**IN THE COURT OF APPEALS OF IOWA**

No. 9-540 / 08-1631
Filed September 2, 2009

**IN RE THE MARRIAGE OF BARBARA BUDELIER AND RICHARD BUDELIER**

**Upon the Petition of**
**BARBARA S. BUDELIER,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning**
**RICHARD T. BUDELIER,**
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Muscatine County, Mary Howes, Judge.

Barbara Budelier appeals and Richard Budelier cross-appeals from the decree dissolving their marriage. **AFFIRMED AS MODIFIED.**

Richard Davidson of Lane & Waterman, Davenport, for appellant.

John Wunder, Muscatine, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Potterfield, JJ.

**VOGEL, P.J.**

Barbara Budelier appeals, and Richard Budelier cross-appeals from the decree dissolving their marriage. Following a trial, the district court entered a detailed decree which included valuing and distributing the parties' substantial assets and liabilities and awarding spousal support to Barbara. The court made some amendments to its decree after Richard's post-trial motion and Barbara's response, to enlarge or amend pursuant to Iowa Rule of Civil Procedure 1.904(2). Barbara now appeals, continuing to seek what she perceives to be a more equitable distribution of the parties' assets and liabilities, along with increased spousal support. Richard cross-appeals, arguing that in its ruling on the motion to amend, the court should not have increased Barbara's spousal support. We affirm as modified.

**I. Background Facts and Proceedings.**

Barbara and Richard were married on November 14, 1981. At the time of trial, the parties had been married for twenty-six years. They had three children, Adam, Eric, and Miles, who at the time of trial were twenty-five, twenty-three, and twenty, respectively. During their marriage, the parties lived on a farm, and Richard primarily ran the grain operation, while Barbara managed the hog operation, which they pursued in the early years of the marriage. She was also the primary caretaker of the children. In 1987, they invested in real estate, apartments, and "spec" homes, and began a rental business with these properties. Barbara was primarily responsible for this business.

The parties owned two farms in Muscatine County totaling approximately 215 acres, and one in Cedar County of seventy-five acres. The family lived on

the “Yankee Farm,” which was owned by Richard’s parents, but with Richard having an irrevocable option to purchase the residence and five acres of land for $40,000. Richard farmed the land on the Yankee Farm, Muscatine and Cedar County farms, as well as the “Herring Farm,” a farm jointly owned by Richard’s mother and aunt, and rented by the parties. The parties separated in August 2006, and trial was held on February 11, 2008, upon Barbara’s petition for dissolution of marriage. Barbara appeals and Richard cross-appeals from the decree entered on April 18, 2008, as amended on September 5, 2008.

## II. Standard of Review.

We review dissolution of marriage proceedings de novo. Iowa R. App. P. 6.4; *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). Although we are not bound by the district court’s factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(*g*).

## III. Property Distribution.

Iowa law requires that marital property be divided “equitably between the parties,” considering several factors. Iowa Code § 598.21(1) (2007). “Although an equal division is not required, it is generally recognized that equality is often most equitable.” *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007). To make an equitable distribution of assets, the court must first determine what assets are available to be allocated between the spouses. *In re Marriage of Driscoll*, 563 N.W.2d 640, 641-42 (Iowa Ct. App. 1997). To do this, the court must identify and value the assets of the parties held both jointly and separately.

*Id.* All property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property. *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005) (citing Iowa Code § 598.21(1)).

**a. Marital Residence with Five Acres: The Yankee Farm**

Barbara asserts that she is entitled to the marital residence property, claiming she has a greater need for the outbuildings for storage in order to continue her rental property business and house the peacocks she raises. Richard responds that the decision to award him the marital residence was proper. At trial, Barbara was asked "[w]ould either of those [Yankee Farm or the gray house] be suitable for your living arrangements?" Barbara responded, "Yes." The district court found Richard would receive the marital residence because his parents owned the residence and the associated farmland, he has the option to purchase, he remained in the home upon separation, and "based on Barbara's other award of property, including a farm home and 76 acres just down the road, that she had ample space there to store her building materials and peacocks." Although Barbara claims she contributed to the upkeep and improvement to the residence and therefore should be awarded the home, the testimony indicates both parties contributed to the substantial renovation and upkeep. We find nothing inequitable in the district court's allocation of this asset to Richard and affirm.

**b. Missing Grain**

The district court found that 40,000 bushels of corn were missing from the accounting of the 2006 crop, and made an appropriate adjustment in the assets. Barbara calculated that 47,896 bushels of corn should have been accounted for,

and she therefore claims she was entitled to a greater share of the missing grain. The testimony of the parties' son, Adam, supports the 40,000 figure. However, even if we were to agree with Barbara that the district court underestimated the number of bushels of missing corn, Barbara fails to give us a cost adjustment for the expenses associated with the harvesting of those additional bushels, or explain how a more equitable figure could have been reached. The district court made a decision by factoring in all information available and set a reasonable value based on expected yields and cost adjustments. We affirm this finding of the district court.

