

IN THE COURT OF APPEALS OF IOWA

No. 7-438 / 06-1956

Filed July 12, 2007

**IN RE THE MARRIAGE OF PEGGY L. STRAIT
AND DONALD A. STRAIT**

**Upon the Petition of
PEGGY L. STRAIT,**
Petitioner-Appellant,

**And Concerning
DONALD A. STRAIT,**
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

Peggy Strait appeals the property division provision of her decree of dissolution of marriage. **AFFIRMED.**

Pamela Vandel, Des Moines, for appellant.

Christine Keenan of Feilmeyer, Feilmeyer, Keenan, Forbes & Fultz,
P.L.C., Ames, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Peggy Strait appeals the property division provision of her decree of dissolution of marriage. We affirm.

I. Background and Facts

Peggy and Donald Strait were married on August 2, 2002. Peggy entered the marriage with substantial premarital assets and little debt, while Donald had few assets and substantial debt.¹ No children were born to the marriage. The marriage was dissolved by decree on November 8, 2006.

At the time of the dissolution, both parties were employed full-time, Peggy earning \$9.57 per hour, and Donald earning \$15.50 per hour. They owned two trucks, with virtually no equity in either, and a Harley Davidson “Fat Boy” motorcycle, with approximately \$7000 in equity. They owed \$12,714 in credit card debt and \$4000 from a deficiency mortgage debt Donald incurred prior to the marriage.

Peggy and Donald own a home in Boone, Iowa. When the home was purchased, Peggy paid approximately \$50,000 from her premarital funds as a down payment on the house. She also spent approximately \$7000 from inherited funds to make improvements on the house. They later refinanced the home, drawing out most of the equity to pay off debts and to purchase a motorcycle for Donald. The home has a value of approximately \$110,000, and carries a \$97,104 mortgage.

¹ Peggy’s assets included over \$50,000 in equity in a home in Humboldt, Iowa, approximately \$10,000 in stocks and bonds, and a 1998 Dodge Dakota, which she estimated to be worth \$14,000 at the time of the marriage. Donald had few assets and owed approximately \$12,000 in total debt.

The district court distributed (1) the marital home to Peggy, (2) one of the trucks to each party, (3) the “Fat Boy” motorcycle to Donald, and (4) all of the credit card and deficiency mortgage debt to Donald. Peggy appeals.

II. Merits

We conduct a de novo review of dissolution proceedings. Iowa R. App. P. 6.4. We accord the district court considerable latitude and 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) (citing *In re Marriage of Romanelli*, 570 N.W.2d 761, 763 (Iowa 1997)).

Peggy contends the district court erred in failing to credit her for the premarital property she brought into the marriage and for her inherited property. She also contends the district court erred in failing to require that Donald reimburse her for the money she paid to eliminate his premarital debt.

Iowa is an “equitable distribution” state for purposes of dividing property in a marriage dissolution. *Id.* (citing *In re Marriage of McNerney*, 417 N.W.2d 205, 207 (Iowa 1987)). Marital property is to be distributed equitably, considering the factors outlined in Iowa Code section 598.21(1) (2005). *Id.* Among the factors to consider are the length of the marriage, the property brought to the marriage by each party, and the earning capacity of each party. Iowa Code § 598.21(1).

“Equitable distribution” does not necessarily mean an “equal” division of marital property. *Schriener*, 695 N.W.2d at 496 (citing *McNerney*, 417 N.W.2d at 207). “The determining factor is what is fair and equitable in each circumstance.” *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995) (citing *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991)). We “look to the

economic provisions of the decree as a whole in assessing the equity of the property division.” *In re Marriage of Dean*, 642 N.W.2d 321, 325 (Iowa Ct. App. 2002).

In some cases, the property which the parties bring into the marriage may justify a full credit, but that is not always the case. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998) (citing *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996)). “A premarital asset is not otherwise set aside like gifted or inherited property.” *Id.* Where there were “wide disparities between the assets of the parties at the time of the marriage,” however, the length of the marriage is an important factor in determining how marital property is divided. *In re Marriage of Wallace*, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981).

The dissipation of assets may also be a factor in distributing marital assets. *In re Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa Ct. App. 1997). Where, however, a spouse knows of an obligation before the marriage, knows payment of the obligation will be a part of the marriage, and acquiesces to the payments during the marriage, a specific setoff for that debt as part of the property distribution is inappropriate. *Id.* at 829.

Peggy came into the marriage with approximately \$50,000 in equity in her home. She had also received an inheritance in 1998. The amount remaining from that inheritance at the time of the marriage is unclear, but appears to be in excess of \$10,000. In purchasing a new home, remodeling that home, and other purchases, the parties squandered most of these assets during their marriage.

The adjudication of property rights involves a division of both assets and liabilities. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). “The

allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets.” *Id.* Division of property is based on a spouse’s “right to a just and equitable share of that property which has been *accumulated* by the parties as the result of their *joint efforts* during the years of the marriage.” *Knipfer v. Knipfer*, 259 Iowa 347, 353, 144 N.W.2d 140, 143 (1966) (citation omitted) (emphasis added). Where assets have been *dissipated* as a result of a couple’s *joint efforts*, the waste should also be shared. In such cases, the court may decline to give credit for the premarital assets. See *Burgess*, 568 N.W.2d at 829 (declining to set off for dissipation of assets where wife acquiesced to the expenditures throughout the marriage).

The district court awarded Peggy assets and debts with a net value of approximately \$8000. Donald was awarded assets and debts with a negative net value of approximately \$3000. Thus, Peggy received approximately \$11,000 more than Donald, or roughly what she brought into the marriage from her inheritance. See Iowa Code § 598.21(2) (stating property inherited by either party prior to or during the course of the marriage is generally not subject to a property division); *Hass*, 538 N.W.2d at 892 (noting that, in short-term marriages, the claim of either party to property inherited by the other is minimal at best). We believe the district court acted equitably in allocating the assets and liabilities of the parties in this fashion.

We have considered all issues raised on appeal. We find the district court’s division of property to be fair and equitable and affirm the property distribution as set forth by the district court.

AFFIRMED.