IN THE COURT OF APPEALS OF IOWA

No. 6-764 / 95-1853

IN RE THE MARRIAGE OF BRIAN BREUKLANDER AND SANDRA J. BREUKLANDER

Upon the Petition of
BRIAN BREUKLANDER,

Appellant/Cross-Appellee,

And Concerning
SANDRA J. BREUKLANDER,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

The husband challenges certain economic provisions of the parties' dissolution decree, and the wife cross-appeals. **AFFIRMED ON THE APPEAL. CROSS-APPEAL DISMISSED.**

Kolleen K. Samek, Des Moines, for appellant.

Richard A. Bartolomei of Bartolomei & Lange, P.C., Des Moines, for appellee.

Considered by Habhab, C.J., and Huitink and Streit, JJ.

PER CURIAM.

On appeal from the entry of a dissolution decree, the husband challenges the property division and requests an award of appellate attorney fees. On cross-appeal, the wife argues the district court abused its discretion by failing to award her attorney fees and she requests an award of appellate attorney fees. We affirm on the appeal and dismiss the cross-appeal.

Brian and Sandra Breuklander began cohabiting in 1984. At that time, Sandra moved in to Brian's house at 823 East 23rd Court in Des Moines. She agreed to pay him $300 per month in rent. While the parties were living together, Brian purchased real estate on Lake Ponderosa near Montezuma. Brian and Sandra were married on February 9, 1991. During the marriage they purchased a house at 3619 East 40th Street. After they moved to East 40th Street they rented out the home on East 23rd Court.

Brian filed a petition for dissolution of marriage on August 26, 1994. At the time of the dissolution hearing Brian worked for Weitz Construction, where he had annual income of about $40,000. Sandra worked at Sutherland Printing and had annual income of $18,720. She also received $606 per month in child support for the care of her three children from a previous marriage.

The district court issued a dissolution decree for the parties on September 27, 1995. The court awarded Sandra the property on East 40th Street. Brian was

awarded the property on Lake Ponderosa and East 23rd Court. Sandra was awarded one-half of Brian's 1994 income tax refunds. Each party was awarded the vehicle and personal property he or she had in his or her possession. Brian has appealed and Sandra cross-appealed.

I. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown,* 487 N.W.2d 331, 332 (Iowa 1992).

II. Brian makes several arguments concerning the division of property. 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 equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each particular circumstance. *Id.*

A. Brian argues this was a relatively short marriage, and therefore, Sandra should not be entitled to share in the assets he brought to the marriage. Although the parties were not married for a long period of time, they had a long-term relationship. During the time they cohabited they both contributed to household expenses. We

agree with the district court that all of the parties' real property should be considered marital property, and was subject to division in the dissolution decree.

B. Brian also argues that because he had a greater income, he contributed more to the marriage than Sandra, and he should be awarded a greater share of the parties' assets. We find Brian and Sandra made comparable contributions to the marriage. While Brian may have had a larger income, Sandra contributed the income she had, as well as performing general household chores such as laundry and meal preparation. We do not believe Brian is entitled to a greater share of the parties' assets due to alleged greater contributions.

C. Brian claims the district court failed to properly consider the parties' income tax refunds. At the time of the trial, Brian expected to receive $3317 from his 1994 federal and state income tax refunds. Sandra had not yet filed her 1994 taxes. The district court ordered Brian to pay Sandra one-half of his refunds. Brian claims this is inequitable because Sandra is permitted to retain any refunds she receives. As the district court noted, Brian took all of the tax benefits from the parties' residences for 1994. We find the district court adequately considered the parties' taxes.

D. Brian claims the district court failed to recognize that he made two $1000 loans to Sandra. Brian also complains that the court found Sandra loaned him $1546 for materials to build a garage. The question of whether these advances were

considered loans by the parties is one of credibility. As noted above, we defer to the district court on issues of credibility.

E. Brian contends the district court improperly valued the parties' assets. He complains because the district court did not adopt his values for the parties' real property. In valuing the residences on East 23rd Court and East 40th Street, and the Lake Ponderosa property, the court adopted the values given by Sandra. In each instance, the value adopted by the district court was well within the permissible range of evidence, and we will not disturb it on appeal. *See Russell,* 473 N.W.2d at 246.

F. Brian asserts that the district court inequitably distributed the parties' debts. Brian is required to pay a majority of the parties' marital debts. He asks that Sandra be required to pay an additional $3500 toward these debts. Brian has greater income than Sandra and will be better able to pay off the debts in question. We find the district court's distribution of assets and liabilities was equitable. We affirm the property distribution found in the parties' dissolution decree.

III. In her cross-appeal, Sandra claims the district court abused its discretion by failing to award her trial attorney fees. We determine the cross-appeal is untimely under Iowa Rule of Appellate Procedure 5(a), which provides:

> A cross-appeal may be taken within the thirty days for taking an appeal or in any event within five days after the appeal is taken.

The dissolution decree was filed on September 27, 1995. Brian filed his notice of appeal on October 25, 1995. The cross-appeal was filed on November 6, 1995, and served on October 31, 1995. The cross-appeal was not filed within thirty days after September 27, 1995, or within five days after October 25, 1995. Because the cross-appeal is untimely, we do not have jurisdiction to consider it, and it must be dismissed. *See State ex rel. Miller v. Santa Rosa Sales & Marketing, Inc.*, 475 N.W.2d 210, 214 (Iowa 1991).

IV. Both parties seek attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Hunt,* 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should pay his or her own appellate attorney fees.

We affirm the terms of the parties' dissolution decree. We dismiss the cross-appeal. Costs of this appeal are assessed to Brian.

AFFIRMED ON THE APPEAL. CROSS-APPEAL DISMISSED.