

IN THE COURT OF APPEALS OF IOWA

No. 2-106 / 11-1295
Filed April 11, 2012

**IN RE THE MARRIAGE OF JEFFREY HOKER
AND CYNTHIA D. HOKER**

Upon the Petition of

JEFFREY HOKER,
Petitioner-Appellant,

And Concerning

CYNTHIA D. HOKER,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,
Judge.

A husband appeals the valuation and division of the parties' property in
their dissolution decree. **AFFIRMED.**

Arthur L. Buzzell, Davenport, for appellant.

Lynne C. Jasper, Bettendorf, for appellee.

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

MULLINS, J.

In this dissolution of marriage action, Jeffrey Hoker appeals the district court's valuation of a trucking company, the amount of the compensatory cash payment award, and the income tax payments. We affirm.

I. BACKGROUND FACTS

Jeffrey and Cynthia Hoker were married in April 1999. During their marriage, Jeffrey and Cynthia started two businesses: Hoker Trucking L.L.C. and Hoker Logistic L.L.C. (collectively referred to herein as "the trucking company"). Although separate legal entities, the trucking company is operated as a single business. Jeffrey is the sole equity owner of the trucking company.

On October 26, 2009, Jeffrey petitioned for the dissolution of the parties' marriage. Trial was held March 15 and 16, 2011. The main issues were the valuation and division of the trucking company, the division of the other assets accumulated by the parties during the marriage, and spousal support.

At trial, both parties submitted expert business valuation reports appraising the trucking company's "fair market value." Both experts agreed that utilizing an asset approach to valuation was most appropriate in this case. Under this approach, the trucking company's value was determined by simply subtracting the trucking company's total liabilities from its total assets.

Using the trucking company's December 31, 2010, balance sheet, Jeffrey's expert determined the trucking company had assets totaling \$1,658,979 and liabilities of \$1,424,247 resulting in a fair market value of approximately

\$234,732. The expert then utilized a marketability discount of ten percent to conclude the trucking company had a fair market value rounded to \$210,000.

Cynthia's expert determined the fair market value of the trucking company was \$788,933 based on assets of \$1,438,112¹ and liabilities of \$649,179. However, this expert's appraisal was based on the trucking company's December 31, 2009, balance sheet. Cynthia claimed this was the only information available to her because Jeffrey denied her access to the trucking company's records. Cynthia's expert did not apply a marketability discount.

On May 4, 2011, the district court entered a decree of dissolution of marriage. The district court determined the adjusted net asset value methodology was the appropriate approach, but rejected the conclusions reached by both experts. The district court found:

The Court is unable to rely entirely on the conclusion of [Jeffrey's] expert because it is dependent on financial actions taken by [Jeffrey] in the context of the pending litigation in which the valuation of the businesses had been identified as a principal point of contention between the parties. Simply stated, [Jeffrey] had both the reason and opportunity to manipulate the financial structure and condition of the businesses to decrease the valuation of those businesses. Further, [Jeffrey's] expert has included a ten percent marketability discount in his valuation. The Court does not find such a discount to be appropriate given the utilization of the adjusted net asset valuation methodology and under the circumstances of this dissolution of marriage proceeding in which the parties agree that the businesses will be awarded to [Jeffrey] for continued operation. On the other hand, the valuation of [Cynthia's] expert is suspect because it is based on dated financial data, inaccurate estimates of the value of the businesses' rolling stock, and manipulation of the comparable sales data to include sales of businesses which the Court determines not to be comparable temporally, geographically, or functionally.

¹ Her expert blended \$1,444,924 (market approach) and \$1,431,300 (cost approach) to opine the value of the assets was \$1,438,112.

The Court concludes that the estimates of the values of the semi tractors and trailers utilized by [Jeffrey's] expert in his analysis are the most accurate available to the Court. Therefore, in the Court's valuation of the businesses, those estimates will be utilized. However, the Court recognizes that [Jeffrey], through recent updating of the fleet, has increased the liabilities attributable to the vehicles to a greater degree than the current market value of the fleet has been increased. Obviously, those actions have the effect of reducing the present net asset value of the businesses. While some legitimate business reasons exist for [Jeffrey's] actions, the extent to which the businesses needed new tractors and trailers is open to legitimate doubt given the impact of the transactions on the snapshot valuation of the businesses. The Court makes some adjustment in the overall valuation of the businesses as a result of that circumstance in order to arrive at a fair and equitable valuation.

The district court then determined that based on the evidence before it, the net result of the updating of the tractors and trailers of the trucking company was to increase the net liabilities and decrease the net value of the trucking company by between \$150,000 and \$200,000. However, because some updating was certainly appropriate for the ongoing functionality and income-producing potential of the trucking company, the district court concluded that the valuation of the trucking company should only be increased by the minimum amount of \$150,000. The district court then utilized Jeffrey's expert's valuation of the trucking company of \$234,732 as the more credible appraisal to conclude the net value of the trucking company was \$385,000.

