

IN THE COURT OF APPEALS OF IOWA

No. 5-584 / 94-1983

IN RE MARRIAGE OF CHERYL ANN
HUSS AND DAVID E. DEVEREAUX

Upon the Petition of

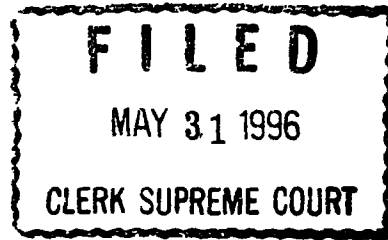
CHERYL ANN HUSS,

Petitioner-Appellant,

And Concerning

DAVID E. DEVEREAUX,

Respondent-Appellee.



Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Cheryl appeals certain economic provisions in the parties' dissolution of marriage decree. **AFFIRMED AS MODIFIED.**

C. A. Pasley of Singer, Pasley, Holm, Timmons, Mathison & Curtis, Ames, for appellant.

Bruce P. Bickel, Ames, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ. Vogel, J., takes no part.

HABHAB, P.J.

Cheryl and David were married in February 1992. There are no children from the marriage, although Cheryl has three children from two previous marriages. In January 1994, Cheryl filed a petition for dissolution of marriage.

At the time of the parties' marriage Cheryl, who has a degree in nursing and a master's degree in health care administration, owned and operated a medical equipment business. By February 1993, however, the business was failing and Cheryl declared bankruptcy. A \$40,000 loan¹ from David was discharged. At the time of trial, Cheryl worked for the Iowa Department of Public Health earning approximately \$35,000 per year.

David is the owner and operator of Devereux Electric and receives approximately \$35,000 in annual wages from this business. In addition, David owns rental property and is in the business of raising and selling ostriches.

In its findings of fact and conclusions of law, the district court found the parties' prenuptial agreement was valid and should be upheld. The district court divided the parties' assets in accordance with the agreement. Further, the court denied Cheryl's requests for a \$30,000 property settlement and attorney fees.

Cheryl appeals.

¹ There is testimony the total loans made by David to Cheryl may have reached \$66,000

I. *Scope of Review.* In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. *Property Distribution.* Cheryl contends the district court erred in not awarding the lump sum property settlement she requested. Cheryl argues she should have received a \$30,000 lump sum settlement to reduce her debt and allow her to obtain a mortgage refinancing. The district court awarded each party their respective property, but found no basis for the lump sum settlement.

Cheryl and David entered into a written prenuptial agreement prior to their marriage. While Cheryl concedes the prenuptial agreement is valid, she argues it should not prevent the court from distributing the parties' property equitably after considering all the factors listed in Iowa Code section 598.21(1) (1993). Specifically, Cheryl urges us to consider the parties' present economic circumstances, contributions she made to David's investments and businesses, and her provision of a home and homemaking services during the parties' marriage.

Since Cheryl does not challenge the validity of the prenuptial agreement and instead relies on the equitable principles in section 598.21(1), we need not discuss its effect on these proceedings. Rather, we must determine whether Cheryl should be

awarded the lump sum settlement she requested under section 598.21(1). This was a short-term marriage, as the parties separated after only fifteen months of marriage. The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in section 598.21(1). *In re Marriage of Oler*, 451 N.W.2d 9, 11 (Iowa App. 1989).

In a short-term marriage, equity requires the court to consider the assets each party brought into the marriage in determining the property distribution. *See In re Marriage of Knust*, 477 N.W.2d 687, 688 (Iowa App. 1991). With these principles in mind, and from our de novo review of the record, we conclude the district court properly awarded each party their property under the prenuptial agreement and find no basis in such a short-term marriage for the lump sum settlement requested by Cheryl.

In addition, both parties agree the district court erred in awarding Cheryl two diamond rings which were appraised at \$8000. The rings should have been awarded to David, and we modify the district court's decree accordingly.

III. Attorney Fees. Cheryl requests attorney fees for the trial. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). To overturn an award, the complaining party must show that the trial court abused its discretion. *Id.* We find the district court did not abuse its discretion.

Both Cheryl and David request appellate attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We determine each party should pay his or her own attorney fees for this appeal.

Upon consideration of all arguments raised on appeal, we find the district court's ruling should be affirmed in all respects except for the modification previously noted.

AFFIRMED AS MODIFIED.