

**IN THE COURT OF APPEALS OF IOWA**

No. 3-949 / 13-0698  
Filed November 6, 2013

**IN RE THE MARRIAGE OF STEPHEN MUTTI LOUCKS  
AND SANDRA ANN LOUCKS**

**Upon the Petition of  
STEPHEN MUTTI LOUCKS,**  
Petitioner-Appellant,

**And Concerning  
SANDRA ANN LOUCKS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Story County, Michael J. Moon,  
Judge.

Stephen Loucks appeals from the spousal support and property  
distribution provisions of the decree dissolving his marriage to Sandra Loucks.

**AFFIRMED AS MODIFIED.**

Nicole S. Facio of Newbrough Law Firm, L.L.P., Ames, for appellant.

Meredith C. Mahoney Nerem of Jordan & Mahoney Law Firm, P.C.,  
Boone, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**POTTERFIELD, P.J.**

Stephen Loucks appeals from the property distribution and spousal support provisions of the decree dissolving his marriage to Sandra Loucks. He argues the district court's property division, award of spousal support, and award of attorney fees were inequitable. We affirm as modified, finding the court's award was equitable, but adjusting the interest rate on the equalization payment.

**I. Facts and Proceedings.**

Stephen and Sandra were married in 1984 in Wyoming. They have two adult children who are not at issue on appeal. Stephen has a college degree, Sandra does not. Sandra worked various jobs outside the home until the parties' first child was born. Stephen worked progressively more responsible jobs; his work led the family to Ames, Iowa in 1993. Sandra did not return to the workforce until 1999. She worked various administrative jobs part-time before Stephen filed for dissolution of the parties' marriage in 2012. The parties separated; Stephen lived in the marital home and Sandra moved to an apartment where the parties' adult son resided with her in August 2012. A temporary support order entered in July 2012 ordered Stephen to begin paying Sandra \$1000 a month in temporary spousal support as of July 16, 2012. In entering the temporary support order, the court noted Stephen had an annual salary of \$82,200 with the potential of an annual bonus. In November 2012, Stephen received his annual bonus along with a one-time buy-out bonus. The one-time bonus was distributed to employees based on the length of time they had been employed by the company. Stephen's years with the company all took place during the marriage.

At the time of trial, Stephen was fifty-seven years old and Sandra was fifty-two years old. At this time, Sandra worked at Wal-Mart earning \$9.05 an hour working thirty-six to forty hours per week. Stephen worked at Colorbiotics earning \$86,000 per year with an average bonus of \$10,901 per year. Trial was held February 13, 2013; both parties testified. Both parties agreed spousal support was appropriate for Sandra.

The court awarded Sandra spousal support in the amount of \$1500 per month for eight years and \$500 per month for the subsequent six years. In determining this number, the court considered both parties' income and expenses based on affidavits and testimony provided to the court. It found Stephen's monthly income was \$6459 and his expenses were \$3744. It found although Sandra's expenses exceeded her income by \$1625. The court noted that Sandra requested Stephen pay her entire budget shortfall and Stephen might be able to pay that amount at the time of trial, Stephen would not necessarily be able to pay that amount when he retires.

The court divided the parties' assets, ordering Stephen to pay an equalization payment of \$69,398 to Sandra as he received the marital home and other valuable property. It awarded the parties' van to Sandra, finding its value to be \$3000. Stephen filed a motion to amend or enlarge the decree, requesting his spousal support obligation terminate at the death or remarriage of Sandra, that his duty to maintain life insurance decrease when his support obligation decreases, that he not be required to provide health insurance for the parties' adult children, and that the court revisit its valuation of the van and his truck. The court amended the decree according to Stephen's requests in every respect

except regarding the valuation of the vehicles, concluding the values should not be changed. Stephen appeals.

## **II. Analysis.**

“Our review in dissolution cases is de novo. Although our review of the trial court’s award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Schriener*, 695 N.W.2d 493, 495–96 (Iowa 2005) (internal citations and quotation marks omitted).

