

IN THE COURT OF APPEALS OF IOWA

No. 1-434 / 10-1891
Filed August 10, 2011

**IN RE THE MARRIAGE OF CARLA J. RICHMANN
AND ADAM RICHMANN**

**Upon the Petition of
CARLA J. RICHMANN,**
Petitioner-Appellee,

**And Concerning
ADAM P. RICHMANN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Jackson County, Bobbi M. Alpers,
Judge.

Adam Richmann appeals from the economic provisions of the decree
dissolving his marriage to Carla Richmann. **AFFIRMED AS MODIFIED.**

Steven J. Kahler of Schoenthaler, Roberg, Bartelt & Kahler, Maquoketa,
for appellant.

Janette S. Voss of Remley, Willems, McQuillen & Voss, L.L.P., Anamosa,
for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

Adam Richmann appeals from the economic provisions of the decree dissolving his marriage to Carla Richmann. He and Carla both request appellate attorney fees. Upon our de novo review, we affirm as modified.

I. Background Facts and Proceedings.

Adam and Carla met in high school. They began dating off and on in approximately 1999. The two became engaged in December 2005, and they began living together in approximately September 2006.

Adam and Carla both have farming backgrounds. Both parties' parents farm and raise cattle. Adam and Carla worked on their respective families' farms growing up.

In 2004, Carla received her bachelor's degree from Brown University. She then attended University of Northern Iowa, receiving her master's degree in counseling in December 2007. Prior to graduating, she began working for Anamosa Community Schools as a high school counselor.

Adam graduated from Iowa State University in 2006 with a degree in agricultural studies and a minor in agronomy. After graduation, Adam began working for a hog producer. He also continued to work on his parents' farm.

In 2007, Adam began his own farming operation. He rented land from family members, initially planting corn and beans. Carla acknowledged she did not contribute anything toward the expenses of planting Adam's 2007 crop. Adam also continued to help out with his parents' farm. In exchange for Adam's labor, Adam was permitted to use his parents' farm machinery without charge.

Additionally, in 2007, Adam's father gave Adam 2604 bushels of soybeans valued at \$16,926 in exchange for Adam's labor on his parents' farm. Adam testified that the soybeans given to him by his father were sold during the spring of 2007.

In March 2007, Adam and Carla agreed to purchase eleven head of registered bred heifers from Carla's parents for a total of \$13,200. Carla's father told Adam and Carla they could pay him back for the cattle in a year, after their first calf crop had sold. The cows were, as agreed, delivered to Adam and Carla in May 2007. The cows were kept at Adam's parents' farm, and Adam's parents covered the expenses associated with storing and feeding the cattle as another form of payment to Adam for his working on their farm.

Adam and his father initially banked together. Their January 2007 bank statement showed they shared a checking account, a money market account, and a certificate of deposit. By the end of August 2007, the money market account and the certificate of deposit were cashed out or closed, and the proceeds from those accounts were deposited into the checking account. On August 30, 2007, Adam and his father's reward checking account had a balance of \$31,284.42. Adam always deposited all of his grain sales checks into his checking account.

Adam and Carla were married on September 1, 2007. At that time, Carla had a car loan with a balance of \$9411.52 and over \$40,000 in student loans. Adam added Carla to the joint checking account, and Adam's father was removed from the account. Carla acknowledged there was around \$31,000 in

the account when she was added. Adam continued to use the account for his farming operation, having farm income deposited and expenses withdrawn from the account. Carla's monthly paycheck was also deposited in the account, commingling the funds. Both used the account to pay for everyday expenses such as payment of utility bills and groceries. There was no separate accounting beyond the transaction descriptions on the bank statements.

Adam's 2007 crop was harvested after the parties' wedding. Carla acknowledged she was not involved in the harvest of the 2007 crop. However, all of the sales from the 2007 crop were deposited into the parties' joint checking account. Additionally, all of the prepaid expenses for the 2008 crop were paid out of the joint checking account at the end of 2007. Carla's father was also paid \$13,200 from the joint checking account in December 2007 for the cattle Adam and Carla took possession of in May 2007.

