

IN THE COURT OF APPEALS OF IOWA

No. 3-524 / 12-2032
Filed August 7, 2013

**IN RE THE MARRIAGE OF MARK WILLIAM ZENK
AND LINDA R. ZENK**

**Upon the Petition of
MARK WILLIAM ZENK,**
Petitioner-Appellant,

**And Concerning
LINDA R. ZENK,**
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E.
Hoffmeyer, Judge.

A husband appeals the economic provisions of a dissolution decree.

AFFIRMED.

R. Scott Rhinehart and Matthew Metzgar, Sioux City, for appellant.

Linda R. Zenk, Sioux City, pro se.

Scott L. Bixenman of Murphy, Collins & Bixenman, LeMars, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

EISENHAUER, C.J.

Mark Zenk appeals the economic provisions of the decree dissolving his marriage to Linda Zenk. He requests we strike the property equalization and spousal support awards. We affirm.

I. Background Facts and Proceedings.

Mark, age fifty-six, and Linda, age forty-seven, married in 2003 and were married for nine years. Mark entered into the marriage with significant premarital assets. No children were born of this marriage.¹ Both parties have a high school education. Linda has recent health issues.

In January 2005 the parties formed a corporation with 50/50 ownership interests, opened Zenk Auto Repair, and became employees of the business—Mark servicing the vehicles and Linda providing bookkeeping services. The court found: “With this startup business, it is clear Mark’s skill was the driving force in its success.” In October 2011 Mark filed a dissolution petition. Both parties accused the other of the unauthorized taking of business assets for personal use. After a temporary hearing, Linda was removed as bookkeeper, and the accounting was handled by an independent firm.

On October 19, 2012, the court entered a lengthy, well-reasoned dissolution decree with a five-page spreadsheet listing premarital property and the division of marital property. The parties owned two houses, and the court awarded one house and its accompanying debt to each party.² The court

¹ Linda has a daughter in high school and receives \$600 per month in child support.

² The court’s original decree ordered Linda to make efforts at least every five years to attempt to refinance the mortgage indebtedness to solely her name. The

assigned as an asset of the withdrawing party the proven unauthorized withdrawals.³ The court set aside approximately \$500,000 in premarital property to Mark⁴ and awarded net assets of approximately \$62,500 (Linda) and \$154,000 (Mark). Mark's net assets included the business, "the only income-producing asset of the parties." To equalize the property distribution, the court ordered Mark to pay Linda \$45,782.56 (lump sum or \$500 monthly).

Linda requested spousal support, and Mark contended Linda had an earning capacity of \$25,000. The court stated "in 2010, 2011, and to date, while working for Zenk Auto, [Linda] made significantly more in W-2 wages and when factoring the corporate dividend distributions, [she] made as much as \$50,000 in excess of Mark's projected earning capacity." The court found Mark drew wages of \$92,084 (2011) and \$91,491 (2010) and in "each of those years he drew an additional corporate dividend distribution of approximately \$49,000 to \$50,000 each year." The court ruled:

Both parties' testimony clearly state Linda will leave this marriage and not be expected to earn monies comparable to what she is currently earning Because this marriage is of relatively short duration but involved significant financial gain from their startup business, the court believes Linda is entitled to an award of alimony. In looking at the financial information, her income and the property distribution, the court finds her request of \$3000 per month for a period of five years to be reasonable. This would annualize at \$36,000 and is forty-one percent of her salary and profits made in 2010 and fifty percent of her salary and profits made in 2011.

court's ruling on post-trial motions modified this requirement and ordered Linda to make efforts to refinance every three years.

³ For example, Linda claimed Mark made approximately \$200,000 in unauthorized withdrawals, and the court assigned Mark \$10,000 in assets as unauthorized withdrawals.

⁴ The court set aside \$192,000 (home equity), \$97,300 (vehicles, boats, recreational), \$178,685 (IRA), \$51,000 (business investment), and \$20,000 (tools) as Mark's premarital property.

Both parties filed post-trial motions. Mark challenged the decree's economic provisions. After hearing, the court ruled many of the issues Mark raises "arise out of the court's determination of credibility and factual determinations made in the decree. The court finds rehabilitative alimony was awarded because Linda is leaving the marriage at a distinct financial disadvantage." The court declined to modify the property equalization award and denied all other motions "not specifically mentioned herein."⁵

II. Scope and Standards of Review.

We review dissolution of marriage cases de novo. *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Precedent is of little value because we base our decision on the unique facts of each case. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009).

We recognize "deference to the trial court's [alimony] determination is decidedly in the public interest." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). "When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at

⁵ In April 2012, during the dissolution process, Linda was found to be in contempt of court. She was sentenced to two days in jail. Mark's post-trial motion also contended the court erred in failing to *again* find Linda in contempt of the court's prior peace and property order. During the hearing on post-trial motions, the court informed Linda: "You've done some very inappropriate things that have complicated this divorce . . . and you don't believe that."

Mark now argues the court erred in not making a specific ruling on the contempt issue, and he requests we find Linda in contempt. We believe the court's denial of Mark's requested relief is encompassed by the language: "In all other regards not specifically mentioned herein, the [post-trial] motions of the parties are hereby denied." We find no error.

staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.” *Id.*

III. Merits.

Upon our de novo review of the record, we find evidentiary support for the district court findings. We agree with the reasons and conclusions set forth by the district court in its exhaustive and well-organized decision and in its well-reasoned ruling on post-trial motions. The court’s rulings address and answer the contentions now raised by Mark on appeal. Accordingly, we affirm the district court’s decree pursuant to Iowa Court Rule 21.29(1)(d). See *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012) (recognizing the district court has considerable latitude in determining a spousal support award and we disturb an award only if it fails to do equity between parties); *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005) (recognizing we afford the district court considerable latitude in its property distribution determination and disturb its finding only when the award is inequitable).

Both parties request appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the appellate court’s sound discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Given our disposition of this case, and the parties’ difference in earnings, we award Linda appellate attorney fees in the amount of \$1500. Costs on appeal are assessed to Mark.

AFFIRMED.