

IN THE COURT OF APPEALS OF IOWA

No. 2-807 / 12-0260
Filed November 29, 2012

**IN RE THE MARRIAGE OF DENISE LYNELL THOMPSON
AND JAMES DEAN THOMPSON**

Upon the Petition of

DENISE LYNELL THOMPSON,
Petitioner-Appellant,

And Concerning

JAMES DEAN THOMPSON,
Respondent-Appellee.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

Denise Thompson challenges multiple provisions in a district court's decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Dan McClean and Courtney Vorwald of McClean, Heavens & Vorwald Law Offices, Dyersville, for appellant.

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Beatty & Parrish, P.L.C., Decorah, for appellee.

Heard by Potterfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

Denise Thompson challenges the decree dissolving her marriage of more than thirty years to James Thompson. She contends the district court improperly excluded a banker's testimony regarding farmland value and undervalued the property. Denise also claims the court should not have considered a \$40,000 intrafamily loan as an asset, and improperly calculated both parties' incomes to determine child support payments. In addition, she contests the court's refusal to award her alimony and attorney fees, and to distribute personal property.

First, because the banker was not prepared to provide an opinion on the land's value, any error by the district court in limiting his testimony was harmless. The court's adoption of the valuation offered by the appraiser fell within the permissible range of evidence. Second, because both parties stipulated before trial that the loan to their son was an asset, the district court correctly awarded the \$40,000 debt to Denise. Third, the record supports the child support calculations. Fourth, on the issue of spousal support, because of the length and nature of the marriage, it is equitable to award Denise \$700 per month for a period of five years. Fifth, we order the parties to divide the remaining household items within ninety days of procedendo or thereafter schedule an auction. Finally, the court did not abuse its discretion in refusing to award attorney fees at trial and we find both parties should pay their own appellate attorney fees.

I. Background Facts and Proceedings

James and Denise Thompson married in October 1980. The following spring, the couple moved to an acreage and began farming his family's land.

Both partners initially were involved in the farming operation—handling livestock and growing crops. Over the course of their marriage, the parties raised five sons, who are now adults; one daughter who was eighteen years old and a senior in high school at the time of trial; and a foster child.

In 1993, James and Denise purchased the farmland from James's parents at a discounted price. Three years later a significant work injury left James unable to continue farming. In April 1997, he started working as a mechanic for C. J. Moyna & Sons, a road construction company. With the help of her sons, Denise continued the family's dairy operation until the family sold it in 2001. The parties later sold their livestock, but continued to raise crops.

In 1996, Denise began earning her teaching degree. Four years later, while continuing her education, she started working part-time as a teacher's aide in the MFL-MarMac Community School District. In 2008, she earned her B.A. in elementary education, and is now a licensed teacher. Through scholarships, government grants, and family income, Denise entered the job market without school debt. Despite diligent efforts, she has yet to become employed as a teacher and continues to work full-time as a teacher's aide. She also worked as a groundskeeper at the school from April to September annually, working thirty to thirty-five hours a week in her seasonal employment, until budget cuts forced the district to eliminate the position. She now supplements her income as a part-time motel desk clerk. Two months before trial, she was hired as a waitress at an area supper club.

During their marriage, James and Denise purchased several parcels of property in addition to the farmland and home acreage. The parties acquired and rented out several homes in Monona, most of which were sold during the marriage. They still own a rental house on Paige Street, which they purchased in 1991 for \$17,500. In 2008, the parties purchased an Iowa City condominium where their fourth son currently lives, though they consider it to be rental property. Until she moved out, Denise managed all rental properties. Most recently, James and Denise purchased what they call the "Spook Cave house," a residence on a fifteen-acre parcel of land. They closed on the property on October 1, 2010. Three days later, Denise informed James she planned to seek a divorce.

Denise filed a petition for dissolution of marriage on November 15, 2010. The district court held trial from October 28 to November 3, 2011, and filed its decree dissolving the marriage on December 1, 2011. Because daughter Casey remained with James on the farm and anticipated graduating in May 2012, the court ordered Denise to pay \$339 per month in child support from December 2011 until May 2012, while James continued to maintain medical and dental insurance for their daughter.

