

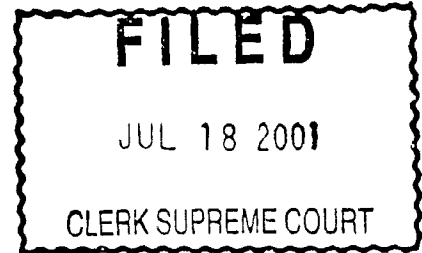
IN THE COURT OF APPEALS OF IOWA

No. 1-339 / 00-0819

Filed July 18, 2001

IN RE THE MARRIAGE OF JOE DEAN HARTGRAVE, SR.
AND DIANE MARIE HARTGRAVE

Upon the Petition of
JOE DEAN HARTGRAVE, SR.,
Petitioner-Appellant,



And Concerning
DIANE MARIE HARTGRAVE,
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Douglas S.
Russell, Judge.

The petitioner appeals from the property distribution provisions of the
parties' dissolution decree. **AFFIRMED.**

Sally H. Peck, Iowa City, for appellant.

John C. Wagner of John C. Wagner Law Office, P.C., Amana, for
appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

The petitioner, Joe Dean Hartgrave, appeals from the property distribution provisions of the parties' dissolution decree. Petitioner contends the district court erred in: (1) failing to award petitioner one-half of the increase in value of the parties' residence; (2) considering respondent's credit card debt in allocating marital assets and liabilities; and (3) allocating liabilities between the parties. Respondent, Diane Hartgrave, requests an award of appellate attorney fees. We affirm.

Background Facts. The parties were married on June 18, 1995. They separated in October 1997. No children were born of the marriage.

Joe Dean worked for Cryovac in Cedar Rapids at the time of the marriage, earning approximately \$22,000 per year. Diane worked at the University of Iowa Hospitals and Clinics, earning approximately \$18,000 per year. Joe Dean lost his job at Cryovac sometime in late 1996 or early 1997. Subsequently, he worked at various temporary jobs and as a self-employed auto mechanic. On his 1997 tax return, Joe Dean reported income of \$9523.

Both parties owned real estate prior to the marriage. Joe Dean sold his home after the parties married, realizing a profit of approximately \$44,000. He contributed none of the proceeds from the sale of his house to the marriage. The parties resided in Diane's home during the marriage. Diane paid the mortgage, interest, real estate taxes and insurance on the home. Joe Dean performed maintenance, yard work, and repairs on the home. Most of the improvements to the home during the marriage were paid for by public funds. Joe Dean also

performed maintenance and body work on the parties' vehicles. Joe Dean provided Diane \$100 per week for living expenses during his employment at Cryovac, and less for a certain period thereafter.¹ He paid for his own personal items.

Joe Dean filed a petition for dissolution of marriage in December 1997. In November 1999, the parties filed separate stipulations of assets and liabilities, neither stipulation being signed by both parties. In his stipulation, Joe Dean listed "division of debts" as an issue in dispute. The order setting trial, filed in December 1999, listed "debts" as an issue for trial. Trial took place in March 2000.

At the time of trial, both parties were in good health and employed full-time. Joe Dean was earning a gross monthly income of approximately \$1500 at North Liberty Plastics, and Diane was earning a gross monthly income of approximately \$1800 at the University of Iowa Hospitals and Clinics.

The district court entered its findings of fact, conclusions of law and dissolution decree on March 21, 2000. It awarded Diane her home and any equity therein. It assigned responsibility for two credit card debts totaling approximately \$4400 to Joe Dean, finding the debts "were accumulated for joint expenses during the marriage and have not increased in any significant way

¹ The district court found, "Joe Dean paid \$100.00 per month for the first five months of the period of cohabitation and in the following twenty-three months paid a total of approximately \$850.00 for the family's support." The district court's finding is in error. The record supports a finding Joe Dean contributed \$100 per week for the family's support during all but five or six months of the period of cohabitation, and a total of \$850 during that five or six months. We take the district court's error into consideration in reaching our decision.

since the parties' separation." The responsibility for other credit card debt, totaling approximately \$21,400, was assigned to Diane.² The court denied Joe Dean's 179(b) motion. Joe Dean appeals.

