IN THE COURT OF APPEALS OF IOWA

No. 2-166 / 11-0169
Filed August 8, 2012

**IN RE THE MARRIAGE OF AMY K. KINSER
AND MARK D. KINSER**

Upon the Petition of

AMY K. KINSER,
Petitioner-Appellant/Cross-Appellee,

And Concerning

MARK D. KINSER,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Mark and Amy Kinser appeal the district court's division of property in a decree dissolving their marriage and post-trial modification of the decree. **AFFIRMED AS MODIFIED.**

Becky S. Knutson of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellant.

Michael P. Holzworth, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Both Mark and Amy Kinser challenge the decree dissolving their marriage and the post-trial modification of the decree. At trial, the parties presented evidence of the value of various assets obtained before and during the marriage, including buildings and other parcels of real estate, Mark's businesses, and personal property. Mark contends the district court's asset valuations are based on uncorroborated evidence. Amy challenges the district court's division of the estate as inequitable.

After reviewing the district court's credibility findings and itemized values, we find its determinations in the supplemental order to be within the permissible range of record evidence, but we do correct some accounting errors. Because of Amy's financial contributions to their thirteen-year marriage, we find awarding the T. Rowe Price, the New Asia, and the American Century accounts to her will represent a more equitable distribution of the marital estate. We affirm the district court's order that Mark pay $5000 in attorney fees for the trial, we award Amy appellate attorney fees.

I. Background Facts and Proceedings

The couple's thirteen-year marriage began in 1997. Amy, then thirty-three, had a seven-year-old daughter from a previous marriage. Mark was thirty-five, and had no children. Mark was—and continues to be—self-employed. He began Kinser Construction, initially acting as a subcontractor to other home builders. He transitioned into acting as a general contractor for residences and investing in real estate lots. During the marriage Mark built a house on one of

the lots, eventually selling the property for a loss. He no longer works construction, but still owns the vehicles and equipment, and a parcel of property in Johnston, Iowa. Mark has invested some of his earnings into three separate investment accounts he owned at the time of marriage, and also purchased a life insurance policy.

During the marriage, Mark and Amy lived in a three-bedroom apartment located in a large Morton building, which also housed a machine shop, equipment, and offices. Mark purchased the building in Grimes shortly before marrying Amy, and constructed a large addition to it over the course of the marriage. The non-residential portion contained Mark's second business, Carroll and Kinser Racing Engines (Kinser Racing). Mark is now the sole owner of the business, which builds high performance racing engines. Kinser Racing initially built auto engines and raced vehicles, but has since moved into manufacturing boat racing engines. At the time of trial, the business owned various boats and racing motors. This business also provided recreation for Mark and Amy, who spent substantial time traveling around the Midwest, racing various vehicles and watercraft.

The parties disputed the value of Kinser Racing. Mark and Amy both hired appraisers to ascribe a value to the equipment, machinery, boats, and motors. But many items were never valued. Mark acknowledged he stores some equipment inside the business for others, and has no ownership in it.

During the marriage, Mark and two other friends also purchased a commercial building and adjacent lots in the Ozarks. They purchased the real

estate with intentions to renovate the building and construct new houses, ultimately putting each on the market. Mark and his father own ARM, LLC, a business consisting of a leased building and land located next to the Grimes residence.

Amy worked full-time before and during the marriage. She currently works in the human resource department at Bob Brown Chevrolet, earning $67,000 annually. The district court found that Amy "contributed her income to the support of the family and accumulated little additional retirement savings." She paid for family health insurance, clothing, food, vacations, and improvements to the family residence. Amy owned an acreage in Ankeny which she sold, investing the proceeds in an ESOP (employee stock ownership plan) she had established before the marriage. She also purchased a condominium at the Lake of the Ozarks with premarital funds, which the couple would use while boat racing in Missouri. The couple possessed additional assets at the time of trial which we do not need to mention for purposes of this appeal.

