IN THE COURT OF APPEALS OF IOWA

No. 2-125 / 11-0441
Filed April 25, 2012

IN RE THE MARRIAGE OF MELINDA KITZMAN AND WILLIAM KITZMAN

Upon the Petition of
MELINDA KITZMAN,
Petitioner-Appellee/Cross-Appellant,

And Concerning
WILLIAM KITZMAN,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Grundy County, Bradley J. Harris, Judge.

William Kitzman appeals, and Melinda Kitzman cross-appeals, from economic provisions of a dissolution decree. **AFFIRMED.**

Erin Patrick Lyons of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellant.

Barry S. Kaplan and Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellee.

Heard by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

DANILSON, J.

William Kitzman appeals, and Melinda Kitzman cross-appeals, from various economic provisions of a dissolution decree. Upon our review, we affirm the district court's judgment. Although Melinda was entitled to credit for at least the appreciation of the premarital assets in this long-term marriage, William was entitled to some credit for his inherited property. These facts, and any other miscalculations identified by the parties are, to a degree, offsetting and otherwise do not fundamentally change the equalization payment calculated by the district court. We also affirm the court's decision declining to award trial attorney fees to Melinda. We award appellate attorney fees to Melinda in the sum of $4500.

I. Background Facts and Proceedings.

William and Melinda Kitzman married in 1982, separated in 2008, and divorced in 2011. William was fifty-five years old and Melinda was fifty years old at the time of trial in September 2010. Both are in good health. William contributed to the marriage a vehicle, a life insurance policy, some certificates of deposit, and 274 shares to a newly formed farm corporation, Kitzman Farms, Inc. (KFI). Melinda contributed to the marriage a vehicle with debt attached and two life insurance policies. Three children were born to the marriage, who were twenty-three, twenty-one, and nineteen years of age at the time of trial. Two of the children attend Iowa State University, and the third is contemplating attending a community college.

A few years prior to their marriage, William became a shareholder in KFI. William has a one-third interest in KFI. The other shareholders of KFI are William's two brothers, Clifford and Wallace, and their wives, who each have a

one-sixth interest. Melinda was not added as a shareholder after her marriage to William although she was always considered "part of" the family farming and seed corn operation. KFI owns five separate parcels of land known as the Heidi's (valued at $382,000); Connel's (valued at $987,000); Palman's (valued at $527,000); Albert's (valued at $1,315,000); and Middleton's (valued at $561,000) farms. The Heidi's and Connel's farms were purchased on contract by KFI prior to the parties' marriage; KFI purchased the remaining three farms in 2000 or 2001. KFI also owned approximately $1.5 million in farm equipment and machinery, and the most current balance statement dated February 15, 2010, reflected over $900,000 in unsold crop. KFI had total indebtedness in the amount of $264,386.

In 2003, Rocking K Farms was established, with William and Melinda as equal shareholders. KFI rents its land to Rocking K, with the purpose of selling grain on the farmground and receiving farm payments on that ground, without limiting the amounts of government payments received. Rocking K does not own any land. The value of Rocking K fluctuated on a day-to-day basis, but at the time of trial, its net worth was approximately $30,000 to $40,000.

In approximately 2005, the Kitzman brothers formed WCW Hogs, L.L.C. (WCW). Its six equal shareholders are William, Melinda, and William's two brothers and their wives. The entity operates on a portion of land owned by WCW for the purpose of leasing the hog confinement buildings in order to use the manure produced by the hogs on KFI farmland. WCW owns land worth $877,000 and other assets worth $15,364, with debts of $503,524. At the time of

trial, WCW was valued at $388,840. The WCW property rents to a tenant for $11,000 per month.

The real estate owned by the parties during their marriage consisted of three parcels that were referred to as the "home place," an acreage with the marital home (three acres); the land surrounding the marital home (seventy-three acres); and 167 acres of the Nichols farm; which is divided into Nichols east and Nichols west. The parties moved to the home on the acreage in 1984 and purchased it in 1988 or 1989 from William's parents for $40,000, which was below market value. At the time of trial, this property appraised at $122,000.

When William's mother died in 1993, William inherited the seventy-three acres of land surrounding the marital home. At that time, the parties paid $74,000 to William's sisters to make the inheritances equal. The land was valued for purposes of the estate proceedings in the amount of $168,750. When William's father died in 1994, William and his brothers inherited his farmland along with a debt of approximately $30,000. This farmland was valued at $332,750 in the estate proceedings.