**c. Living Expenses**

Barbara next asserts that the district court erred in reducing the equalization payment by one-half of the amount of the cash she took at the time the parties separated. Richard maintains that near the time of their separation in August 2006, Barbara took $9000 from the family safe, $15,000 from the parties' joint bank accounts, and $15,000 of rental income. The district court stated,

> [t]here is a dispute between the parties as to whether or not Barbara took $9000 in cash missing from the family safe. On this issue, the court finds Richard's testimony more credible and does find that she took $9000 from the family safe. The Court also finds she took $15,000 of joint money from a bank account and $15,000 of joint rental income. Thus the court finds as Richard maintains Barbara did get $39,000 of marital money at the time of the separation without his agreement.

The court thus reduced Barbara's property equalization payment by $19,500, one-half of the $39,000 of marital money. In the post-decree ruling, the court then "decline[d] to change the $19,500 reduction *even though Barbara used it for legitimate living expenses*." (emphasis added).

The value of the assets should be determined as of the date of trial. *In re Marriage of Campbell*, 623 N.W.2d 585, 589 (Iowa Ct. App. 2001) ("We use the date of trial as the most appropriate date to value assets, while recognizing the need for flexibility in making equitable distributions based on the unique circumstances of each case."); *Driscoll*, 563 N.W.2d at 641-42. "In determining whether dissipation has occurred, courts must decide (1) whether the alleged purpose of the expenditure is supported by the evidence, and if so, (2) whether that purpose amounts to dissipation under the circumstances." *Fennelly*, 737 N.W.2d at 104.

Eighteen months lapsed between the time of the separation when Barbara took the additional marital cash and the time of trial. The money was no longer an asset to be distributed, as the court found that the money Barbara used was for "legitimate living expenses." There was no allegation in the record that Barbara had dissipated, hid, depleted or diverted this cash, other than to use for her own living expenses during the pendency of the dissolution.[1] *See id.* at 105. In addition to using the money for living expenses, the record indicated Barbara used the money for repair and improvement to the rental properties, thereby increasing the value of those assets, which were then valued as of the date of trial and subject to division. As there is no proof of any inappropriate dissipation of the cash, the court should not have considered this spent marital asset to reduce the equalization payment. We therefore modify to increase the equalization payment from Richard to Barbara by $19,500.

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[1] The court did find Richard had diverted 2007 farm income, attempting to hide this marital asset from Barbara; the income was imputed back to Richard and considered in the distribution of assets.

**d. Personal Property**

Barbara asserts that Richard removed or sold many items of personal property, including gifts to her, and did not return the missing items. Richard, in turn, testified that Barbara took many items of personal property, such as tools, and did not return them. The district court stated,

> [t]he parties have a huge amount of personal property in dispute. . . . The Court has no way based on the evidence of fixing the value of these items. It is also not really possible as between the parties for the Court to know who is telling the truth and who is not as to who has taken certain items. Thus, the court finds the fairest distribution of personal property, that the parties cannot amicably split between the two of them, ordered be sold at a public auction and the proceeds be split fifty-fifty between Barbara and Richard. Each party may bid on the items for sale at the public auction.

The district court found each had listed “hundreds of items” as evidenced by over twenty, single-spaced pages of personal property. We affirm the district court’s remedy as being both practical and equitable under the evidence presented.

**e. Income and Property Taxes and Allocation of Indebtedness**

Barbara contends that Richard should be responsible for the farm and rental property taxes on the income from property under his control during their separation in 2007, and she should be responsible for the taxes on the income from the rental property under her control during that timeframe. She also contends Richard will continue to have a substantially higher income, so therefore should also be allocated a greater share of the overall marital indebtedness. Richard disagrees, arguing that both have benefitted from the income generated, so should share the debt equally.

The trial court divided the total assets and liabilities between Barbara and Richard at approximately one-half to each, using the trial date as the determining

point.[2] *See In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002) ("Before making an equitable distribution of assets in a dissolution, the court must determine all assets held in the name of either or both parties as well as the debts owed by either or both. The assets should then be given their value as of the date of trial.") The district court found that "[s]ince the parties were married for all of 2007, and the Court has attempted to fairly divide the 2007 income and assets between them, they should equally divide any income tax owed for that year." In the post-trial ruling, the court added, "the Court has awarded [Barbara] a judgment based in part on the farming income for 2007 so the Court finds it is not unfair for her to share in the tax burden." In the same fashion, the court also found that "[w]hen at all possible, the Court also assigned the debt to the party getting the real estate connected with the debt." We agree that the court equitably divided the 2007 income tax liability, as well as the debt accumulated over the course of the marriage as associated with the property distributed.

