FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-499 / 89-1879

**IN RE THE MARRIAGE OF KAREN LORRAINE DIRKS AND DAVID HARLAN DIRKS**

Upon the Petition of
**KAREN LORRAINE DIRKS,**

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Appellant,

And Concerning
**DAVID HARLAN DIRKS,**

Appellee.

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Appeal from the Iowa District Court for Tama County, Larry J. Conmey, Judge.

The wife has appealed a dissolution decree, challenging the division of property and debts. **AFFIRMED.**

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellant.

James R. Moore of Welp, Harrison, Brennecke & Moore, Marshalltown, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

**SCHLEGEL, J.**

Karen and David Dirks were married in 1985 and separated in 1988. They had no children. The parties' only significant asset was a house purchased in 1987 for $10,000, which is currently valued at $25,000 but subject to a mortgage with the Security Bank. The dissolution decree directed that this house be sold. The decree directed that the sale proceeds be used to pay the mortgage debt and also to pay two other debts of about $2,500 each. One of these $2,500 debts was owed to David's parents, such monies being used to repair the parties' 1986 Riviera automobile, the engine of which had blown up only a short time after its purchase, and to pay other bills. The other $2,500 debt was owed to the Toledo State Bank and had been incurred to consolidate various unpaid bills. The decree provided that any sale proceeds remaining after the payment of debts would be divided equally between the parties. Neither party was awarded alimony or attorney's fees.

Karen has appealed the dissolution decree. In her only issue, she contends the district court erred by directing that the two $2,500 debts noted above be paid from the proceeds of the house sale before those proceeds are divided between the parties. She argues she should not be required to share in the payment of these debts. She asserts David should be responsible for the bill consolidation loan because it was incurred to pay bills that David had left in arrears. She also questions whether

the debt to David's parents is a genuine debt which needs to be repaid at all. We affirm.

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).

The allocation of marital debts between the parties is an integral part of property division. In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). Indebtedness incurred prior to separation is considered part of a joint effort and may be divided equally. In re Marriage of Smith, 351 N.W.2d 541, 543 (Iowa App. 1984); In re Marriage of Lovetinsky, 418 N.W.2d 88, 90 (Iowa App. 1987). What is equitable must be established under the specific facts of each case. In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984).

Upon our de novo review, we find the trial court's division of marital debts equitable under the facts of the present case. Both parties signed a promissory note in the amount of $2,500 to David's father. The money was used to repair the parties' 1986 Riviera automobile, the engine of which had blown up only two weeks after purchase. The record reflects the dealer refused to give the parties any

money back for the defective auto. The parties have since traded the Riviera for other vehicles, and it is no longer owned by the parties. As such, the $2,500 debt to David's father was a marital debt and should be divided equally between the parties through the proceeds of the sale of the house. Likewise, the mortgage on the house is a marital debt and should be divided equally through the sale proceeds.

Karen argues, however, that she should not be held responsible for the $2,275 David borrowed from the Toledo State Bank, which was used to pay past due utility bills, tax services, medical bills, and a $303 bill incurred by Karen prior to the parties' marriage. Karen expressed surprise that David had not paid the bills. A large part of the utility bills, however, was incurred by Karen during the months of December 1988, and January, February, and early March of 1989, months during which David did not reside in the home. Though Karen maintained she provided David the bills, David argued that since he left the home in December 1988, Karen did not give him the bills since Karen was the one who kept the checkbook.

Karen has not pointed to any evidence in the record suggesting the utility bills were anything other than family living expenses. Karen was living in the home at the time the bills were incurred and knew such bills were due. We therefore conclude the $2,275 debt incurred to consolidate the parties' marital debt should be divided equally through the proceeds of the sale of the home.

Karen lastly contends if David's parents are to be repaid for the money loaned for the purchase of the car, Karen's grandmother should also be repaid for monies advanced during the parties' marriage. We find no merit to this argument. Karen's grandmother signed the note at the bank in order to help the parties purchase their home. Both David and Karen signed a promissory note with David's parents for money used to purchase a car. In both cases, there clearly was an expectation of repayment. Other advances of money provided by David's parents or Karen's grandmother do not show this expectation of repayment, and without more, we must conclude such advances were considered gifts to the parties.

We conclude the trial court's division of marital debts is equitable.

**AFFIRMED.**