

IN THE COURT OF APPEALS OF IOWA

No. 1-156 / 10-0891
Filed April 27, 2011

**IN RE THE MARRIAGE OF DONALD R. RYAN
AND CAREY A. RYAN**

**Upon the Petition of
DONALD R. RYAN,**
Petitioner-Appellee/ Cross-Appellant,

**And Concerning
CAREY A. RYAN,**
Respondent-Appellant/ Cross-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

Carey Ryan appeals and Donald Ryan cross-appeals the economic provisions of the decree dissolving the parties' marriage and the district court's post-trial rulings thereon. **AFFIRMED AS MODIFIED.**

Catherine C. Dietz-Kilen and Earl B. Kavanaugh of Harrison & Dietz-Kilen,
P.L.C., Des Moines, for appellant.

Joseph G. Bertogli, Des Moines, for appellee.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

Donald and Carey Ryan were married in 1974. Six children were born of the marriage. In 1989, Donald started a business, New Directions in Sales, Inc. (NDS), which became quite successful. During the early years of the marriage, Carey worked as a surgical nurse and did consulting work. After the parties moved to Des Moines, she started a midwifery business.

Donald filed a petition for dissolution of marriage in July 2008. To describe the litigation as contentious is an understatement. Highly acrimonious and hotly contested, this case was a procedural nightmare. By the time the notices of appeal were filed, the pleadings in the district court file had grown to eight inches in thickness. No useful purpose would be served by setting forth a lengthy and detailed description of the numerous filings, contempt proceedings, and multiple motions to reconsider.

Over the course of the three-and-a-half-week trial, more than 2000 pages of transcript were generated. Afterwards, the district court entered an exhaustive sixty-six-page findings of fact, conclusions of law, and decree of dissolution of marriage. And the battle continued on. A flurry of post-trial motions followed. A special master was appointed to, among other things, value certain property, conduct an accounting, and pay certain of the parties' outstanding obligations. Further proceedings were conducted after the special master's report was submitted. In its final post-trial ruling, the court received and approved the special master's report and amended the dissolution decree based on that report. The district court also denied Carey's motion to reconsider, Carey's supplemental

motion for reconsideration, and Donald's response, which also requested certain relief. The parties' appeals then ensued.¹

We review this equity case de novo. Iowa R. App. P. 6.907. We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We acknowledge, however, the virtues inherent in listening to and observing the parties and witnesses. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. *Id.*

No hard and fast rules govern the economic provisions in a dissolution action; each decision turns on its own uniquely relevant facts. Thus we accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling "only when there has been a failure to do equity."

In re Marriage of Smith, 573 N.W.2d 924, 926 (Iowa 1998) (citations omitted).

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 a staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.

In re Marriage of Benson, 545 N.W.2d 252, 257 (Iowa 1996) (citations omitted).

Carey argues on appeal the district court erred in (1) its valuation of NDS, (2) determining the income of each party for purposes of calculating Donald's child support obligation, (3) failing to award Carey substantial traditional alimony, (4) failing to take into consideration Donald's dissipation of marital assets when

¹ Carey filed a notice of appeal. Donald then filed a notice of cross-appeal; however, he raises no cross-appeal issues in his brief.

determining the distribution of the parties' assets, (5) holding Carey responsible for certain marital bills, and (6) failing to order Carey's attorney fees be paid by NDS. Both parties seek an award of appellate attorney fees.

Carey argues the district court, in determining the division of property, failed to consider Donald's dissipation of \$62,000 in marital assets. At trial, Donald freely admitted dissipating marital assets in the amount of \$48,500. "Dissipation of assets is a proper consideration when dividing property." *In re Marriage of Fennelly*, 737 N.W.2d 97, 104 (Iowa 2007). Although extensive, the district court's decree did not take into consideration Donald's admitted dissipation of marital assets. We find it equitable to include the dissipated assets in the distribution of the parties' assets and debts and therefore conclude \$48,500 should have been included in the marital assets awarded to Donald. This action results in an increase of \$24,250 in the amount of money owed by Donald to Carey to equalize the distribution of assets and liabilities.

With regard to the parties' remaining arguments, we have closely reviewed the record and, all things considered, we find the district court's findings of fact, conclusions of law, and decree of dissolution of marriage, as well as its post-trial rulings, to be well-reasoned and fully supported by the record and the law. Points of contention are inevitable, but at the end of the day, we cannot say the district court failed to do equity. Because we agree with the district court's reasoning, its conclusions under the facts presented, and its application of the law, we affirm, with the above modification, the rulings of the district court. See Iowa Ct. R. 21.29(1)(a), (e).

Both parties seek an award of appellate attorney fees. We enjoy broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). In exercising this discretion, we consider several factors: the financial needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* We decline to award appellate attorney fees to either party in this case. Costs of the appeal are taxed one-half to each party.

AFFIRMED AS MODIFIED.