FILED
APR 24 1998
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 8-167 / 97-1193

IN RE THE MARRIAGE OF KEVIN ROPSON AND BRENDA ROPSON

Upon the Petition of
KEVIN ROPSON,
Appellant,

And Concerning
BRENDA ROPSON,
Appellee.

Appeal from the Iowa District Court for Delaware County, Margaret L. Lingreen, Judge.

Kevin Ropson appeals various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Stephen B. Jackson and Stephen B. Jackson, Jr., of Jackson Law Office, Cedar Rapids, for appellant.

Lucy Harrington and Sherry L. Schulte of White & Johnson, P.C., Cedar Rapids, for appellee.

Heard by Cady, C.J., and Huitink and Vogel, JJ.

VOGEL, J.

The petitioner, Kevin Ropson, appeals various economic provisions of the parties' dissolution decree. We find the distribution of property to be equitable and affirm.

Background facts. Kevin and Brenda Ropson cohabited for approximately two years prior to their marriage in December 1990. Kevin was thirty-six years of age at the time of trial and Brenda was thirty-five. No children were born to the marriage. Kevin has a son from a previous marriage and paid child support of $450 per month out of the parties' joint checking account. Brenda has four children from a previous marriage who resided with the couple during their marriage. She received $400 per month child support and deposited that amount into the joint account.

At the time of the marriage, Kevin was employed at the Iowa Men's Reformatory in Anamosa, earning an annual gross salary of $33,525.18. Kevin was also a member of the Army Reserves and for five years during the marriage also worked part-time at Pizza Hut. Brenda was employed at Pronto, but later took a year off. She subsequently received some income from her baby-sitting service. Brenda ultimately obtained employment at E Z Pickins convenience store, where she earned a gross annual salary of $11,000.

Prior to the parties' marriage, but while they cohabited, Kevin purchased a home on contract in Manchester, Iowa for $34,000. He paid $2500 down, and the

monthly payments were $370. The home has increased in value to $38,000, and the indebtedness has decreased to $18,000. After the parties' separation in May 1996, they moved out of the home. Kevin borrowed $1000 to repair damage to the home and to install a satellite television receiver. Kevin rented out the home for the same amount as his monthly payments.

The court awarded Kevin the home in Manchester and all encumbrances thereon. Kevin was also awarded a 1994 Thunderbird, valued at $12,525 with a loan balance of $9000, and a 1965 Chevrolet pickup, valued at $1000, which was used to secure the loan for repairs on the rental home. He was awarded his personal checking and savings accounts. Brenda was awarded the value of Kevin's IPERS account as of December 31, 1996, or $11,710.20. She was further awarded a share of Kevin's pension from the Army Reserve. In addition, the court awarded Brenda a $6000 cash settlement. Brenda was also awarded her 1990 Geo and all encumbrances thereon. The court ordered Kevin and Brenda to share equally in the remaining debt. The net distribution to Kevin was $19,670 and to Brenda, $18,612. The court lastly ordered Kevin to pay $2500 toward Brenda's attorney fees. Kevin has appealed.

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 the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984).

Property division. The parties to a marriage are entitled to a just and equitable share of the property accumulated during the marriage. *In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa App. 1994). The determining factor is what is fair and equitable to both parties under each circumstance. *Id.;* Iowa Code § 598.21 (1995). The equitable distribution of property should be made in consideration of the criteria codified under Iowa Code section 598.21. *Starcevic*, 522 N.W.2d at 857; *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Kevin contends the district court erred in failing to award him a set-off of $2500 used as a down payment on the Manchester home and the equity accumulated prior to their marriage. Kevin also asserts the district court erred in awarding Brenda $2500 toward her attorney fees.

The parties were pooling their money from their earnings while they were living together and the home was purchased. The parties maintained joint bank accounts and filed joint tax returns. We determine the trial court did not err in concluding Brenda was entitled to jointly share in the value of the home's equity, and we reject Kevin's argument that he should be given credit for the $2500 down payment on the home.

Moreover, we find it is improper to incorporate Kevin's attorney fee judgment, as Kevin urges us to do, into the parties' asset/debt calculation. *See* Iowa Code § 598.21(1)(a)-(m) (1995). After reviewing the record and the trial court's division of the parties' assets and property, we conclude that the net award to each party was nearly equal. We further find the trial attorney fees in the amount of $2500 were appropriately assessed to Kevin by the trial court in part because of Kevin's dilatory compliance with discovery orders.

Appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *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). Kevin's income is substantially greater than Brenda's. We determine Kevin shall pay $1000 of Brenda's appellate attorney fees. Costs are assessed to Kevin.

Having carefully considered the arguments before us on appeal, we affirm the trial court's decision.

AFFIRMED.