

**IN THE COURT OF APPEALS OF IOWA**

No. 8-118 / 07-0210

Filed May 14, 2008

**IN RE THE MARRIAGE OF ANGIE M. SCHNUR  
AND GENE R. SCHNUR**

**Upon the Petition of**

**ANGIE M. SCHNUR,**

Petitioner-Appellant/Cross-Appellee,

**And Concerning**

**GENE R. SCHNUR,**

Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Story County, Dale E. Ruigh,  
Judge.

Angie Schnur appeals, and Gene Schnur cross-appeals, from the district  
court's decree dissolving their marriage. **AFFIRMED.**

Timothy M. Duffy, Des Moines, and Jeanne K. Johnson, Des Moines, for  
appellant.

Joseph R. Cahill of Cahill Law Offices, Nevada, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

**MAHAN, J.**

Angie Schnur appeals, and Gene Schnur cross-appeals, from the district court's decree dissolving their marriage. We affirm.

**I. Background Facts and Proceedings.**

Angie and Gene Schnur were married in 1983 and have two children.<sup>1</sup> The parties have been separated since July 2005. Angie is a high school graduate, who devoted much of her time and energy to raising the children and homemaking for the family. Angie also assisted Gene in his farming operation. She first began working outside the home part-time in 1991, eventually attaining the manager position of the local golf course where she worked until September 2005; her highest annual salary during the marriage was \$12,576. Angie attempted to begin a cosmetic tattooing business, spending \$6123 toward that endeavor, but failed to obtain the necessary license and insurance to realize a profit from such a business. Angie's financial affidavit submitted for child support calculations estimated an annual gross earning capacity of \$20,000.

Gene has been employed in farming since 1976 and advanced this career throughout the course of the marriage. His grain farming is conducted through a closely-held corporation, Schnur Country, Inc. Gene personally owns land, buildings, and equipment used by Schnur Country in the farming operation, for which the corporation pays rent to Gene. Gene also receives employee compensation from the corporation, but the compensation varies from year to year based on the success of the farming operation. Both parties presented

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<sup>1</sup> The portions of the decree relating to custody and support of the children are not on appeal, and we do not discuss them.

expert opinion testimony as to Gene's average annual salary from the corporation for both employee compensation and rent. The district court concluded, based upon Gene's financial affidavit and information and methods provided by the expert testimony, that Gene's annual gross income for purposes of child support calculation is \$30,676. The corporation also owns other assets, including fifty membership units in an ethanol plant, Lincolnway Energy, L.L.C., purchased in 2004 for \$47,500, life insurance policies on Gene and Angie, and two grain storage bins located on real estate owned by Gene's father. The parties disputed at trial the proper ownership of these items and whether they were subject to division as marital property.

Other property subject to division in the dissolution proceedings includes an acreage and home located in Colo, Iowa, valued at \$350,000, with a mortgage encumbrance of \$7031 and a loan of \$33,304 to Gene's parents for construction of the acreage's home. The district court determined the net equity of the Colo property to be \$309,665. The parties each presented expert testimony as to the value of Gene's farming equipment used by Schnur Country. Angie's expert, a self-employed farmer and auctioneer, valued it according to auction values at \$334,100. Gene's expert was an implement salesman employed by the dealer with whom Gene has had an historic business relationship; he valued the equipment at a fair-market "trade-in or wholesale" values, amounting to \$283,325. The district court concluded the equipment's gross value was \$310,000, with a net value of \$203,540 due to a bank encumbrance of \$70,038 and debt to Gene's parents of \$36,422. The total

property division, not referenced in detail in this opinion, left Gene with substantial real estate and personal property associated with the farming enterprise. The court ordered Gene to make an equalization payment of \$265,323 to Angie and gave him 90-120 days to secure the necessary funds and satisfy the judgment.

Also in issue at trial was credit for personal property brought by Gene into marriage, which included farm machinery worth approximately \$79,113 at the time of the marriage and \$26,413 of Gene's funds used to construct a shop building that housed the couple for the early years of the marriage. The district court declined to set-off or give Gene credit for this property due to the length of the marriage, both parties' significant contributions to the marriage, and failure to segregate or otherwise maintain the property for Gene's sole benefit. Angie likewise sought to have a debt owed to her father divided as a marital debt, although taken after the parties' separation for her living expenses. The court declined to do so, as well as declining Angie's request for attorney fees.

Angie appeals the district court's denial of her motion to continue the dissolution trial, the determination of Gene's salary (for purposes of child support calculation), the characterization and valuation of certain property as to its divisibility as marital property, and the denial of attorney fees. She also requests appellate attorney fees. Gene cross-appeals the court's denial of credit for property brought into the marriage.

## **II. Scope and Standards of Review.**

We review dissolution decrees de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly & Breckenfelder*, 737 N.W.2d 97, 100 (Iowa 2007). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

We review denial of motions to continue for an abuse of discretion. *Mediacom Iowa, L.L.C. v. Incorporated City of Spencer*, 682 N.W.2d 62, 66 (Iowa 2004).

