

IN THE COURT OF APPEALS OF IOWA

No. 7-714 / 07-0510
Filed January 30, 2008

**IN RE THE MARRIAGE OF KIMBERLY ANN DIRKSEN
AND BRIAN DEAN DIRKSEN**

**Upon the Petition of
KIMBERLY ANN DIRKSEN,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
BRIAN DEAN DIRKSEN,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Franklin County, Stephen P. Carroll, Judge.

Brian Dean Dirksen appeals and Kimberly Ann Dirksen cross-appeals from the provisions of the decree dissolving the parties' marriage. **AFFIRMED.**

Stacey Warren and Kodi A. Petersen of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines, for appellant.

Dorothy Dakin of Kruse & Dakin, L.L.P., Boone, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Brian Dean Dirksen appeals from the property division, child support, and alimony provisions of the decree and subsequent orders dissolving the parties' marriage. Kimberly Ann Dirksen (Kim) cross-appeals from the property division, child support, tax deduction, and attorney fees provisions. We affirm.

I. Background Facts and Proceedings.

Brian and Kim were married in 1984. They have two minor children: Brett, born in 1990, and Katie, born in 1992. Kim filed a petition for dissolution of marriage in October 2004. The parties separated in July 2005, at which time Brian vacated the marital residence.

The district court entered a temporary order in September 2005 prohibiting the parties from having contact with each other, except as it related to visitation. The order provided for Brian to have temporary visitation with the parties' minor children and to pay temporary child support and attorney fees. In calculating the amount Brian should pay for temporary child support, the court used Brian's average earning capacity of \$47,080¹ and set temporary child support at \$894 per month commencing September 1, 2005. Finally, the order allowed Brian to borrow money using the parties' tractor as collateral. Subsequently, Brian filed a motion to reconsider the ruling on temporary child support and temporary

¹ Brian claimed his annual earnings for child support purposes should be \$25,560, based on his projected annual income at Someday Farms for January through December 2006. Kim claimed the appropriate figure was \$60,000, based on Brian's base salary plus benefits at Ag Inputs. The court declined to use either of these values. The court arrived at \$47,080 for Brian's average earning capacity based on an average of Brian's social security earnings over a five-year span. The court averaged Brian's earnings from 1998 to 2002 because the records from 2003 through 2005 were not made available.

attorney fees. The court determined it would reconsider the temporary matters at the same time as trial.

Trial commenced in October 2005. Trial proceedings took place over several days in October 2005, and in January and February 2006. At the conclusion of trial, Brian was forty-three years old and Kim was forty-two.

The record reveals that Brian graduated from CAL Community High School in 1981 and then worked at various jobs in agronomy, soil sampling, and GPS mapping. Brian has worked in management positions. In 1998 he joined Ag Inputs, Inc., a business owned in part by Kim's father. Brian was in charge of the sales and soil sampling, and he sold crop insurance. His salary was between \$45,000 and \$47,000, and he received money each month to help with insurance. When the parties' marriage began to deteriorate, so did Brian's work performance. His employment with Ag Inputs was eventually terminated on January 14, 2005. After leaving Ag Inputs, Brian started his own business, Someday Farms, Inc. Brian projected his income, as the sole owner and an employee, at \$2150 per month; however, the business was not successful. In April 2006, two months after trial had concluded, Brian began employment with Hagie Manufacturing Company at a base salary of \$40,000. At the time of trial, Brian was in good physical health but suffered from depression and anxiety.

Kim graduated from Hampton High School in 1981 and from a vocational "travel school" later that year. Thereafter, she worked at travel and clerical jobs. While married to Brian, her income ranged from \$8500 to \$20,000. Her 2005 gross income totaled \$20,000. During the parties' marriage, Kim was primarily responsible for the care of the children and family home. At the time of trial, Kim

suffered from rheumatoid arthritis (RA). She was diagnosed with RA in 1997. Dr. Maria Radia, a physician who specializes in arthritis management, has seen Kim every four to six months since 2000.² Dr. Radia has not placed Kim on any specific restrictions and opined that her medical condition does not prevent her from working full time. Dr. Radia testified that although Kim's condition has stabilized, she needs to continue taking her medications to prevent exacerbation of her condition. Kim's annual medical expenses are greater than \$9000.³

On March 6, 2006, before the district court entered its dissolution decree, Kim filed a motion to reopen the record regarding the valuation of a tractor and loader and their son's grades. Brian resisted the motion. On June 1, 2006, Kim filed a second motion to reopen the record based on Brian's new employment and income, which Brian resisted. The hearing was held on Kim's motion to reopen the record on October 20, 2006. The only issue at this hearing was Brian's income from his new employment and its effect on child support.