As part of the farming operation, Adam consulted Kent Ruppert, a consultant with Mississippi Valley Farm Business Association. Ruppert had prepared Adam's father's and Adam's taxes in the past. In approximately January 2008, Ruppert met with Adam to begin preparing his 2007 net worth statement. The net worth statement was based upon figures provided to Ruppert by Adam; Ruppert did not see the supporting documentation to verify Adam's figures. Adam's 2007 net worth statement stated that as of January 1, 2007, Adam had cash and bank accounts equaling \$46,000 and a crop inventory on hand in the amount of \$16,926, totaling \$62,926. The statement further stated that as of December 31, 2007, Adam had cash and bank accounts equaling

\$51,971, a livestock inventory of \$5000.05, crop inventory on hand of \$78,775.10, investment in growing crop of \$35,653, and breeding livestock valued at \$8800, for a total farm net worth of \$180,199.15.

In February 2008, Adam and Carla filed a joint 2007 tax return. A Schedule F form for reporting a profit or loss from farming was filed along with the return. No expenses for machinery use or rent were reported on the tax return. An expense of \$4500 was reported for rent or lease of "other (land, animals, etc.)."

In 2008, Adam began using a computer accounting program recommended by Ruppert to track his income and expenses. Adam reconciled his bank account statement with the program every month, recording all transactions in the program. In May 2008, Carla's car loan was paid in full. By June 2008, the majority of Carla's student loans had been paid off. Both debts were paid from the parties' joint checking account.

Adam testified that in 2008, his father was in need of money. He testified that he entered into a verbal agreement with his father to lease the use of his father's farming machinery based upon his father's actual cost per acre. Adam testified that he never told Carla about the agreement. He also testified that he and his father agreed in 2009 for Adam to pay a "finishing expense" for the feeding of Adam and Carla's cattle located on Adam's parents' farm.

In early 2009, Ruppert created Adam's 2008 net worth statement using the data Adam entered into the program. The 2008 net worth statement, which included a "Year End Detail Report," was much more detailed than the 2007

statement. The 2008 net worth statement does not expressly show a machinery rental cost; however, it does reflect a short-term loan for \$31,687.50 with Richmann Family Farms, Adam's parents' farming operation. Adam testified that this loan was actually the machinery rental cost to Adam's parents. Additionally, Adam testified that his beginning January 1, 2008 crop inventory values did not match his ending December 31, 2007 crop inventory values because the grain storage facility had made errors and the 2008 net worth statement made the correction.

In February 2009, Adam and Carla filed their joint 2008 tax returns. The 2008 farming profit and loss statement listed no expense for machinery use or rent. An expense of \$13,253 was reported for rent or lease of "other (land, animals, etc.)."

On September 24, 2009, Carla and Adam separated. At that date, the joint checking account showed a balance of \$68,567.83. On October 1, 2009, Adam withdrew \$62,029.12 from their checking account. On October 9, 2009, Carla filed her petition of dissolution.

Adam called Ruppert for financial advice after the parties' separation. Ruppert and Adam met in early 2010 to discuss Adam's 2009 taxes. Ruppert recommended Adam prepay farm expenses for the following year and buy equipment to lower his tax bill because Adam was showing "a fair amount of income."

Adam's 2009 net worth statement still showed a short term loan with Adam's parents farming operation on the books for \$31,687.50. The 2009 "Year

End Detail Report” attached to the net worth statement reported a machine hire expense to Adam’s father on December 31, 2009, for \$44,200. The report also showed an expense of \$6045 owed to Adam’s father for a “feed/grain expense” for Adam and Carla’s cattle kept at Adam’s parents’ farm. Adam testified he paid the \$31,687.50 amount in June 2010 and he paid the \$44,200 amount on December 31, 2009. Adam testified he paid the feed/grain expense to his father on December 31, 2009, and that this was the first time he had paid his father for this expense. Adam filed his 2009 tax return separately, and for the first time, he reported a machinery charge on his taxes in the amount of \$44,200. An expense of \$64,745 was reported for rent or lease of “other (land, animals, etc.)”

Trial on the dissolution was held on August 30, 31, and September 1, 2010. Carla submitted a “distribution scenario” setting forth how she thought the parties’ assets and liabilities should be divided. Her scenario calculated the value of the stored and sold 2009 grain to be \$161,289.91, and the value of the 2010 sales of the 2009 grain to be \$145,785.50. She admitted there may have been “double-dipping” in her accounting for the valuation of the stored 2009 crops, in that some of those crops may have been sold in 2010 and accounted for in her 2010 grain sales analysis. Additionally, her scenario listed the estimated value of the livestock in Adam’s possession to be \$58,852, based upon the expert opinion of Glen Swanson, including the valuation of \$5252 for the fat cattle sold by Adam in March 2010. The scenario also listed the value of the one cow she had in her possession of \$800.