## **III. Issues on Appeal and Cross-Appeal.**

### **A. Motion to Continue.**

Angie maintains the district court erred in denying her motion to continue the trial. We conclude the court did not abuse its discretion in denying her motion for continuance. Rulings on a motion to continue are within the sound discretion of the trial court. *Hawkeye Bank & Trust v. Baugh*, 463 N.W.2d 22, 26 (Iowa 1990). We will reverse only when that discretion is abused. *Id.* The trial court overruled the motion to continue after making inquiry into the matters sought in discovery. Although Angie had a change of counsel in late October 2005, she obtained an extension of the discovery deadline to mid-February 2006 and a first continuance of the trial to March 2006. This provided nearly four months for additional discovery. Gene points out that Angie failed to serve discovery until late December 2005. It is clear Angie suspects Gene was untruthful concerning his business interests and attendant assets, particularly

debts owed to Gene's parents and the corporation's ownership of the Lincolnway Energy units, two grain bins, and life insurance policies. We see nothing in the record suggesting additional discovery would have yielded different information. Angie admitted in her testimony that the parties owed debts to Gene's parents, although she was unsure of the amount. We cannot say the court abused its discretion in overruling the motion to continue, and accordingly we affirm.

**B. Gene's Income Determination.**

Angie argues the district court erred in its determination of Gene's income from the corporation, setting it at \$30,676. We recognize, in some cases, the only equitable way to determine income for child support purposes is to average income over time. *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992). The district court considered Gene's earnings from the farming corporation in the three years preceding the parties' separation in mid-2005. The average of these incomes from employee compensation and rental income amounted to \$22,066. The district court recognized a string of poor marketing decisions by Gene that affected the profitability of the corporation, and thereby his compensation. Gene attested to an earning capacity of \$30,676 in his financial affidavit. Angie's reliance on the testimony of her expert witness setting Gene's income at \$43,888 is unfounded, as the record shows the expert's income calculations were based on tax returns that clearly incorporated the parties' joint income instead of singling out Gene's income. We also note that the court set a much lower earning capacity for Angie at \$12,600 than even she attested to in her financial affidavit, which listed her earning capacity at \$20,000.

We conclude the determination of Gene's income by the district court is supported by the record, and affirm.

### **C. Valuation of Marital Property.**

Angie also argues district court error in determining the value of certain marital property, or whether property was subject to division in the dissolution. 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). 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.* "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.*

Angie first disputes the district court's valuation of the farming equipment. As detailed in the facts above, the parties each presented expert testimony as to the value of Gene's farming equipment used by Schnur Country. Angie's expert was a self-employed farmer and auctioneer who valued the equipment according to his perceived auction values, amounting to \$334,100. Gene's expert was an implement salesman employed by the dealer with whom Gene has had an historic business relationship; he initially valued the equipment at what he

referred to as “trade-in or wholesale” values, amounting to \$283,325. He later characterized this valuation analysis as “fair-market” values. The district court concluded the equipment’s gross value was \$310,000, very nearly the exact middle ground between both experts’ valuations. The net value of the equipment came to \$203,540 due to a bank encumbrance of \$70,038 and debt to Gene’s parents of \$36,422. We conclude the district court’s valuation of farming equipment was well within the permissible range of the evidence presented and affirm on this issue.

Angie further claims error by the court’s valuation of Gene’s closely-held farming corporation, Schnur Country, Inc., and corporate ownership of certain property. We begin by agreeing that the record reflects the Lincolnway Energy shares, the life insurance policies, and the grain bins on both the Colo homestead and Gene’s father’s land were owned by Schnur Country. Although Angie testified the shares and insurance policies were purchased with marital funds, she provided no further evidence of this, and the paperwork for these intangible assets clearly lists the corporation as owner. The treatment of these items as marital property on past personal income tax returns does not change their ownership. Angie’s counsel conceded at oral argument that the life insurance and Lincolnway Energy shares were purchased by the corporation. The evidence concerning the grain bins’ ownership was conflicting, whether by the corporation or as marital property. Angie purports the bins be treated as marital property because they were not treated as corporate property listed on financing statements, etc. Gene testified that the bins were corporate property



and used in the farming enterprise. The court allocated the bins as corporate property and included them in the division of corporate assets. We cannot say the record compels a different result due the conflict of evidence. We affirm the district court as to corporate ownership of the Lincolnway Energy shares, the life insurance policies, and the grain bins on both the Colo homestead and Gene's father's land.

Angie's most substantial dispute on appeal is the valuation of the farming corporation for purposes of division. As noted by the district court,

The corporation's net worth changes dramatically, depending upon commodity prices and operating loans. It has been trending downward for the last several crop seasons. Most of the corporate assets consist of sealed grain and advanced crop expenses. The liabilities are loans connected with the grain farming operation.