On November 17, 2006, the district court entered a decree placing the children in the parties' joint legal custody and in Kim's physical care. The court ordered that Brian was entitled to visitation with the children every other weekend, one weekday each week, and alternating holidays. Summer visitation was to be worked out between the parties. Brian was ordered to pay child

² Dr. Radia testified she has seen arthritis in Kim's shoulders, knees, and feet. Additionally, she testified that, based on x-rays, Kim has incurred arthritic damage to both wrist bones, which indicates an aggressive stage of the disease. Dr. Radia opined that Kim has a fifty-percent chance of becoming disabled in the first five years of the disease. She also opined that her chances of not becoming disabled are getting better and the progression of the disease has slowed significantly.

³ At the time of trial, Kim's actual annual medical expenses were the health insurance cost of \$5016 (\$418 per month), plus other medical expenses of \$4000.

support in the amount of \$861 per month, to cover the children with health insurance, and to pay a portion of the medical expenses not covered by insurance. He was allowed to claim both children as dependents on his income tax returns.

The court awarded the marital home, valued at \$116,000, to Kim. The court also awarded Kim the Ag Inputs stock, her IPERS retirement account, and the remaining personal property in her possession, with the exception of the 210 John Deere mower.⁴ The court also awarded Kim \$1270.47 from the proceeds of the sale of the Dodge Ram truck. Brian was awarded his Reassure Life Insurance policy, his Principal Life policy, the tractor and loader, the 210 mower, the horse wagon, the old Chevy truck, the 1998 Jeep, the bale forks, his guns, and the sum of \$1144.56 from the sale of the parties' Dodge Ram truck.

In addition, the court awarded each party "any and all checking and saving accounts" in his or her name. The court also ordered any remaining oats to be sold and the proceeds divided equally between the parties. Neither party was awarded spousal support or attorney fees.

After the decree was entered, both parties filed a motion asking the court to enlarge/amend its findings of fact and conclusions of law and to modify the decree pursuant to Iowa Rule of Civil Procedure 1.904. Each party filed a resistance to the other party's motion to amend. A hearing was held on the parties' respective motions, and on February 7, 2007, the court modified its decree in several respects.

⁴ The parties had previously divided their furniture and other household contents according to a mutual agreement. For those items not agreed upon, the court listed the items of property and the values attributed to them.

First, the court ordered Brian to pay Kim “permanent alimony” as follows: \$100 per month until Brett turns eighteen in 2008, then \$300 per month until Katie turns eighteen in 2010, and then \$500 per month until either spouse deceases, Kim remarries, or Brian turns sixty-six years old. The court concluded the \$100 per month spousal support obligation would be effective September 1, 2005, the same date the temporary child support obligation commenced.

Second, the court determined the amounts Kim and Brian received from the proceeds of the truck being sold should be modified so that Kim would be reimbursed for her expenses in selling the truck and the remaining \$1551.43 would be divided equally between the parties.

Finally, the court stated it had inadvertently failed to review the temporary support order in the final decree. The court then ruled that Brian’s temporary support obligation should have been calculated based on his projected income from Someday Farms and not the five-year average income the court used to calculate his average earning capacity. The court stated,

I consider that given the economic reality of the situation (namely, that he was not turning a profit), it is fair and equitable to use the annual sum of \$25,560 to determine his child support obligation until he went to work at Hagie Manufacturing Company.

The court then reduced Brian’s temporary child support, for the period of time between September 1, 2005, and May 1, 2006, to \$548 per month.

On February 16, 2007, Brian filed his second motion to enlarge and modify the trial court’s findings of fact and conclusions of law. Kim filed a response arguing that there is no provision in the Iowa Rules of Civil Procedure that permits the filing of a second motion. The district court agreed with Kim that

no such provision exists. However, in a nunc pro tunc order dated February 26, 2007, the court lowered Brian's temporary child support from \$548 to \$468 per month, effective from September 1, 2005, to May 1, 2006, due to a miscalculation resulting from the use of an incorrect medical insurance figure. Additionally, effective May 1, 2006, Brian was ordered to pay Kim \$861 per month for child support based on his employment at Hagie Manufacturing. The court stated that

[Brian] shall continue to pay \$861 per month, as provided in the decree, until he is no longer obligated for the support of the older child, Brett, at which time he shall be obligated to pay Kimberly the sum of \$561 per month child support for Katie.

