IN THE COURT OF APPEALS OF IOWA

No. 1-1001/ 11-0839
Filed February 29, 2012

IN RE THE MARRIAGE OF RHEA CAROL FREUND AND ANTHONY GERARD FREUND

Upon the Petition of

RHEA CAROL FREUND,
Petitioner-Appellee/Cross-Appellant,

And Concerning

ANTHONY GERARD FREUND,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Cass County, James M. Richardson, Judge.

Two spouses appeal provisions within a decree dissolving their marriage. **AFFIRMED AS MODIFIED AND REMANDED.**

Becky S. Knutson of Davis Brown Law Firm, Des Moines, for appellant.

J.C. Salvo and Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

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

TABOR, J.

Anthony (Tony) Freund appeals and Rhea Freund cross-appeals from provisions in the decree dissolving their twenty-three year marriage. Both parties challenge the district court's division of their substantial farm holdings, issues relating to their five children, alimony, and attorney and expert fee awards.

Because the district court achieved an equitable division of the property, we largely affirm the economic provisions of the decree. We do modify the decree in five respects, two of which require action by the district court on remand. First, on the issue of visitation, we incorporate the parties' agreed-upon fall-back schedule. Second, we remand the case for the district court to recalculate the amount of child support Tony must pay, pursuant to the child support guidelines, based on identified income figures for both parents. Third, during the remand, the district court should determine if good cause exists under Iowa Code section 598.21F (2009) to require either or both parents to pay a postsecondary education subsidy for their three oldest children; the court also should amend the decree to retain jurisdiction to consider college funding for the two youngest children if requested in the future. Fourth, we find the court's omission of the bin site on the assets and liabilities portion of the decree was a scrivener's error requiring an increase in Tony's equalization payment to Rhea by $14,630. Fifth and finally, we find the court erred in crediting Tony for the $20,000 in attorney fees he paid on Rhea's behalf from marital funds, and order Tony's equalization payment be increased by $10,000 to reflect a reciprocal credit for Rhea.

I. Background Facts and Procedures

Tony Freund was born in 1955. About a year after graduating high school, he started farming with his father and brothers. Rhea was born in 1963. After completing her high school studies, she attended Iowa Western Community College for one year, and began working as a dental assistant.

The couple married on September 12, 1987. They have five children. Two daughters, Marie, born in 1988, and Brandi, born in 1990, were finishing their college degrees in Omaha at the time of the dissolution. The three youngest children—Alex, born in 1992; Jeana, born in 1998; and Nicholas, born in 2001—lived at home.

Through land purchases and inheritance, the family accumulated a sizeable farming operation and acquired a net worth of $5.78 million. Throughout the marriage, Tony and his brother, Mike, farmed what is now nearly 1500 acres, while Rhea worked primarily as a stay-at-home mother. Rhea was employed outside the home one day a week as a dental assistant. The couple maintained joint accounts, and Tony controlled the family's finances.

In October 2009, Tony and Rhea separated. Tony and Alex moved into a farm house previously occupied by Tony's parents. Rhea stayed in the family home with Jeana and Nicholas, the two youngest children. Rhea filed for divorce on October 6, 2009. The district court entered a temporary order on August 9, 2010, granting joint legal custody of the children. The order required Tony to pay Rhea $1500 a month for temporary alimony, $1200 monthly for child support,

and a lump sum of $20,000 within thirty days. The court also ordered Tony to continue paying for the family's home, medical care and insurance expenses.

The district court dissolved the marriage on March 21, 2011. Pursuant to the parties' agreement, the court divided the property so that the farming assets and real estate would remain with Tony, except for the land previously owned by Rhea's family. The court accounted for the disproportionate division of the land by ordering Tony to pay a cash settlement to Rhea.

Neither party was satisfied with the terms of the decree. Tony filed a motion to enlarge, modify or amend, challenging the college education subsidy for the three youngest children, the mortgage to the house retained by Rhea, and Rhea's attorney and expert fees. He contested the division of assets, machinery, and equipment, as well as the visitation and support provisions. Rhea also filed a motion to enlarge, modify or amend the decree. Among other things, she challenged the attorney fees credited to Tony, the real estate valuation, and the interest rate on the cash settlement. On April 25, 2011, the court denied both motions. Tony appealed and Rhea cross-appealed.