Conversely, Adam asserted his net worth statements should be utilized for determining his premarital assets and for determining values of his farming assets. Adam argued that the \$62,926 beginning January 1, 2007 net worth stated on his 2007 net worth statement should be set aside to him as a premarital asset. Additionally, Adam asserted the December 31, 2007 net worth valuation, which included the values of livestock, bank accounts, crop inventory on hand, and investment for the 2008 crops, be awarded to him as premarital assets. Adam testified that in March 2010, he sold five fat cattle for \$5252 and the proceeds were deposited in the joint checking account. Adam asserted the valuation of the livestock should be based upon the numbers stated on his 2009 net worth statement for the end of the year. Adam and Carla's father both testified that the two bulls with Adam and Carla's cattle had been loaned to them by Carla's father. However, Carla testified she and Adam owed her father \$3600 for the two bulls. Adam agreed to return the bulls to Carla's father.

Ruppert testified that the net worth statement was an analysis tool for farmers to use to get a handle on their farming operation. Ruppert also testified that the tax return information may not be exactly reflective of the net worth statement in the detail that he was provided. He testified that on a net worth statement, there is really no income shown, just differing inventory levels from one time to the next.

Ruppert also testified that he used the Iowa State University Extension Office closing inventory valuations for valuing the farm's assets, including crops and livestock stated on the net worth statements. He testified that he did not

take into account whether the cattle were purebred Angus or not when valuing the cattle. He testified that there was discretion in determining the livestock's valuation from the closing inventory valuations.

Carla called Glen Swanson, a farmer raising cattle and a member of the Cedar County Cattleman's Association, as an expert witness regarding the value of the parties' livestock. Adam objected to Swanson's appraisal of the livestock, asserting the expert was not disclosed during the discovery process and was therefore untimely. Carla asserted the appraisal was not completed sooner because she hoped there would be a settlement in the case and she wanted to get a valuation as close to the date of trial as possible. The court overruled Adam's objection and allowed Swanson's appraisal and testimony.

Swanson testified he went to the pasture where some of Adam and Carla's cattle were held, and he observed two bulls, twenty cows, and nineteen calves. He testified he estimated the cattle's weight, but testified you "get the knack of it if you've been around it." He admitted he "could be off 100 pounds. . . . [B]ut if you go out and look at them, I would say that they're in that vicinity." He testified the twenty cows would bring \$1200 a head. He testified the bulls were each worth \$2000. He testified that he guessed fifteen of the calves were "in the neighborhood" of 400 pounds," and he estimated their value at \$500 to \$600. He estimated three of the 2008 calves would each bring \$450 to \$500 and the smaller 2008 calf would bring \$400. He estimated the fourteen calves located at Adam's parents' farm weighed about 1050 pounds and believed they would bring \$1050 a head. He based his estimates on what he has observed

values to be placed on cattle and based upon commercial cow prices going in the sales barn. The total valuation of the livestock was estimated to be \$58,852 by Carla, based upon Swanson's estimates.

On November 2, 2010, the district court entered its decree dissolving the parties' marriage. The court found "Carla's analysis and argument for division of the farm property is more convincing than that presented by Adam and her position is adopted by the court." The court set aside as premarital assets Adam's life insurance policy, valued at \$2061, and his Roth IRA, valued at \$2409. The court then distributed the parties' assets and liabilities as follows:

ASSETS:	ADAM	CARLA
HONDA CRV		\$9,000.00
F-150 TRUCK	\$24,500.00	
ROTH IRA		\$1,269.61
ROTH IRA	\$1,000.00	
CHECKING	\$7,948.33	
SAVINGS ACCOUNT		\$738.96
IPERS		\$4,336.79
DEBT PAYMENT FOR CAR LOAN		\$7,800.00
DEBT PAYMENT FOR STUDENT LOANS		\$43,772.00
CHECKING FUNDS REMOVED BY ADAM	\$62,029.12	
LIVESTOCK	\$58,852.00	
FARM EQUIPMENT	\$10,757.00	
2009 GRAIN STORED AND SALES	\$161,289.91	
2010 GRAIN SALES OF 2009 GRAIN	\$145,785.50	

TOTAL: \$472,161.86 \$66,917.36

LIABILITIES:	ADAM	CARLA
PAYMENT FOR TWO BULLS	\$3,600.00	\$0.00

TOTAL: \$3,600.00 \$0.00

ASSETS LESS LIABILITIES TOTALS:	ADAM	CARLA
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\$468,561.86 \$66,917.36

The court found the difference between the assets distributed to the parties was \$401,644.50. Dividing \$401,644.50 by two, the court found Adam should pay Carla \$200,822.25 to equalize the distribution of marital property between the parties.

