

IN THE COURT OF APPEALS OF IOWA

No. 3-478 / 12-1941
Filed June 26, 2013

**IN RE THE MARRIAGE OF ELVIR DIZDAREVIC
AND ZEMIRA DIZDAREVIC**

**Upon the Petition of
ELVIR DIZDAREVIC,**
Petitioner-Appellant,

**And Concerning
ZEMIRA DIZDAREVIC,**
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L.
Stigler, Judge.

Elvir Dizdarevic appeals from the property distribution provisions of a
dissolution decree. **AFFIRMED.**

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellant.

John J. Rausch of Rausch Law Firm, P.L.L.C., Waterloo, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Elvir Dizdarevic appeals from the property distribution provisions of the parties' dissolution decree. He argues the trial court erred in its assessment of the value of the couple's property in Bosnia, in its division of the proceeds of the sale of his business, and in its award of attorney fees to Zemira. We affirm, finding the property division was equitable and the district court did not abuse its discretion in its award of attorney fees.

I. Facts and proceedings.

Zemira and Elvir were married in Bosnia on September 4, 1997, and moved to the United States in 1999. There is one child of the marriage, born in 2007, whose interests are not at issue on appeal. Elvir operated an auto repair shop, which was established with the profits on the sale of the parties' former home. Zemira worked at a local business. The property on which the auto repair business was located was later sold. They separated in 2008; Elvir filed a petition for dissolution of marriage in 2009.

A dissolution decree was entered in January 2010 by default, as Elvir was absent from the proceedings. This decree, among other things, provided Zemira would claim the income tax exemption for the parties' child in odd-numbered years and Elvir would claim the exemption in even number of years so long as he was current with child support payments (paragraph six), ordered a lien and judgment in favor of Zemira and against Elvir in the amount of \$44,000 for Zemira's share of a house and garage built in Bosnia with funds sent to Elvir's family for that purpose (paragraph eight), awarded Zemira half of the \$53,000 profit from the sale of the building which housed Elvir's car repair business

(paragraph nine), assigned Elvir the obligation to pay the remaining balance on a business loan in the amount of six thousand dollars (paragraph ten), and ordered Elvir to pay Zemira's attorney fees in the amount of \$1572.62 (paragraph twelve).

Elvir filed a motion to set aside the decree of dissolution of marriage in November of 2010. He asked the court to change the property distribution provisions of the default decree, specifically paragraphs six, eight, nine, ten, and twelve. The parties agreed, and the court ordered, that those paragraphs be set aside and that further hearing on those issues be scheduled. The district court did not set aside the other provisions of the default decree, which remain in effect.

A hearing on the specific aspects of the property division took place September 19, 2012. Elvir argued the home in Bosnia belonged to his father and that the couple had no actual interest in the property. He contended the default decree's award of the proceeds of the business sale was improper, as the district court failed to take into account various costs of sale and payments made by Elvir to Zemira. Elvir, Zemira, Elvir's brother, and three friends of the parties testified. Evidence was presented that during the marriage, Elvir sent money to the couple's family in Bosnia. Zemira asserted much of this money was used to build a home for the couple's eventual return to Bosnia. Zemira presented several witnesses who also testified that the parties built a home in Bosnia where they intended to return. This home was built on Elvir's father's land. Zemira testified the home was worth \$80,000, a value the district court accepted in its credibility determination. Evidence was also presented regarding how the money from the sale of the business was spent.

The court summarized this evidence in its thorough opinion:

[The parties] jointly and severally sent money home to Bosnia. The issue is whether the money was intended solely as support for family members still in Bosnia, or whether the money was only partially intended as support for family members, but mainly for the construction of a home.

[Elvir] introduced legal documents from Bosnia, which state he does not have an ownership interest in the home in Bosnia. [Zemira's] witness testified as to the easy availability of obtaining fraudulent documents in Bosnia. Whether the chain of title is in [Elvir] or [Elvir's] father's name, the court finds to be not controlling. Based upon [Zemira] and three of her witnesses' testimonies the court finds on repeated occasions, [Elvir] stated the home was being constructed as a home for himself and [Zemira].

