

**IN THE COURT OF APPEALS OF IOWA**

No. 2-751 / 12-0492  
Filed October 31, 2012

**IN RE THE MARRIAGE OF SARA L. AMBROSY  
AND LORIN J. AMBROSY**

**Upon the Petition of**

**SARA L. AMBROSY,**  
Petitioner-Appellee,

**And Concerning**

**LORIN J. AMBROSY,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Jackson County, Paul L. Macek,  
Judge.

Lorin Ambrosy appeals from the economic provisions of the decree  
dissolving his marriage to Sara Ambrosy. **AFFIRMED.**

Steven J. Kahler of Schoenthaler, Roberg, Bartelt & Kahler, Maquoketa,  
for appellant.

Maria K. Pauly, Davenport, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

**BOWER, J.**

Lorin Ambrosy appeals from the economic provisions of the decree dissolving his marriage to Sara Ambrosy. Lorin contends the district court's distribution of the parties' assets is inequitable, and alleges the court based its property distribution scheme on the "faulty underlying premise" that Sara would otherwise be entitled to spousal support. Both Lorin and Sara seek an award of their appellate attorney fees. Upon our review, we find the district court's award of spousal support and property distribution is appropriate and equitable considering the facts and circumstances of this case. We decline to award either party their attorney fees on appeal.

**I. Background Facts and Proceedings.**

Lorin and Sara were married in September 2000. No children were born during the marriage. Lorin was born in 1961 and is in good health. Sara was born in 1960 and is in good health.

Lorin works for Roeder Brothers, a farm implement dealership. Lorin's annual salary is approximately \$76,937. Lorin is also self-employed as a farmer, but generally operates at a loss of approximately \$18,697 per year. Sara works for Rockwell Collins as an assembler, where she has worked for many years. Sara makes \$16.82 per hour and earns approximately \$31,499 per year.

Sara filed a petition for dissolution of marriage in September 2010. The parties lived together until Lorin moved out of the marital residence in December 2010. Thereafter, Lorin provided Sara no financial support. To pay for expenses, Sara borrowed \$10,000 from a friend and sold three horses. Sara

also borrowed money from her son and gave him a horse in gratitude for helping her.

Trial was held over two days in November 2011 and January 2012. The parties stipulated Sara should receive the parties' residence (consisting of a house, outbuildings, and thirty-five acres) valued at \$300,000 and with an indebtedness of \$78,858.25. In February 2012, the district court entered a decree dissolving the parties' marriage. The court awarded Sara the marital residence and divided the parties' remaining assets. The court awarded Lorin a truck, the corn crop, hay bales, cows, equipment, personal property, and his bank accounts. The court awarded Sara a truck, two horses, household furnishings, personal property, and her bank accounts. The court ordered "the marital portion" of any retirement assets to be divided evenly between the parties by a Qualified Domestic Relations Order. The court divided the parties' debts. The property division resulted in Sara's receipt of "about \$51,000 more than a mathematically equal distribution."

The court determined an award of spousal support to Sara was appropriate, but concluded the "disparate property division should be in lieu of alimony." The court found "Sara need not concern herself with the prospect that Lorin would be dilatory in payments" and "[t]his paradigm provides for a clean break between the parties." In reaching this conclusion, the court specifically found "Lorin is not credible," and stated its concerns in regard to Lorin's "attempt[] to manipulate the facts of this case in order to try to preserve what he views as his assets" and Lorin's family's assistance "in hiding Lorin's marital

assets.” The court further ordered Lorin to pay \$2500 of Sara’s attorney fees, finding “it was evident to the court that Lorin’s efforts to conceal assets caused Sara’s attorney fees to be much larger than they might otherwise be.” Lorin now appeals.

## **II. Scope and Standard of Review. Repertoire**

We review dissolution cases de novo. *In re Marriage of Okland*, 699 N.W.2d 260, 263 (Iowa 2005). We examine the entire record and adjudicate the rights of the parties anew on the issues that are properly preserved. *In re Marriage of Jones*, 653 N.W.2d 589, 592 (Iowa 2002). However, we accord the trial court considerable latitude in making an award and will disturb its ruling only where there has been a failure to do equity. *Okland*, 699 N.W.2d at 263. We give weight to the trial court’s fact findings, especially when considering the credibility of witnesses, although we are not bound by them. *In re Marriage of Duggan*, 659 N.W.2d 556, 559 (Iowa 2003).