II. Standards of Review

Dissolution decrees are equitable proceedings; therefore, our review is de novo. *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2006). We give weight to the district court's fact findings, especially when considering witness credibility, but are not bound by them. *In re Marriage of Brown*, 778 N.W.2d 47, 50 (Iowa Ct. App. 2009). We review the attorney fee award for abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 247, 255 (Iowa 2006).

III. Analysis

A. Whether the District Court Properly Determined the Visitation Schedule and Child Support Payments

1. Visitation

Tony challenges the visitation portion of the decree, arguing the court erred by failing to incorporate the fall-back agreement included in the parties' stipulation.

At the time of trial, the two youngest children lived with Rhea and the older son lived with Tony. The parties agreed to a liberal visitation schedule, where any of the three children could visit the other parent at any time. Alex could pick up his younger siblings, and they could go deer hunting, fishing, ride in the farm equipment, attend church, and spend time with their father, so long as they let Rhea know their whereabouts. Both parents intended this arrangement to be incorporated in the dissolution decree.

Before any witnesses testified, Rhea's attorney made a record of stipulations reached by both sides, including a stipulation as to visitation:

> We have proposed pretty much an open visitation schedule, and if that doesn't work, the parties will fall back to a specific visitation schedule which Mr. Mailander and I have, I think, worked out. There may be some little language issues.

Tony's attorney concurred: "that's the agreement as I understand it." The court admitted the fall-back schedule as trial exhibit FF. It reads, in part:

> In the event the parties cannot agree on visitation, Jeana and Nicholas shall be allowed the following visitation schedule with Anthony:

(a) Every other weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m.
(b) Tuesday and Thursday evenings from 5:00 p.m. until 8:00 p.m.
(c) [schedule to alternate holidays]
(d) Every mother's Day with Rhea and every Father's day with Anthony.
(e) Summer visitation consisting of up to one week in June, one week in July, and one week in August, not to be exercised consecutively.

Rhea testified that the couple agreed Jeana and Nicholas would continue to live with her, and Alex would live with Tony, subject to open visitation. She referred to the exhibit as reflecting their contingency plan if problems arose with the voluntary visitation agreement. In his testimony, Tony agreed to the open visitation schedule and the fall-back provisions. The decree included the current physical care and visitation arrangement as described by the parties, but overlooked the fall-back stipulation. The court did not explain the omission.

Our top priority when considering visitation issues is the best interests of the children. *In re Marriage of Stepp,* 485 N.W.2d 846, 849 (Iowa Ct. App. 1992). Generally, liberal visitation promotes the children's best interest. *Id.* In so far as is reasonable, courts should try to assure children "maximum continuing physical and emotional contact with both parents" after a divorce. Iowa Code § 598.41(1)(a).

In this case, the parties have worked well together to ensure that the children enjoy continuing contact with both parents and their siblings. Tony and Rhea reported no dissension regarding the voluntary visitation agreement. They both testified they accepted the fall-back provisions in case of future strife over visitation. A district court presiding over dissolution proceedings retains the

power to reject the parties' stipulation if it is unfair or contrary to law. *In re Marriage of Briddle*, 756 N.W.2d 35, 40 (Iowa 2008). But in this case, the district court noted in its ruling on post-trial motions that it accepted Tony's position on visitation as set forth in his stipulation.

Given this record, it appears that the district court's failure to expressly adopt the fall-back provision may have been an oversight. Moreover, we believe that incorporating the back-up provision would be in the best interests of the children. If the present voluntary agreement becomes unworkable, the fall-back schedule will provide the parties with enforceable provisions without the necessity of returning to court for modification.

We have modified visitation provisions to include similar fall-back agreements on several occasions. *See, e.g., In re Marriage of Malloy*, 687 N.W.2d 110, 114 (Iowa Ct. App. 2004) (establishing liberal visitation rights with a fall-back provision "if they cannot agree"); *Northland v. Starr*, 581 N.W.2d 210, 214 (Iowa Ct. App. 1998) (imposing similar "[i]f the parties cannot agree" clause); *In re Marriage of Wiarda*, 505 N.W.2d 506, 509 (Iowa Ct. App. 1993) (modifying provision to allow visitation at all times agreeable between the parents, but "[i]n the event the parents cannot agree" instructing parties to revert to the decree). We elect to do the same here. Accordingly, we affirm the district court's order regarding visitation, but modify the provision to include the fall-back visitation agreement within trial exhibit FF.