The court awarded Denise the Spook Cave house, the Iowa City condo, the Paige Street rental, and the debts associated with those properties. The court awarded James the home acreage, the farmland, and the debt tied to that real estate. After dividing vehicles, equipment, machinery, and accounts between parties, the court awarded Denise a \$250,000 property settlement

payment but refused her request for alimony. Denise filed an Iowa Rule of Civil Procedure 1.904(2) motion and motion for new trial on December 16, 2011, which the district court denied in full on January 10, 2012. Denise now appeals.

II. Scope and Standard of Review

Our review of dissolution proceedings is *de novo*. *In re Marriage of Morris*, 810 N.W.2d 880, 885 (Iowa 2012). While we decide anew each issue raised on appeal, we give weight to the district court's fact findings, especially concerning witness credibility. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009) (internal quotations omitted).

III. Analysis

A. Did the District Court Properly Value the Farmland?

Denise challenges the district court's valuation of the farmland. She first contends the court erroneously excluded witness testimony regarding its value. Second, she argues the court improperly relied on the appraisal from James's hired expert.

The disputed farmland totals 148.41 acres, not including the 9.01-acre marital acreage. James hired appraiser Merlin Studt to determine the property's value. Based on a \$5300-per-acre price, Studt appraised the farmland at \$786,000. In his report, he listed the Corn Suitability Rating (CSR) as 73.12 and a per-acre rental value of \$165 to \$200. Denise signed a stipulation before trial that placed the farmland's value at \$786,000, but at trial she testified that she believed the property to be worth \$8000 an acre—based on newspaper reports

of increasing land values. James testified he would not sell the property for less than \$6000 per acre because he wanted to farm with his son Brock.

Tom Neuhaus is the executive vice president and senior loan officer for Freedom Bank in Monona and has known James since grade school. James listed him as a witness because of his familiarity with the parties' finances, having been their banker for the past five years. On direct examination, Neuhaus testified regarding James's cash flow alternatives pending dissolution if he were to retain the farmland rather than sell it. Because Neuhaus provided financing for the Spook Cave property, he testified to the recent acquisition's implications for the parties' finances as well.

On cross-examination, Neuhaus estimated the farmland's rental value to be between \$275 and \$350 per acre, but admitted he was unfamiliar with the CSR rating.¹ James's counsel objected when Neuhaus was asked what he believed the land was worth. The district court sustained the objection.² Neuhaus explained he is familiar with farm real estate values and has been asked to express his opinion of farmland to bank customers and others, but he is not an appraiser. In the context of comparable sales as a basis to value the property, Denise's attorney asked Neuhaus the price of "a similar farm" near the subject property that sold a year before. The court sustained counsel's objection

¹ When asked the farmland's rental value, Neuhaus responded: "It's a little hard to tell. The real estate rental values, farm rental values, have gone up, going up into 2012. It would probably be fair to say that land could rent from 275 to 325, maybe 350."

² The court sustained all objections to counsel's questions regarding land value. When asked whether it would be a "good idea" to sell the land for \$5000 an acre, Neuhaus answered: "Bad idea." After counsel asked, "What if she said \$6000 an acre," the district court sustained counsel's objection for attempting to ascertain a value.

on relevance grounds. Neuhaus testified farmland value in the area has been sharply increasing over the past couple years.

With respect to the court's exclusion of Neuhaus's valuation, Denise argues because the court sits in equity, the objections were improper. Further, Denise asserts the Studt appraisal undervalues the property and omits two like-sales in the area. She contends because of these "errors and omissions the district court's reliance on the farmland appraisal was not within the range of permissible evidence."

James asserts he designated Studt as an expert witness on July 27, 2011, Denise received Studt's report in August 2011, the pre-trial stipulation listed Studt's appraisal price, and at no point did she claim the value was anything different from Studt's amount. He contends because Denise failed to list Neuhaus as an expert, his opinion as to the farmland's value was properly excluded. James concludes because Studt's report was the only credible evidence relating to the farmland's value, the court's findings were within the permissible range of evidence.