Amy filed for dissolution on September 8, 2008. The court held trial on February 4–5, and April 12–13, 2010. On July 29, 2010, the court dissolved the marriage. In its decree, the court highlighted the difficulties in ascertaining the overall value of Mark's businesses. The court noted Mark accumulated substantial debt from unpaid income tax. Mark also owed real estate taxes on certain parcels of land, leaving parcels for tax sales, redemptions from tax sales, and the resulting excessive interest and penalties arising therefrom.

The decree divided marital assets between Mark and Amy, but did not include the court's valuation of each piece of property, nor did it include a net figure of assets and debts assigned to each party. The decree ordered Mark to pay Amy $62,500, which is one-half the value of the hull, drive, transmission, and two motors for the Scarab, a boat Mark disassembled before the dissolution decree. It also ordered Mark pay $20,000 for another boat motor, referred to as the Monument motor, and $33,418.33, which was one-third the value of the assets and tools of Kinser Construction, Kinser Racing, and a Bobcat skid loader. In total, Mark was to pay Amy the sum of $115,918.33. The decree did not disclose what factors influenced the property division, nor did it identify what appraisals or valuation methods the court found to be credible or persuasive.

On December 22, 2010, Amy filed a post-trial motion under Iowa Rule of Civil Procedure 1.904(2), disputing several aspects of the property distribution. On December 28, 2010, the court revised the dissolution, ordering Mark to pay Amy an additional $8000, representing an equal portion of cash in bank accounts or on hand, and $5000 to cover a portion of her attorney fees. The court also awarded Amy the entertainment center from the couple's residence.

Both parties filed timely appeals. Their initial briefs contain comprehensive arguments relating to many substantial assets within the court's property division. Because the decree did not account for itemized property values and the basis upon which the division was reached, each party requested we adopt their appraisals. Mark and Amy also disputed ownership of particular items.

On April 10, 2012, we issued a limited remand, ordering the district court to provide an item-by-item assessment of the value of all marital assets and debts. We also asked the court to include its findings regarding the credibility of the appraisals offered by the parties at trial. The district court entered a supplemental order on May 17—listing the property, its valuation, and the exhibit relied on to determine the value:

> Amy Kinser [p]roperty awarded:
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> The Lake of the Ozarks condominium property: $120,000 (Exhibit No. 42)
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> The jet skis and jet ski trailer: $6,600 (Exhibit No. 42)
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> Amy's pension account, profit sharing account, Premier Select and the ESOP accounts: $57,320 (Exhibit No. 42)
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> The 2006 GMC half-ton pick-up truck: $15,090 (Valuation by Mark Kinser and Exhibit No. 42)
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> The Ankeny acreage sale: $39,695 (Exhibit No. 42)
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> Any banking or savings accounts or securities currently in her name: $2,713.35 (Exhibit No. 42)
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> All jewelry in her possession: $3,000 (Exhibit No. 42)
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> Mark Kinser property awarded:
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> The property located at 10890 N.W. 54th Avenue, Grimes, Iowa, net value: $460,000 (Exhibit No. 42 and Patrick Schulte valuation and appraisal)
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> The property at 9600 Wickham Drive, Johnston, Iowa: $58,400 (Exhibit No. 42 and Mark Kinser's valuations and financials, and Exhibit B)
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> The 9517 Wickham property: $410,600 (Exhibit No. 32)
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> The KMB property at Lake of the Ozarks: $113,750 (Exhibit No. 42)
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> The T.P. Rowe Price account, the New Asia account, and the American Century account: $88,389 (Exhibit No. 42)
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> The 2006 Sierra pickup truck: $27,510 (Exhibit No. 38)
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> The 2004 Chevy work pickup truck: $16,485 (Exhibit No. 38)
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> The 1995 dump truck: $6,500 (Exhibit No. 41)
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> Any property associated with Kinser Racing: $163,975 (Exhibit No. 21)
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> Any property associated with Kinser Construction: $185,000 (Exhibit No. 6A)
>
> The Larry Smith boat, motors, trailer, and outdrives: $311,730 (Exhibit Nos. 35 and 36)