### *A. Spousal support.*

Stephen first argues the district court’s award of spousal support to Sandra in the amount of \$1500 per month for eight years and \$500 per month for the subsequent six years was excessive. While Stephen concedes spousal support is proper in this case, he states an amount of \$1000 per month for six-and-one-half years and then \$500 a month for two-and-one-half years would be equitable. When a court makes an award of spousal support, it must consider the factors in Iowa Code section 598.21(3) (2013). *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005).

Stephen points to deficiencies in his own evidence to the court of his monthly expenses. He argues his pay stubs do not accurately reflect his actual income as he claimed too many exemptions, and his exhibit on expenses failed to include food, clothes, household supplies, contributions to a retirement plan, and vehicle maintenance. He also argues Sandra’s earning capacity is higher than her current employment pays. Though our review is de novo, it is not *trial de novo*. *In re Marriage of Huston*, 263 N.W.2d 697, 699 (Iowa 1978). We find

the credible evidence in the record before us supports the district court's determination of the parties' expenses and earning capacity. See *In re Marriage of Anderson*, 522 N.W.2d 99, 101 (Iowa Ct. App. 1994).

Stephen also argues the duration of the spousal support should be shortened. He points to Sandra's eligibility for penalty-free early withdrawal of retirement funds at age 59.5, or a little more than seven years from her age at trial. Since the district court ordered Stephen to pay \$1500 in spousal support for eight years, he requests this court shorten the time by one year. He also argues the \$500-a-month payments should only continue another three years until she reaches the age of sixty-two and can receive social security benefits rather than the six years ordered by the court. Stephen reasons that Sandra should retire at age sixty-two, especially because he plans to retire that same year, resulting in a reduction to his income. We are unwilling to disturb the district court's comprehensive analysis of the parties' financial needs and capabilities based upon Stephen's prediction of the parties' future retirement situations. Upon our de novo review of the credible evidence, we find the district court's award of spousal support is equitable. See *Schriner*, 695 N.W.2d at 495–96.

*B. Property division.*

Stephen next argues the district court erred in dividing the parties' property in several ways. He first argues the district court erred in its consideration of his annual bonus payment. He believes the court incorrectly considered the annual bonus both as income for spousal support purposes and as property subject to division in the decree. The district court expressly stated that its calculation of Stephen's income included the average annual bonus but

not the one-time bonus, which the court considered only as an asset in the marital property. Stephen's earnings history shows he is paid the annual bonus for each year's earnings in early November of each year. In his affidavit, Stephen counted the annual bonus in his monthly earnings. "The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts." *In re Marriage of O'Rourke*, 547 N.W.2d 864, 865 (Iowa Ct. App. 1996). Regular annual bonuses are properly considered part of a person's income for calculation of spousal support. *See id.* at 866.

Stephen claims the court double-counted the 2012 annual bonus both for support purposes and as a marital asset, contending the money was placed in a checking account which the court divided as a marital asset. The 2012 bonus was deposited in the account in November; Stephen's paychecks and the one-time bonus were deposited in the same account before trial. Upon our de novo review of the evidence presented at trial, we find Stephen did not show that the funds in the checking account divided by the court included any of the annual bonus deposited several months before. *See Schriner*, 695 N.W.2d at 495.

The account shows funds both deposited and withdrawn from the account, including the one-time bonus. The annual bonus was deposited into the parties' account November 8, 2012, more than three months before trial, and the one-time bonus went in the account in December. Throughout this time, Stephen continued to spend money out of this account—his daily balance varied from \$14,561.42 at the time of the annual bonus deposit to \$4206 just before the deposit of the one-time bonus. By the time of trial in February, the account

balance was \$26,461—most of which was attributable to the one-time \$23,073 bonus.

We cannot speculate on the source of the remaining funds at the time of trial. The checking account was a marital asset, and the district court equitably divided it. *See id.* at 496.