The district court also divided the parties' other assets. Following clarification upon motions to amend and enlarge, the district court awarded Jeffrey three parcels of real estate (one included the marital home), an acreage, a rents receivable, snow removal equipment, six vehicles, the proceeds from the sale of another vehicle, five trailers and tractors, five life insurance policies, a

retirement account, guns, and other personal property totaling \$771,738. Cynthia received one parcel of real estate, a rents receivable, a retirement account and cash set off, a Vanguard account, deferred compensation, three vehicles, a life insurance policy, and other personal property totaling \$162,968. The district court justified making this disproportional division so Jeffrey could own the property adjoining the trucking company in order to minimize potential future conflict, and so he could have the opportunity to liquidate or otherwise manage the assets in the most appropriate manner for the continued operation of the trucking company.

The district court then turned to the appropriate amount of compensation to be made in order to make the property division equitable. In making this determination, the district court also considered Cynthia's claim for spousal support. The district court noted that Cynthia was fifty years old and made approximately \$44,400 per year, while Jeffrey was forty-four years old and had an average gross annual income from 2006 to 2009 of \$123,355. However, because Cynthia was "fully capable of supporting herself without assistance" from Jeffrey, the district court determined that providing a compensatory cash award in connection with the division of the property was more appropriate than awarding spousal support. Accordingly, the district court ordered Jeffrey to pay Cynthia a compensatory cash award of \$600,000, which was adjusted for expert fees to \$596,687.50.

At trial, Cynthia agreed that an even split of taxes, penalties, and interest for inaccurate income tax returns filed between 2006 and 2009 would be fair.

Amended tax returns for those years showed amounts owed totaling \$35,392. However, the district court declined to split these payments, and instead made Jeffrey responsible for all such taxes owed.

Jeffrey now appeals. Our review in this dissolution action is de novo. *In re Marriage of Becker*, 756 N.W.2d 822, 824-25 (Iowa 2008).

II. ANALYSIS

In determining the value of the trucking company, the district court found that Jeffrey's expert presented the more accurate appraisal, but the appraisal failed to take into account the increase to the trucking company's liabilities over the past year while the dissolution decree was pending. The district court found only part of the increase in liabilities to be supported as a business decision, and that the remainder was done as a way to minimize the trucking company's overall net value during the dissolution. *See In re Marriage of Bell*, 576 N.W.2d 618, 624 (Iowa Ct. App. 1998) (holding the conduct of a spouse which results in loss, disposal, dissipation, or waste of property otherwise subject to division at the time of divorce may be considered in making an equitable property distribution), *abrogated on other grounds by In re Marriage of Wendell*, 581 N.W.2d 197, 200 (Iowa Ct. App. 1998). The adjustment the district court made is proper in light of this credibility finding, and the valuation of the trucking company is well within the range of evidence presented. *See In re Marriage of Keener*, 728 N.W.2d 188, 194 (Iowa 2007); *In re Marriage of Webb*, 426 N.W.2d 402, 406 (Iowa 1988); *In re Marriage of Williams*, 303 N.W.2d 160, 166 (Iowa 1981).

Jeffrey also takes issue with the amount of the compensatory award ordered in lieu of spousal support. We consider property division and spousal support together in evaluating their individual sufficiency. *In re Marriage of Hardy*, 539 N.W.2d 729, 732 (Iowa Ct. App. 1995); see also Iowa Code §§ 598.21(5)(h) (2009) (property division), 598.21A(1)(c) (spousal support).

Jeffrey was awarded the trucking company and other assets totaling \$1,156,738, while Cynthia was awarded assets totaling \$162,968. Net assets for distribution approximated \$1.32 million. With the compensatory cash payment of \$596,687.50, the property award resulted in Jeffrey receiving \$560,050.50 and Cynthia receiving \$759,655.50. Cynthia received about 57.5% of the marital net worth. If the court had awarded a 50-50 division of net assets, Jeffrey would have received \$99,802.50 more and Cynthia \$99,802.50 less.

The parties were married for twelve years, although for the final eighteen months the parties were separated. Jeffrey currently earns approximately three times as much as Cynthia, and being awarded the trucking company provides him a greater opportunity to increase his future earning capacity. Although Cynthia is capable of becoming self-supporting, it is clear she will not enjoy the same standard of living she enjoyed during the marriage. Under the circumstances of this case, we will not disturb the equitable findings of the trial court and hereby affirm the district court's property distribution in lieu of spousal support. See *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000); *In re Marriage of Geil*, 509 N.W.2d 738, 742 (Iowa 1993).

Finally, Jeffrey argues he should not be required to pay the amounts owed on the parties' amended income taxes returns from 2006 to 2009. He contends the payment "further tilt[s] the division of assets and liabilities away from equitable." We disagree. The district court's determination that Jeffrey should be responsible for all such taxes was made in conjunction with the property division and spousal support issues. For the same reasons stated in the property distribution, we find that this payment is not inequitable. See *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985) ("There need be neither an equal division nor a percentage division of the property; 'that which is determinative is that which would constitute an equitable and just award under the circumstances.'" (quoting *Locke v. Locke*, 246 N.W.2d 246, 251 (Iowa 1976))).

Cynthia argues Jeffrey should be required to pay her \$6000 in appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within our court's wide discretion. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). In determining whether to make such an award, we consider 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 decision of the trial court on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Although Cynthia successfully defended the trial court decision on appeal, the issues raised by Jeffrey were meritorious, and given all the circumstances present in this action, we find that her request should be denied.

AFFIRMED.