After some intra-family land swapping, William and Melinda ended up with the eighty-acre Nichols east farm. During the marriage, the parties bought ninety-three additional acres they had been renting, but they subsequently traded this land with another family member for the Nichols west property. These properties are in the name of William and Melinda. At the time of trial, the parties' Nichols farm was appraised at $1,070,000, and their seventy-three acres of land surrounding the home place was appraised at $525,000. Collectively, the real estate had an indebtedness in the amount of $117,243.

Melinda completed her training to become a registered nurse during the first year of the parties' marriage. She worked as a registered nurse, first at the Iowa Veterans Home beginning in 1983. Since approximately 2002, Melinda has been employed as a public health nurse for Tama County. She earns approximately $59,000 per year and receives medical insurance through her employment for herself and the parties' children. At the time of trial, Melinda had participated in the Iowa Public Employees' Retirement System (IPERS) for more than twenty-seven years, and the "cash out" value of her pension was $168,525.

In December 2008, Melinda left the marital home and filed for divorce. She moved to a house in Grundy Center. William continued to live in the marital home. Prior to trial, the parties divided household furnishings, and those assets were not in dispute.

Trial was held in September 2010. On February 4, 2011, the district court filed its decree dissolving William and Melinda's twenty-nine year marriage. The main issue concerned the division of the parties' property. The court made the following division:

	Melinda	*William*
KFI, 1/3 less Heidi's and Connel's farms and 40% discount		$798,000
WCW, 1/3 less 40% discount		$ 64,781
Rocking K Farms, Inc.		$ 39,891
Real estate owned in parties' names		$1,552,841
Ford and motor home	$ 5,000	
Other vehicles and RV		$ 17,000
Cattle		$ 14,600
Hay		$ 640
Mower		$ 6,000
Trees and wood		$ 0
Manure spreader		$ 3,200
IPERS	$168,525	
Northwest Mutual	$ 12,799	
Farm Bureau	$ 4,367	
American Funds	$ 2,509	
Northwest Mutual		($ 8,938)
Alliant	$ 1,001	
TOTAL	**$194,201**	**$2,488,015**

To make the property division equitable, the court ordered William to pay Melinda $1,146,907, with the first installment of $346,907 on or before June 1, 2011, and the four remaining installments of $200,000 plus 4.5% interest on or before June 1 of each year thereafter. The court denied Melinda's request for attorney fees. The parties filed cross-motions to amend and enlarge the court's ruling. The court denied the motions, except for Melinda's request to be restored to her maiden name. William now appeals, and Melinda cross-appeals, the court's conclusions in regard to various economic provisions of their decree.

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). In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the

court's findings. Iowa R. App. P. 6.904(3)(*g*). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Issues on Appeal and Cross-Appeal.[1]

On appeal, William contends the district court erred in:

(1) not setting aside his inherited real estate;
(2) calculating the value of KFI, WCW Hogs, and Rocking K;
(3) including the value of premarital equipment in its valuation of KFI;
(4) not concluding the cattle belonged to the children;
(5) not requiring Melinda to pay a cash allowance to the children who attend college;
(6) not crediting him for the debts and interest he paid following the parties' separation; and,
(7) undervaluing Melinda's motorhome.

On cross-appeal, Melinda argues the district court erred in:

(1) failing to include "premarital" land in computing the value of KFI;
(2) improperly applying a minority interest discount to the values of KFI and WCW Hogs;
(3) failing to consider the value of the equipment and farm machinery;
(4) reaching its valuations by failing to attribute the value minus the debt as of the date of trial; and,
(5) failing to award her trial attorney fees. Melinda also requests appellate attorney fees.

IV. 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

[1] Both parties argue that various contentions of the other were not properly preserved for our review. We have taken the parties' error preservation concerns into consideration; unless specifically noted otherwise, we find the issues presented to be properly preserved.

property in an equitable manner according to the enumerated factors in Iowa Code section 598.21(5) (2011). *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).

We also observe that the district court awarded all farm assets[2] to William and thus, he received all of his inherited property and premarital property. The parties' dispute on appeal relates to the manner in which the court determined the equalization payment to be paid to Melinda.

A. Valuations.

The parties dispute the district court's valuations of WCW, Rocking K, KFI, the parties' real estate, and Melinda's motorhome in arriving at the equalization payment. 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.

