

IN THE COURT OF APPEALS OF IOWA

No. 7-422 / 96-1902

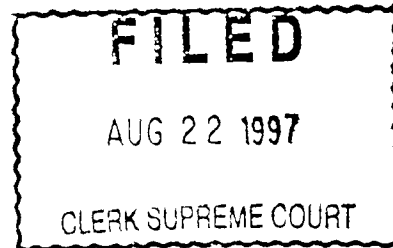
**IN RE THE MARRIAGE OF JOANN MARIE
MALONE AND JAMES ALLAN MALONE**

**Upon the Petition of
JOANN MARIE MALONE,**

Petitioner-Appellant,

**And Concerning
JAMES ALLAN MALONE,**

Respondent-Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Charles Smith,
Judge.

On appeal from the entry of a dissolution decree, the appellant challenges the
property division. **AFFIRMED.**

G. Elizabeth Otte, Council Bluffs, for appellant.

Joseph J. Hrvot, Council Bluffs, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

SACKETT, P.J.

The sole question in this appeal from a decree dissolving a short-term marriage is whether the property division made by the trial court was equitable. We find that it was and affirm.

Petitioner-appellant Joann Marie Malone and respondent-appellee James Allan Malone were married in February 1993. It was a second marriage for both. Joann had two children in her custody and James had three.

At the time of the marriage, each party had a personal residence with equities of about \$35,000. They each sold their house. With this money, they bought a van and made a \$46,000 down payment on a home they owned at the time of the dissolution. James's money went first to pay for the van and the balance went in the house. Joann's money went directly in the house.

The trial court valued the house they purchased, and in determining its value at the date of dissolution, considered the eight percent sales commission they would owe if it were sold. The trial court determined the parties had an equity in the home of \$57,250. James was given the right, if he wanted the home, to purchase Joann's equity for \$33,500 within ninety days.

Joann first contends that in allocating assets the trial court did not properly consider a cash account she had at the time of the marriage. She contends the account contained \$20,000. James contends there was actually \$17,500 in the account. The

account had been depleted by the time of the dissolution. It is conceded that of the money \$4500 was used to pay an income tax obligation Joann had incurred prior to marriage, \$7000 was spent on the parties' wedding, and \$3000 was spent on a family vacation with all their children.

Joann further contends the trial court (1) should not have considered a sales commission in valuing the house, and (2) should have given her additional assets because the money from the sale of her house went exclusively in the house she and James bought, while James's money went part to pay off the van and part as a down payment on the house. She accurately points out the van has depreciated in value and the house has not.

The trial court did not give consideration to the seventeen to twenty thousand dollars Joann had at the time of the marriage, finding it had all been spent. The trial court found in addition to the conceded expenditures, Joann used money for the education of her own children and other family purposes. The trial court, while recognizing the expenditures Joann made from the savings account she brought into the marriage, considered that James thought his earnings made a significantly higher contribution to the support of Joann, her children, and his children, than did Joann. The trial court determined it would not be equitable to consider the cash Joann brought into the marriage under these circumstances.

The trial court further found, which finding does not seem to be disputed, that at about the time of the parties' separation James, who had been employed in the insurance field, was required to buy an insurance business to ensure continued employment, and the value of the insurance business he bought was exceeded by debt. None of this debt was charged to Joann.

The question is whether the property division is equitable. *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). In dividing the property, the court considers the criteria codified in Iowa Code section 598.21(1), which includes a directive the court consider property each party brought into the marriage. *In re Marriage of Robinson*, 542 N.W.2d 4, 5 (Iowa App. 1995).

We find no reason to disturb the trial court's allocation of assets. A portion of the money Joann brought to the marriage was used for her tax debt and for her children's exclusive purposes. Joann and her children benefitted by James's earnings, which exceeded three-fourths of the family income. Joann benefitted by not being charged with any portion of the debt James had incurred in buying the insurance business. The trial court's division was equitable.

Joann also contends the trial court incorrectly found James's temporary support obligation to be satisfied. She fails to include in her brief the amount she claims is still owing and she fails to direct us to where in the record there is evidence to support her theory on this issue. Iowa Rule of Appellate Procedure 14(a)(5) requires the

argument of the brief to state, among other things, where in the record the issue was raised and decided. *See James v. Rosen*, 203 N.W.2d 256, 260 (Iowa 1972), where appellant argued trial court erred in fixing damages in an excessive amount but cited no legal authorities to support this assignment of error and court held it could determine assignment waived. We find no basis to reverse the trial court on this issue.

We award no appellate attorney fees. Costs on appeal are taxed to Joann.

AFFIRMED.