Mark Kinser's ownership interest in ARM, L.L.C.: $140,000 (Exhibit No. K)

Any bank checking or savings accounts or security accounts currently in his name: $15,000 (Exhibit No. K)

Two Maynard Reese prints: value undeterminable

His mother's antique pine furniture: value undeterminable

Amy Kinser's Debts:

The Lake of the Ozarks condominium: $101,534.63 (Exhibit No. 41)

The 2006 Chevy pickup: $7,282 (Exhibit No. 41)

All credit cards in her name: $23,000 (Exhibit No. 42)

Mark Kinser's Debts:

The property at 10890 N.W. 54th Ave., Grimes, Iowa (Destination Drive): $73,000 (Exhibits A-E and W)

The Polk County property tax debt: $70,086 ((Exhibit No. B)

The First American Line of Credit Debt: $175,702 (Exhibit No. B)

The promissory note due to ARM, L.L.C.: $150,000 (Exhibit No. G)

The balance of the electric company debt: $8,686 (Exhibit No. B)

Real estate taxes owed on the Wickham lot: $3,688 (Exhibit No. B)

The Lake of the Ozarks Central Bank loan: $159,404.51 (Exhibit No. B)

The debt on the 2006 GMC pickup truck: $7,000 (Exhibit No. B)

Promissory note to Mary Lynn, L.L.C.: $25,307.03 (Exhibit Nos. L and L-2)

In its supplemental order, the court found the referenced exhibits and "any accompanying testimony supporting them as reliable and credible in determining the assets and debts of the parties."

Mark and Amy both submitted supplemental briefs in response to the district court's May 17 order. We now address the arguments contained in those briefs, as well as any previous contentions left unresolved by the district court's supplemental order.

II. Scope and Standard of Review

We review dissolution decrees de novo. Iowa R. App. P. 6.907; *In re Marriage of Gensley*, 777 N.W.2d 705, 714 (Iowa Ct. App. 2009). We give weight to the district court's findings, especially to credibility determinations. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Hansen*, 733 N.W.2d 683, 691 (Iowa 2007). Because we accord the district court considerable latitude in its property divisions, we disturb a ruling only when the result is inequitable. *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005). Our deference stems from the district court's firsthand perspective in viewing the witnesses and hearing the evidence. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

III. Analysis

After receiving the supplemental order, Amy does not dispute the values that the district court assigned to the parties' debts and assets. Her main complaint on appeal is that the property division has resulted in Mark receiving "a disproportionate share of the parties' total accumulated wealth." She requests additional cash or other assets be shifted to her to make a more equitable distribution of property.[1] She also contests the court's awarding of a pine hutch and two paintings to Mark.

With the property values now established, Mark alleges the district court relied on uncorroborated and incredible evidence in making its determinations.

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[1] In her initial appellate brief, Amy speculated that the district court duplicated the value of the Ankeny acreage proceeds by listing both "The Ankeny acreage sale" and "Amy's pension account, profit sharing account, Premier Select and the ESOP accounts." Because the district court placed values on each in its supplemental order, it clarified that Amy's list of property awarded did not include any duplication with regard to the Ankeny acreage proceeds.

He also challenges the valuation of the Larry Smith boat, Amy's jewelry, and her credit card debt.

We first address Mark's arguments concerning the valuation of the property. We then turn to Amy's assertion that the overall division is inequitable. After determining whether Mark should gain the right of first refusal on Amy's Lake of the Ozarks condo, we consider whether an award of attorney fees is appropriate on both the trial and appellate level.

Iowa is an equitable distribution state. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Therefore, our courts equitably divide all property owned by the parties at the time of divorce except for gifts and inherited property received by one of the spouses. *In re Marriage of Keener*, 728 N.W.2d 188, 193 (Iowa 2007). The particular circumstances of each case drive what is fair and equitable. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 683 (Iowa 2005); *see* Iowa Code § 598.21 (2009) (listing factors to be considered by the courts). Property divisions do not have to be perfectly equal to be equitable. *Keener*, 728 N.W.2d at 193.