2. Child Support

The district court ordered Tony to pay $1500 to support Jeana and Nicholas, and $1000 a month when only one child remains in Rhea's care. In the district court, Tony calculated his obligation as $1131.95 monthly for both children living with Rhea. On appeal, Tony asserts that because he determined his income based on tax returns reflecting his earnings while he farmed an additional 100 acres of land that Rhea received in the decree, his estimate was ten percent higher than the required amount of child support. At trial, Rhea calculated that Tony owed $1963 per month for two children and $1384 for one child. On appeal, she argues that the district court's figure was "well within the range of evidence."

In determining child support, courts must consider both parents' net monthly income. *See In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 332 (Iowa Ct. App. 2005). Our legislature has established a rebuttable presumption that the guidelines yield the proper amount of monthly support. Iowa Code § 598.21B(2)(c). The purpose of the guidelines is to provide for the best interest of the children through each parent's proportional income. *In re Marriage of Beecher*, 582 N.W.2d 510, 513 (Iowa 1998).

In this case, the parties assign widely varying annual incomes for Tony. Rhea listed his income at $200,000, while Tony estimated that he earned $93,279 annually. The district court did not adopt either estimate, nor did it show in the decree what income amounts it used in calculating child support.

"Application of the guidelines is mandatory unless the court makes written findings adjustment is necessary." *In re Marriage of Benson*, 495 N.W.2d 777, 780 (Iowa Ct. App. 1992). A departure from the guidelines is not required by the fact that a noncustodial parent is a farmer. *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992) (approving process of averaging a farming spouse's income over two to three years to account for fluctuations in commodity prices and other agriculture variables).

We find it necessary to remand the child support issue for the district court to fix Tony's obligation by first determining the net monthly income for both parties, using the most up-to-date documentation, and then applying the child support guidelines. This exercise should take into account whether Tony's farm income has decreased in light of 100 acres of land being awarded to Rhea. We leave it to the district court's discretion whether it is appropriate to average Tony's income over several years to account for fluctuations in his actual earnings. If the court finds it necessary to deviate from the guidelines to support the children and achieve a just result for the parties, it should state that it is doing so. *See* Iowa Code § 598.21B(2)(d).

B. Whether the Court Correctly Ordered Tony to Pay for the Children's Postsecondary Education Expenses

In its decree, the court ordered:

> That Anthony shall continue to be responsible for the postsecondary education expenses of the parties' two oldest children, Marie and Brandi, and shall likewise be responsible for postsecondary education expenses for the remaining children pursuant to Chapter 598.21F of the Iowa Code should they desire to pursue postsecondary education.

Tony challenged the postsecondary education order in his motion to amend or enlarge, arguing that each parent should be responsible for a one-third share of the children's college expenses as allowed by section 598.21F. Rhea responded that

> the parties paid all college expenses of their two oldest daughters from their considerable farm income and that both fully anticipate that the farm income will do the same for the other children. As all the farm assets were awarded to Tony, he more than Rhea, has the ability to provide for their college expenses.

In its ruling on Tony's motion to amend, the court stated it had accepted Tony's stipulation concerning the postsecondary education subsidy. The court described Tony's position in the motion to amend as "spurious and unconscionable."

On appeal, Tony contends the district court erred by ordering him to bear the entire cost of college education for Marie and Brandi, as well as the three youngest children. He alleges the court mistook evidence presented at trial as his stipulation to undertake the whole expense. Tony concludes that the court overstepped its authority by ordering him to pay the college expenses in their entirety, contrary to Iowa Code section 598.21F, and should have ordered Rhea to contribute to the children's college education as well.

In her appellate arguments, Rhea asserts that Tony misinterprets the terms of the decree, which she reads as requiring him to finance one-third of the educational costs of the three youngest children pursuant to section 598.21F. *See* Iowa Code § 598.21F(2)(c) ("The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary

education."). She also claims Tony did not preserve error on his request that she be ordered to contribute one-third of the costs. Significantly, she does not argue that the parties reached an agreement Tony would bear the entire cost of the children's postsecondary educational pursuits. She urges us to affirm the decree on this issue.

At the time of trial, the two oldest daughters—then ages twenty-two and twenty—were in their final year of college, which the family had collectively funded up to the time of the dissolution. Before the presentation of evidence, Rhea's attorney offered the stipulation that "the family will continue to pay [the oldest daughters' education] expenses as they've done in the past." Tony's attorney agreed. Exhibit FF reads: "Anthony will provide the post-secondary education expenses for the parties' children should they pursue education beyond high school." Tony testified that he was aware Rhea wanted him to pay the remaining tuition for Marie and Brandi, but he did not state whether he agreed to do so, or whether he was willing to bear the entire cost of sending their younger children to college. At the time of the dissolution trial, Alex was eighteen years old, a senior in high school, and planned to attend college, according to the testimony, but the youngest children were only twelve and nine years old.