Placing a value on that home is difficult. . . . That it is difficult to place a fair value upon the home, should not mean that [Zemira] should be denied an equal share in its value. Her earnings went into the construction. Accepting her values of \$80,000 and allowing [Elvir] an offset of \$20,000 for the value of the land on which that home sits, the court finds the home has a fair market value of \$60,000, one-half of which should be awarded to [Zemira] in the form of a judgment for \$30,000.

Paragraph number nine of the [default] dissolution decree awarded a judgment against [Elvir] (sic) in the amount of \$26,500 as [Zemira's] value of a building sold from which the parties netted \$43,000. . . . [Elvir] spent the entirety of the \$43,000 with the exception of \$3000 in continuing an auto repair business from a rented location on Lafayette Street. The court is unable to agree with [Elvir] that the money was expended for operating expenses of his relocated business. Although [Elvir] may have spent certain amounts of the \$43,000 to operate his relocated business, his accounting fails to take into account revenue he should have received from billing customers for work done represented by portions of the \$43,000 expended. The court finds judgment should be entered in favor of the [Zemira] for a one-half interest of the \$43,000 or \$21,500.

The court also ordered Elvir to pay Zemira \$2500 in attorney fees.¹ He appeals from these three parts of the decree.

¹ The court also ordered the child tax exemption to rotate annually between the parties, however, Elvir does not appeal from this determination, nor does he raise on appeal any argument concerning the procedural rulings regarding the default and the motion to set it aside.

II. Analysis.

We review this dissolution action de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). We give weight to the factual findings made by the trial court, especially regarding the credibility of the witnesses. *Id.* We review the trial court's award of attorney fees for an abuse of discretion. *Id.*

On appeal, Elvir continues to assert no home in Bosnia exists. The trial court heard extensive testimony on this issue. It concluded the most credible evidence available supported the finding that the parties sent money to Bosnia which was used to construct a home there, and that, subtracting the value of the property it sits on, the home itself is worth \$60,000. We defer to this credibility determination and factual finding, and find any further analysis unnecessary. Iowa R. App. P. 6.1203(a), (d).

Elvir also continues to assert the profits from the sale of his business assets should not be partly given to Zemira because all of the profits were used for the operation of the new business, or to support the parties as neither was working at the time of the sale. The district court found Elvir's arguments unpersuasive, because although he "may have spent certain amounts of the \$43,000 to operate his relocated business, his accounting fails to take into account revenue he should have received from billing customers for work done represented by portions of the \$43,000 expended." We again defer to the district court's fact finding and credibility determinations. The business was established through the parties' joint efforts, and both are entitled to a just and equitable share. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa Ct. App. 1997). "We find the values placed on the assets by the trial court to be well within the

permissible range of evidence and we will not disturb them on appeal.” *Id.* The division of the business assets is therefore affirmed.

Elvir also argues that, in the alternative, we should modify the award to reimburse him for Zemira’s use of the income tax exemption for the parties’ child in 2010 in violation of the default decree, which alternated the dependency exemption awarding it to Elvir in even-numbered years so long as his child support payments were current. This claim was not ruled upon below; therefore we will not reach the issue for the first time now. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012).

Finally, Elvir argues, the district court erred in awarding attorney fees to Zemira, as she received a substantial property award. An award of trial attorney fees lies within the considerable discretion of the trial court. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). To change this award, Elvir must show the district court abused its discretion. *Id.* The fees must be fair and reasonable, and the award in part depends on the parties’ respective abilities to pay. *Id.* Zemira’s estimated income is \$17,000 a year, while Elvir’s is \$25,000. We find the award of \$2500 in attorney fees to Zemira for Elvir’s multiple petitions for dissolution of marriage did not constitute an abuse of discretion. Costs are divided equally on appeal.

AFFIRMED.