Before dividing the marital property, the district court must identify all assets held, and ascribe a value to each. *In re Marriage of Hagerla*, 698 N.W.2d 239, 333 (Iowa Ct. App. 2005) (requiring each asset to be valued as to the date of trial). Without a determination of the property's value, the court is without a basis upon which to equitably divide the estate. *Keener*, 728 N.W.2d at 193. As the fact finder, the district court is at liberty to reject or accept evidence relating to value. *In re Marriage of Richards*, 439 N.W.2d 876, 881 (Iowa Ct. App. 1989).

We will not disturb its valuation of an asset so long as the value falls within the range of permissible evidence. *Gensley*, 777 N.W.2d at 720.

A. Did the District Court Properly Assign Values to the Parties' Assets and Debts?

Mark disputes many of the district court's valuations of the marital assets and debts. He urges us to adopt his exhibits to determine the appropriate values.

After listing the value of each asset and debt in its supplemental order, the district court cited the evidence it deemed to be credible in arriving at that amount. We defer to the district court when its valuation of a particular asset is accompanied with supporting corroborative evidence or credibility findings. *See In re Marriage of Decker*, 666 N.W.2d 175, 180 (Iowa Ct. App. 2003).

For twelve entries in the revised disposition, the district court cited exhibit 42 as the basis for its valuations. Mark contends that because this exhibit is Amy's mediation proposal, it is simply a "wish list" and should not be treated as credible evidence. He considers the court's findings to be "uncorroborated and lacking credibility" in this regard.

We find Mark's argument to be unpersuasive for two reasons. First, the property values on exhibit 42 largely reflect separate evidence and exhibits already on record appraising the relevant assets. Rather than functioning as a "wish list," the exhibit acts in part as a recapitulation of argued values. Second, even where exhibit 42 would reflect Amy's own estimates, the district court is not restrained from considering them as an accurate value. *See Hansen*, 733

N.W.2d at 704 ("In ascertaining the value of property, its owner is a competent witness to testify to its market value.").

Mark specifically challenges whether the exhibit is credible evidence to support Amy's $23,000 in credit card debt. He argues that because Amy presented no evidence of this debt, exhibit 42 is uncorroborated and incredible evidence. Amy testified to owing $23,000 on a Chase credit card, a debt acquired largely during the marriage. Because Amy's sworn testimony serves as corroborating evidence, the district court arrived at a determination reflecting evidence presented at trial.

In its supplemental order, the district court determined the combined value of the Larry Smith boat, motors, trailer, and outdrives to be $311,730, based on exhibits 35 and 36. Exhibit 35 contains an estimate by Amy's expert, Matthew Smith, who valued the Larry Smith boat at $125,000. Exhibit 36 is an email concerning the cost of building two motors for a "36' Skater" boat, the final cost of which Mark estimated would be $176,500. Mark argues that because a Skater boat has a different value than the Larry Smith boat, we should reject the use of the amount and adopt Jeffery Hackman's $61,500 estimate as the value of the boat.

Mark does not argue that the combined value of the Larry Smith boat, motors, trailer, and outdrives are all inaccurate, but rather that the district court should not have used the email to determine the value of the boat. Nothing in the order suggests the court used the email to ascertain its value. To the contrary, because exhibit 35 is an appraisal of the Larry Smith boat alone, it

appears the itemized pricing for two motors assisted the court in determining the value of the multiple motors in Mark's business. In its post-trial order, the court ordered Mark pay $62,500, which it determined to be half the value of the Scarab's two motors. It also ordered he pay $20,000 to Amy, representing half the value of the "Monument" motor. Mark admitted owning a large motor and drive from the "Eliminator" boat, for a combined value of $50,230 as well.[2] Because these components fall into the category of the Larry Smith boat, trailer, motors, and drives, the court's combined valuation is within the range of evidence presented at trial. *See In re Marriage of Versluis*, 521 N.W.2d 760, 761 (Iowa Ct. App. 1994) (upholding district court's findings as to value of tools as within the permissible range of evidence).