Stephen next argues the district court's division of the parties' marital debts was improper. He specifically argues the inclusion of a Best Buy debt incurred by Sandra was inappropriate as Sandra kept the Best Buy goods and had not requested Stephen pay the expense.<sup>1</sup> He also argues the division of a loan from Sandra's friend similar in amount to charges on the parties' line of credit by Stephen was improper as they were not marital debts. We find nothing inequitable about the inclusion of these debts as marital, along with debts incurred by Stephen for post-separation expenses. *See id.* at 495–96.

Stephen next appeals the value assigned to the parties' van. At trial, he presented a value of \$8426 based upon the Kelley Blue Book valuation of the seven-year-old van, while a wholesale report from a local car dealer submitted by Sandra showed the vehicle was only worth \$3000. The district court found the vehicle was worth \$3000 twice: both in the decree and upon a motion for reconsideration. Sandra states this number is more accurate because, unlike Stephen's estimate, this estimate was given after an actual inspection of the van.

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<sup>1</sup> We note Stephen does not argue the debt was not marital, and neither party clearly states *when* the Best Buy debt was incurred. Instead, Stephen points to testimony by Sandra that she did not expect Stephen to pay the bill, and also argues Sandra should be credited with the value of the property.

We find the credible evidence supports the district court's valuation of the vehicle. See *Anderson*, 522 N.W.2d at 101.

Stephen's last point of error regarding the property division involves the interest rate assigned by the district court to the property settlement. The court ordered him to pay ten percent annual interest on the equalization payment, instead of 2.14 percent. Iowa Code section 535.3 provides for interest on judgments and decrees.

1. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13, except for interest due pursuant to section 85.30 [workers' compensation] for which the rate shall be ten percent per year.

2. Interest on periodic payments for child, spousal, or medical support shall not accrue until thirty days after the payment becomes due and owing and shall accrue at a rate of ten percent per annum thereafter. Additionally, interest on these payments shall not accrue on amounts being paid through income withholding pursuant to chapter 252D for the time these payments are unpaid solely because the date on which the payor of income withholds income based upon the payor's regular pay cycle varies from the provisions of the support order.

Iowa Code § 535.3. Because the equalization payment under the property distribution is not a periodic payment for child, spousal, or medical support, the interest rate must be calculated according to section 668.13. *Id.* This section provides an indexed rate unless the interest rate is otherwise set by a contract on which the decree is entered. Iowa Code § 668.13(2). No such contract exists here, and the court provided no rationale for setting the interest rate at almost eight percent higher than the statutory interest rate. See *Hunt v. Kinney*, 478 N.W.2d 624, 626 (Iowa 1991); *In re Marriage of Dunn*, 455 N.W.2d 923, 925 (Iowa 1990). We modify the decree accordingly to substitute an interest rate of 2.14 percent.



C. Attorney fees.

Finally, Stephen argues the award of attorney fees was in error as part of the fees had already been included as a marital debt. The district court found both parties had paid attorney fees out of marital assets—\$3500 by Stephen and \$3000 by Sandra. Sandra was also assigned a loan as part of the marital debt which was used, in part, to pay her attorney fees. An award of attorney fees lies in the discretion of the trial court. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). We will only disturb this award if we find the court abused its discretion. *Id.* When evaluating whether to award a party attorney fees, the court considers the respective ability of each of the parties to pay. *Id.* Given the income disparity between the parties even after considering the outcome of the decree, the district court did not abuse its discretion in awarding Sandra further attorney fees.

D. Appellate attorney fees.

Sandra requests appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests in our discretion. *Id.* We consider Sandra's needs, Stephen's ability to pay, and the relative merits of Stephen's appeal. *Id.* Stephen was successful in a limited part of his appeal, but his arguments were largely without merit. He also has a higher ability to pay. We award appellate attorney fees to Sandra in the amount of \$3000. Costs on appeal are assessed to Stephen.

**AFFIRMED AS MODIFIED.**