

**IN THE COURT OF APPEALS OF IOWA**

No. 6-445 / 05-0514  
Filed July 26, 2006

**IN RE THE MARRIAGE OF DIANE DENISE BAKER  
AND MICHAEL LOAL BAKER**

**Upon the Petition of  
DIANE DENISE BAKER,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
MICHAEL LOAL BAKER,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Polk County, Carla Schemmel,  
Judge.

Respondent appeals and petitioner cross-appeals the district court's  
division of property in the parties' dissolution decree. **AFFIRMED AS  
MODIFIED.**

Diane L. Dornburg of Carney & Appleby, P.L.C., Des Moines, for  
appellant.

Alexander R. Rhoads of Babich, Goldman, Cashatt & Renzo, P.C., Des  
Moines, for appellee.

Considered by Hecht, P.J., Eisenhauer, J., and Robinson, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2005).

**ROBINSON, S.J.*****I. Background Facts & Proceedings***

Michael and Diane Baker were married in 1978. Diane filed a petition for dissolution of marriage in September 2003. The parties have four children, but only one, Stacey, was a minor at the time of the dissolution proceedings. They agreed Diane would have physical care of Stacey. Michael was granted visitation and ordered to pay child support of \$817 per month.

At the time of the trial, Diane was forty-seven years old. She has a high school degree. Diane was employed as the director of the network operation repair center at Qwest, and she earned \$100,000 annually. Diane is in good health.

Michael was forty-nine years old. He has a college degree in industrial engineering. Michael was employed as an engineer at Qwest, where he earned \$84,000 per year. In his spare time, Michael worked in a partnership with Bradley Cox to build homes. After the homes were sold, Michael and Bradley would split the profits equally. Michael earned about \$20,000 to \$30,000 per year from the partnership.

The parties owned several parcels of real estate. In addition to their salaries and business income, they also received rental income. In the dissolution decree, using the district court's valuations, Michael was awarded assets worth \$1,024,946. Diane was awarded assets worth \$1,222,846. Michael filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). The district court recognized that each party would receive their own 401(k) account. The

court made no other adjustments to the division of property. Michael appealed and Diane cross-appealed the division of property.

## ***II. Standard of Review***

Our review of this equitable action is de novo. Iowa R. App. P. 6.4. We examine the entire record and decide anew the issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them. Iowa R. App. P. 6.14(6)(g).

## ***III. Division of Property***

Each party claims the property distribution was inequitable to them. Michael claims the court incorrectly (1) included a property in Indianola as a marital asset; (2) determined he had not accounted for \$66,000 which was withdrawn from the joint savings account; (3) valued the property on Norton Drive; (4) valued the property on Gabus Drive; (5) valued the Corvette; (6) awarded the marital home to Diane; (7) accounted for the parties' 401(k)'s; and (8) did not make an equal division of the property. Diane claims (1) she should receive a credit for a tax payment made by Michael; (2) she should receive one-half of the value of a lawn tractor; and (3) she should receive one-half of the rental income received by Michael.

Iowa law requires that marital property be divided equitably between the parties, considering the factors in Iowa Code section 598.21(1) (2005). *Rhinehart*, 704 N.W.2d at 683. The court should divide the property of the

parties at the time of divorce, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the case. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). A equitable division is not necessarily an equal division. *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005). A court may consider a party's dissipation of assets when it makes a property distribution. *In re Marriage of Olson*, 705 N.W.2d 312, 317 (Iowa 2005).

The trial court was presented with the difficult task of valuing numerous items of real and personal property. Testimony was conflicting and a plethora of paper exhibits were introduced. Diane's lack of knowledge about values, together with Michael's less than forthcoming responses to questions made the court's task unusually nettlesome.

We conclude the court made an equitable division of property save for two misvalued items. The record indicates the Chevrolet Corvette has a value of \$28,000, not \$14,000, and the Norton Street property in Grimes, Iowa, has a value of \$140,000, not \$237,000. There is no testimony nor documentation in the record supporting the trial court's valuations of these two items. We will affirm a district court's valuation of assets only where the value is within the permissible range of the evidence. *In re Marriage of Decker*, 666 N.W.2d 175, 180 (Iowa Ct. App. 2003).

Given Michael's dissipation of marital assets (\$66,000), an equitable division of property using the new valuations would be to award Michael the property at 681/683 N.E. 52nd Avenue, Saylor Township (\$80,600), and the

Corvette (\$28,000). This leaves Diane with marital assets of \$1,128,246, and Michael with assets worth \$1,033,546.

***IV. Attorney Fees***

Diane seeks appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We determine each party should pay his or her own appellate attorney fees.

We affirm the decision of the district court as modified. Costs of this appeal are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**