IN THE COURT OF APPEALS OF IOWA

No. 0-552 / 09-1653
Filed December 8, 2010

IN RE THE MARRIAGE OF CHERYL R. ANTOINE AND THOMAS M. ANTOINE

Upon the Petition of
CHERYL R. ANTOINE,
Petitioner-Appellee,

And Concerning
THOMAS M. ANTOINE,
Respondent-Appellant.

Appeal from the Iowa District Court for Kossuth County, Frank B. Nelson, Judge.

Thomas Antoine appeals from various economic provisions of a dissolution decree. **AFFIRMED AS MODIFIED.**

Kimberly S. Bartosh and Bernard L. Spaeth Jr. of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Paul R. Doster of Fenchel, Doster & Buck, P.L.C., Algona, for appellee.

Heard by Mansfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Thomas Antoine appeals from various economic provisions of a dissolution decree. Tom contends (1) he should have been awarded a greater share of the marital property, (2) the value of the farmland gifted to him by his parents should be set aside to him, and (3) Cheryl should not have been awarded attorney fees. Tom also disputes valuations placed on some assets. Cheryl requests appellate attorney fees and costs. We affirm the district court's judgment with modifications to the provisions regarding a $1 million life insurance policy and 2009 farm cash rent. We also modify the award of trial attorney fees and decline to award appellate attorney fees.

I. Background Facts and Proceedings.

Tom and Cheryl Antoine married in 1980. It was Tom's first marriage. Cheryl had a previous marriage that ended in divorce in 1977. At the time of trial, Tom was sixty-three years old, and Cheryl was sixty-five years old. Cheryl is in good health and does not work; Tom describes his health as "fair" or "fair to good," and works as a farmer. Tom has had numerous surgeries, including a triple bypass surgery in June 2007. Cheryl has three children from a prior marriage, two of which lived with Tom and Cheryl during their marriage. Tom and Cheryl had two children together, born in 1981 and 1982. No minor children are affected by this dissolution.

During their marriage, Tom and Cheryl were extremely successful financially, building an estate in excess of $7 million. Their property includes ten parcels of farmland in Kossuth County and two business entities: Antoine Acres, Inc. and Antoine East, L.L.C. Antoine Acres Inc. owns farm machinery, grain,

and conducts Tom and Cheryl's farm operation. Antoine East, L.L.C. owns confinement barns and conducts their hog-raising operation.

Prior to the parties' marriage, Tom was already a successful farmer. He farmed and owned 360 acres (Parcels 1, 2, and 3), farmed additional rented land, and owned grain, a few hogs, and a full line of machinery. He also had entered into a purchase agreement to purchase a fourth parcel (Parcel 4) just days before the parties were married.

Cheryl was working at a bank in Algona at the time the parties married. She had little, if any, net worth. Cheryl continued to work at the bank until the birth of the parties' first child, at which time the parties jointly agreed she should remain in the family home, caring for the children, keeping the books, and helping on the farm. Tom acknowledges Cheryl helped on the farm on a part-time basis and made tangible contributions to the marriage.

Two days before the marriage, the parties executed an antenuptial agreement. The agreement was not renewed upon its ten-year termination clause, and has no binding effect in these proceedings.

Tom continued to farm after the parties' marriage. Over the years, the parties inherited land from Tom's parents (eighty percent of Parcel 9 and one-third of Parcel 10), and purchased more land (Parcels 5, 6, 7, 8, and the remainder of Parcels 9 and 10). The parties farmed 1500-1600 acres each year.

In October 2007, Cheryl filed a petition for dissolution of marriage. She moved from the marital home to Parker, Colorado, a suburb of Denver. In December 2007, Cheryl purchased a home in Parker for $245,000. She accessed more than $150,000 in marital funds to make a ten percent down

payment and furnish the home. On February 1, 2008, a temporary order was entered requiring Tom to pay Cheryl $4500 per month in spousal support and provide medical insurance for Cheryl. Tom later agreed to continue to pay Cheryl's monthly temporary spousal support and medical insurance costs until all appeals in this case have been ruled upon.

Prior to trial, the parties entered into a partial stipulation, agreeing that all household furnishings, whether in Iowa or Colorado, were divided, and the party in possession of those items was the party to receive them. In the decree, the district court viewed the division of the personal property by the partial stipulation as an equal division, and this appeal does not dispute that determination.