Although the court's ruling found "Adam will receive the proceeds from the March 15, 2010 sale of five fat cattle (\$5252). . . . Carla will receive the one cow at her parents' place (\$800)," the court's final calculation did not include or deduct those figures.

Adam now appeals. Adam and Carla both request appellate attorney fees.

II. Scope and Standards of Review.

An action for dissolution of marriage is an equitable proceeding, so our review is de novo. Iowa R. App. P. 6.907; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). However, we recognize the district court was able to listen to and observe the parties and witnesses. *In re Marriage of Zebecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Our determination depends on the facts of the particular case, so precedent is of little value. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995).

III. Discussion.

On appeal, Adam challenges the court's ruling on the property subject to division, the values assigned to various properties, and the division of assets. Both Adam and Carla request appellate attorney fees. We address their issues in turn.

A. Premarital Assets.

Iowa Code section 598.21(5) (2009) requires the court to divide "all property, except inherited property or gifts received by one party" equitably between the parties. "This broad declaration means the property included in the divisible estate includes not only property acquired during the marriage by one or both of the parties, but property owned prior to the marriage by a party." *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005) (citing *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994)).

Premarital property is not set aside like gifted and inherited property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). The district court should not separate a premarital asset from the divisible estate and automatically award it to the spouse who owned it prior to the marriage. *Fennelly*, 737 N.W.2d at 102; *Sullins*, 715 N.W.2d at 247. Rather, property brought into the marriage by a party is merely a factor among many to be considered under section 598.21(5). *Schriener*, 695 N.W.2d at 496. "This factor may justify full credit, but does not require it." *Miller*, 552 N.W.2d at 465. Other factors under section 598.21(5) include the length of the marriage, contributions of each party to the marriage, the age and health of the parties,

each party's earning capacity, and any other factor the court may determine to be relevant to any given case. See *Fennelly*, 737 N.W.2d at 102.

1. Duration of Marriage.

Adam first argues the court failed to take into account the short duration of the parties' marriage. The court clearly noted in its decree the short duration of the parties' marriage, and it correctly considered the length of the marriage as a factor. We find no error here.

2. "\$62,690.00" in Premarital Assets.

Adam contends the district court failed to set aside the value of his premarital property, asserting he "brought \$62,690.00 of premarital assets into the marriage."¹ He argues that when he started his farming operation on January 1, 2007, he had a net worth of \$62,926.² As evidence, Adam submitted

¹ We note many portions of Adam's argument section in his brief contain no citation to the record or authority as required by Iowa Rule of Appellate Procedure 6.903(2)(g)(3), making it very difficult to follow his arguments.

² This assertion is set forth in Adam's brief in the statement of facts section, in which Adam does provide cites to the record. However, the cites he does provide are listed in a string at the end of each paragraph rather than following each proposition. Although this is not a direct violation of our rules, see Iowa Rule of Appellate Procedure 6.903(2)(f) ("All portions of the statement shall be supported by appropriate references to the record or the appendix in accordance with rule 6.904(4)."), given this court's high volume of appeals to review and limited resources to do so, it is much more accommodating to provide a cite following each proposition. Pinpoint cites would also be helpful. Citing to all pages of a nineteen- or twenty-nine-page financial document forces us to plow through every page of the document in order to hopefully find the kernel of information appellant represents is there. Further, while we appreciate that Iowa Rule of Appellate Procedure 6.904(4)(b) requires the parties to "replace references to parts of the record with citations to the page or pages of the appendix at which those parts appear," when referring to the transcript, it would be most helpful that the pages and lines from the transcript are also cited, as is required for proof briefs. See Iowa R. App. P. 6.904(4)(a). Appellant's brief has numerous multiple-page citations to the appendix, *i.e.*, "App. pp. 59-61." So, this single citation to three pages of appendix, consisting of condensed transcript (see Iowa Rule of Appellate Procedure 6.803(2)(f) and 6.905(7)(f)), requires reading twelve pages of transcript to locate the matter appellant wishes us to find. We realize this is a *de novo* review case and we could