After the nunc pro tunc order was filed, Brian appealed and Kim cross-appealed. Brian claims the district court erred in reopening the record more than eight months after trial concluded. He further claims the district court erred in awarding Kim alimony. He also claims the district court's property division is not fair or equitable to the parties and that Kim should refinance the marital home. Kim claims the district court failed to properly determine the correct amount for child support. She further claims the district court erred by not allowing her to claim at least one child as a deduction on her income taxes. She also claims the district court erred in failing to properly assess the value of the parties' home. Finally, she claims the district court erred in failing to award her attorney fees.

II. Scope and Standards of Review.

We review the trial court's decision to reopen the record for an abuse of discretion. *Sun Valley Iowa Lakes Ass'n v. Anderson*, 551 N.W.2d 621, 634 (Iowa 1996). Abuse occurs when the court exercises its discretion on grounds or

for reasons clearly untenable, or to a clearly unreasonable extent. *State v. Teeters*, 487 N.W.2d 346, 349 (Iowa 1992). The trial court has wide discretion in deciding whether to reopen a case for the reception of additional evidence. *Id.* at 348; see *Bangs v. Maple Hill, Ltd.*, 585 N.W.2d 262, 267 (Iowa 1998) (noting “a trial court in its discretion may allow reopening of the case at any stage of the trial, including after argument has commenced if it appears ‘necessary to the due administration of justice’”).

We review dissolution cases de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly & Breckenfelder*, 737 N.W.2d 97, 100 (Iowa 2007). Although not bound by the district court’s factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Merits.

A. Reopening the Record.

Brian argues that the district court abused its discretion in reopening the record eight months after the trial concluded. He asserts that if the district court would have entered its dissolution decree earlier then a reopening of the record would not have been necessary.

During the hearing on Kim’s motion to reopen the record, held on October 20, 2006, the court stated, “the record shall be reopened for the limited purpose of looking at the child support issue.” The court continued, “If I did not reopen . . . then to get a more precise result, you’d have to bring an action to modify and, hopefully, we can avoid a subsequent proceeding as to child support by honing up that issue” The court then heard testimony from Brian

regarding his new job at Hagie Manufacturing and the salary earned at his new position. Additionally, the district court stated in its modification order on February 7, 2007, "I reopened the record to attempt to prevent future litigation in the form of a modification action to increase his child support based on his increased earnings at Hagie Manufacturing Company."

We recognize it is desirable to expeditiously resolve an acrimonious dissolution proceeding. However, we do not believe the district court based its decision to reopen the record on clearly unreasonable grounds in this case. Accordingly, we conclude the court did not abuse its considerable discretion in reopening the record.

B. Property Division Issues.

In allocating the parties' assets and debts, the court strives to make a division that is fair and equitable under the circumstances. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). Iowa courts do not require an equal division or percentage distribution; rather, the decisive factor is what is fair and equitable in each particular case. *Id.* In determining what division would be equitable, courts are guided by the criteria set forth in Iowa Code section 598.21(1) (2003). *In re Marriage of Goodwin*, 606 N.W.2d 315, 319 (Iowa 2000). Before making an equitable division of assets, the court must determine "all assets held in the name of either or both parties as well as the debts owed by either or both." *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa Ct. App. 2002). The assets should then be given their value as of the date of trial. *Id.*

Brian argues the district court's property division is inequitable because the court incorrectly valued a 2003 Dodge Ram truck and a horse wagon. He

also argues the court's distribution is inequitable because the court erred in including gifted property in the marital estate, and because the court substantially overvalued the property awarded to him. Brian further argues that Kim should have to refinance the marital home. In her cross-appeal, Kim asserts the court failed to properly assess the value of the marital home.

"Ordinarily, a trial court's valuation will not be disturbed when it is within the range of permissible evidence." *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007). We generally defer to the trial court when valuations are supported by accompanying credibility findings or corroborating evidence. *Id.*

Dodge Ram Truck.