(1) Minority Interest/Lack of Marketability. Before addressing the valuations assigned by the district court we first address Melinda's contention that the district court improperly applied a minority interest discount to the subscribed values of KFI and WCW. She alleges no discount should have been applied to the entities, because the assets "are farm assets that can easily be

[2] We interpret "all farm-related assets" as used in the decree to include all corporate stock of the farming entities.

sold," and because the Kitzman brothers' "Buy-Sell Agreement states there are to be no discounts for minority interest or lack of marketability." Melinda further argues that even if the court finds a minority discount should apply, a forty-percent discount "is excessive." In regard to the Kitzman brother's Buy-Sell Agreement, the district court observed:

> In 2001, the shareholders of KFI entered into a shareholders' agreement which provided among other matters that upon sale of the stock between the shareholders, the value shall be determined by appraisal "without regard to minority or lack of marketability discounts." The court determines that said language is included solely as an agreement between shareholders and that the assets of KFI, excluding the value of Heidi's and Connel's farms, shall be discounted by 40 percent due to respondent's minority shareholding status.

Courts may discount the value of stock for minority ownership and lack of marketability in distributing assets in a dissolution of marriage, but there is no requirement that a discount be applied. *See In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993).

> The purpose of determining value is to assist the court in making equitable property awards and allowances. The general rule is that stock should be valued at market value if it can reasonably be ascertained. However, the valuation of a closely-held corporation is difficult, and the market value of stock in a closely-held corporation can rarely be ascertained. Because of the difficulty of the task of valuation, the law provides much leeway to the trial court.

Id. (citing *In re Marriage of Dennis*, 467 N.W.2d 806, 808 (Iowa Ct. App.1991)).

Record evidence includes opinions from Melinda's own expert witness, accountant Mark Harrington, as well as William's expert witness, accountant Doug Jordan, in regard to an appropriate discount, if any, that should be applied to the corporations to account for William's minority interest in a closely-held

family corporation and the lack of marketability for such assets. As Harrington set forth in a May 2010 letter to Melinda's attorney:

> William Kitzman owns a one-third interest in the corporations discussed herein [KFI and WCW]. As a one-third owner, he does not have the right or ability to cause a sale of corporate assets or cause the payment of dividends or other compensation. As such, it is reasonable and proper to discount the value of this interest to reflect that fact that he is a minority owner. It is my opinion that the net asset value his one-third interest be reduced by 20% to reflect this minority ownership interest. Further, the fact that there are limited opportunities to sell shares of a closely-held family business creates a very limited market for these shares. It is my opinion that a further reduction of the net asset value by 20% to reflect this lack of marketability is reasonable in this case.

As Harrington further explained at his deposition, he reached his opinion as to the appropriate percentage in "the particular areas of valuation discounts" of "minority interest, lack of marketability" based upon the "standards in the industry." Doug Jordan generally agreed with Harrington's opinion.

Upon our review, we find the district court's discount of forty percent is substantial, but within the permissible range of the evidence presented, and is due to William's status in the closely-held family corporations as a minority shareholder, and because there is a lack of ready marketability for his interest, as set forth by the expert testimony and record evidence before the district court. *See, e.g.*, *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991) (analyzing factors to consider in determining reduction of fair market value); *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 660 (Iowa 1989); *In re Marriage of Hoak*, 364 N.W.2d 185, 193 (Iowa 1985).

(2) WCH. William's proposed value for his share of WCW is $26,500; Melinda's proposed value for William's share of the entity is $75,967. At trial, the

district court heard testimony from several experts, including Doug Jordan, Larry Steffens, Robert Wobetter, and Mark Harrington, in regard to the valuations of the entity. The decree provided that WCW owns real estate the court determined to be valued at $877,000 and other assets in the amount of $15,364, with indebtedness in the amount of $568,492. The court then discounted the parties' one-third interest in the entity by forty percent, to arrive at a valuation of $64,781 for William's share.

Upon our review, we find the valuation assigned by the district court to be within the permissible range of evidence, *see Hansen*, 733 N.W.2d at 703, except for the amount of indebtedness, which expert testimony indicates had decreased to $503,524 at the date of trial. The date of trial is the most appropriate date to value assets. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). Modification of the amount of indebtedness increases the valuation of William's share of WCW to $77, 768.

(3) Rocking K Farms. William's proposed value for Rocking K Farms is $0; Melinda's proposed value for the entity is $39,891. At trial, the district court heard testimony from several witnesses, including William's expert, who stated the value of Rocking K Farms was approximately $30,000, and the most recent balance sheet for the entity in the record noted its value to be $39,891. William contends that Rocking K Farms "is merely a pass-through entity" that has "no equity at all." Although it may be a pass-through entity, clearly its net worth of $39,891 could be passed-through to William at will. Upon our review, we find the valuation of $39,891 assigned by the district court to be within the permissible range of evidence. *Hansen*, 733 N.W.2d at 703.