Mark also contests the court's valuation of Amy's jewelry at $3000, as is reflected on exhibit 42. He references Amy's financial affidavit where she lists the value of her jewelry at $4000. Because both amounts appear on the record as appropriate jewelry valuations, we defer to the district court's determination as to which most accurately reflects its worth. *See Keener*, 728 N.W.2d at 194.

In addition, Mark argues that because the district court did not explain its reasoning supporting awarding an additional $8000 to Amy in its post-trial order, we should delete the required payment. In her post-trial motion, Amy argued that the decree failed to consider Mark's $15,000 cash on hand and $8000 in a bank account. The court then ordered "an additional cash award shall be made by the Respondent to the Petitioner representing an equitable portion of cash on hand

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[2] Mark valued the motor at $40,000, and Amy's expert valued the drive at $10,230.

or in bank accounts in the amount of $8000." Counter to Mark's argument, the district court explained the additional payment, and we will not disturb this distribution.

B. Did the District Court Equitably Divide the Marital Property?

1. Overall Property Distribution

In its supplemental order, the district court determined that the combined assets awarded to Amy were valued at $244,418.35 and the debt assigned to her was valued at $131,816.63—for a net value of $112,601.72. The district court determined that the combined assets awarded to Mark were worth $1,997,339 and debts were valued at $672,872.54—for a net value of $1,324,466.46. By ordering Mark to pay Amy a cash distribution of $115,918.33 in its initial decree plus an additional $8000 in its post-trial order, the court left Mark with $1,200,548.13 in net assets and provided Amy with $236,520.05 in net assets. Amy contends we should award her an additional equalization payment to balance the distribution of the marital estate.

While we do not disturb the district court's credibility findings for each asset and debt, we preliminarily correct a few scrivener errors. *See Hansen*, 733 N.W.2d at 703 (correcting an error in district court's distribution table to conform with equity). First, the district court includes the 9517 Wickham property—valued at $410,600—in assets awarded to Mark. In fact, this property was sold in 2009 for $335,000. Because he defaulted on the original mortgage, Mark took out a loan from his father's business, Mary Lynn, LLC, for $327,991 to pay it off. Mark applied the $302,800 in sale proceeds to the Mary Lynn note, which now has

$25,307 remaining to be paid. Although the district court properly included the balance of the note in Mark's liabilities, because the sale already took place before dissolution, the $410,600 should not have been included as one of Mark's assets.[3]

Second, the district court included half the value of the KMB commercial property at Lake of the Ozarks, but included the full value of the debt associated with the property. The district court found Mark's half interest in the property to be $113,750, according to Exhibit 42, which listed the total value of the property at $227,500. It used Exhibit B to determine the remaining debt on the property to be $159,404.51. Exhibit B actually lists Mark's debt to be $79,702, half of that assigned to him in the court's supplemental order.[4] We accordingly adjust the debt to reflect Mark's half-interest in the property.

Because the district court failed to include the $15,000 surrender value of Mark's life insurance policy he listed as an asset on Exhibit B, despite specifically mentioning the policy and its value in the initial dissolution decree, we add that amount to Mark's assets as well. While listing Amy's horse tack and trailer in its original dissolution, it neglected to include the asset and value in its amended order. Because evidence presented shows the value of the equipment at $1200, we add that amount to Amy's assets.

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[3] In her own calculation, Amy noted that the district court included this cost for an already-sold property, but did not include it in her proposed distribution.

[4] Exhibit 42 lists the corresponding half-interest in the KMB property debt to be $79,702 as well.

By implementing the district court's valuations, and amending the above-listed clerical errors we find the following amounts accurately reflect both parties' assets, debts, and overall distributions:

Mark's total assets: $1,601,739
Mark's total debt: $593,171
Equalizing and post-trial cash payments: $123,918.33
Mark's total property less debt and payments: $884,649.67

Amy's total assets: $245,618.35
Amy's total debt: $131,816.63
Equalizing and post-trial cash payments: $123,918.33
Amy's total property and amount received less debt: $237,720.05

Our law does not credit a party for the value of property he or she brings into a marriage; to the contrary, it is only a factor to consider along with the other relevant factors to determine an equitable property division. *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994) (citing Iowa Code § 598.21(1)(b)). In some instances, this factor could justify a full credit, but it does not require it. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996).

