**IN THE COURT OF APPEALS OF IOWA**

No. 1999-351 (9-604) / 98-1820
Filed March 15, 2000

**IN RE THE MARRIAGE OF MARC STEPHEN KANE AND KATHY SUE KANE**

**Upon the Petition of**
**MARC STEPHEN KANE,**
Petitioner-Appellant,

**And Concerning**
**KATHY SUE KANE,**
Respondent-Appellee.

FILED
MAR 15 2000
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge.

On appeal from the entry of a dissolution decree, the appellant claims the district court made an inequitable division of property and awarded interest at a greater rate than allowed by statute. **AFFIRMED.**

Larry F. Woods, Oelwein, for appellant.

R.L. Van Veldhuizen, Oelwein, for appellee.

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

**PER CURIAM**

Marc Kane appeals certain provisions of the parties' dissolution decree. He claims the division of property was inequitable to him and he was ordered to pay interest at a rate greater than allowed by statute. Kathy Kane seeks appellate attorney fees. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Marc and Kathy began living together in about February 1993. They commingled their funds and built a house prior to their marriage in June 1994. It was a second marriage for both parties. During the marriage, Kathy received a $10,000 property settlement from her first marriage, and $558 per month in child support. Marc paid $593 per month in child support. Marc earned about $43,500 per year, while Kathy earned about $17,000.

The district court entered a dissolution decree for the parties on September 4, 1998. The court divided the parties' property to award Marc property worth about $59,000 and Kathy property worth about $20,500. In order to make the property division more equitable, the court ordered Marc to pay Kathy a property settlement of $20,000. If the payment was not made by October 20, 1998, interest would accrue at the rate of nine percent per year.

I. Marc contends the property division was not equitable to him. He asserts the court did not take into consideration the fact he brought more assets to the marriage. He asks us to eliminate the property settlement of $20,000.

The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Russell,* 473

N.W.2d 244, 246 (Iowa App. 1991). Property which a party brings into the marriage is one factor we consider in making an equitable division. *In re Marriage of Wendell,* 581 N.W.2d 197, 199 (Iowa App. 1998). We are not required to set aside premarital assets when making a property division. *In re Marriage of Miller,* 552 N.W.2d 460, 465 (Iowa App. 1996).

While Marc had slightly more assets at the time of the parties' marriage, we note both parties contributed equally during the marriage by working and by improving the value of the home. We find the division of property is equitable under the facts of the case.

**II.** In the alternative, Marc asks us to award Kathy a percentage of his pension plan distribution, after he retires, instead of the lump sum property settlement. He believes the only justification for the property settlement was to give Kathy a portion of his retirement account. The district court specifically awarded each party his or her retirement account. We find the property settlement was based on the overall distribution of property and deny Marc's request.

**III.** Marc claims the district court improperly ordered him to pay interest on the property settlement at nine percent per year. He asserts pursuant to section 535.3, interest should have been set at the statutory rate under section 668.13. He does not assert what the proper rate of interest should have been, or show he was actually ordered to pay more than the statutory rate.

Courts may award interest on property distribution awards different than that called for in section 535.3 if equity so dictates. *In re Marriage of Pertzsch,* 451 N.W.2d 22, 24 (Iowa App. 1989). Upon our review of the entire property division in this case, we find the interest rate awarded by the district court is equitable.

**IV.** Kathy seeks attorney fees for this appeal. In considering a request for appellate attorney fees, we look to 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 Romanelli,* 570 N.W.2d 761, 765 (Iowa 1997). We determine Marc should pay $500 toward Kathy's appellate attorney fees.

We affirm the provisions of the parties' dissolution decree. Costs of this appeal are assessed to Marc.

**AFFIRMED.**