(4) KFI. Melinda raises two challenges to the court's valuation of KFI. She argues the court erred in failing to include farm machinery and erred in failing to use the amount of indebtedness at the time of trial to calculate the entity's value. The district court concluded William's interest in KFI had a value, after deducting a forty-percent discount, of $798,000. For purposes of our discussion here, we will assume it was appropriate to deduct the values of the Heidi and Connel farms as premarital property.

We first observe that the two experts, Harrington and Jordan, valued KFI by its net value of assets less debts. However, Jordan suggested various adjustments to Harrington's calculations, the most significant being a reduction in values of the assets for tax consequences if the corporate assets were sold. Where sale of an asset is ordered, necessary, or otherwise relatively certain, consideration of tax consequences is appropriate, and where sale will not occur or is rather doubtful, consideration of tax consequences is inappropriate. *See*, *e.g.*, *Friedman*, 466 N.W.2d at 691 ("But where there is no evidence to support a discounting based on a sale and the trial court has not ordered a sale, the effect of considering income tax consequences on a sale is to diminish the asset value to the nonowning spouse."); *In re Marriage of Hogeland*, 448 N.W.2d 678, 680-81 (Iowa Ct. App. 1989) (explaining that where the property distribution "will in all probability require the liquidation of capital assets, the income tax consequences of such a sale should be considered by the trial court in assessing the equities of the property and alimony award"). There was no evidence William even contemplated a sale, and in fact all evidence demonstrated he would continue his

farm operations. Thus, the district court did not need to consider the tax consequences of a sale.

Harrington opined that KFI had a value of $5,122,264 including farm machinery. It is not clear from the court's ruling how it calculated William's one-third share interest in KFI prior to the application of any discounts to be $1,330,000. However, upon Harrington's calculation of the value of KFI including farm machinery, but deducting the Heidi parcel ($382,000) and the Connel parcel ($987,000), William's interest in KFI would be $1,251,000. However, we acknowledge there was evidence the Heidi farm may have only had a value of $280,000 and the corporation's indebtedness had been reduced by the time of trial, both of which would justify a figure closer to the sum calculated by the district court. Upon our review, we find the district court was in the better position to consider and weigh the conflicting evidence and testimony in regard to KFI's assets and debts, and we conclude the valuation of $798,000, ($1,330,000 x 40%) assigned by the district court to be within the permissible range of evidence.[3] *Hansen*, 733 N.W.2d at 703.

(5) Real Estate-Indebtedness. Melinda also argues the district court failed to use the amount of indebtedness of the parties' real estate at the time of trial to calculate the value of those properties. With respect to the parties' real estate and debts, the court's findings appear to be consistent with the evidence and testimony in the record as to the properties' indebtedness at the time of trial. We

[3] The district court obviously subtracted forty percent from the sum of $1,330,000 to arrive at $798,000. However, we note the two experts, Harrington and Jordan, first subtracted twenty percent for the minority discount, and after finding the result, then subtracted another twenty percent for lack of marketability. The experts' methodology actually results in a higher value, $851,000, than simply deducting forty percent.

therefore conclude the value of the real estate less indebtedness ($1,552,841) assigned by the district court to be within the permissible range of evidence. *See id.*

(6) Motorhome. William's proposed value for Melinda's motorhome is between $122,000 and $165,000, which he contends is consistent with her testimony at trial. Melinda's proposed value for the motorhome is $90,000, which she posits is the price she purchased it for after the parties' separation, and is less than the amount of its indebtedness ($94,000). The district court concluded Melinda's value should be used and assigned no value to the motorhome. In ascertaining the value of property, its owner is a competent witness to testify to its market value. *Id.* (citing *Holcomb v. Hoffschneider*, 297 N.W.2d 210, 213 (Iowa 1980)). We acknowledge Melinda testified that similar motorhomes have been advertised for $122,000 to $165,000, but she did not know if the features or assessories—which could add significant value to a motorhome—were the same as her motorhome. As a result she opined that her motorhome had a value consistent with its purchase price. Upon our review, we find the motorhome was properly valued at $ 0 ($90,000 less the amount of its indebtedness).