Brian argues he should have been awarded the full equity in the Dodge Ram truck that he and Kim owned. The record reveals Kim had the truck appraised for \$23,900. Brian wanted to sell the truck for \$17,000. Kim tried to have the truck sold at a higher price and eventually sold it for \$18,000. She incurred \$863 in expenses trying to get the truck sold. In its modification order filed February 7, 2007, the court reimbursed Kim for her expenses, using the \$2415.03 in proceeds from the sale of the truck. The court then ordered the remaining \$1551.43 to be divided equally between the parties. We conclude the court's decision on how to distribute the proceeds from the sale of the truck was fair to both parties and was within the permissible range of evidence; therefore we do not disturb the court's valuation. *See Id.*

Horse Wagon.

Brian argues the district court erred by including the horse wagon in the distribution of marital property. Brian testified that Someday Farms purchased

the wagon and used it in starting his company's business. He asserts because Kim signed a waiver releasing any claims to the company's assets, the \$1250 value of the wagon should not have been credited to him and he should have received an equalizing property settlement payment. Kim argues there is no evidence in the record, such as a purchase receipt or a check, to prove the wagon was purchased by Someday Farms rather than Brian personally. In allocating the wagon to Brian, the court did not discuss Kim's execution of a waiver releasing any claims to the company's assets. Although the wagon was valued at \$1250, Brian bought the wagon at an auction for \$200. Even if the wagon should have been excluded from marital property because of the waiver signed by Kim, the court's overall division of the property was equitable, and we conclude no equalizing payment is necessary under the circumstances presented here.

Chevrolet Truck.

Brian contends the 1952 Chevrolet truck was a gift and should be taken out of the property distribution and given to him. Typically, gifted and inherited property is not considered marital property, unless it would be inequitable to exclude the property. Iowa Code § 598.21(2). There are a variety of factors we may consider in deciding how such property should be treated. *In re Marriage of Thomas*, 319 N.W.2d 209, 211 (Iowa 1982). One of those factors is the "contributions of the parties toward the property, its care, preservation or improvement." *Id.* Brian received the truck from his uncle in 1986. The truck did not run and had little value. The couple put \$500 of marital assets into restoring the truck. Because the truck was of little value before the marital assets were

expended, we conclude the district court properly concluded the truck was marital property.

Brian argues that if we determine the truck is marital property then we should reassess the value of the truck. The district court determined the value of the truck was \$4125 based on the “low value” in the NADA Guide. One of Brian’s witnesses testified the value of the truck was only \$500. We decline to disturb the district court’s valuation of the truck.

\$7000 Down Payment.

Brian also contends a \$7000 gift from his parents to be spent on the down payment of the parties’ marital home was a gift to Brian personally. Brian’s father’s testimony was somewhat unclear as to whom he intended to give the \$7000. He testified he gave the check to his son, but also stated he intended it as a “gift to help them.” When asked, “Did you say a gift to help them or to help him?” Brian’s father replied, “Just – I don’t know, it just went to him.” After considering the evidence presented on this issue, the district court concluded the \$7000 was a gift to both Brian and Kim. When issues of credibility are at issue, we give weight to the trial court’s findings of fact. See Iowa R. App. P. 6.14(g). Moreover, because the \$7000 was used as a down payment for the marital home and became commingled with other marital income as part of the equity in the home, we believe it would be inequitable to exclude the amount from marital property. See Iowa Code § 598.21(2). Therefore, we conclude the district court properly determined the \$7000 was marital property.

Tractor and Loader.

The district court valued a John Deere tractor and loader at \$11,000. Brian asserts the district court overvalued these items. The court heard testimony from an auctioneer who originally valued the tractor and loader at \$15,000 and then lowered his assessment to \$7500 after Brian complained to the auctioneer's supervisor. The court also received an appraisal from a John Deere dealership in Mason City, appraising the tractor at \$9000 and the loader at \$2000. We conclude the value placed on the tractor and loader by the district court was within the permissible range of evidence and supported by corroborating evidence. See *Hansen*, 733 N.W.2d at 703.

Marital Home.

In her cross-appeal, Kim argues the district court erred in failing to properly assess the value of the marital home. The court heard testimony from Dale Hoyt, who opined that the value of the home was between \$96,000 and \$98,000, and Jerry Plagge, who valued the home at \$116,000.⁵ The court found Plagge's valuation to be most credible, stating,

I find that Mr. Plagge's opinion is more credible than the opinion offered by Dale Hoyt. Mr. Plagge is familiar with the properties in the Latimer area. Using a market comparison, he opined that the fair market value would be about \$116,000. In contrast, Mr. Hoyt is not as familiar with Franklin County properties as Mr. Plagge. In addition, cross examination pointed out that, in using his comparable sales, Mr. Hoyt's method was flawed to some extent because a sale relied upon was a less than arm's length transaction.