If there is a wide disparity between the value of assets each party owned at the time of marriage, "the length of the marriage is a *major factor* in determining the respective rights of the parties regarding such property at the time of dissolution." *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa Ct. App. 1995) (emphasis in original). And the claim of either party to the other's property owned prior to a relatively brief marriage is minimal at best. *Id.*; *see In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa Ct. App. 1998) ("Premarital property does not merge with and become marital property simply by virtue of the

marriage."); *In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa Ct. App. 1994) ("Property brought into a marriage by one party need not necessarily be divided.").

In considering which party receives the appreciated value of premarital assets, we consider the attendant circumstances of a marriage:

> There are several factors given special emphasis when determining an equitable division of property owned prior to the marriage and appreciated during the marriage. First, the "tangible contributions of each party" to the marital relationship are considered. Homemaking is considered a tangible contribution to a marriage. Looking to the tangible contributions prevents entitlement to appreciated property due to the mere existence of the relationship. Second, we look at whether the appreciation of the property is attributed to fortuitous circumstances or the efforts of the parties. Third, we look to the length of the marriage.

In re Marriage of Grady-Woods, 577 N.W.2d 851, 852–53 (Iowa Ct. App. 1998) (awarding premarital value of business to husband, plus eighty-seven percent of the $133,000 appreciation of husband's business, where wife made tangible contributions to the seven-year marriage, spending her salary on the marital relationship and being responsible for maintaining the home) (internal citations omitted). But we are also reminded:

> [M]arriage does not come with a ledger. Spouses agree to accept one another "for better or worse." Each person's total contributions to the marriage cannot be reduced to a dollar amount. Many contributions are incapable of calculation, such as love, support, and companionship. Financial matters must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

In re Marriage of Fennelly, 737 N.W.2d 97, 103 (Iowa 2007) (internal citations omitted). The *Fennelly* case involved parties whose fifteen-year marriage produced two children. *Id.* at 99. The husband brought into the marriage a

$12,000 asset that appreciated to $29,000 at the time of divorce, and the wife's premarital assets, valued at $25,645 before marriage, appreciated to $116,094. *Id.* at 103. Both parties worked outside the home, cleaned the house, cooked, and looked after their two children. *Id.* at 104. Considering the circumstances of the case, the court equally divided the appreciation of the parties' assets, holding that it is not appropriate "to emphasize *how* each asset appreciated—fortuitously versus laboriously—when the parties have been married for nearly fifteen years." *Id.* (emphasis in original).[5]

Both Mark and Amy brought assets into their thirteen-year marriage, though the value of Mark's property was likely greater than Amy's.[6] Amy held her ESOP account and horse riding equipment prior to marriage, while Mark owned multiple businesses, investments, and what would ultimately serve as the marital residence.[7] By her own admission, Amy chose not to heavily involve herself with Mark's businesses, and was not financially invested in them. Instead she held a full-time job before and during the marriage. The two made an effort to keep their finances separate. They kept their individual accounts and maintained no comingled funds. Amy purchased the Lake of the Ozarks condominium with her own means, while Mark's business bought some of the boats that the couple used for recreation.

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[5] By not overruling previous cases looking to the manner in which the value of premarital property appreciates, *Fennelly* demonstrates how various factors, depending on the circumstances of each case, dictate alternative estate distribution.

[6] Neither party presented evidence of premarital property value at the time of marriage.

[7] Mark launched his construction business just after high school and began building racing engines for clients in 1984—acquiring nearly all of the equipment in his shop before marrying Amy.