Trial was held on March 10 and 11, 2009. On September 9, 2009, the district court filed its decree dissolving Tom and Cheryl's twenty-nine-year marriage. The main issue concerned the division of the parties' property. The court made the following property division:

	Cheryl	*Tom*
Parcel 1 (160 acres)	$742,560	
Parcel 2 (40 acres/residence)		$284,720
Parcel 3 (160 acres)	$735,280	
Parcel 4 (69 acres)	$299,390	
Parcel 5 (80 acres)		$333,538
Parcel 6 (101 acres)		$301,665
Parcel 7 (80 acres)	$407,680	
Parcel 8 (149 acres)		$621,371
Parcel 9 (200 acres)		$1,075,495
- less 80% inheritance		($860,396)
Parcel 10 (278 acres)		$1,126,125
- less 1/3 inheritance		($375,375)
Colorado residence	$220,500	
Antoine Acres, Inc.		$1,566,115
Antoine East, L.L.C.		$220,416
Other personal property	$156,931	$48,229
Debt (mortgages)	($220,500)	($665,850)
TOTAL	**$2,341,841**	**$3,675,033**

To make the property division equitable, the court ordered Tom to pay Cheryl the sum of $600,000, in three installments of $200,000 each, with interest on the unpaid installments. The court also ordered Tom to pay Cheryl cash rent in the amount of $93,800 for the crop year 2009, for the parcels awarded to Cheryl, but being farmed by Tom. The court ordered each party to retain any and all life insurance policies owned by him or her, regardless of the person insured. The court denied Cheryl's request for alimony "[g]iven the magnitude of the property settlement."

By the time of trial, the parties had used a significant amount of marital funds to pay for their attorney fees: Tom paid approximately $83,000; Cheryl paid approximately $35,000 and still owed in excess of $52,000. The court ordered Tom to pay $30,000 towards Cheryl's trial attorney fees.

Tom filed a motion to amend the judgment and decree, which the court denied. Tom now appeals, contending the decree's property division, the failure to set aside the value of farmland gifted to him by his parents, and the award of attorney fees are inequitable. Cheryl requests appellate attorney fees. We turn to these issues.

II. Scope and Standard 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 that 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). We review an award of attorney fees for abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997).

III. Property Division.

Under our statutory distribution scheme, the first task in dividing property is to determine the property subject to division and the proper valuations to be assigned to the property. *Fennelly*, 737 N.W.2d at 102; *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). The second task is division of that property in an equitable manner according to the enumerated factors in Iowa Code section 598.21(5) (2009). *See Fennelly*, 737 N.W.2d at 102. "Although an equal division is not required, it is generally recognized that equality is often most equitable." *Id.* (quoting *In re Marriage of Rhinehart*, 704 N.W.2d 677, 683 (Iowa 2005)). Ultimately, what constitutes an equitable distribution depends upon the circumstances of each case. *In re Marriage of Hansen*, 733 N.W.2d 683, 702 (Iowa 2007); *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

A. Valuations. The parties dispute the district court's valuations of the two business entities, Cheryl's home in Colorado, and the amount of loan monies owed to them by Art and Jackie Ingalls, Cheryl's daughter and son-in-law. Although our review is de novo, we will defer to the district court when valuations

are accompanied with supporting credibility findings or corroborating evidence. *Vieth*, 591 N.W.2d at 640.

Cheryl's proposed values for the two business entities, Antoine Acres, Inc. and Antoine East, L.L.C., are $1,566,115 and $220,416; Tom's proposed values for the entities are $1,453,746 and $104,218. At trial, the district court heard testimony from several experts, including John Cowin and Vernon Frederick Greder, in regard to the valuations of the entities. The decree provided that the district court "carefully considered the appraisal reports and the briefs of the parties" and concluded Cheryl's valuations should be used. Upon our review, we find the valuations assigned by the district court to be within the permissible range of evidence. *See id.* (citing *In re Marriage of Brainard*, 523 N.W.2d 611, 616 (Iowa Ct. App. 1994)).