**f. Division of Farm Land**

The district court found that Richard would continue to be primarily responsible for the farmland and Barbara for the majority of the rental property as their separate sources of income.[3] In addition, Barbara was awarded the Cedar County farm (seventy-five acres). Barbara contends that their positions should be reversed, and she should be awarded the two Muscatine County farms (215 acres) in order to generate additional farm income for herself; and Richard

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[2] With the exception of the living expenses mentioned above and imputed 2007 farm income.

[3] The division of farmland is complicated by the ownership of some land by Richard's parents and aunt, as well as the transfer by Richard during the pendency of the dissolution of some of the farm operations to the parties' sons.

should be awarded the Cedar County farmland, while also retaining his rights to farm the Yankee and Herring farms. The district court considered the different pieces of farmland, as well as the many rental properties, and divided the properties based on the parties' past involvement with the properties and need for future income. The court found that Richard was given the majority of the farmland because he was the spouse "actively engaged in farming," allowing him to continue to do so. Barbara was given the majority of the rental properties, as she was primarily responsible for the management of those properties during the marriage. The district court also awarded Barbara some farmland, specifically chosen for its proximity to her house. The division by the district court was made in order to "balanc[e] their work skill and the goal of equalizing division of the marital assets." The division is equitable and we therefore affirm.

**g. Building Supplies and Farm Equipment**

Barbara raises an argument that she was entitled to one-half of the value of some building supplies and farm equipment. Barbara assigns values to the building supplies, but this value was not found in the record. Barbara also assigns a value of $56,571 for farm equipment, but the only value in the record was $8025, which was found in the parties' joint stipulation of assets and liabilities. The farm equipment was not owned by Richard, but by his parents, which Barbara admits. Therefore, the only valuation of Richard's award of "all farm equipment" was the $8025. There is no support for the remainder of the value. We agree with Richard that Barbara did not preserve these claims, as they were not raised nor ruled on below. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006) ("It is a fundamental doctrine of appellate review that

issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Further, Barbara did not preserve this issue in her post-trial motion pursuant to Iowa Rule of Civil Procedure 1.904(2). *See id.* ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal."). Thus, we conclude that error was not preserved on these arguments.

**h. Spousal Support**

In its dissolution decree, the district court awarded Barbara rehabilitative and traditional alimony in the amount of $1500 per month for forty-eight months, and then amended the amount to $2500 per month for forty-eight months after reconsidering the full picture of assets, liabilities, and likely income to be generated by the parties in the near future.[4] Barbara contends that she is entitled to greater spousal support, and seeks an increase to $4000 per month for ten years. Richard cross-appeals, requesting the lower award from the original decree be reinstated. Rehabilitative alimony was fashioned as a method of supporting an economically dependent spouse through a limited period of re-education or retraining following a dissolution, thereby creating opportunity and incentive for that spouse to become self-supporting. *In re Marriage of Wessels*, 542 N.W.2d 486, 489 (Iowa 1995). We consider the award of alimony in

[4] While the district court also used the word "traditional" alimony based on Barbara's contributions to the long marriage, the award more closely resembled rehabilitative alimony, as traditional alimony is "payable for life or so long as a spouse is incapable of self-support." *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). *See In re Marriage of Becker,* 756 N.W.2d 822, 827 (Iowa 2008) (stating that regardless of the label associated with the type of spousal support, the courts are required "to consider the factors mandated by the legislature contained in section 598.21(3)."

conjunction with the property award. *In re Marriage of Van Regenmorter*, 587 N.W.2d 493 (Iowa Ct. App. 1998). In the post-dissolution decree, the district court stated “Barbara’s spousal support should be increased to allow her sufficient time to rehabilitate her income by pursuing her rental property business.” It is clear the district court stepped back and looked at the full picture of the parties’ assets and what those assets could generate as income. Richard asserts the court misread his 2007 income “dummy” tax returns, as they reflected his grain income for both calendar years 2006 and 2007, which greatly increased his projected future income. However, the court also noted that regardless of how the separate future earnings of Barbara and Richard were estimated, “both parties’ figures place [Barbara’s] post dissolution income significantly lower than Richard’s.” Even with the disparity of methods used and wide swings in projected incomes, the conclusion of the district court, in conjunction with the substantial assets awarded, was both fair and equitable. Having reviewed the circumstances of both parties, we find the costs of this appeal should be divided between them.

**AFFIRMED AS MODIFIED.**

Potterfield, J. concurs. Vaitheswaran, J. partially dissents.

**VAITHESWARAN, J.** (Dissenting partially)

I respectfully dissent from that portion of the majority opinion increasing the equalization payment by $19,500. The district court found that Barbara "took" marital money without Richard's agreement and found Richard's testimony more credible than Barbara's on this question. I would give weight to this credibility finding which, in my view, was effectively a finding that Barbara dissipated assets. *See In re Marriage of Fennelly*, 737 N.W.2d 97, 104–06 (Iowa 2007). Based on that finding, I would affirm the district court's decision concerning the equalization payment.