The district court's distribution attributed the substantial assets to the individual who owned them prior to marriage. But as noted in the district court's dissolution decree, "[d]uring the course of the parties' marriage, Amy contributed her income to the support of the family and accumulated little additional retirement savings." Amy paid for the family's health insurance, food, clothing, and some improvements to the family's residence. She also paid for vacations and assisted in Mark's business travels, paying for hotel rooms and helping prepare equipment for races. Amy's contributions allowed Mark to put his money toward additional investments, business opportunities, and retirement accounts of his own.

Amy correctly states that property to be allocated toward the divisible estate includes not only property acquired by either spouse during the marriage, but property owned before the union as well. *Fennelly*, 737 N.W.2d at 102. And while Amy's tangible contributions may not have directly increased the value of Mark's businesses, her financial and other intangible contributions to the thirteen-year marriage itself allowed the businesses the opportunity to grow. *See Miller*, 552 N.W.2d at 465. The district court recognized her efforts by awarding her a proportion of the businesses' value. Although the district court's division of assets and debts need not be equal to be equitable, *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999), we believe in this case that the lopsided nature of the distribution calls for some modification, especially considering the length of the marriage and Amy's contribution of her salary to the couple's daily living expenses.

In her supplemental brief, Amy requests a property equalization payment of $328,369.66. To satisfy this request, Amy specifically suggests we award her cash or, assets such as Mark's retirement accounts—valued at $88,389—and an additional cash payment to make a more equitable distribution between the two parties. In his supplemental response, Mark does not address Amy's request. Because these accounts will supply Amy with the retirement capital she otherwise could have saved during the marriage, and more equitably allocate the marital estate, we award the T. Rowe Price account, the New Asia account, and the American Century account to Amy.

We recognize that even when the retirement accounts are transferred to Amy's side of the ledger, a substantial disparity remains in the property distribution. The circumstances justify this disposition. Although the parties did not provide the precise value of Mark's businesses at the time of marriage, he testified he owned most of the equipment at that time. Our court has previously awarded the value of premarital property to a spouse when circumstances warrant as much. *See Grady-Woods*, 577 N.W.2d at 852–53 (awarding premarital value of business plus a percentage of business appreciation to party bringing business into marriage); *Miller*, 552 N.W.2d at 465 (awarding one-third of marital property to wife despite joint efforts of both spouses throughout marriage, based on the amount of assets husband brought into the nine-year marriage and tax consequences facing husband); *Hass*, 538 N.W.2d at 894 (approving of district court's factoring premarital value of property when dividing marital estate).

Without evidence in the record to show the premarital value of Mark's assets, we are unable to ascertain the precise property appreciation at the time of divorce. Nonetheless, we believe the district court's award to Amy, plus our transfer of Mark's retirement accounts to her side of the ledger, is supported by precedent. Similar to *Grady-Woods*, the marriage involved two independently established spouses with individual property, separate careers and no children in common. *See* 577 N.W.2d at 852. Like the husband in that case, Mark brought his businesses into the marriage as assets, and similar to the wife, Amy dedicated her income to the marital relationship and maintained the home. *Id.* at 853. Based on the circumstances at hand, the disparate asset division in *Grady-Woods* is equally appropriate here.

While remembering "marriage does not come with a ledger," we do not find an equal split of the marital estate as was ordered in *Fennelly* would be equitable in this case. *See* 737 N.W.2d at 104. In *Fennelly*, the court focused on a spouse's investment funds that appreciated $80,000 during the marriage, rather than a business that provided for a spouse's livelihood. *See id.* The dynamic in the marriage of Mark and Amy was unlike that in *Fennelly*. *See id.* Considering the characteristics and apparently disparate value of their premarital assets, as well as the independent role of each spouse in the marriage, we believe the district court's award to Amy, plus Mark's retirement accounts, results in an equitable property distribution in this case.

2. Award of Pine Hutch, Prints, and Entertainment Center

On appeal, Mark initially requested that two Maynard Reese prints be returned to him because they were acquired before the marriage. In her reply brief, Amy did not dispute returning the prints, but argues the district court should not have awarded Mark his mother's antique pine furniture because she believes they were a gift to her alone. Mark responds that the furniture is actually a family heirloom and that he should retain possession of it. In its supplemental order, the district court awarded the paintings and furniture to Mark, listing the value as undeterminable.