When an action is in equity, the trial court generally should not rule on a party's objection to the admission of evidence, but rather allow the evidence into the record subject to the objection. *In re Marriage of Anderson*, 509 N.W.2d 138, 142 (Iowa Ct. App. 1993). This procedure facilitates an appellate court's de novo review of a complete record. *Hughes A. Bagley, Inc. v. Bagley*, 463 N.W.2d 423, 426 (Iowa Ct. App. 1990). But excluding evidence is erroneous only when the exclusion affects "a substantial right of the party." Iowa R. Evid. 5.103(a). We

determine the exclusion's effect by considering the record as a whole. *Stumpf v. Reiss*, 502 N.W.2d 620, 623 (Iowa Ct. App. 1993) (noting reversal is required only when allowing the district court's judgment would not promote justice).

James contends allowing the banker to answer the cross-examination questions would have been contrary to the rules of evidence and pretrial orders for disclosing expert witnesses. He asserts the banker's opinion on value would have been speculative and without proper foundation. James correctly asserts Denise failed to identify Neuhaus as an expert, nor did she suggest he would testify regarding real estate values.³ Based on his replies on cross-examination, it is apparent Neuhaus did not intend to testify in such a capacity.

James called Neuhaus to testify regarding debts associated with the parties' properties and how various property distributions would affect James's financial well-being. On cross-examination Denise's counsel shifted the topic to the land's per-acre and rental value. Neuhaus admitted he had no first-hand knowledge of the farmland's rental value. He was unfamiliar with the CSR of the land, saying "I did not look it up." Neuhaus testified he often values land for purposes of making real estate loans, but admitted he is not an appraiser. He was unable to recall the sale price of land near the Thompson farm that sold a year earlier. The following exchange further demonstrates Neuhaus was unprepared to provide a value for the property:

³ Denise's October 24 designation of exhibits and witnesses listed only herself as a witness, and included no experts. James's October 28 designation included Neuhaus, as well as a representative from H&R Block, Joel Everett, and Merlin Studt.

Q. Have you evaluated the Thompson farm for purposes of determining whether or not to finance the Thompsons? A. We do our own internal valuations on land.

Q. What is the valuation you placed on this farmland? A. I don't have the file with me. I have no idea what that figure was.

Regardless of whether Denise needed to identify Neuhaus as an expert witness, his responses show he was not prepared to provide reliable answers for the disputed questions. Even if the court had not sustained objections to Neuhaus's testimony, his off-the-cuff opinion would not have carried the same weight as Studt's researched appraisal. The district court's ruling did not affect Denise's substantial rights and any error was harmless. See *Tucker v. Caterpillar, Inc.*, 564 N.W.2d 410, 414 (Iowa 1997) (holding exclusion of evidence did not affect substantial rights in view of other record evidence and any error did not warrant reversal).

On the merits of the district court's property valuation, we find no error in its reliance on Studt's appraisal. When considering a challenge to the value ascribed to property in a dissolution decree, we give substantial leeway to the district court's findings and will not disturb them when they fall within the range of evidence presented. *In re Marriage of Keener*, 728 N.W.2d 188, 194 (Iowa 2007). We further defer to the district court's valuations when they are supported by credibility findings or corroborating evidence. *Id.* We recognize an owner is competent to testify to his or her property's market value. *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007).

The district court accepted Studt's valuation without making any specific credibility findings. But the amount remains within the range of permissible

evidence. Studt provided the only professional appraisal of the property and the only figure backed by thorough research and analysis. The court was entitled to accept Studt's computation over Neuhaus's speculative rental amount and Denise's self-researched \$8000-per-acre estimate. See *In re Marriage of Martin*, 436 N.W.2d 374, 375 (Iowa Ct. App. 1988) (finding one appraiser's valuation more compelling than another's). Finally, the context of James's testimony that he wouldn't sell for \$6000 an acre signals more about his reluctance to part with the family farm than the actual value of the land. Because the district court's valuation is within the permissible range of evidence, we elect not to disturb it.⁴

B. Should Brock Thompson's Loan Be Considered an Asset and Awarded to Denise?

At the time of trial, Brock Thompson had not yet repaid a \$40,000 loan from his parents. The district court treated the loan as an asset and awarded it to Denise. On appeal Denise argues the court's assignment is inequitable. She contends the debt should be removed from her listed assets because Brock disputes the amount to be repaid and her ability to collect the principal is uncertain.

