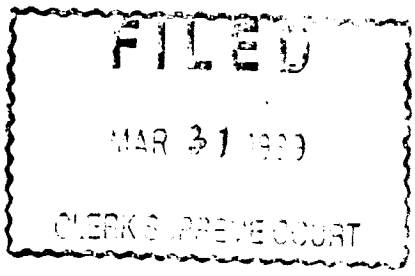
# IN THE COURT OF APPEALS OF IOWA

No. 8-701 / 97-1948

**IN RE THE MARRIAGE OF JULIE MUETZEL AND JAMES LAWRENCE MUETZEL**




Upon the Petition of
**JULIE MUETZEL,**

Appellee,

And Concerning
**JAMES LAWRENCE MUETZEL,**

Appellant.

---

Appeal from the Iowa District Court for Polk County, David L. Christensen, Judge.

James Muetzel appeals various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Steven L. Udelhofen of Udelhofen Law Firm, Ankeny, and Deborah K. McKittrick of McKittrick Law Office, Ankeny, for appellant.

Kolleen K. Samek, Des Moines, for appellee.

Heard by Huitink, P.J., and Mahan, and Zimmer, JJ.

**ZIMMER, J.**

James Muetzel appeals various economic provisions of the parties' dissolution decree. He also appeals the denial of his motion to continue trial and his motion to reopen the record following trial to allow for additional discovery. We affirm all issues on appeal with the modification that Julie should not be awarded a share of IRA funds and a money market account.

***I. Background Facts and Proceedings.*** James and Julie Muetzel began living together in August 1990. The parties were married on January 2, 1993. Julie filed a petition to dissolve the parties marriage in September 1996. Trial was held on July 2, 1997. The trial court dissolved the parties' marriage on July 16, 1997 and entered a supplemental decree on September 11, 1997 that divided the parties' assets and debts.

Julie and James were both previously married. Julie has two minor children from her first marriage and receives child support from their father. James has no children from his first marriage. The parties had no children together.

James is a high school graduate who obtained a bachelor's degree in industrial technology from the University of Northern Iowa, and a degree in civil engineering from Iowa State University. He is employed as a civil engineer. His base salary at the time of trial was $48,000 per year.

Julie is a high school graduate. She attended Iowa State University for two years. At the time of trial, she was employed as a design consultant earning $1705.00 per month plus occasional commissions.

James purchased a home in his name in August 1990. Julie and her children moved into the home shortly after it was purchased. The parties resided together continuously in the home until they separated pending the dissolution of their marriage.

During trial the most significant areas of disagreement between the parties concerned the marital home, IRA funds connected with a job held by James from 1990 to 1994, and a money market account. In its decree, the trial court valued the marital home at $92,020, and found the home had a net equity of $31,491.15. The net equity was equally divided by the court. James was afforded a credit of $14,592.54 for his down payment on the home. The court determined the money market account was a marital asset and equally divided the account. The court also equally divided the IRA and profit sharing plans. Julie was awarded her 1993 Geo, and James was awarded a 1991 Jeep and 1986 pickup truck. The court ordered James to pay Julie $35,403.94 as a property equalization settlement. The court declined to award either party alimony. James was ordered to pay $1500.00 toward Julie's attorney fees.

***II. Refusal to Grant Continuance or Reopen Record.*** Review of a trial court's refusal to grant a continuance or reopen the evidence after trial is for abuse of discretion. *See Ragan v. Petersen*, 569 N.W.2d 390, 391–92 (Iowa App. 1997) (rulings on motions for continuance); *Neimann v. Butterfield*, 551 N.W.2d 652, 655 (Iowa App. 1996) (reopening trial records). A trial court enjoys wide discretion in reopening the record. *See Neimann v. Butterfield*, 551 N.W.2d at 655. Trial courts enjoy similar discretion with respect to continuances, which "may be allowed for any

cause not growing out of the fault or negligence of the applicant, which satisfies the court that substantial justice will be more nearly obtained." *See* Iowa R. Civ. P. 183(a). We will not find an abuse of discretion in either case unless the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (citations omitted).

James filed a motion for sanctions immediately prior to trial and moved for a continuance. Following a hearing held the morning of trial, the district court denied the motion after concluding the parties had not agreed on a discovery deadline and that Julie had not violated any court order with respect to the discovery process. Furthermore, we note over eight months passed from the time the petition to dissolve was filed and trial commenced. We determine the parties were afforded sufficient time to complete discovery informally or to avail themselves of discovery rules provided for in the rules of civil procedure in a timely manner. We conclude the trial court did not abuse its discretion in denying James' motion to continue trial.

Following trial, James moved to reopen the evidence to permit additional discovery regarding Julie's pending purchase of a new home. We find no abuse of discretion in the trial court's refusal to reopen the evidence.

***III. Division of Assets.*** James contends the trial court's distribution of property was inequitable. He does not believe Julie should have been awarded any share of the home he purchased before the marriage, his IRA account, or a money market certificate of deposit.

Our review of the economic provisions of a divorce decree is de novo. *See* Iowa R. App. P. 4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *See 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. *See* Iowa R. App. P. 14(f)(7).