In regard to the Colorado residence, the district court accepted the valuation of $220,500 offered by Cheryl in her financial affidavit and trial testimony. Cheryl purchased the home for $245,000 in December 2007, but testified that home prices in the area had dropped by the time of trial in March 2009. She valued her home as ten percent less than the purchase price, and testified this figure was based upon the sale prices and listing prices for comparable homes in her area after the housing market had gone down. In ascertaining the value of property, its owner is a competent witness to testify to its market value. *Hansen*, 733 N.W.2d at 703 (citing *Holcomb v. Hoffschneider,* 297 N.W.2d 210, 213 (Iowa 1980)). In this economic climate, a drop in value of residential real estate is not unrealistic. We find the district court's valuation of

the Colorado residence was within the range of the evidence and, as a result, should not be disturbed.

The district court identified the amount of the debt owed to the parties by Art and Jackie Ingalls to be $3100. Cheryl recalled two loans to the Ingalls in the total amount of $6200. She expressed a willingness to forgive her one-half of this debt and treat it as a gift. Upon a review of documents produced by Cheryl during pretrial discovery, Tom discovered transfers to the Ingalls in the amount of $15,900. He acknowledges the documents also reflect that Cheryl received payment of $7500 towards those loans or transfers. Thus, at the time of trial, the debt according to Tom was $8400 and according to Cheryl was $6200. We agree that using the amount of $3100 on Cheryl's asset ledger inappropriately reduces the amount of assets awarded to her. Because Cheryl was the bookkeeper in charge of tracking these loans, we accept her figure of $6200. The entire $6200 "asset" should be shown as awarded to her and she can then forgive as much or as little of it as she wants.

B. Life Insurance Policy. Tom contends the district court erred in awarding the Central Financial life insurance policy to Cheryl. This policy insures Tom's life and is owned by Cheryl. Cheryl has paid the premiums for this policy in the amount of $823 per month since the decree was entered. The policy has a face value of $1 million and a cash value of $5210. Its cash value was reduced by a loan taken against it by Cheryl in the amount of $60,000. Tom sought an award of this policy because he has no other life insurance and he is no longer insurable as a result of his health problems. Cheryl has two other policies that insure her own life.

We agree the policy should be awarded to Tom. Because there is no permanent alimony award, there is no stream of income to protect by insurance. Cheryl is a creditor of Tom so long as the equalization payment is unpaid, but upon full payment, Cheryl would not likely have an insurable interest. There is also no need to protect her entitlement to the equalization payment as it can be safely secured by a judgment lien upon Tom's real estate. Tom is unable to procure insurance due to health reasons, and it is more appropriate to award the policy to him. Cheryl should, however, be reimbursed for the premiums she has paid since the date the decree was entered, particularly because of the substantial amount of the premiums.

C. 2009 Cash Rent. The district court ordered Tom to pay Cheryl cash rent in the amount of $93,800 for the 2009 crop year. Cheryl sought the cash rent "upfront right at the beginning," presumably to use for her day-to-day expenses. Tom argues the requirement that he pay cash rent is inequitable because he has been supporting Cheryl throughout these proceedings.[1] Since February 2008, Tom has paid Cheryl $4500 per month in temporary spousal support, and provided Cheryl's medical insurance at a cost of $235.90 per month.[2] Although Cheryl was in need of temporary support because she had no source of income, the court denied her request for permanent alimony "[g]iven the magnitude of the property settlement." (As part of the property distribution,

[1] Tom further contends that if he is required to pay cash rent to Cheryl, the amount should be offset by $56,830.80 (the annual amount he pays in temporary spousal support and health insurance); or at the very least, the amount should be offset by $2260 (the difference between the number of gross acres the court used to calculate the cash rent and the number of tillable acres Tom actually farmed).

[2] Tom agreed to continue these payments until all appeals in this case have been ruled upon. According to oral arguments, Tom has posted an appeal bond and has continued to pay temporary alimony.

Cheryl received income-producing assets by the award of nearly 500 acres of farmland.) Cheryl was awarded cash rent for the 2009 crop year for the farmland she was awarded in the dissolution decree as well as temporary support payments from Tom.

Upon our review, we conclude Tom should be required to pay some amount of rent, as he benefitted from the income earned from the farmland awarded to Cheryl. However, the requirement that Tom pay cash rent in the full amount of $93,800 is inequitable because of the contemporaneous temporary alimony payments.[3] We find it more equitable under these circumstances to offset the cash rent by the total amount of temporary support Tom has paid to Cheryl since March 2009.