his 2007 net worth statement stating that as of January 1, 2007, he had cash and banking accounts equaling \$46,000 and soybeans in storage worth \$16,926, all totaling \$62,926. The statement does not break down the \$46,000 into its parts, and Ruppert, the preparer of the net worth statement, testified that the \$46,000 figure was arrived at by Adam giving him “a number. I mean, it may not have been physical proof.” Nevertheless, Adam states that amount includes his “money market account, a checking account, a certificate of deposit, a Roth IRA, and the cash value of his whole life insurance policy.”

a. Roth IRA and Cash Value of Insurance Policy.

It is clear the district court set aside the value of Adam’s Roth IRA and the cash value of his life insurance policy as premarital assets. Thus, to include those amounts in the \$62,690 Adam asserts the court failed to award him would double-dip. We accordingly find no error by the court on this issue.

b. Bank Accounts.

Adam provided copies of various 2007 bank statements. Adam testified that his certificate of deposit and money market account had been closed prior to his and Carla’s wedding, with the proceeds of those accounts being deposited into his checking account. Thus, the court correctly did not include those accounts as premarital assets to be set aside for Adam.

Adam’s August 30, 2007 (the day before the wedding) bank statement shows the balance of his checking account to be \$31,284.42. Carla acknowledged the account had about \$31,000 in it when she was added to the

graze through the entire record on our own, but it would be of great assistance to be specifically directed to the pertinent parts of the record.

account. Considering the factors set forth above, we find that this amount should have been set aside as a premarital asset for Adam.

c. 2006 Soybeans.

The final amount asserted to be a premarital asset contained within Adam's asserted \$62,690 amount is the \$16,926 valuation of the 2006 soybeans. Upon our review, we find that the \$16,926 value of Adam's soybeans should not be set aside as a premarital asset. Adam acknowledged he sold the soybeans in the spring of 2007 and deposited the proceeds into his checking account. Thus, Adam's checking account, the balance of which we have awarded to Adam as of August 30, 2007, would already account for the proceeds from the sale of the soybeans, and to count the value of the soybeans before sale would double-dip. We therefore find the court did not err in not setting aside the \$16,926 amount asserted by Adam for 2006 soybeans.

We conclude the \$31,284.42 balance of Adam's checking account on August 30, 2007, should have been set aside a premarital asset, along with the valuations for Adam's Roth IRA and his life insurance policy that were correctly set aside by the district court.

3. 2007 Crops as Premarital Assets.

Adam next asserts the district court erred in failing to set aside to him the value of the proceeds from the 2007 crops as his separate property. He asserts the value stated on the 2007 net worth statement for his crop inventory on hand for the end of the year, \$78,775.10, should be awarded to him as a premarital asset. We agree.

Carla acknowledged she did not contribute to the 2007 crop expenses. She also testified she was not involved in the harvest of the 2007 crop. We find, considering the relevant factors set forth above, that the \$78,775.10 valuation of the crop inventory on hand at the end of 2007 should have been set aside as a premarital asset for Adam.

4. 2007 Livestock as Premarital Assets.

Adam next asserts the district court erred in failing to set aside the value of livestock he purchased after the marriage. He asserts the livestock was purchased with premarital assets. We disagree.

The testimony at trial was that Carla's father agreed to sell Adam and Carla the livestock, to be paid a year later, after the first calf crop. The cattle were delivered to both Adam and Carla in May 2007, and Adam paid for the cattle in December 2007 after the parties were married. We agree with the district court that these cattle were not a premarital asset of Adam's and find no error on this issue.

5. Net Worth of the Farming Operation as of January 1, 2008.

Adam argues the district court erred in not setting aside to him the net worth of his farming operation as of January 1, 2008, as stated on his 2008 net worth statement, as his premarital property. We note that at trial, Adam specifically requested the court use the December 31, 2007 ending net worth valuation stated on his 2007 net worth statement. In any event, we have previously awarded Adam the balance of the checking account the day prior to the parties' marriage and the value of the crop inventory at the end of 2007, and

we have found he is not entitled to the value of the livestock as a premarital asset. The only remaining amount included in the net worth valuation not previously addressed is the amount stated for his investment in the 2008 crop, stated to be \$35,653.

