of their child, and Brooke received physical care subject to Warren's visitation. The district court imputed incomes to the parties—\$20,800 per year to Warren and \$15,840 per year to Brooke—in calculating Warren's child support obligation. The court then distributed the property, awarding Brooke \$7500 for one-half the increase in equity in the home during the marriage. With respect to the parties' vehicles, Brooke was awarded the Durango, while Warren received the Trailblazer and its debt. The court awarded Brooke her engagement ring and wedding band as her separate property. The court awarded Warren the personal property in his possession with the exception of the following items specifically awarded to Brooke: two nightstands, a large-screen television, a Toro riding lawn mower, a washer/dryer, bedding, and Mary Kay and Pampered Chef items she previously used in business ventures.

Warren filed a motion for new trial or to enlarge and amend the findings. The district court denied Warren's requests to amend the property distribution. Warren filed a timely notice of appeal.

II. Scope and 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 Distribution.

Warren requests the decree be modified in the following respects: (1) the award of \$7500—representing half of the increase in assessed value of the residence—be deleted or reduced; (2) Brooke's engagement ring be considered divisible property and Warren be awarded half its value; (3) the lawnmower be withheld from the property division as it was purchased with funds from Warren's father; (4) one of the couple's large-screen television sets be awarded to Warren; and (5) the two nightstands be awarded to him. He provides a balance sheet to support this modification, which values the marital residence at \$140,000. Warren calculates the division with his suggested modifications as awarding \$18,281 in net assets to Brooke and \$32,750 in net assets to him. He argues the "unequal" division is equitable given the short duration of the marriage and the parties' relative contributions to the marital property.

As both parties acknowledge, Iowa is an equitable-division state. *See In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). An equitable division does not necessarily require the assets to be divided down the middle; rather, we must determine what is equitable under the circumstances of each case. *Id.* The partners in the marriage are entitled to "a just and equitable share of the property accumulated through their joint efforts." *Id.* Iowa Code section 598.21(5) (2011) sets forth the factors to consider in an equitable distribution.

All property of the marriage that exists at the time of the divorce—other than gifts and inheritances to one spouse—is divisible property. *Sullins*, 715 N.W.2d at 247. Divisible property includes not only property acquired during the marriage by one or both of the parties, but also property owned before the marriage by one of the parties. *Id.* The fact that one party brings certain property into the marriage is a factor we consider, together with all of the other factors, “in exercising [our] role as an architect of an equitable distribution of property at the end of the marriage.” *Id.*; see also Iowa Code § 598.21(5)(b).

The district court did not specifically value the marital residence. When asked about the fair market value of the residence, Warren testified, “If I were to try to sell my home, I would imagine 140, \$150,000.” His opinion was based on his knowledge of the market value of the houses in his neighborhood, though he had not discussed the price with any realtors. The home was most recently assessed at \$181,700. Using Warren’s own figures, we value the home at \$150,000.

We agree that Brooke is entitled to one-half of the increase in the home’s equity that occurred during the marriage. See *In re Marriage of Campbell*, 451 N.W.2d 192, 195 (Iowa Ct. App. 1989) *disavowed on other grounds by In re Marriage of Denly*, 590 N.W.2d 48, 51 (Iowa 1999). From 2010 to 2011, the home’s assessed value rose from \$168,900 to \$181,700—an increase of \$12,800. This increase is attributable, in part, to the construction of the \$14,000 two-car garage on the property. Brooke testified that she helped out with home improvements, including building the deck and putting in fixtures. Her brother

testified that he helped build the garage. The district court found the home's equity increased by a total of \$15,000 during the three years the parties were married. This finding is within the permissible range of the evidence and we decline to disturb it on appeal. See *In re Marriage of Shanks*, 805 N.W.2d 175, 177 (Iowa Ct. App. 2011). We affirm the district court's award of \$7500 to Brooke.

Warren next argues Brooke's engagement ring was purchased with the parties' joint funds and, therefore, its value should be equitably divided. We disagree. "[A]n engagement ring given in contemplation of marriage is an impliedly conditional gift" *Fierro v. Hoel*, 465 N.W.2d 669, 672 (Iowa Ct. App. 1990). Once the parties are married, the gift is completed. See *id.* Accordingly, the ring is not subject to a property division. See Iowa Code § 598.21(6).

Warren also argues the district court erred in awarding Brooke a riding lawnmower. He claims the lawnmower was purchased with funds from his father and therefore belongs to his father or is a gift to Warren and not subject to division. The only evidence at trial regarding the lawnmower was Brooke's testimony. She testified she and Warren purchased the lawnmower with Warren's father for approximately \$4000. She told the court the lawnmower was in Warren's possession at the time of trial and to the best of her knowledge, it was paid off entirely. Warren presented no evidence that his father loaned them money to buy the lawnmower or that it was a gift only to Warren. We agree with the district court's finding that the lawnmower was subject to division as part of

the marital property. Brooke's testimony that the mower was not useful to her, does not mean that the court erred in awarding it to her as an asset.

With these findings in mind, the parties' balance sheet is as follows:

	Brooke	Warren
Assets		
Homestead		\$150,000
Trailblazer		\$5,000
Durango	\$5,000	
Samsung television	\$750	
Sony television	\$750	
Toro lawnmower	\$4,000	
Couch		\$4,000
Washer/dryer	\$1,500	
Property settlement	\$7,500	
Total Assets	\$19,500	\$159,000
Debts		
Mortgage		\$109,000
Trailblazer loan		\$4,900
Couch		\$3,100
Property settlement		\$7,500
Credit cards	50%	50%
Total Debts	0	\$124,501
Total Equity	\$19,500	\$34,500

We find the foregoing distribution to be equitable considering the length of the marriage and the parties' relative contributions to the marital estate. Accordingly, we affirm the district court's property division.

IV. Attorney Fees.

Warren also contends the district court erred in awarding Brooke \$800 in trial attorney fees. We review the district court's attorney-fee award for an abuse

of discretion. *Sullins*, 715 N.W.2d at 255. The decision to award trial attorney fees depends on the parties' respective abilities to pay. *Id.*

We find no abuse of discretion in the trial court's award. Brooke incurred more than \$2500 in trial attorney fees; Warren had no trial attorney expenses. While neither party is earning his or her potential, Warren has the higher imputed income. We find the district court acted within its discretion in awarding \$800 in attorney fees to Brooke.

AFFIRMED.