D. Farmland and Personal Property. This dissolution proceeding involves division of a substantial amount of farmland and personal property. Complicating the division is the existence of premarital property, inherited property, property claimed to be a partial gift, and the fact that all of the farmland has substantially appreciated in value. Although neither party disputes the district court's allocation of the various parcels to the parties, Tom complains the overall property distribution was not equitable. In particular, Tom asks that we modify the property distribution to afford him full credit for his premarital property and set aside one-half of the value of Parcel 2 as gifted property.

Section 598.21(5) requires the court to divide "all property, except inherited property or gifts received by one party" equitably between the parties.

[3] The rent payment reduces Tom's net farm income by $93,000, and his net farm income is the source and basis for his temporary spousal support payments of $4500 per month.

"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 Schriner*, 695 N.W.2d 493, 496 (Iowa 2005) (citing *Brainard*, 523 N.W.2d at 616).

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). *Schriner*, 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.

In contrast, gifted and inherited property are considered non-marital property. Section 598.21(6), however, contains a qualification to the gift and inheritance set-aside rule: "[p]roperty inherited by either party or gifts received by either party prior to or during the course of the marriage . . . is not subject to a property division . . . except upon a finding that refusal to divide the property is inequitable to the other party." Our supreme court has identified a number of factors for courts to consider in determining whether gifted or inherited property should be divided:

> (1) contributions of the parties toward the property, its care, preservation or improvement;
>
> (2) the existence of any independent close relationship between the donor or testator and the spouse of the one to whom the property was given or devised;
>
> (3) separate contributions by the parties to their economic welfare to whatever extent those contributions preserve the property for either of them;
>
> (4) any special needs of either party;
>
> (5) any other matter which would render it plainly unfair to a spouse or child to have the property set aside for the exclusive enjoyment of the donee or devisee.

In re Marriage of Goodwin, 606 N.W.2d 315, 319 (Iowa 2000) (quoting *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 659 (Iowa 1989)). The court has also stated that "the length of the marriage may be an important factor in determining whether gifted [or inherited] property should be included in the court's property distribution." *Goodwin*, 606 N.W.2d at 319.

In support of Tom's contention that he should receive a greater credit for the property he brought into the marriage, Tom points to the fact that he was already "engaged in a sizeable farming operation" before the parties were married and his premarital net worth was $1,108,800 (which included equipment, crops, cash, and Parcels 1, 2, and 3). Tom suggests either he be awarded full credit of $1,108,800, or Cheryl only be awarded one-third of the appreciation of the property he brought into the marriage. Tom relies on *Miller*, 552 N.W.2d at 465, where this court concluded the husband's rapid and significant accumulation of assets was due to the husband's premarital assets and awarded the wife approximately one-third of the marital property. Tom argues that without his significant premarital assets, he and Cheryl would not have accumulated over $7 million in assets. However, Tom seeks credit without regard to the liabilities

he brought into the marriage. His net worth at the time of the marriage was $792,800.[4] Further, the facts before us can be distinguished from *Miller* by the length of the marriage. In *Miller*, the parties were married less than ten years, compared to Tom and Cheryl's marriage of twenty-nine years. *See Miller*, 552 N.W.2d at 462.

Here, there is no dispute in respect to the award of Tom's inherited property. However, Tom claims the forty-acre Parcel 2 was purchased in part and gifted in part to him. He contends he bought Parcel 2 from his parents for $400 per acre in 1974, an amount that was at least one-half of the actual value of the property. Thus, Tom argues that one-half of the current value of Parcel 2 should have been set aside to him as gifted property. The court valued Parcel 2 at $284,720, so Tom asks that an additional $142,360 be set aside to him.

The purchase/gift of Parcel 2 occurred two years before the parties were married. Because the record contains no evidence that Tom's parents filed a gift tax return and the antenuptial agreement signed by the parties did not recite that the property was a partial gift, Cheryl believes no consideration should now be given to Tom's contention. Cheryl also argues that if we find Tom's argument meritorious that we determine his premarital liabilities should be averaged over the 360 acres he owned prior to the marriage, resulting in a debt of $878 per acre. Cheryl also claims any appreciation in the value of the property, if found to be gifted property, should be divided by one-half due to the length of their

[4] We rely upon exhibit 101, a bank financial statement dated December 28, 1979, to support this finding.

marriage, contributions of both parties, and substantial improvements to the parcel in the amount of $99,400.