The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *See In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997); *see also In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Premarital property does not merge with and become marital property simply by virtue of the marriage. *See In re Marriage of Miller*, 452 N.W.2d 622, 624 (Iowa App. 1989). Iowa courts do not require an equal division or a percentage division in determining a just and equitable share of property. *See In re Marriage of Gonzalez*, 561 N.W.2d at 98. Instead, each particular circumstance determines what is fair and equitable. *Id.* Further, the property distribution should be made pursuant to the criteria codified in Iowa Code section 598.21(1) (1997). *Id.*

Property which a party brings into the marriage is a factor to consider in making an equitable division. *See* Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but it is not required. *See In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). A premarital asset is not otherwise set aside like gifted or inherited property. *Id.*

In dividing appreciated property acquired before the marriage we must consider whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties. *See In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa App. 1982). In so doing, we do not limit our focus to the parties' direct contributions to the increase. *Id.* Rather, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. *See* Iowa Code § 598.21(1). Financial matters make up only a portion of a marriage, and must not be emphasized over other contributions in determining an equitable contribution. *See In re Marriage of Miller*, 552 N.W.2d at 465.

We determine the trial court did not err in dividing the parties' home equity. James argues Julie should not be awarded any portion of the equity in the marital home because the home was purchased in his name and with his money. However, the record indicates Julie's role as homemaker in the relationship contributed to the increase in equity. There is also evidence Julie contributed to the costs associated with the house, such as utilities and a mortgage. We will not set aside property to one spouse that at the time of the marriage was in the name of only one party but was the result of premarital funds accumulated by both parties. *See In re Marriage of Miller*, 452 N.W.2d at 624. The district court correctly granted James a credit for his initial down payment, and then equally divided the home equity less outstanding mortgage costs.

The trial court awarded Julie one half of the IRA and money market accounts. Julie argues those accounts should be divided for the same reasons as the equity in the

house, to wit; that the funds were acquired through the parties' joint efforts. The purpose of Iowa Code section 598.21(1)(b) "is to prevent a spouse from being given an interest in property for which he or she made no contribution to acquiring." *In re Miller*, 452 N.W.2d at 624. We are not convinced Julie has contributed in any significant manner to the IRA.

The IRA was created in March 1994 from monies cashed out of a profit sharing plan earned by James while employed by Calhoun-Burns and Associates from 1990 to 1994. The parties married on January 2, 1993. James terminated his employment at Calhoun-Burns shortly after their marriage. He cashed out the plan in 1994 and rolled the proceeds into an IRA for his benefit alone.

An equitable property division of the appreciated value of property is a function of the tangible contributions of each party, not the mere existence of the marital relationship. *See In re Marriage of Hass*, 538 N.W.2d 889, 893 (Iowa App. 1995). The IRA was established by virtue of James' prior employment at Calhoun-Burns. Furthermore, the IRA was worth $9,769.20 when it was created and was apparently worth the same when divided by the district court. We conclude Julie should not be awarded any portion of the IRA.

We further determine the court should not have equally divided the money market account. James brought into the marriage a savings account in the amount of $22,184.64. The account was held in his name only. There is no evidence Julie contributed to these savings any time prior to marriage. After the parties married, James used these funds to open a money market account in the names of James and

Julie. The account was held jointly by them until dissolution proceedings began, at which time James removed Julie's name from the account and transferred the entire account to his parents allegedly for repayment of college loans. The account, containing $25,893.53 at the time of dissolution, was divided equally between the parties as a marital asset.

Joint ownership of an asset originally owned by one party in a marriage cannot be demonstrated by merely affixing the other party's name to that asset. *See In re Marriage of Hoffman*, 493 N.W.2d 84, 89 (Iowa App. 1993) (overruling the holding in *In re Marriage of Butler*, 346 N.W.2d 45 (Iowa App. 1984), that "[a] transfer of property into joint tenancy where one party furnishes all the consideration is presumed to be a gift to the other party of one-half interest in the property"). Instead, there must be proof of a gift, demonstrated by "(1) donative intent, (2) delivery, and (3) acceptance." *Raim v. Stancel*, 339 N.W.2d 621, 623 (Iowa App. 1983). *See also In re Marriage of Hoffman*, 493 N.W.2d at 89 (noting that "the intent of the donor and the circumstances of the gift . . . control whether the gift . . . is to be set off in the dissolution"). Placing an asset owned by one party prior to marriage into a joint account does not alone demonstrate intent to gift one-half of that asset to the other party. "The donor must have a clear intention to pass all right, title, and dominion over the gift to the donee." *Raim v. Stancel*, 339 N.W.2d at 623.

The trial court concluded there was insufficient evidence to support James' contention he transferred the funds in the money market account to his parents with Julie's permission in order to satisfy a debt for college loans. While we agree with the

trial court's conclusion, we do not believe the money market account was properly classified as a marital asset. The account was established with James' personal funds accumulated prior to the marriage. The record discloses no evidence Julie contributed in any significant manner to the increase in the value of the account during this marriage of short duration. Finally, we do not believe the evidence demonstrates a clear intention by James to gift one-half the value of this asset to Julie. We conclude James should be awarded the money market account.

*IV. Attorney Fees.* An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *See In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). 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. *See In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981). We determine each party should pay their own appellate attorney fees. Costs on appeal are to be split equally between the parties.

**AFFIRMED AS MODIFIED.**