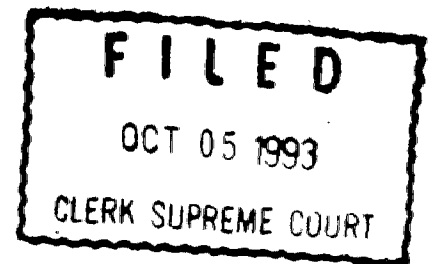


IN THE COURT OF APPEALS OF IOWA

No. 2-666 / 92-395



IN RE THE MARRIAGE OF ANNE MARIE MARSHALL AND
DALE LYNN MARSHALL

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Upon the Petition of

ANNE MARIE MARSHALL,

Appellant,

And Concerning

DALE LYNN MARSHALL,

Appellee.

Appeal from the Iowa District Court for Dubuque County,
Alan L. Pearson, Judge.

Former wife appeals and former husband cross-appeals
the economic provisions of the parties' dissolution
decree. **AFFIRMED AS MODIFIED.**

Russel A. Neuwoehner, Dubuque, for appellant.

Larry R. Kurt, Dubuque, for appellee.

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

HABHAB, J. 000314

Anne and Dale Marshall were married on April 7, 1990. They have two children, Trevan, born prior to their marriage on May 13, 1989, and Autumn, born August 27, 1991, while the dissolution was pending. The parties have stipulated to joint custody with primary care to Anne and visitation rights to Dale. The district court ordered Dale to pay \$160 per month in child support based on Dale's net monthly income of \$508 and Anne's net monthly income of \$650.

Anne brought significant premarital assets into the marriage as a result of the \$55,340 she received in a personal injury settlement. Dale brought no significant assets into the marriage. By trial time all that remained was \$3846.06 in cash which was the proceeds from the sale of the parties' residence, a \$750 promissory note from Dale to Anne, and a \$2000 judgment arising out of a cash loan made to Dale's friend. The court set this property aside to Anne.

The parties accumulated no significant assets during their marriage but incurred several debts. One of those debts, \$2187 owed to Dale's father, was assigned to Anne.

The district court dissolved their marriage on January 13, 1992. Anne appeals and Dale cross-appeals.

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).

I. Child Support.

On appeal, both parties are contesting the award of child support. Dale believes that he should not be required to maintain health insurance in addition to the child support award. Anne argues that as a result of Autumn's birth on August 27, 1991, Dale's child support should have been increased to \$194.20 per month.

The district court found Dale's child support obligation to be \$160 per month. The court arrived at this figure by attributing to Dale a gross income of \$694 and subtracting \$51 for federal taxes, \$53 for FICA, \$12 for state taxes, and \$70 for health insurance. The court found Dale's net monthly income to be \$508 and Anne's to be \$650.

We agree with the district court that Dale should have to pay for health insurance for the children. The only testimony regarding Dale's health insurance premiums for the children was from Dale himself. Dale testified that health insurance for the two children would be \$70 every two weeks. This would be \$152 a month in premiums for the children's health insurance. This makes Dale's net monthly \$426. When we apply the child support guidelines, Dale and

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Anne's net income falls in the portion of the chart where support payment is within the discretion of the court. We therefore order Dale to pay 30.5% of his monthly income to child support, or \$130 per month.

Anne also requests back temporary child support be awarded for the months of September through December 1991, since Autumn was born while the dissolution was pending. At the time Autumn was born, a temporary support order was in effect establishing the support at \$131 per month. Anne did not make an attempt to amend the temporary support obligation. At trial she requested that she be granted child support for the months of September through December 1991 in her statement of affairs. The trial court did not address this issue. Anne did not file a rule 179(b) motion. Under these circumstances, we find Anne's request for an increase in temporary support should be denied.

II. Property Settlement.

Anne also contends the property distribution is inequitable to her. Specifically, Anne requests that we: 1) award her a cash property settlement; and 2) allocate to Dale the parties' debt to Dale's father.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an

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equal division or percentage distribution. Id. The determining factor is what is fair and equitable. Id.

It is undisputed that prior to their marriage Anne was injured in a motor vehicle accident. As a result of the settlement, lump sum payments of \$24,000 and \$15,000 were made to her prior to the marriage. In addition, she began receiving monthly payments of \$742.74 around the time the parties were married. At the time of the dissolution Anne had received \$55,340, of which only \$6596 remained. Anne acknowledged that \$8500 was spent repaying loans she had received from her parents and a loan made to her brother.

The district court concluded that all proceeds of the house sale, the proceeds from the \$2000 loan made to the Gabers and the proceeds of a note representing a loan to Dale are Anne's as proceeds of premarital property. The parties had \$7528 in outstanding debt. The district court assigned Anne the parties \$2187 debt to Dale's father. Dale was assigned the remaining marital debts. We modify the district court's division of the parties' assets and liabilities to make Dale responsible for the parties debt to his father.

Anne also request a \$6000 cash award as property settlement. After carefully examining the record in light of the criteria codified in Iowa Code section 598.21(1) (1991), we find that a cash award to Anne would be inequitable to Dale.

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Costs of this appeal assessed one-half to Anne,
one-half to Dale.

AFFIRMED AS MODIFIED.