⁵ The court also received an opinion from Brad Staley, who did not testify but stated in a letter that the value of the home was \$108,000 in September 2005.

We find the value placed on the marital home by the district court was within the permissible range of evidence and supported by corroborating evidence; therefore, we will not disturb the valuation. *See id.*; *see also* Iowa R. App. P. 6.14(g).

Refinancing Issue.

Brian argues that the district court erred by not ordering Kim to refinance the marital home in order to remove his name from the mortgage. Brian is not required to make payments on the mortgage, and nothing in the record indicates Brian will be damaged by the court's failure to order Kim to refinance the parties' former marital home. Therefore, we reject this assignment of error.

C. Spousal Support.

An award of spousal support is used as a means of compensating the party who leaves the marriage at a financial disadvantage, particularly where there is a large disparity in earnings. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998). It is a discretionary award, dependent upon factors such as the length of the marriage, each party's age and earning capacity, the ability of the spouse seeking support to become self-sufficient, and the relative need for support. Iowa Code § 598.21(3); *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa Ct. App. 1996). The property division and an award of spousal support should be considered together in evaluating the individual sufficiency of each. *In re Marriage of Earsa*, 480 N.W.2d 84, 85 (Iowa Ct. App. 1991).

In its original decree issued November 17, 2006, the district court determined Kim was not entitled to alimony. However, in its order filed February 7, 2007, the court modified its prior decision and ordered Brian to pay Kim “permanent alimony” as follows: \$100 per month until Brett turns eighteen in 2008, then \$300 per month until Katie turns eighteen in 2010, and then \$500 per month until either spouse deceases, Kim remarries, or Brian turns sixty-six years old. The court concluded the \$100 per month spousal support obligation would be effective September 1, 2005, the same date the temporary child support obligation commenced. In modifying its order, the court noted that its original reasoning for not awarding Kim alimony was flawed. In deciding that after payment of child support, Brian would have \$1950 per month to work with and Kim would have \$2400, the court explained it had not considered that Brian’s amount is for one person, while Kim’s is for three persons. The court also discussed Dr. Radia’s testimony regarding Kim’s diagnosis of rheumatoid arthritis and her associated monthly medical expenses, and ultimately concluded Kim should be awarded some amount of spousal support. In discussing the possibility that Kim may become disabled from RA and not be able to work in the future, the court stated, “[t]o not award any spousal support to Kimberly would foreclose her from raising this issue on later modification”

Kim is now forty-four years old. Over the course of her marriage she has worked in various clerical positions. At the time of trial, she worked full-time at Ag Inputs as a secretary and earned approximately \$20,000. Brian consistently earned considerably more than Kim during the parties’ marriage. He currently earns about twice what Kim does.

Given the length of the marriage, the disparity in earning capacities, and Kim's considerable medical expenses, we conclude the court's award of spousal support was equitable. We affirm the spousal support provision of the decree.

D. Child Support.

In her cross-appeal, Kim argues the district court improperly calculated Brian's child support obligation. Following the hearing on temporary matters, Brian was ordered to pay \$894 per month, based on his average earnings from a five-year period prior to his termination from Ag Inputs. In the court's modification order filed on February 7, 2007, the court used Brian's projected gross annual income for Someday Farms and reduced his temporary child support to \$548 per month for the time period between September 2005 and May 2006. In its order nunc pro tunc, the court further reduced Brian's temporary child support for this time period to \$468, based on a miscalculation using an incorrect medical insurance figure. Additionally, the court stated that effective May 1, 2006, Brian would pay \$861 per month, based on his salary at Hagie Manufacturing, until his oldest child no longer needed support and then he would pay \$561 per month to support his youngest child.

Kim argues that because Brian voluntarily and intentionally quit working for Ag Inputs, where he made a base salary of over \$48,000 with other incentives worth an additional \$12,000, the court should have taken his earning capacity into consideration. See *In re Marriage of Rietz*, 585 N.W.2d 226, 229 (Iowa 1998) (explaining a primary factor to be considered in determining whether support obligations should be modified is whether an obligor's reduction in

income and earning capacity is the result of activity, which, although voluntary, was done with an improper intent to deprive his or her dependents of support).