Section 598.21F allows the district court to order divorcing parents to pay a postsecondary education subsidy for their children if good cause is shown. *In re Marriage of Neff*, 675 N.W.2d 573, 575 (Iowa 2004). Whether good cause exists depends upon the financial condition of the parents and the resources available to their child. *Id.* Under the statute, a court may not hold a parent

responsible for more than one-third of the cost to attend an in-state public institution. *Sullins,* 715 N.W.2d at 253. The subsidy applies to expenses incurred by "a child who is between the ages of eighteen and twenty-two years." Iowa Code § 598.1(8). These statutes ensure that their parents' divorce will not become a financial impediment to the children obtaining a college education. *See generally Johnson v. Louis,* 654 N.W.2d 886, 891 (Iowa 2002). The educational benefit is a quid pro quo for the loss of stability resulting from divorce. *See Sullins,* 715 N.W.2d at 253; *In re Marriage of Vrban,* 293 N.W.2d 198, 202 (Iowa 1980).

Case law suggests it is possible for divorcing parents to stipulate to a financial plan to cover their children's college expenses outside the terms of chapter 598. For instance, our supreme court has stated: "In the usual context, parties to a dissolution are free to make agreements regarding the future college expenses of their children, which the courts may then enforce." *See In re Marriage of Rosenfeld*, 668 N.W.2d 840, 848 (Iowa 2003); *see also In re Marriage of Dolter*, 644 N.W.2d 370, 373 (Iowa Ct. App. 2002) (noting that definition of and limitation on "necessary postsecondary education expenses" in code "does not preclude the parties from entering into a stipulation covering additional expenses"). But in the instant case, the record does not show Tony and Rhea reached such an agreement regarding the postsecondary educational expenses as to any of their five children. Rhea proposed a stipulation at trial, but she does not assert on appeal Tony entered into that stipulation or that it is enforceable by the court.

The pretrial discussion between the attorneys that the "family" would continue to pay the expenses of the two college-aged daughters did not unambiguously establish Tony's responsibility to pay the entire amount of their remaining education expenses after the divorce. Likewise, it was not clear from the decree that when the district court invoked section 598.21F in relation to the three youngest children, it had performed the good cause determination required by that code provision.

Subsection (2) sets out the criteria for good cause:

> In determining whether good cause exists for ordering a postsecondary education subsidy, the court shall consider the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent.

Iowa Code § 598.21F(2).

For Jeana and Nicholas—who were respectively six and nine years shy of attending college at the time of the dissolution—it would be premature to determine their academic ability, their financial resources, whether they could be self-sustaining by the time they were ready to enter college, and the cost of tuition and related expenses that far into the future. *See Rosenfeld*, 668 N.W.2d at 848 (refusing to enforce conditional stipulation when child was only fourteen when decree was entered). We modify the decree to eliminate the provision requiring Tony to pay the postsecondary educational expenses of the two youngest children, and remand the case for entry of an amended decree reserving jurisdiction to consider applications for postsecondary education subsidies involving either or both parents when the court is able to make the

necessary findings under section 598.21F for Jeana and Nicholas. *See In re Marriage of Murphy*, 592 N.W.2d 681, 684 (Iowa 1999).

As for Alex, Brandi, and Marie—all of whom fell within the age range of eighteen to twenty-two years at the time that Rhea filed the petition—we remand for the district court to consider whether good cause exists to order Tony, Rhea, or both, to subsidize their postsecondary education expenses. *See Neff*, 675 N.W.2d at 580 (calculating subsidy from the time the action commenced). If good cause exists, the court shall determine the appropriate amount of the subsidy as to each parent and each child under the provisions in section 598.21F(2)(a)–(c) and modify the decree accordingly.

C. Whether the District Court Properly Determined Real Estate Valuations and Distributions

A dissolution decree must reach an overall equitable, though not necessarily equal, division of the couple's property—guided by the criteria listed in section 598.21(5). *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). On appeal, we hesitate to substitute our own property distribution for an even-handed division supported by the evidence:

> This deference to the trial court's determination is decidedly in the public interest. When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.

Id. at 641 (quoting *Benson*, 545 N.W.2d at 257).