The testimony at trial was that the prepaid farm expenses in 2007 for the 2008 crop were made at the end of 2007, after the parties were already married. Considering those factors set forth above, we conclude to further set aside those amounts paid towards the 2008 crops during the parties' marriage would be unfair, having already set aside the valuation of the 2007 crops and balance of the checking account prior to the parties' marriage. We therefore find no error on this issue.

B. Values Assigned to Property.

“Although our review is de novo, we ordinarily defer to the trial court when valuations are accompanied by supporting credibility findings or corroborating evidence.” *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999); see also *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). “Ordinarily, a trial court’s valuation will not be disturbed when it is within the range of permissible evidence.” *In re Marriage of Wiedemann*, 402 N.W.2d 744, 748 (Iowa 1987).

1. Gross Proceeds as an Asset.

Adam asserts the district court erred in following Carla’s proposed distribution scenario because Carla only listed gross proceeds in determining the value of the farm without deducting any farming expenses. We disagree.

There was testimony questioning many of Adam's so-called expenses in 2008 and 2009. Adam admitted he verbally agreed in 2008 to pay his father money for use of his farming machinery when he had been permitted to use the equipment in exchange for his labor in the past. However, he did not list this expense on his 2008 tax return. He did not pay the alleged rent until after he and Carla had separated in 2009. Adam also admitted he never informed Carla of the alleged verbal agreement. Additionally, Carla questioned Adam's agreement with his father to pay for finishing their cattle, an expense paid for the first time after Carla and Adam's separation. Finally, a comparison of the 2008 and 2009 Schedule F forms show an increase in rental expenses of over \$50,000. The testimony at trial was that Adam rented the majority of his farmland from his family. Upon our review, we find the district court's use of gross proceeds to be within the range of permissible evidence. We find no error on this issue.

2. Flawed Calculation of Gross Proceeds.

Adam contends the district court erred in following Carla's asserted valuation of 2009 grain sales and storage amounts in 2009 and 2010. Carla's "2009 Grain Sales of 2009 Grain Post-Separation" asserted Adam held 10,390.05 bushels of corn in storage, valued at \$31,170.15, and 3822.98 bushels of soybeans in storage, valued at \$33,642.22. She also set forth a valuation for the "2010 Sales of 2009 Grain." At trial, Carla testified that it was possible that some of the 2010 sales of 2009 grain included the amounts set forth in the 2009 grain sales document as stored grain. The district court determined Carla's

valuations were correct and utilized her valuations. On appeal, Adam asserts that Carla's valuations did double-dip. Upon our review, we agree.

Adam's 2009 net worth statement states that as of December 31, 2009, Adam had 39,562 bushels of corn and 3822 bushels of soybeans on hand. Those same numbers are reported as Adam's beginning year crop inventory on hand on his 2010 net worth statement. Adam's 2010 "Year End Detail Report" shows grain sales from February 2010 to July 2010, totaling 33,511.13 bushels of corn and 5722.98 bushels of soybeans sold. Based upon the dates, the grain sold had to be from a prior harvest. Thus, to include the valuation of those amounts in storage at the end of 2009 and the valuation of the sale of those same crops sold in 2010 would double dip. Accordingly, we find Carla's "2009 Grain Sales of 2009 Grain Post-Separation" must be modified.

Subtracting the number on hand at the end of 2009, 39,562 bushels of corn, minus the 33,511.13 bushels sold, we find only 6050.87 bushels of corn should have been counted in the 2009 value of corn on hand. Because the corn was valued at three dollars a bushel, we reduce the amount of the value of the corn in storage from \$31,170.15 to \$18,152.61. Adam sold all of the soybeans he had on hand at the end of 2009 in 2010. We therefore reduce the value of \$33,642.22 of soybeans on hand at the end of 2009 to zero, because the value of the beans is accounted for in the 2010 sales. Accordingly, we modify the district court's finding of \$161,289.91 for the value of the 2009 grain stored and sold to \$114,630.15.

3. \$62,000 from Joint Checking Account.

Adam next argues the court erred in distributing “non-existent cash assets” when it attributed the \$62,029.12 Adam took from the parties’ joint checking account in October 2009 as an asset. He asserts that Carla admitted he took the funds for his farming operation. As best we can tell from the financial documents provided, we believe the record indicates the funds were used to pay 2009 farm expenses. Accordingly, we find the funds removed from the checking account should not have been considered in making the property division, and we modify the district court’s finding in that regard.