James points out Denise regarded the \$40,000 loan as an asset before and during trial. James testified he was not involved in making the loan and was unaware of its purpose. He also testified Denise did the bookkeeping during the

⁴ We recognize the property's appraisal to be a conservative estimate. Even in his preliminary affidavit of financial status, James listed the farmland at \$6000 an acre for a total worth of \$900,000. Notwithstanding, the appraisal was backed by data and analysis lending to its credibility. Denise's counsel cross-examined Studt at trial and had the chance to reveal any incongruent figures factoring into his appraisal.

marriage, but that he signed real estate and loan documents. James testified there was some dispute as to the amount Brock still owed. James admits both parties regularly provided financial assistance to their children, and he recently co-signed on indebtedness for another son's fall semester college tuition.

In its order denying Denise's post-trial motions, the district court explained its reason for awarding the \$40,000 debt to Denise: "The division of assets and allocation of debt is not inequitable. Questionable financial transactions arranged by the petition[er] with little or no input from the respondent are made the petitioner's responsibility." Denise argues she has been responsible for the parties' finances throughout the marriage, and that this loan should not be treated differently.

Our court has recognized sums to be repaid as assets in a marital property distribution. See *In re Marriage of White*, 537 N.W.2d 744, 746–47 (Iowa Ct. App. 1995) (considering parties' law practice accounts receivable as an asset to be divided between them). But our supreme court has suggested loans to the parties' children may not be as collectible as traditional loans. See *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987) (noting validity to husband's challenge to trial court's findings that did not adjust value of privately held company for \$118,220 in loans to parties' children).

We do not believe subtracting the loan from Denise's asset balance provides an equitable solution. In the pre-trial stipulation, both parties listed the \$40,000 debt as an asset. Denise did not contest the debt's classification and collectability until her post-trial motion. While we do not necessarily embrace the

district court's reasoning for awarding the debt to Denise, we nonetheless determine that awarding her the loan helps to equalize the asset division and minimize James's equalization payment.

C. Did the District Court Properly Calculate Child Support?

The district court adopted James's child support worksheet to determine Denise's payments. James computed his 2012 projected income at \$65,000 and Denise's at \$22,800, combining \$18,000 in wages with \$4800 of rental income.⁵ The court ordered Denise to pay \$339 per month in child support from December 2011 until Casey graduated high school the following May.

Denise contends the district court overestimated her income and underestimated James's earnings. She argues rent from the Monona property should not be included in her income because they have yet to receive rent for the property this year, and asserts she has not earned an annual income of \$18,000 in the last five years. Denise additionally argues because James's income exceeded \$80,000 for four of the last five years, averaging his income would more accurately depict his ability to pay.

Before applying child support guidelines, we must determine each parent's current monthly income. *McKee v. Dicus*, 785 N.W.2d 733, 739–40 (Iowa Ct. App. 2010) (defining "net monthly income" as "gross monthly income less specifically enumerated deductions"). "All income that is not anomalous, uncertain, or speculative should be included when determining a party's child support obligations." *In re Marriage of Hagerla*, 698 N.W.2d 329, 332–33 (Iowa

⁵ Neither party's child support calculations include any income from farming.

Ct. App. 2005). We look to the most reliable evidence presented when determining monthly earnings, which requires our careful consideration of all circumstances relating to each parent's income. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa Ct. App. 1995).

The record showed that the previous Paige Street tenant failed to pay rent and moved out by the trial date. According to James's November 3, 2011 testimony, a new renter moved in November 1 and told James he had just mailed the first rent check. Because the Paige Street property is completely paid off, the \$400 monthly rental income would not be offset by mortgage payments. While Denise now argues the gross rental income does not account for maintenance, property tax or insurance expenses, she admits no record was made to tally those costs. As far as her other income, Denise earned \$8399.60 in 2007; \$17,021.76 in 2008; \$15,578 in 2009; and \$17,562 in 2010. As of September 20, 2011, her income was \$11,819.56, not including her recent employment as a supper club server, a job she began a couple months before trial.