Upon our review of the record, we believe it was appropriate to use Brian's projected income in calculating his temporary child support from September 1, 2005, to May 1, 2006. Brian's employment with Ag Inputs was terminated on January 14, 2005. There is some evidence that Brian became very difficult to work with and he acted as though he wanted to be fired. However, following his termination, he began looking for options to support his family and then began Someday Farms where he hoped to utilize his agricultural career skills. Although Brian's poor performance at Ag Inputs may have contributed to his termination, we do not believe this rises to the level of a voluntary income reduction to avoid his support obligations. See *In re Marriage of Foley*, 501 N.W.2d 497, 500 (Iowa 1993) (holding that termination for insubordination, although not commendable, does not qualify as self-inflicted or voluntary).⁶ Therefore, we conclude the district court properly reduced Brian's temporary child support obligation to \$468 per month for the time period between September 1, 2005, and May 1, 2006. We further conclude the district court properly used Brian's current income at Hagie Manufacturing in calculating his child support payments beginning May 1, 2006.

E. Tax Deductions.

In her cross-appeal Kim also contends the district court erred by not allowing her to claim at least one child as a deduction on her income taxes. The

⁶ Additionally, we note that at the time of his termination, Kim's father was one of the five owners of Ag Inputs.

district court has the ability to award a tax exemption to a noncustodial parent “to achieve an equitable resolution of the economic issues presented.” *In re Marriage of Rolek*, 555 N.W.2d 675, 679 (Iowa 1996). In the original decree the court stated,

[Brian] shall be entitled to claim the two children as exemptions for state and federal income tax purposes, provided that he is current in his child support obligation at the end of the taxable year. If he is entitled to claim the exemptions under this provision, then [Kim] shall sign whatever documents may be necessary to permit him to claim the exemptions.

Although the Internal Revenue Service’s general rule is the custodial parent is allowed the tax deduction, an exception to the rule exists when the custodial parent releases his or her claim to the deductions. *See In re Marriage of Kerber*, 433 N.W.2d 53, 54-55 (Iowa Ct. App. 1988). The court can order the custodial parent to sign the IRS form releasing the exemption to the noncustodial parent. *Id.* at 55. In allowing Brian to claim both children, the district court noted that Brian’s net monthly income will increase by \$255.26 if he claims both children as dependents, whereas Kim’s net monthly income will only decrease by \$94.38 if she claims both children as dependents. *See In re Marriage of Thede*, 568 N.W.2d 59, 62 (Iowa Ct. App. 1997) (“Tax exemptions are considered with child support; the allocation of the tax exemptions will have an effect on the income tax liabilities of both parties and their resulting net income for child support purposes.”). Upon our review of the record, we conclude the court did not err in determining Brian is entitled to claim both children as exemptions on his federal and state returns as long as he is current on his child support obligation.

F. Attorney Fees.**Trial Attorney Fees.**

Kim asserts in her cross-appeal that the district court erred in failing to award attorney fees to her. She argues that the court failed to take into consideration the respective earning capacities of each party and her medical expenses. The district court has broad discretion in awarding attorney's fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa Ct. App. 1983). An award of attorney fees is based upon the respective abilities of the parties to pay the fees and whether the fees are fair and reasonable. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997). We generally will not disturb an award unless the court abused its discretion. *In re Marriage of Geil*, 509 N.W.2d 738, 743 (Iowa 1993). In denying attorney fees, the district court noted that it had to a great extent divided the marital assets more or less equally. The court further noted that it could be inferred that the parents of each party had financed the dissolution proceeding as neither party had the ability to pay attorney fees. We conclude it was within the district court's discretion to deny attorney fees in this case.

Appellate Attorney Fees.

Kim requests an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We award no appellate attorney fees in this case.

IV. Conclusion.

We conclude the court did not abuse its discretion in reopening the record. We further find the district court's property division and valuation of the marital home was equitable. Additionally, we conclude the court's award of spousal support was equitable. We find the district court did not err in determining the amount Brian owed in child support and in allowing Brian to claim both of the children as a deduction on his income taxes. Nor did the district court err in denying attorney fees. Accordingly, we affirm the district court's ruling. We decline Kim's request to award her appellate attorney fees.

AFFIRMED.