4. Livestock Valuation.

Adam argues the district court erred in allowing Glen Swanson to testify as an expert witness when Carla failed to disclose him as an expert during discovery. Alternatively, Adam argues the court erred in using Swanson’s valuations instead of the valuations stated on his net worth statement. Our review of this ruling is for an abuse of discretion. *Milks v. Iowa-Oto Head & Neck Specialists, P.C.*, 519 N.W.2d 801, 805 (Iowa 1994).

Iowa Rule of Civil Procedure 1.508(3) requires supplementation of discovery responses concerning the identity or substance of expert testimony at least thirty days before trial. It is clear Carla did not meet this deadline. However, her noncompliance does not mandate exclusion of the expert testimony; the rule explicitly affords the court discretion to determine whether noncompliance should result in exclusion. See Iowa R. Civ. P. 1.508(3).

Although the district court did not expressly explain its rationale for allowing Swanson's testimony, we find no abuse of discretion upon our review. The valuation of the livestock was clearly an issue known to the parties, and Adam should have expected an expert in this type of case. Moreover, Adam presented his own evidence of the valuation of the livestock and was able to fully cross-examine Swanson at trial. We discern no abuse of discretion in the court's ruling on this issue.

Turning to Adam's alternative argument, he asserts his valuation from his 2009 end-of-year figures on his 2009 net worth statement should be used as the valuation of the livestock. We find the district court's use of Swanson's estimates within the range of permissible evidence. However, we agree the district court erred in including the value of the two bulls in the inventory and the alleged debt owed to Carla's father for the bulls. Both Adam and Carla's father testified the bulls belonged to Carla's father and they should be returned to Carla's father. Additionally, we agree that the district court erred including the valuation of the five fat cattle sold in 2010, as the proceeds were deposited into Adam's checking account and would have been accounted for there. Finally, we agree the district court erred when it failed to include the parties' cow at Carla's parents' farm, valued at \$800, as an asset of Carla's. We therefore modify the district court's valuation of the livestock held by Adam from \$58,852 to \$49,600. We also modify the district court's valuation to include an \$800 livestock asset against Carla.

C. Adam's Other Arguments.

We have considered all of the issues raised in Adam's brief. Those not specifically addressed are without merit.

D. Attorney Fees.

Both Adam and Carla request an award of appellate attorney fees. Appellate attorney fees are not a matter of right but rest in this court's discretion. See *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Although we find the district court erred in its various calculations in the decree, we nevertheless decline to award appellate attorney fees in this case to Adam. We also decline Carla's request.

IV. Conclusion.

Based upon the foregoing, we modify the district court's valuations of assets and liabilities as follows:

ASSETS:	ADAM	CARLA
HONDA CRV		\$9,000.00
F-150 TRUCK	\$24,500.00	
ROTH IRA		\$1,269.61
ROTH IRA	\$1,000.00	
CHECKING	\$7,948.33	
SAVINGS ACCOUNT		\$738.96
IPERS		\$4,336.79
DEBT PAYMENT FOR CAR LOAN		\$7,800.00
DEBT PAYMENT FOR STUDENT LOANS		\$43,772.00
PREMARITAL BANK ACCOUNT FUNDS	-\$31,284.42	
LIVESTOCK	\$49,600.00	\$800.00
FARM EQUIPMENT	\$10,757.00	
2007 PREMARITAL CROP INVENTORY	-\$78,775.10	
2009 GRAIN STORED AND SALES	\$114,630.15	
2010 GRAIN SALES OF 2009 GRAIN	\$145,785.50	
TOTAL:	\$244,161.46	\$67,717.36

LIABILITIES:	ADAM	CARLA
	\$0.00	\$0.00
TOTAL:	\$0.00	\$0.00

ASSETS LESS LIABILITIES TOTALS:	ADAM	CARLA
	\$244,161.46	\$67,717.36

The difference between the assets distributed to the parties is \$176,444.10. Dividing that number by two, we determine Adam must pay \$88,222.05 to Carla in order to equalize the distribution of marital property between the parties. We accordingly affirm the district court's decree as modified. Costs are assessed to Carla.

AFFIRMED AS MODIFIED.