B. Inherited Property.

William contends the district court erred in not setting aside his inherited real estate; namely, the seventy-three-acre parcel surrounding the marital home acreage he inherited following his mother's death in 1993, and the eighty-acre Nichols farm he inherited following his father's death in 1994. In respect to these two parcels and the acreage, the district court concluded:

> Although the three parcels of real estate owned by the parties consists of property previously owned by respondent's family and was obtained by the parties either by inheritance or exchange of inherited property between family members, due to the long term of this marriage and the intermingling of inherited assets, the court determines that said property should be considered as a marital asset for the purpose of making an equitable division of the property of the parties.

(Citation omitted.) Melinda argues the court properly determined the inherited portion of the parties' real estate should be considered a marital asset subject to division.

The principles guiding division of property are well established. Iowa Code section 598.21(5) requires the court to divide "all property, except inherited property or gifts received by one party" equitably between the parties. 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." *Id.* Other factors include 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 the dissolution. *Id*. at 319-20.

Here, the marriage between the parties lasted twenty-nine years, and the inherited property served as a source of the family's livelihood. Melinda was the primary caretaker of the home and children. She was involved in improvements that were made to the family home. Although she did not have "hands on" involvement with the farming business, Melinda was inherently involved, as the business was central to the family's success and prosperity. Melinda also worked outside the home for nearly the whole marriage and contributed her paychecks to the family's joint checking account, which was used to pay bills. Melinda also maintained a "very close" relationship with William's parents and tended to them in their later years. We acknowledge Melinda is able to support and care for herself and does not have any special needs.

Notwithstanding Melinda's contributions, William's argument that he should have been given credit for his inherited property has some merit. However, any credit would likely be limited to the value of the inherited property at the time of inheritance. In light of this long marriage, the fact the inherited property served as a source of support during the marriage, and each party's

contributions, at a minimum the appreciation should have been credited to both parties equally. *See Fennelly*, 737 N.W.2d at 104.

C. Premarital Property.

Melinda argues the district court erred in failing to include the Heidi's and Connel's farms (valued at $382,000 and $987,000, respectively) in computing the value of KFI. William states the court properly excluded those premarital properties from its valuation of KFI. However, William contends the district court erred in failing to include $233,141 worth of premarital farm equipment in its valuation of KFI. Melinda persists the court was correct in giving $0 credit for premarital farm equipment.

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; *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Rather, property brought into the marriage by a party is merely a factor among many to be considered under section 598.21(5). *In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005). "This factor may justify full credit, but does not require it." *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). 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.

The Heidi farm was acquired by KFI in 1980, two years before the parties married. That property in particular is significant to William because it is where his parents lived and he had lived before the marriage. KFI purchased the

Connel farm in the spring prior to the parties' marriage. As a part of the court's award to William of all "farm-related assets," William received his interest in the Heidi and Connel farms and leaves his farm operation intact. Accordingly, the propriety of omitting the values of the two farms in valuing KFI is only significant as it relates to the proper amount of the equalization award.

That said, William was fully committed to the farming business at the time of the parties' marriage. William supported Melinda while she completed her schooling to become a nurse during the first year of the marriage. As mentioned above, Melinda did not have "hands on" involvement with the farming business, although she did contribute significantly to the family's finances by her work outside the home throughout the marriage. Further, it is clear the vast majority of KFI's land accumulation occurred in the early 2000's and was accounted for in the large amount of assets subject to division between the parties.

In reaching its decision, the district court omitted the full current value of both the Heidi farm and the Connel farm in valuing KFI. We first observe the premarital asset actually "owned" by William was his interest in the KFI corporation, not the Heidi and Connel farms. Unfortunately, it does not appear the corporation's net value on or near the parties' marriage was available to the district court.

More significant, is that both properties were purchased on contract and, other than the down payment on each farm, as well as one installment payment on the Heidi farm, the balance of the purchase price of each of the two farms was paid during the marriage. Moreover, by excluding both properties at their current

market value less the forty percent discount, Melinda was not credited with any portion of the appreciation that accumulated throughout this lengthy marriage.

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. In *Fennelly*, the supreme court noted the parties contributed "in countless ways to the marriage" and it was appropriate under the facts to divide the appreciation of the parties' premarital property. *Id*. Although Melinda should have been given credit for some of the appreciation on the Heidi and Connel farms, our concern is if the overall property division is equitable to both parties.

Record evidence also indicates the Kitzman brothers each made an initial investment into the corporation, including some amount of farm equipment; however, there is no evidence as to the current value of William's contributed equipment or if this equipment still exists. We will take these factors into consideration with our other findings in determining whether the district court's overall property division needs to be adjusted to constitute an equitable distribution between the parties based upon the circumstances of this case.