We believe the district court properly calculated Denise's six-month child support obligation. The undocumented and unattributed costs that would reduce the rental income were likely overcome by Denise's additional earnings from her most recent employment.

Denise also challenges James's 2012 projected income of \$65,000, a significant decrease in his annual earnings. James testified because his employer is finding less road work contracts, he is projected to earn less money in 2012 than in previous years. While James made significantly more money in

the years before 2011 because of overtime pay, recently his employer has cut down hours, a trend that James anticipates will continue.

For individuals who are self-employed—such as farmers—or have fluctuating monthly income, it is generally best to average income over a period accurately reflecting the uneven earnings. *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992). While courts are to use overtime wages in calculating income for child support purposes, when such pay is anomalous, uncertain, or speculative, it is appropriate for the court to deviate from including overtime pay. *In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 333 (Iowa Ct. App. 2005); *cf. In re Marriage of Brown*, 487 N.W.2d 331, 333 (Iowa 1992) (finding party should include overtime pay as income where pay had been consistent and would remain consistent).

James's income is derived from his work as a mechanic, where he earns an hourly wage. He works for a construction company rather than being self-employed. Although his salary and hours have fluctuated over the years, he explained the recent decrease was caused by the declining construction business and less overtime. Because James was credible in his prediction that overtime pay would not reach its previous levels any time soon, and the parties would be supporting Casey for only six more months, the court was reasonable in using James's most recent income to project his 2012 earnings, rather than a five-year average. *Cf. Brown*, 487 N.W.2d at 333. The district court did not err in ordering Denise to pay \$339 per month in child support.

D. Should the District Court Have Awarded Denise Alimony?

Denise challenges the district court's refusal to award her spousal support. She asked for \$1500 per month at trial. During oral argument her counsel asserted the duration of the alimony should be until she remarries or sells the three parcels of property awarded to her in the decree.

In its post-trial ruling, the court explained why it declined to award alimony:

Due to his age and the nature of his occupation, the respondent is coming toward the end of his career as a mechanic working on the job site in the construction industry and his earnings are declining. He has substantial commitments on his income under the decree to use income to cash flow a large lump sum payment to the petitioner, pay child support,^[6] and accommodate the goal of keeping the farm in the family. The petitioner has an education, job skills, works in a less physically demanding career field, is younger, has income, and is awarded very substantial assets, including investment assets.

Denise combats the court's rationale with James's testimony that he plans to work until at least sixty-six years of age. Meanwhile, she works multiple jobs to maintain her present earnings. Excluding rental income, she calculates her monthly earnings at \$1458, offset by her obligations of \$2709 (her two mortgages plus child support) and argues the deficit demonstrates her inability to support herself.

Alimony is a stipend to a party in lieu of the other party's legal obligation for support. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). It is not an absolute right, rather an award depends on the circumstances of a

⁶ The court later clarified that James had not been ordered to pay child support.

particular case. *Id.* We determine the amount of alimony, if any, by following the factors set forth in section Iowa Code § 598.21A(1) (2009):

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to section 598.21.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.
- e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.
- j. Other factors the court may determine to be relevant in an individual case.

When determining the propriety of spousal support payments, we balance each party's present standard of living and ability to pay against their relative needs. *In re Marriage of Okonkwo*, 525 N.W.2d 870, 872 (Iowa Ct. App. 1994). We traditionally accord the district court considerable latitude in awarding alimony and disturb its ruling "only when there has been a failure to do equity." *Spiegel*, 553 N.W.2d at 319.

James and Denise were married for more than thirty years. At the time of trial, James was nearly fifty-seven and Denise was fifty. Denise testified she still

has complications from a surgery roughly a year ago; but on appeal, neither party claims their health is in decline.

Denise received \$633,245 in assets and \$296,338 in debt, for a net property distribution of \$336,907. Combined with the district court's \$250,000 settlement award, her assets total \$586,907. James received \$1,173,375 in property and \$441,628 in debt, not including unknown fall harvest bills, for a net property distribution of \$731,747. Subtracting the \$250,000 settlement award, James is left with \$481,747 in assets.