Upon our review, we agree with Cheryl that setting aside one-half of the current value of Parcel 2 on the basis that it was a partial gift would be inequitable to Cheryl considering the length of parties' marriage, the contributions of the parties, the debt that existed upon the property, and the improvements made to the property from the use of marital funds.[5] Cheryl contributed significantly to the marriage and helped with the parties' farming operation by preparing fields for planting and harvesting, walking beans, helping raise hogs, cleaning the barns and grain bins, attending meetings, and doing bookkeeping and marketing. Also, Cheryl was the primary caretaker for the children and was in charge of the majority of household chores, including cooking, cleaning, washing, ironing, gardening, mowing, raking, and spraying for weeds.

Our supreme court has stated, "[we do not] find it appropriate when dividing property to emphasize how each asset appreciated—fortuitously versus laboriously—when the parties have been married for nearly fifteen years." *Fennelly*, 737 N.W.2d at 104. We also observe that Parcel 2, along with all of Tom's inherited property, provided a source of income and homestead for both Tom and Cheryl for over twenty-nine years. *See In re Marriage of Geil*, 509 N.W.2d 738, 741 (Iowa 1993) (finding that spouse could not complain that a portion of inherited assets were distributed to the other spouse where the farm had served as the family homestead and livelihood for many years).

[5] Tom also notes that his physical health should be considered in the property division because his earning capacity is not what it used to be. We find the district court properly considered Tom's health in dividing the parties' property.

The district court's property division awarded Cheryl $2,341,841 in total assets (real estate worth $2,184,910, personal property worth $156,931, and debt of $220,500) and awarded Tom $3,675,033 in total assets (real estate worth $2,506,123, personal property worth $1,834,760, and debt of $665,850), a disparity of $1,333,192. To make the division equitable, Tom was also required to pay to Cheryl the sum of $600,000 via three annual payments. With our modifications to the value of the debt owed to Cheryl by the Ingalls, and the award of the life insurance policy to Tom, Cheryl's net total is $2,350,151. The district court's distribution with our modifications provides:

	Cheryl	*Tom*
Farmland	$2,184,910	$2,507,146
Colorado residence	$220,500	
Personal property	$165,241	$1,829,550
Debt	($220,500)	($665,850)
TOTAL	**$2,350,151**	**$3,669,823**

The difference between the parties' property award is $1,319,672, and the $600,000 equalization payment still provides Tom with $119,672 more in assets than Cheryl.

The district court also set aside Tom's inherited property at current appreciated values. The district court considered Tom's inheritance of 160 acres of the 200-acre Parcel 9 when it set aside to Tom eighty percent of Parcel 9's current value as a non-marital asset.[6] The same is true in regard to Parcel 10, where Tom inherited a one-third interest in 278 acres,[7] and the court set aside one-third of Parcel 10's current value as a non-marital asset. By setting aside

[6] Tom inherited sixty acres of Parcel 9 from his father's estate, and one hudnred acres of Parcel 9 from his mother's estate.

[7] Tom inherited a one-third interest in Parcel 10 from his mother's estate.

these non-marital assets at their current and appreciated values, Tom received an additional $1,235,771 in farmland.

In total, Tom was awarded, or set aside, net total assets in the amount of $4,905,594. After deducting the equalization payment of $600,000, his net total is $4,305,594. After adding the equalization payment to Cheryl's side of the ledger, she will leave the marriage with net equity of $2,950,151 ($2,350,151 plus $600,000). The difference of their awards is $1,355,443. This sum is nearly identical to the value of Tom's premarital property less liabilities ($792,800) plus the value of his inherited property ($563,663), a total of $1,356,463, if appreciation is disregarded.[8]

Our comparison of the district court's distribution with a different approach has provided similar results. In light of Cheryl's contributions, needs, and the length of this marriage, the district court could have concluded Cheryl was entitled to a nearly equal division of (1) all marital property, (2) the appreciation arising during the marriage to all premarital property, and (3) the appreciation arising during the marriage to all inherited and gifted property. In *Fennelly*, 737 N.W.2d at 102, the supreme court determined that the parties' premarital assets as well as the appreciation of such assets were subject to equal division upon dissolution of a nearly fifteen-year marriage, irrespective of parties' relative financial contributions to the marital standard of living, where "the parties'