D. Cattle.

William contends the district court erred in not concluding the cattle belonged to the children and including the cattle in the assets subject to division between the parties. Melinda states the cattle were the parties' marital property, she was unaware William had "gifted" the cattle to the children, and she did not give William permission to do so. William acknowledged at trial the cattle were

listed on the parties' July 2009 marital asset list that was submitted to the district court. However, he apparently posits that since then, he gifted the cattle to the children. Upon our review, we find Melinda's testimony in regard to the cattle to be more credible, considering the cattle were listed on the parties' asset sheet and the lack of evidence to support William's claim to the contrary. We agree with the district court's finding as to this issue.

E. Cash Allowance to Children.

William argues the district court erred in "not requiring Melinda to pay a cash allowance to the parties' children that attend college" in addition to the postsecondary education subsidy ordered by the court. William contends he is providing assistance for the children above and beyond that required by the court pursuant to section 598.21F, including paying for new clothes, transportation, groceries, and supplies, whereas Melinda "is doing so on a sharply limited basis." Melinda states she "did give money to her daughters, but the record does not reflect specifically how the monies were applied."

Upon our review, we find the decree only identifies the general duty or obligation for each party to pay one-third of the children's postsecondary education subsidy, but it does not identify the actual implementation of the subsidy by fixing the parties' specific obligation. This issue may be subject to further application and hearing to fix the specific monetary obligations of the parties if they are unable to reach an agreement.

F. Post-Separation Debts and Interest.

William argues the district court erred in failing to credit him for the debts and interest he paid following the parties' separation. He contends "[i]t is not

equitable for Melinda to be permitted to simply abandon debts for which he then responsibly paid." William states he paid $1280 in principal and $3917 in interest on the marital home from the time Melinda left in December 2008 until the time of trial in September 2010. He further alleges Melinda should have to credit him for the debts and interest he paid on Rocking K and the other properties.

Melinda contends the district court properly took into consideration each party's respective payments toward debt and expenses post-separation in its final property division. She points out that the parties' commonly derived income from Rocking K funds to pay bills, "which is likely what William continued to do in making the debt payments post-separation."

Upon our review, we find the amount of principal[4] William paid for these properties is an equitable factor along with our other findings in determining whether the district court's overall property division needs to be adjusted to constitute an equitable distribution between the parties based upon the circumstances of this case.

V. Modification of Property Division.

Upon our review of the numerous issues raised by the parties on appeal and cross-appeal, we conclude the district court mistakenly undervalued William's share of WCW by $12,987. As we set forth above, we also consider William's investment contributed to KFI, which included equipment and principal William paid on marital properties post-separation. We also conclude the district court gave William too much credit for his premarital property (approximately

[4] William should not be credited for interest paid, as those amounts will undoubtedly be deducted on his income tax return.

$253,000 to $279,000), but William received no credit for his inherited property (at its inherited value of nearly $195,000). These errors do not fundamentally change the value of assets subject to division and to a certain extent are offsetting.

All of the farm corporate stock and farm assets were awarded to William, including his premarital and inherited property. For purposes of valuation, a significant portion of the farm assets were discounted by a substantial discount of forty percent. We also note that by being awarded all "farm-related assets" William also received all growing crops. Melinda leaves the marriage with an equalization payment that adequately compensates her for her many contributions to the marriage. She has benefitted from William's premarital and inherited property, but because of her contributions and the long marriage, she was entitled to be compensated. Accordingly, we conclude the district court's property distribution was equitable to both parties and affirm the district court's judgment.

VI. Attorney Fees.

Melinda argues the court abused its discretion in failing to award her $10,000 in 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). An award of trial attorney fees is reviewed for an abuse of discretion. *Sullins*, 715 N.W.2d at 255. Considering the parties' respective financial conditions and abilities to pay attorney fees at the time of trial, we conclude the district court did not abuse its discretion in ordering the parties to pay their own fees and share the costs. *See id.*

Melinda also contends she should receive $10,000 in 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." *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We award Melinda $4500 in appellate attorney fees.

VII. Conclusion.

We conclude the district court's property distribution was equitable and affirm the district court's judgment. We affirm the court's decision declining to award trial attorney fees to Melinda. We award appellate attorney fees to Melinda in the amount of $4500. Costs of appeal are assessed to William.

AFFIRMED.