Denise was primarily responsible for child-rearing and domestic responsibilities and contributed to the farming operation. Later, she pursued her teaching degree part-time while doing farm work, and eventually found employment as a teacher's aide. Until recently, she managed the parties' finances and rental properties. James has financially supported the family with his farm work and as a mechanic for Moyna Construction.

While she continues her search for a teaching position, Denise earns around \$18,000 annually, plus any rental income from her Iowa City or Monona properties. She has applied for every teacher opening in the vicinity for which she is qualified, but without any luck. James does not dispute her efforts.

Many factors favor providing Denise alimony. While the court awarded roughly \$100,000 more in assets to her than to James in the decree, Denise makes substantially less in annual income—likely because early in the marriage she took primary responsibility for child rearing at the expense of furthering her career. James has historically earned more than \$80,000 a year, though his pay

has recently decreased. If his estimate of \$65,000 in annual income is correct, he will still earn three times Denise's current salary, not including any income he may gain from the awarded farmland. The parties have been married for more than thirty years. During those three decades, Denise was the primary caretaker of six children, labored extensively on the farm, and contributed to the marital finances.

"In marriages of long duration we approve both alimony and nearly equal property division, especially where the disparity in earning capacity is great." *In re Marriage of Friedman*, 466 N.W.2d 689, 693 (Iowa Ct. App. 1991). Denise does not require retraining, but she is unable to find professional employment. Her inability to do so is caused by factors beyond her control. *See In re Marriage of Trickey*, 589 N.W.2d 753, 758 (Iowa Ct. App. 1998) (recognizing party's inability to find teaching job is not "self-inflicted" in her attempt to become self-supporting).

We conclude that denying alimony fails to do equity under these circumstances. We order James to make monthly spousal support payments of \$700 for five years. The payments shall cease if Denise remarries or dies. Such payments will strike an appropriate balance between the parties' disparate earning capacities. *See In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa Ct. App. 1994).

E. Should the District Court Divide the Remaining Property?

In its decree, rather than dividing personal possessions, the court stated "[t]he court is confident that the parties will divide these items amicably and no

special provisions need be included in this decree for those things.” In its post-trial order, it clarified: “In testimony the parties indicated that they could cooperate in dividing personal items and respondent has continued to cooperate in that regard with the statements made in his post-trial filings.”

Denise asserts she and James have not cooperated and still disagree about the distribution of forty-nine items listed in her 1.904(2) motion. She requests we award her those items or remand the issue to district court.

James argues the court had authority to instruct the parties to divide the property on their own, and that Denise has not sought any court orders to compel James to produce property. James encourages us to adopt his post-trial resistance, wherein he cedes many of the items on Denise’s list, suggests splitting others, and asks to keep the remaining items.

The district court did not err in declining to create a line-item distribution of each personal possession. We are optimistic the parties will comply with the court’s original directive to divvy up these miscellaneous items on their own. We direct them to do so within ninety days of procedendo, the order closing the appeal. If the personal property is not distributed within ninety days, it shall be sold at public auction with proceeds split equally between the two parties. Denise shall choose the auctioneer. James shall cooperate with all auction arrangements.

F. Is Either Party Entitled to Attorney Fees?

Denise argues because James received substantial assets and his income is greater than hers, the court erroneously refused her request of \$3000

in attorney fees. James contends because Denise received substantial assets as well as a \$250,000 cash payment and he paid marital expenses during the pendency of the proceedings, the court did not improperly deny her request.

We review a district court's decision on attorney fees for an abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). The award of such fees depends on each party's ability to pay. *Id.* Despite James's higher earnings, the property distribution leaves Denise with substantial resources. Because both parties are able to pay their own attorney fees, the district court properly exercised its discretion in refusing Denise's request.

Denise and James both request appellate attorney fees. Such an award is not a matter of right and rests within our discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the requesting party's financial needs, the other party's ability to pay, and whether the requesting party was forced to defend the district court's decision on appeal. *In re Marriage of Kurtz*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997).

Both parties have resources. We modify the decree to order spousal support and the sale of the undivided personal property at auction if the parties cannot reach an agreement. The remaining provisions—defended by James—remain unchanged. Accordingly, we order the parties to pay their own attorney fees. Costs are divided equally between them.

AFFIRMED AS MODIFIED.