In this case, the district court properly ascertained all the assets and debts held by the parties before determining how to divide them. *See In re Marriage of*

Hagerla, 698 N.W.2d 329, 333 (Iowa Ct. App. 2005). For purposes of this appeal, it is not necessary to reproduce the balance sheet identifying all assets and liabilities acquired during the marriage. But to preface the following discussion of the issues raised by the parties, it is helpful to recognize the real estate owned by Tony and Rhea.

Tony and his brother, Mike, acquired farmland through conveyances from family members at a substantial discount. They added to their holdings by purchasing additional parcels in arms-length transactions. The brothers also inherited a bin site from their parents. In total, the brothers owned and farmed 1372 acres.

Rhea inherited sixty acres of land from her grandparents. Her brother inherited forty acres adjacent to Rhea's plat, which Tony and Rhea bought from him. Tony and his brother included these 100 acres in their farming operations. Tony and Rhea also owned their residence, located on 3.35 acres. The mortgage on the house totaled $96,903 at the date of dissolution.

On appeal, the parties contest ownership rights in one of the properties received from Tony's parents, as well as the overall valuation of the farmland. Rhea also identifies an accounting error entered into the decree with respect to the bin site.

1. The Walnut Farm

We start by addressing Rhea's argument concerning 200 acres of farmland transferred by Tony's parents to Tony, Rhea, Mike, and his wife, Deborah. In the decree, the district court explained:

> The parties refer to this as the "Walnut Farm." In 1993, ½ of this ground was "sold" to Rhea and Deborah, spouses of Tony/Mike respectively, for $140,000.00 from J.W. Freund and Marilyn Freund. The remaining undivided ½ interest was transferred to Mike and Debora Freund, and Tony and Rhea. No consideration was paid for this remaining ½ interest.

All four recipient's names appear on the deed as tenants in common. The court treated the half-interest in the Walnut farm as a gift exclusively to Tony "since that is clearly what they are; transfers from Tony's family for substantially less than the fair market value of the property."

On appeal, Rhea contends that because her name appears on the deed, the court should have considered the farm as marital property. Relying on *In re Marriage of Wendt*, 339 N.W.2d 615, 616 (Iowa Ct. App. 1993), she advances that the Walnut farm was given to both brothers and their spouses, therefore the property should be divided in the same manner as all other marital assets. From that premise, she argues the $300,000 credit to Tony should be eliminated, increasing the amount owed to her by $150,000.

Tony maintains that the fact Rhea's name also appears on the deed does not determine whether it should be included in the estate under section 598.21(6).[1] *See In re Marriage of Fall*, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999) ("The manner a married couple titles or holds inherited or gifted property is not a controlling factor in assessing its treatment as a gift or inheritance under section 598.21[(6)]."). He relies on those factors cited in case law construing section 598.21(6) to conclude that regardless of title, his parents intended the

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[1] In his brief, Tony refers to this section as 598.21(2). Subsequent to many of the cases construing this subsection, the legislature reassigned this provision to section 598.21(6). We will refer to the subsection as 598.21(6) through the remainder of the opinion.

property as a gift to him and his brother alone, and not to their spouses. *See id.* at 166.

We find *In re Marriage of Martens* instructive on the treatment of a gift that has been deeded to both spouses. *In re Marriage of Martens*, 406 N.W.2d 819, 820 (Iowa Ct. App. 1987). In *Martens*, the parents of one spouse conveyed the marital residence and twenty acres to the couple, including both parties on the deed. *Id.* at 821. Although the deed stated "Love and Affection" as the sole consideration, the couple paid the parents $17,500 at the time of transfer. *Id.* We affirmed the district court's decision to award the entire property as a gift to the spouse whose parents conveyed it, as well as the court's corollary award to the other spouse of $8750—one-half of the consideration the couple paid. *Id.*

The *Martens* court found the controlling question to be donative intent, opining that the inclusion of both spouses' names on the deed "is only one factor to be considered in the broader calculus of donative intent." *Id.* In that case, compelling evidence showed the parents intended to give the property to their child alone, which significantly outweighed the fact that the other spouse's name appeared on the deed. *Id.* at 822. *Martens* also applied a five-factor test[2] by

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[2] These factors were identified in *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982):

> (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;

analogy to determine if the equities supported awarding the property to just one party. *Id.*

Here, Tony's parents regularly gave property to Tony and his brother for farming purposes. The record shows the parents' intent that farming remains a multi-generational family tradition, and their pattern of giving to their children reflects this intent. Although Rhea offers that a deviation from a pattern of giving suggests a different intent by the donors, this argument is less persuasive when four names appear on the deed rather than just the names of Tony and Rhea. The gift illustrates the parents' intent that the property remain in the hands of their sons to perpetuate the farm operation. We agree with the district court's determination that the half-interest in the Walnut farm was a gift to Tony alone.