Although Angie challenges the valuation of the corporation and its ownership of the above mentioned property, the record supports the district court's determinations. Her expert, Brian Flagg, evaluated the corporation's worth by looking only at corporate income tax returns. Recalculating for straight-line depreciation on the corporate income, Flagg's calculated average over the four years preceding the dissolution process amounted to a negative net value of \$638. Flagg also calculated under straight-line depreciation a three-year average with the July 2005 year-ending left out, due to the unusually high loss that year of \$40,000, which came to a positive average net value of \$22,954. Flagg nonetheless testified that looking only at income tax returns often is not the best or most accurate manner to evaluate the worth of a farming enterprise, as there could be assets inventoried or otherwise held to minimize a corporation's

profitability for income tax purposes. However, Flagg did not inquire as to or consider information other than the corporate returns in arriving at his expert opinion and testified Gene's methods of valuing the corporation seemed consistent with his experience in farming operations:

Q: So that loss didn't necessarily cost him anything or will cost him? How do they generate a loss? A: Well, there could have been an economic loss. The situation, though, with farms are that there is the ability to—to allocate income and expenses between years. For example, farmers are allowed to prepay a certain amount of expenses, if the—if the farm is on the cash basis.

Q: Is this on the cash basis? A: I believe—yes. This is on the cash basis. That income isn't realized until crops are sold.

Q: And so you don't sell your crops so you don't realize your income? A: Yes, that's correct.

Q: And then you get to carry the debt? A: Yes.

Q: Then it looks like you had a loss? A: Yes.

Q: Can you tell if that happened here? A: I cannot tell. I don't have any information on what inventory of crops that there were. And I do not know if there were expenses paid in advance. I would imagine in this situation since there's a loss that a person wouldn't pay expenses in advance in a year they were generating a loss.

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A: [A]nd there's other factors. For example, a farmer can do things like what's called sealing corn. They can take corn to the elevator and get a loan on that corn and actually have the money the prior year but not have to report it until the following year. And so tax returns are not a very good indicator of what the income actually was on an economic basis for a farmer for that particular year.

It is not clear from the record whether Flagg took into account the corporate property discussed above. The court reviewed its initial determination again when Angie filed a lengthy motion to reconsider or enlarge the findings. The district court upheld its determination that the corporation had negative worth and the property distribution was equitable. In a three-page ruling, the court noted that it found Angie's expert's testimony unsupported by the other evidence,

that the evidence on certain property including the grain bins was less than crystal clear, and the valuation figures settled on by the court were within the range of values proposed by the parties' witnesses. We agree with the detailed analysis of the district court, which the record reflects carefully considered the evidence and arguments of the parties. The record in this case, particularly as to the corporate valuation, is confusing and "less than crystal clear." We conclude the district court's valuation of the corporation and other property was within the range of evidence presented at trial and proper.

Lastly, Angie contends a debt to her father during the couple's separation should have been divided as a marital debt because of a delay in commencement of temporary support payments. Although the petition was filed on April 1, 2005, the application for temporary orders was not filed for another five months—until September 1. A hearing on temporary matter scheduled for October 2005 was continued by Angie. We cannot say the district court erred when it denied treatment of Angie's loan from her father as marital debt, and we affirm on this issue.

#### **D. Trial Attorney Fees.**

Angie contends the district court erroneously denied her request for trial attorney fees and also seeks an award of appellate attorney fees. The district court has broad discretion in awarding attorney 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). In denying attorney fees, the district court observed that it had to a great extent divided the marital assets more or less equally, noting the liquidity of the majority of Angie's property award. We affirm the district court's decision denying Angie attorney fees in this case.

#### **E. Property Brought into the Marriage.**

Gene asserts error by the district court in refusing to credit property brought by him into the marriage. A premarital asset is not automatically set aside. *Sullins*, 715 N.W.2d at 247. "Instead, 'property brought to the marriage by each party' is merely one factor among many to be considered." *Fennelly*, 737 N.W.2d at 102 (quoting Iowa Code § 598.21(1) (2005)). Considering the property division as a whole, we agree with the district court's decision to deny Gene's request. See *In re Marriage of Johnson*, 499 N.W.2d 326, 328 (Iowa Ct. App. 1993) ("Property brought into a marriage by one party need not necessarily be divided."); *In re Marriage of Wallace*, 315 N.W.2d 827, 831 (Iowa Ct. App. 1981) ("[I]t cannot be said that the partner who has benefited from the other's inheritance or other property necessarily has a claim to half of all that property."). Clearly, Gene brought what he had into the marriage from the beginning to continue his farming enterprise and support his young family. Due to the same considerations listed by the district court, we conclude these militate against giving Gene credit for these initial individual contributions and affirm on this issue.

**F. Appellate Attorney Fees.**

Finally, Angie requests attorney fees on appeal. 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). Given the relative asset position of the parties, we deny Angie's request for appellate attorney fees. Costs on appeal are assessed one-half to Angie and one-half to Gene.

**AFFIRMED.**