## **III. Spousal Support and Distribution of Property.**

Lorin contends the district court’s distribution of the parties’ assets is inequitable, and alleges the court based its property distribution on the “faulty underlying premise” that Sara would otherwise be entitled to spousal support. Lorin argues the court “fashioned an inequitable distribution scenario and awarded Sara two-thirds of the marital estate.”

A. *Marital Property.* Lorin contends the district court “failed to properly determine what constituted the parties’ joint marital assets subject to equitable distribution and to properly value those assets.” Specifically, Lorin argues the

court improperly identified and valued the used farm equipment, the stored hay, the corn crop, and the amount of joint marital liabilities subject to distribution.

Iowa is an equitable division state. *In re Marriage of Hazen*, 778 N.W.2d 55, 59 (Iowa Ct. App. 2009). Equitable division does not necessarily mean equal division of each asset, although an equal division of assets accumulated during the marriage is frequently considered fair. *Id.* The issue the court must consider in each case is what is fair and equitable under the circumstances. *Id.* “The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts.” *Id.* In distributing the property, we consider the criteria set forth in Iowa Code section 598.21(5) (2009). Although our review is de novo, we will defer to the district court when valuations of marital assets are accompanied with supporting credibility findings or corroborating evidence. *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999).

In this case, the district court relied on Sara’s “more credible” descriptions and valuations of the parties’ assets, in large part based on the court’s specific and strong findings regarding Lorin’s “lack of credibility.” The court noted that Lorin denied he farmed particular ground, removed assets from the marital home while Sara was out of town, “moved cattle, equipment, hay, and tools from one location to another [w]ithout any financial or agrarian rationale,” “and has otherwise attempted to manipulate the facts of this case in order to try to preserve what he views as his assets.” The court also noted that Lorin’s brother, Dale, “assist[ed] Lorin in hiding Lorin’s marital assets.” When Dale attempted to

enlist Lorin's other brother, Kevin, to help hide Lorin's assets, Kevin refused and "was to some extent ostracized" by the family.

Lorin argues he "is familiar with the farm equipment market in the Jackson County area" and alleges he "relied upon his professional knowledge to value his used farm equipment." We acknowledge Lorin's experience and knowledge in regard to farm equipment and machinery. However, upon our de novo review, we find the district court's identification and valuations of the parties' assets to be accurate and equitable.<sup>1</sup> We further find the court's identification of the parties' debts and distribution of retirement assets to be equitable. We affirm on these issues.

*B. Division of Property.* Lorin alleges the court based its "inequitable" property distribution on the "faulty underlying premise" that Sara would otherwise be entitled to spousal support. We consider the property distribution and spousal support provisions of a decree together to determine their sufficiency. *Hazen*, 778 N.W.2d at 59. Spousal support is justified when the distribution of the marital assets does not equalize the inequities and economic disadvantages suffered in marriage by the party seeking the support, and there is a need for support. *Id.* While the property distribution is designed to sort out property interests acquired in the past, spousal support is made in contemplation of the parties' future earnings and is modifiable. *Id.* at 59–60.

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<sup>1</sup> The district court valued Lorin's "Equipment and Bobcat Utility" at \$115,465. At trial, Lorin testified he had recently sold the Bobcat for \$6500. However, Lorin further testified he used the proceeds from the Bobcat sale to make a tractor loan payment on his MF 7465 tractor. As Lorin was awarded all the equipment (including the MF 7465) with its indebtedness, the sale of the Bobcat has no bearing on Lorin's overall net worth after the property distribution.

As the district court reached its property distribution upon finding Sara would be entitled to spousal support, we first address whether an award of spousal support is appropriate in this case. There is no absolute right to spousal support. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996) (superseded by statute on other grounds as recognized by *In re Marriage of Shanks*, 758 N.W.2d 506, 510–11 (Iowa 2008)). Rather, whether it is awarded depends on the circumstances of each particular case. *Id.* Iowa Code section 598.21A(1) sets forth the criteria for determining spousal support. This includes the length of the marriage, the age and physical and emotional health of the parties, the property distribution, the earning capacity of each party, and any other factors the court may determine to be relevant. Iowa Code § 598.21A(1) (2009).