2. Valuation of Real Estate

Both parties retained certified appraisers to value the real estate subject to dissolution. Rhea hired Donald Kearn, who estimated the property's fair market value at $4,240,623. Tony employed Max Evans, who appraised the gross fair market value at $2,462,600—an amount he reduced by fifteen to thirty percent based upon the fractional ownership between the two brothers. Evans explained that because of the joint ownership, the land likely would not sell for its full value due to a potential purchaser's hesitance to own half-interest in land shared with an unrelated individual.

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(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 done or devisee.

In its decree, the court accepted Kearn's higher valuations of all parcels, but applied Evans's fractional interest theory to property shared by the brothers, thereby reducing Kearn's amounts by fifteen percent. The court then divided the value of property owned in part by Mike to account for each brother's half-interest in the land. Rhea challenges the court's use of Evans's fractional interest reduction because no sale to an unrelated third party was imminent.

Because of the intricacies surrounding property valuation, appellate courts give substantial leeway to the district court. *In re Marriage of Keener*, 728 N.W.2d 188, 194 (Iowa 2007). If the district court's valuation is within the range of evidence presented at trial, it will not be disturbed on review. *Id.* We defer to the district court's valuations when they are accompanied by corroborating evidence or supporting credibility findings. *Id.* In this case, while we do not specifically endorse the fractional interest reductions applied by the district court, because its overall valuation of the property fell within the permissible range of evidence presented by the parties, we will not disturb its conclusion.

3. Bin Site

Rhea identifies a miscalculation on the real estate portion of the assets allocation schedule attached to the decree. Although the district court listed Tony's half-interest in the bin site at $29,260, it failed to include that amount when calculating the subtotal of land. Under the liabilities portion, the court did include the bin site, subtracting $29,260 from the amount Tony owed. On appeal, Tony concedes the district court's calculation error.

Rhea suggests remedying this discrepancy by adding $14,630 to her cash settlement. We agree with her proposal. Equity requires this scrivener's error to be corrected. *See In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (correcting an error in district court's distribution table). Accordingly, the decree should be modified to increase Tony's equalization payment by $14,630.

D. Whether the District Court Properly Determined the Value of the Farm Machinery

Tony challenges the district court's valuation of farm machinery, arguing the court should have accepted the $669,500 amount he and his brother Mike set in their "partnership agreement." The district court found the brothers' arrangement was more accurately deemed a buy-sell agreement, providing a buyout price if one brother dies or decides to sell—a characterization that Tony's attorney accepted at oral argument.

At trial, Rhea submitted the farm's Wells Fargo financial statement, which valued the machinery at $896,280 for the purpose of obtaining an operating line of credit. After the statement date, Tony purchased three additional tractors and a combine. Rhea argues this evidence supported the court's valuation of machinery at $829,500.

We will not disturb a district court's valuation if it falls within the range of permissible evidence. *Id.* We defer to the district court when corroborating evidence or credibility findings support the valuation. *Id.* The district court provided a balanced analysis of the competing figures, ultimately finding the bank

statement more reliable than the buy-sell agreement. On this record, we accept the district court's valuation of the machinery and equipment.

E. Whether the District Court Erred in Failing to Account for Tax Consequences on Cattle and Crop Asset Valuation and the Home Mortgage

1. Cattle and Crops

At trial, Tony valued the cattle at $413,415.02 and the crops at $358,692.82. Rhea valued the cattle at $414,240 and the crops at $310,662. Tony now contends the district court's valuation of the cattle at $414,240 and crops at $310,622 was inaccurate because it failed to take into account the tax consequences for their sale.

Tony correctly observes, "[t]he court is directed to consider the income tax consequences when allocating property in a dissolution." *See In re Marriage of Hogeland*, 448 N.W.2d 678, 680 (Iowa Ct. App. 1989). But Tony appears to have factored those consequences into his original valuation—deducting $10,000 for tax liability and $10,000 for sale costs. As with the real estate distribution and machinery valuation, the district court's findings fall within the range of evidence admitted at trial. We affirm the valuation of the cattle and grain.