Our court previously explained some of the variables and general guidelines to determine who may properly receive tangible personal property:

> In general, gifts and inheritances should be permitted to remain with the intended recipient. Such intimate personal items as jewelry, clothing, and the like should also be permitted, as far as is reasonably possible, to remain with the person whose possessions they were during the marriage. Any item that is reasonably likely to possess far greater sentimental value to one party than to the other, such as jewelry [and] heirlooms . . . should remain, as far as is reasonably possible, in the possession of the party to whom the sentimental value is the greatest.

In re Marriage of Wallace, 315 N.W.2d 827, 832 (Iowa Ct. App. 1981). The district court appropriately determined the antique pine furniture remain with Mark.

In her supplemental brief, Amy disputes the award of the prints to Mark, and she also requests the entertainment center in the family home. Her argument regarding the entertainment center appears moot; the district court awarded it to her in its post-trial order. With regard to the prints, we defer to the district court's order that Mark retain them, especially considering Amy's

statement in her reply brief that "there is no dispute that Mark may have the prints."

C. Should Mark Gain the Right of First Refusal on Amy's Lake of the Ozarks Property?

In his initial brief, Mark asks that he be given the right of first refusal if Amy decides to sell the Lake of the Ozarks condominium. The district court refused his request. Amy believes Mark's aspiration is unrealistic, given his financial situation, and that the option would unnecessarily tie the divorced couple together into the future. She argues that because there is no family, sentimental, or business connection to the property, placing such a restriction on Amy's ability to transfer the property is not appropriate.

Under the same rationale, our supreme court has rejected the provision in a decree allowing a former spouse a right of first refusal over any properties not awarded to him for ten years following dissolution. *See In re Marriage of Webb*, 426 N.W.2d 402, 407 (Iowa 1988) (holding that because "[i]t is clearly the parties' desire to be restored to their separate and independent lives . . . we should so treat them as far as is possible including their status vis-à-vis one another in their chosen field"). We adopt this reasoning and deny Mark's request.

D. Should Amy Be Awarded Attorney Fees?

Mark contests the district court's post-trial order that he pay $5000 for Amy's attorney fees. He argues such an award is an abuse of discretion because Amy is in a better financial position to pay. Amy defends the award on the basis that Mark failed to produce discovery before trial, causing her to incur

additional costs. She also cites Mark's pre-trial noncompliance as grounds for awarding her appellate attorney fees.

An award of attorney fees rests within the district court's judgment, and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We exercise our own discretion when determining the propriety of awarding appellate attorney fees. *See In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). We consider the needs of the party requesting the award, the other party's ability to pay, and whether the requesting party was obliged to defend the trial court's decision on appeal. *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999).

Mark was uncooperative during the discovery process. He failed to respond to interrogatories propounded, despite multiple attempts by Amy's attorney to obtain the materials. Over the span of nearly one year, Amy filed two motions to compel and one motion for sanctions, each of which was granted by the court. In each ruling, the court ordered Mark pay the attorney fees Amy incurred in prosecuting those motions. Mark paid some but not all of these costs. In her post-trial motion, Amy requested the court enforce previous orders that Mark pay "all costs" for his failure to provide discovery. The court responded by ordering Mark pay $5000 in attorney fees.

Our supreme court has upheld such an award when one party is less than cooperative in producing discovery. *See In re Marriage of Crosby*, 669 N.W.2d 255, 259 (Iowa 2005) (affirming a district court's award of $5000 to account for attorney fees, based on other party's "lack of cooperation"). We do the same.

The district court did not abuse its discretion by ordering Mark pay Amy $5000 in trial attorney fees. We also award Amy $5000 in appellate attorney fees. *See Miller*, 552 N.W.2d at 465 (awarding $9000 in trial and appellate attorney fees based on property distribution in which payor spouse received a significantly greater amount of assets and his farm business income was greater than payee spouse's).

AFFIRMED AS MODIFIED.