[8] We value Tom's inheritance of 160 acres of the 200 acres in Parcel 9 as $360,000, based upon the fact that Tom and Cheryl paid $2250 per acre for the remaining acres (160 acres x $2250 = $360,000). We value Tom's inheritance of one-third of Parcel 10 as $203,663, based upon the fact that Tom and Cheryl purchased the balance of the parcel for $2200 per acre (92.6 acres x $2200 = $203,663). And we previously noted that Tom had premarital assets less liabilities in the sum of $792,800. If full credit was given for Tom's premarital assets less liabilities and all inherited property set off to him, the total property value would be $1,356,463.

respective contributions to the marriage" did not justify "treating the parties differently." Further, in *Goodwin*, 606 N.W.2d at 319-20, our supreme court concluded that factors to consider in determining whether gifted or inherited property should be subject to division included: the length of the marriage, the parties' contributions to the improvement of the property, whether the property served as the family home and provided a source of the family's livelihood, and whether the parties were able to support themselves after dissolution.

Upon our review, the total value of land purchased during the marriage along with the appreciation of all land during the marriage totals $4,740,199.[9] If divided evenly, each party would be entitled to farmland marital assets valuing $2,370,099, and Tom would receive an additional $1,187,625 in farmland as a set off for his inherited property as well as a nearly full credit for his premarital property. Although our methodology differs from that used by the district court, it results in only a marginal difference, considering over $5.7 million in farmland was divided.[10]

Because Cheryl was awarded income-producing assets—nearly 500 acres of farmland, an award of permanent alimony was not required. Upon our de novo review, we believe the learned district court equitably divided the parties'

[9] In this calculation, we included the appraised values of Parcels 4, 5, 6, 7, and 8 as shown on Exhibit A attached to the judgment and decree. In determining the appreciation to premarital properties identified as Parcels 1 and 3, we afforded a twenty percent increase in value over and above his respective purchase prices as premarital appreciation, as urged by Tom, to fix the value at the time of marriage. In respect to Parcel 2, we relied upon the value Tom reported on his 1979 financial statement, Exhibit 102, for the value at the time of marriage. In determining the appreciation for Parcels 9 and 10, which were partially inherited, we note that Tom and Cheryl purchased the remaining acres of each parcel, and thus we relied upon the purchase price per acre to determine the total value of each parcel.

[10] By our calculations, the difference is 3.1% or $185,190 and supports a greater—not lesser—award of property to Cheryl.

property, except in respect to the life insurance policy and the offset to the cash rent.

IV. Attorney Fees.

Attorney fee awards are not a matter of right but rather rest within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). Consideration is given to the financial condition of the parties and their respective abilities to pay. *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977). Any award of attorney fees must be fair and reasonable. *Id.* To overturn an award of attorney fees, the complaining party must show the trial court abused its discretion. *Romanelli*, 570 N.W.2d at 765.

Tom argues the court should not have ordered him to pay $30,000 to Cheryl for trial attorney fees in light of the fact that pursuant to the award "Tom will pay $30,000 in non-marital assets on attorney fees, while Cheryl will pay only $22,000 in non-marital assets for attorney fees." Tom further points out that "Cheryl is provided with over $123,000 in liquid assets and $600,000 cash property settlement, compared to $19,000 of liquid assets for Tom." At the time of trial, Cheryl owed $52,669 in attorney fees. We conclude the district court did not abuse its discretion in ordering Tom to pay some of Cheryl's attorney fees, as both parties used marital funds to pay for their respective attorney fees. We modify Cheryl's award of attorney fees to approximately half of the remaining amount she owed, $26,000.

Cheryl requests an award of appellate attorney fees. When determining whether to award such fees, "we look to the needs of the party making the request, the ability of the other party to pay, and whether the party making the

request was obligated to defend the trial court's decision on appeal." *Id.* Here, we decline to award Cheryl any appellate attorney fees.

V. Conclusion.

We affirm the district court's judgment with the following modifications: the valuation of the debt owed to the Ingalls shall be $6200; Tom is awarded the $1 million life insurance policy and shall be obligated to pay any loan against its cash value as well as reimburse Cheryl for premiums she has paid since the entry of the decree; and Tom's 2009 cash rent obligation shall be offset by the amount of temporary alimony Tom has paid since the entry of the decree. We modify the award of trial attorney fees to Cheryl to the amount of $26,000. We decline to award appellate attorney fees.

Costs of appeal are assessed equally to each party.

AFFIRMED AS MODIFIED.