2. *Home Mortgage*

Tony argues the court erred in assigning him the $96,903 mortgage for the home awarded to Rhea. His position is two pronged. First, he contends Rhea will have resources to pay the mortgage from his impending property settlement payments. Second, he alleges the court overlooked the tax consequences,

specifically that he cannot take deductions for mortgage interest and property taxes, but Rhea could, had the court assigned the mortgage to her.

In its decree, the court assigned all debts to Tony, including the mortgage. Assigning the mortgage to Tony decreased his share of marital property, which in turn decreased his property settlement obligation. We do not see that it would achieve greater equity to reassign the mortgage to Rhea.

Neither are we persuaded by Tony's tax-consequence argument. Tony cites *Hogeland*, 448 N.W.2d at 680, to support his contention that tax implications cause the court's assignment to be inequitable. But *Hogeland* stands for the proposition that when payment of a lump sum requires liquidating capital assets, a court should consider whether the tax consequence of such a sale will diminish its overall value. *Hogeland*,448 N.W.2d at 680–81. This concern does not present itself here. The taxable item is not being liquidated to pay a debt and the tax consequence is a benefit lost by the spouse not alleging error. The district court did not err in awarding the home to Rhea while assigning its mortgage to Tony.

F. Whether the District Court Properly Set a Payment Schedule for the Million-Dollar Cash Settlement, Plus Interest

To equalize the distribution, the district court ordered Tony to pay Rhea a cash settlement of $1,287,995, with a first payment of $187,995 due by June 1, 2011, and a second payment of $100,000 plus interest due by December 1, 2011. The court ordered Tony to tender the remaining $1 million over fourteen years, paying $75,000 per year plus interest—at a rate of 2.29 percent.

Tony asserts an interest-free settlement over twenty-five years at $50,000 annually would be more appropriate given the financial burdens imposed by the decree. Rhea replies that the 2.29 percent interest rate is appropriate because she must wait to receive her share of the assets, and that it would be inequitable to extend the wait over a quarter-century. When determining an appropriate property division, a district court must consider the time value of money when fashioning a cash award. *Keener*, 728 N.W.2d at 196. Removing the 2.29 percent interest on Rhea's cash settlement would effectively reduce her award and result in an inequitable distribution. We affirm the district court's order.

G. Whether the Alimony Award was Appropriate

In its temporary order, the district court ordered Tony to pay Rhea $1500 per month in alimony. In the final decree, the court decreased that amount to $400 per month. The alimony award continues until Rhea reaches age sixty-two, remarries, or dies, whichever occurs first. On appeal, Rhea argues the alimony fixed in the decree is insufficient, given her contributions to Tony's farming operation during the marriage and her own limited earning capacity. Tony encourages us to affirm the $400 monthly payments.

Alimony is an amount paid to a spouse in lieu of the other's legal obligation for support. *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). Alimony is not an absolute right, but an award based on the particular circumstances of each case. *In re Marriage of Becker*, 756 N.W.2d 822, 825 (Iowa 2008). Courts determine the amount of spousal support by applying the criteria in section 598.21A(1). *See id.*

In this case, the district court appropriately considered the section 298.21A(1) criteria, including the parties' twenty-three-year marriage and Tony's retention of the farming operation. The court found it significant that Rhea was awarded the family home, with Tony paying the mortgage; and that she would receive a "substantial property settlement." The court also believed Rhea could earn as much as $35,000 per year without further education or training, and that she could generate additional income from the 100 acres of land she was awarded. While the court's alimony determination also took into consideration Tony would be paying the children's college expenses—an aspect of the decree we have modified—that single factor does not motivate us to disturb the $400 monthly award.

Rhea also challenges the cessation of the payments on her sixty-second birthday, arguing there is no evidence that her financial position will improve at that age. Such limitations have been enforced by our court. *See In re Marriage of Vanderpol*, 529 N.W.2d 603, 606 (Iowa Ct. App. 1994). Given the surrounding circumstances, including Rhea's ability to work more hours outside the home after her children mature, the fifteen years of payments will afford Rhea an adequate opportunity to become self-supporting. We affirm the terms of the spousal support payments.

H. Attorney and Expert Fees

In the temporary order, the district court directed Tony to pay $20,000 of Rhea's initial attorney fees. In the final decree, the court ordered Tony to pay Rhea's additional attorney fees in the amount of $26,600, as well as $12,922.50 in appraisal fees. It then credited Tony for the initial $20,000 in attorney fees paid on Rhea's behalf. Last, the district court ordered Rhea to pay her accountant's fees in the amount of $8900.

