

IN THE COURT OF APPEALS OF IOWA

No. 9-100 / 08-0823
Filed March 11, 2009

**IN RE THE MARRIAGE OF LARRY M. STARK
AND COLLEEN K. STARK**

**Upon the Petition of
LARRY M. STARK,**
Petitioner-Appellant,

**And Concerning
COLLEEN K. STARK,**
Respondent-Appellee.

Appeal from the Iowa District Court for Hamilton County, Gary L. McMinimee, Judge.

Petitioner appeals from the property division of the parties' dissolution decree. **AFFIRMED.**

Patricia A. Shoff and Kelsey J. Knowles of Belin Lamson McCormick Zumbach Flynn, P.C., Des Moines, for appellant.

Thomas J. Cahill of Cahill Law Offices, Nevada, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

MAHAN, P.J.

Larry Stark appeals from the property division of the parties' dissolution decree. He contends the district court improperly divided the proceeds from the sale of the homestead and the 2006 state income tax refund. We affirm.

At the time Larry and Colleen Stark were married in 2000, they each owned fifty percent of the homestead, which they defined in their premarital agreement as "separate" property. Pursuant to that premarital agreement, in the event of dissolution of the marriage, "[t]he separate property of each party . . . specified in the Agreement shall continue to be his or her separate property." Thus, pursuant to the premarital agreement, the district court awarded each party fifty percent of the proceeds of the sale of the homestead.

Larry argues that he should have been awarded more of the proceeds from the sale of the homestead.¹ First, he asks for credit for amounts he contends he contributed to the improvement of the homestead. Much of the value Larry claims to have contributed, however, preceded the premarital agreement and the marriage. Larry also contends he used inherited funds to purchase items for the homestead for which he should receive credit.² The district court found the contributions were to the homestead generally and

¹ Larry contends he should have received sixty-four percent of the sale proceeds based on amounts he contends he contributed to its improvement dating from 1998.

² Larry contends these were "removable" items and estimates their value as follows: a shed built in 2003 to house his boat and motor home, which he claims cost about \$16,000; a hot tub he testified he left "because it was built into the deck" and that "to replace . . . would probably be around \$7,000"; and two propane tanks that to "replace" would be "about \$1,200." However, these items were sold with the homestead with no separate valuation. In addition, we are unable to determine what funds were used to purchase these items.

accrued to the benefit of the homestead. The proceeds from the sale were divided fifty percent to each party as their separate property.

Larry argues that the district court erred in awarding Colleen the 2006 state tax refund of \$1208 because he paid the federal income tax liability. However, Larry fails to acknowledge that federal and state income taxes were withheld from Colleen's income, but not his. The court found that the parties had never calculated their respective tax liabilities according to the premarital agreement and "[b]ased on the limited evidence presented," awarded the refund to Colleen.

We have carefully reviewed the evidence presented, the contentions of the parties, and the court's resolution of the issues presented. Giving appropriate deference to the fact findings of the district court, see Iowa R. App. P. 6.14(6)(g), we find no error in and agree with the district court's resulting judgment. We therefore affirm that judgment. See Iowa Ct. R. 21.29(1)(d), (e).

Colleen requests appellate attorney fees. An award of attorney fees is not a matter of right but rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). The court considers the financial positions of the parties and whether the party making the request was obligated to defend the trial court's decision on appeal. *Id.* In light of the distribution of assets and the parties' working statuses, we conclude each party should pay his or her own attorney fees for this appeal. Costs on appeal are taxed to Larry.

AFFIRMED.