Here, the district court determined an award of traditional spousal support would be appropriate. Traditional spousal support is payable for life or until the dependent is capable of self-support. *In re Marriage of Hettinga*, 574 N.W.2d 920, 922 (Iowa Ct. App. 1997). The purpose of traditional spousal support is “to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued.” *Id.* “Traditional alimony analysis may be used in long-term marriages where life patterns have largely been set and the earning potential of both spouses can be predicted with some reliability.” *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa Ct. App. 1997).

We agree with the district court that a spousal support award would be appropriate under the facts and circumstances of this case. Although our review

is de novo, the district court is given considerable latitude in determining spousal support. See *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). “We will disturb that determination only when there has been a failure to do equity.” *Id.*

This is a marriage of relatively short duration of eleven years. However, at the time of trial, the parties’ earnings and earning capacity were established and unlikely to change. Sara is fifty-one years old; Lorin is fifty years old. Both parties are high school graduates. Both parties are healthy and employed full-time. However, Sara’s ability to earn income is significantly less than Lorin’s. Sara has been employed in the same capacity since 1997 and makes approximately \$31,499 per year. Lorin earns approximately \$76,937 per year. As the district court noted, during the marriage, Sara was able to “enjoy her avocation of horse ownership and riding.” The parties’ lived comfortably and took vacations. Upon our review, we find Sara is entitled to some amount of traditional spousal support. See Iowa Code § 598.21A(1); *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008); *In re Marriage of Stark*, 542 N.W.2d 260, 262–63 (Iowa Ct. App. 1995).

Here, the parties stipulated to Sara’s receipt of the marital home, with a net value of \$221,142, or sixty percent of the parties’ net worth. The court observed that awarding Sara her vehicle, a horse, the household furnishings, and her bank accounts resulted in her receipt of \$235,874, or sixty-three percent of the parties’ net worth, and Lorin’s receipt of \$133,822. The court noted that “[i]n order to make such a division fair, Sara would be called upon to pay Lorin an



equalization payment.” However, the district court found it equitable to order a “disparate” property division in lieu of spousal support. As the court stated:

[Sara] could only make [an equalization] payment over time, as it would be unlikely a bank would lend money to her given her current income and debt. Then, if Lorin were required to pay alimony, these payments would effectively cancel or nearly cancel each other. Further, the court is concerned that Lorin would make efforts to secrete assets and minimize his income in order to avoid actually paying same. Moreover, it is doubtful Lorin would cease farming as he has done this for a considerable period of time and it is probably a passion. In other words, Lorin’s payments to Sara would probably be a monthly burr under his saddle. Better to bite the bullet or, to mix figures of speech, take one’s medicine all at once. Consequently, this disparate property division should be in lieu of alimony. Sara has 14 years before reaching retirement age. Without considering the present value of money, the \$51,000 disparity in Sara’s favor amounts to a monthly equivalent of \$300 (14 yrs x 12 mos/yr = 168 mos; 51,000 divided by 168 = 303). If traditional alimony were to be awarded, such a monthly amount would be on the lower end of what would be appropriate. After all, \$300 per month is considerably less than the \$1,200 per month shortfall Sara currently experiences. Nonetheless, Sara is awarded approximately two-thirds of the parties’ nonretirement assets. Therefore, it is appropriate to weight the property distribution more heavily in Sara’s favor in lieu of alimony. See section 598.21(5)(h) of the Code.

Under these facts, we find the court’s decision to order Sara to receive a larger portion of the parties’ marital assets in lieu of spousal support to be equitable. We affirm the distribution of property ordered by the decree.

#### **IV. Attorney Fees.**

Lorin and Sara both request an award of appellate attorney fees. Such an award rests within our discretion. *Okland*, 699 N.W.2d at 270. “Factors to be considered in determining whether to award attorney fees include: the needs of the party seeking the award, the ability of the other party to pay, and the relative

merits of the appeal.” *Id.* (quotation marks omitted). In this case, we decline to award any appellate attorney fees.

Costs of appeal are assessed equally to each party.

**V. Conclusion.**

We find the district court’s award of spousal support and property distribution is appropriate and equitable considering the facts and circumstances of this case. We decline to award either party their attorney fees on appeal.

**AFFIRMED.**