The district court enjoys discretion in determining whether to award attorney fees. *Rosenfeld*, 668 N.W.2d at 849. A party wishing to overturn an award must show the court abused its discretion. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). The court's award should reflect the respective parties' ability to pay. *Sullins*, 715 N.W.2d at 255.

Both Tony and Rhea challenge the court's fee awards. Tony argues Rhea is "more than capable of paying her own attorney fees and expert witness fees." Rhea argues the district court erred in crediting Tony for the $20,000 he paid under the temporary order. She contends that because Tony paid her initial legal fees out of a marital account before its division, the district court deprived her of $10,000—her half of the amount paid toward the fees. She notes Tony also paid his own attorney and appraiser fees from those marital funds.

We find no abuse of discretion in the district court's requirement that Tony pay $26,600 toward Rhea's attorney fees, as well as the fees and expenses for Smith Land Service and Max Evans. Because Rhea will be receiving her cash

settlement from Tony over an extended period of time, Tony has a somewhat more immediate ability to absorb the costs of the litigation.

We also accept Rhea's argument that she should receive a $10,000 credit—representing half of the initial attorney fees Tony paid from marital funds that were credited back to him in the decree. The *Hansen* court faced a similar situation where the district court credited the husband for $541 in his own attorney fees when dividing the property between the spouses. *Hansen*, 733 N.W.2d at 703. Our supreme court held it was error to characterize attorney fees as marital debt, and reduced the equalization payment the wife was required to make by $280. *Id.* Like *Hansen*, Tony paid attorney fees from the marital account before the property division. The court then listed the $20,000 in paid attorney fees as a liability for Tony, but not for Rhea, in the parties' ledger. To remedy this inequity, the decree should be modified to credit Rhea with an additional $10,000.

Finally, Rhea asks for Tony to pay her attorney fees incurred on appeal. In exercising our broad discretion on this question, we consider several factors: the financial needs of the party seeking the award, the other party's ability to pay, and the relative merits of the appeal. *In re Marriage of Okland,* 699 N.W.2d 260, 270 (Iowa 2005). While Tony's immediate access to his assets may place him in a superior financial position, he has already been ordered to pay substantial attorney and expert witness fees incurred by Rhea at trial. We do not believe it is equitable to order him to pay additional fees on Rhea's behalf on appeal. Moreover, both sides presented cogent, reasonable arguments for their

respective positions on appeal. We decline to award Rhea appellate attorney fees. Costs of this appeal are taxed one-half to each party.

To recap, we modify the decree to incorporate the parties' stipulation concerning a fall-back visitation schedule. We also modify the decree by increasing Tony's equalization payment by $24,630 ($14,630+$10,000) to reflect the error concerning the bin site and the attorney fees paid from marital funds. Finally, we remand the case for the district court to recalculate Tony's child support payments and to determine whether good cause exists for Tony or for both Tony and Rhea to pay postsecondary education subsidies.

AFFIRMED AS MODIFIED AND REMANDED

Vaitheswaran, P.J., concurs; Mullins, J., concurs in part and dissents in part.

MULLINS, J. (concurs in part and dissents in part)

I respectfully concur in part and dissent in part.

With regard to the postsecondary education subsidy for the three older children, I dissent and would find that the parties' stipulation establishes good cause to obligate Tony to pay the subsidy, but not to exceed the statutory limit set forth in Iowa Code section 598.21F. I would further approve the apparent intent of the stipulation that Rhea is not obligated to pay toward the subsidy. I would remand for entry of an order consistent with these findings.

With regard to the home mortgage obligations, I dissent and would find that the extent to which the property distribution requires Tony to pay the home mortgage payments for the home awarded to Rhea, the distribution is equitable as a balance sheet matter, but I believe a different arrangement would provide a truly equitable distribution in this case. Specifically, it is inequitable to the parties and to their children for the parties to lose the benefits of income tax deductions that were designed in part to assist home ownership. Further, tying Rhea's housing stability to Tony's obligation to make payments provides an entanglement of responsibilities that is better severed with the severance of the marital bonds. Accordingly, I would reverse that provision and remand for the trial court to award to Rhea the home and the mortgage, and to then determine the manner and amount of adjustments necessary to Tony's obligations for either property equalization or alimony in order to accomplish an equitable result.

In all other respects I concur.