

IN THE COURT OF APPEALS OF IOWA

No. 9-338 / 08-1332
Filed June 17, 2009

IN RE THE MARRIAGE OF JANET L. FOGLE AND DENNIS R. FOGLE

Upon the Petition of

JANET L. FOGLE,
Petitioner-Appellant,

And Concerning

DENNIS R. FOGLE,
Respondent-Appellee.

Appeal from the Iowa District Court for Mahaska County, Joel D. Yates,
Judge.

Janet Fogle appeals the property distribution of the parties' dissolution
decree. **AFFIRMED.**

Lee M. Walker and Jane Odland of Walker & Billingsley, Newton, for
appellant.

Lois Vroom of Lois Vroom, P.C., Knoxville, and Gary D. Ordway of
Patterson Law Firm, L.L.P., Des Moines, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

Janet Fogle appeals the property distribution provisions of the parties' dissolution decree. Janet claims she should have been awarded a larger percentage of the marital assets and also finds fault with the district court's valuation of a business, National RP Support. Janet seeks appellate attorney fees. We affirm and decline to award appellate attorney fees.

I. Background Facts and Proceedings.

The parties were married in October 2001, and are the parents of three minor children. After five and one-half years of marriage, the parties separated in May 2007. Child custody and support issues are resolved and not appealed. Dennis is paying \$5000 per month for child support.

At the time of trial in July 2008, Janet was thirty-five and Dennis was forty-one. Janet had experience in real estate lending as a bank employee, but now owns and operates a floral shop the parties purchased in 2006. The trial court found Janet received \$30,000 per year in income from this business and noted the shop had not yet earned a profit. Dennis started his current business, National RP Support, in 1998. National provides technical support and service for stereo lithography equipment. The trial court found Dennis had an average yearly income of approximately \$600,000 for 2005-2007.

The parties disputed the value of National at trial. Janet's expert opined the business is worth approximately \$5,000,000, while Dennis's expert opined the current valuation is \$1,125,000. The district court found the current fair

market value of National to be \$1,125,000 and deducted \$125,000 as an offset for premarital value.

The district court divided the parties' assets and debts and ordered Dennis to pay Janet five yearly installments totaling \$350,000 (at five per cent annual interest) "in order to equalize the property division and as payment for [Janet's] interest in [National]." Janet received the majority of the parties' non-retirement liquid assets, was awarded rehabilitative alimony of \$3000/month for twenty-four months, and was awarded \$12,000 for her attorney fees.

The court recognized its division of assets "is closer to a 60/40 division in favor of [Dennis]," and found this division "fair and equitable under the circumstances." The court stated the length of the parties' marriage and the business risks associated with National were key considerations in the asset division. Janet appeals the valuation assigned to National and the award of forty per cent of the marital assets.

II. Scope of Review.

We review this equity action de novo. Iowa R. App. P 6.4. We have a duty to examine the entire record and "adjudicate anew rights on the issues properly presented." *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the trial court's fact findings, especially regarding witness credibility, but they are not binding. Iowa R. App. P. 6.14(6)(g).

III. Valuation of National.

Janet argues the court incorrectly valued National and requests we use the valuation proposed by her expert because it included financial data through

May 2008, while Dennis's expert excluded 2007 and 2008 data in his valuation. "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.*

Both parties offered expert opinions regarding the value of National and the court made specific credibility findings while deciding to utilize the computations of Dennis's expert. The trial court's determination of credibility is given weight because it has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

The court stated:

In short, the court found [Dennis's] expert witness to be much more credible than [Janet's] expert witness. The methodology used by the expert for [Dennis] was much more appropriate in valuing this business than the methodology used by the expert for [Janet]. Finally, the court concludes the expert for [Dennis] used more commonly accepted accounting practices in arriving at his opinion.

After our de novo review of the record, we find the value placed on National was within the permissible range of evidence and was supported by corroborating evidence. *See Hansen*, 733 N.W.2d at 703. Because valuing a closely-held business is a difficult task, "the law provides much leeway to the trial court." *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993). Therefore, we will not disturb the valuation on appeal.

IV. Marital Asset Division.

Janet asserts the property division was inequitable and seeks fifty percent of the marital assets. Specifically, Janet objects to the trial court's offset of

\$125,000 as the premarital value of National and to the sixty percent award to Dennis due to a discounting for business risk.

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.* We recognize it is not necessary to equally divide the assets when a small business is a part of the assets and the business is the vocation of one party. See *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747-49 (Iowa 1987); *In re Marriage of Callenius*, 309 N.W.2d 510, 515 (Iowa 1981). We also must take into account the risks inherent in any particular asset. See *Wiedemann*, 402 N.W.2d at 749.

National constitutes the largest part of Dennis's assets. Dennis started National before the parties' marriage and the marriage is of short duration. National is subject to both the risk of competition and the risk of business decline at the expiration of its main, short-term contract. National is an inherently risky asset. The assets Janet received are not subject to a similar risk of loss of value and Janet also received a substantial alimony award. Therefore, we find no inequity with the economic provisions of the decree and will not disturb them on appeal. See *In re Marriage of Vieth*, 591 N.W.2d 639, 641 (Iowa Ct. App. 1999) (holding "we give strong deference to the trial court which, after sorting through the economic details of the parties, made a fair division supported by the record").

V. Attorneys Fees.

Janet requests an award of appellate attorney fees. Appellate attorney fees are discretionary. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We consider the parties' needs, ability to pay, and the relative merits of the appeal. *Id.* Upon consideration of the foregoing factors, we deny Janet's request for appellate attorney fees. Court costs on appeal are taxed one-half to each party.

AFFIRMED.