Standard of Review. 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 Dieger*, 584 N.W.2d 567, 568 (Iowa Ct. App. 1998). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Property Division. The parties to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa Ct. App. 1997). Our courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The equitable distribution of property should be made in consideration of the criteria codified under Iowa Code section 598.21. *Dieger*, 584 N.W.2d at 568. No hard and fast rules govern the economic provisions in a dissolution action; each decision turns on its own uniquely relevant facts. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). Thus we accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling "only when there has been a failure to do equity." *Id.*

² The court also assigned responsibility to Diane for a consolidation loan of \$25,750, and a University of Iowa Hospitals and Clinics bill of approximately \$400. The court ordered Joe Dean to pay Diane \$598.50 for damage to her garage door, and ordered Diane to pay Joe Dean \$455 to reimburse him for money paid toward a Sears bill.

Increase in Value of Home. Joe Dean argues the district court erred in denying him any increase in value of the parties' homestead. We disagree.

Premarital property does not merge with and become marital property simply by virtue of the marriage. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998). Property brought into a marriage by one party need not necessarily be divided. *In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa Ct. App. 1993). An equitable property division of the appreciated value of the property should be a function of the tangible contributions of each party and not the mere existence of the marital relationship. *In re Marriage of Hass*, 538 N.W.2d 889, 893 (Iowa Ct. App. 1995). If a marriage lasts only a short time, the claim of either party to the property owned by the other prior to the marriage is minimal at best. *Hass*, 538 N.W.2d at 892.

Joe Dean presented evidence to indicate the tax-assessed value of the home had increased since the parties' marriage. However, the district court found, and we agree, no credible evidence exists to indicate a substantial increase in the actual fair market value of the home. Moreover, the increased value in the home, if any, would have resulted from improvements paid for by public funds. Although the district court incorrectly calculated the contribution Joe Dean made to the household economy, the record reveals his actual contribution was still far less than that of Diane. Finally, the district court's decision is supported by Joe Dean's retention of the entirety of the net proceeds from the sale of his home after the parties were married and the relatively short

duration of the marriage. We affirm the district court's decision to deny Joe Dean's claim for one-half of any equity in Diane's home.

Credit Card Indebtedness. Joe Dean contends the district court erred in considering Diane's credit card debt in its property distribution. He argues Diane waived her right to raise the issue by the statement on her stipulation of assets and liabilities, "each responsible for individual credit card debt." He asserts Diane presented insufficient evidence to support the court's allocation of liabilities.

Diane acknowledged the existence of credit card indebtedness on her stipulation. Joe Dean listed "division of debts" on his stipulation as an issue in dispute. Joe Dean never signed Diane's stipulation, just as she never signed his. Indebtedness was listed as an issue for trial on the pretrial statement and the pretrial order. Diane disclosed the amount of credit card indebtedness in her affidavit of financial status, filed March 8, 2000. Under these circumstances, the district court correctly considered the credit card debt at trial.

Sufficient evidence supports the district court's allocation of liabilities. Diane testified she used the two credit cards at issue for joint expenses during the marriage. Diane testified the debts had not increased in any significant way since the parties' separation. Joe Dean acknowledged he was aware Diane incurred credit card debt when he could not contribute financially to the marriage. The court did not require Joe Dean to pay for additional charges made to one of the credit cards after the parties' separation. The court's division of credit card debt leaves Diane with nearly five times the amount of credit card debt as Joe

Dean. We conclude the district court's division of credit card debt is equitable under the circumstances of the case.

Attorney Fees. Diane requests appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). A successful party does not have a vested right to appellate attorney fees. *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999). In determining whether to award appellate attorney fees, we 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 decision of the trial court on appeal. *Wood*, 567 N.W.2d at 684; *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We deny Diane's request for appellate attorney fees.

AFFIRMED.