

**IN THE COURT OF APPEALS OF IOWA**

No. 0-165 / 09-0674  
Filed May 12, 2010

**IN RE THE MARRIAGE OF KEVIN W. GROSVENOR AND DAWN R. GROSVENOR**

**Upon the Petition of**

**KEVIN W. GROSVENOR,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning**

**DAWN R. GROSVENOR,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

Dawn Grosvenor appeals from the property division and alimony provisions of the decree dissolving the parties' marriage. Kevin Grosvenor appeals the court's alimony award. **AFFIRMED AS MODIFIED.**

Elizabeth A. Rosenbaum, Sioux City, for appellant.

Edward J. Keane of Gildemeister & Keane, L.L.P., Sioux City, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, J.**

In this appeal from a dissolution decree, Dawn Grosvenor seeks an increase in alimony, an adjustment in the property distribution, and additional attorney and expert witness fees. In his cross-appeal, Kevin Grosvenor seeks to reduce his alimony obligation. We affirm and modify the decree to award Dawn one-half of the “uncollectable” accounts receivable.

**I. Background Facts and Proceedings.**

When Kevin and Dawn married in March 1987, they worked at Executive Technologies, Inc. (ETI),<sup>1</sup> a company selling and servicing copying systems. In 1992, Kevin and Dawn purchased ETI from Dawn’s parents. Kevin is now the company president. Dawn worked in accounts payable, accounts receivable, and receiving until May 2008. Dawn worked at the company office until approximately 1999, when she started performing her duties part-time from home. During the marriage, ETI paid for car insurance, car leases, and cell phones for Dawn and Kevin.

In June 2008, Kevin petitioned for dissolution of marriage. Dawn continued to live in the family home and Kevin moved into an apartment. In August 2008, the court ruled on temporary issues and ordered Kevin to continue paying Dawn’s expenses, including newly-incurred weekly counseling expenses, as well as \$500/week in temporary spousal support, \$3000 for Dawn’s attorney fees, and \$3000 for Dawn’s expert witness fees.

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<sup>1</sup> The original name of the business was Executive Copy Systems.

At trial in January 2009, Kevin was forty-nine, Dawn was forty-three, and their two children were young adults attending college. Dawn's psychologist testified:

[Dawn's] principal diagnosis is obsessive compulsive disorder with poor insight. Her other three diagnoses are major depressive disorder, recurrent severe without psychotic features; [secondly], attention deficit hyperactivity disorder, an inattentive type; and [thirdly] trichotillomania.

The trial court adopted the parties' partial stipulation and resolved the disputed issues by valuing ETI at \$10,084, and also ordering: (1) The home be awarded to Kevin and sold with the proceeds divided equally between the parties (unless Kevin elects to pay the court-ordered equity under (3)(b) below); (2) Dawn move out of the home by June 1, 2009, so Kevin could prepare it for sale; (3) Kevin pay \$2700 monthly spousal support until Dawn dies or remarries, such support reduced to \$2200 monthly when either (a) the house is sold and Dawn receives one-half of the equity minus expenses (projected at \$27,064), or (b) Kevin pays Dawn \$33,500 for home equity; (4) Kevin obtain and maintain a \$100,000 life insurance policy with Dawn named as the sole beneficiary; and (5) Kevin pay \$2000 for Dawn's attorney fees.

The court's property distribution, which did not include the homestead, required Kevin to assume \$502,745 in debt, resulting in a \$29,024 net deficit. Dawn was required to assume \$3000 in debt, resulting in her receiving \$16,845 in net assets. Thus, Dawn's property award exceeds Kevin's by \$45,869.

In May 2009, Dawn appealed and also sought an emergency stay so "she does not have to vacate the marital home on June 1, 2009." The motion for stay

was denied by the Iowa Supreme Court. On appeal, Dawn seeks an increased valuation for ETI, one-half of the “uncollectable” accounts receivable, additional alimony, an award of the marital home with an increase in its equity, \$30,000 to repay a loan Dawn made from her accident-settlement money to ETI, and additional attorney and expert fees. Kevin’s cross-appeal requests a reduction in both the amount and duration of alimony.

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

We review the trial court’s decision de novo. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006). We examine the entire record and decide anew the legal and factual issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court’s findings of fact and conclusions of law, but make such findings and conclusions from our de novo review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We give weight to the trial court’s fact findings, especially regarding witness credibility, but they are not binding. *McKenzie*, 709 N.W.2d at 531.

## **III. Property Division.**

Iowa is an equitable distribution state, which means each marital partner is entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The

determining factor is what is fair and equitable in each particular circumstance. *Id.* When distributing property we take into consideration the criteria codified in Iowa Code section 598.21(1) (2007). See *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983). Property division and spousal support should be considered together in evaluating their individual sufficiency. *In re Marriage of Trickey*, 589 N.W.2d 753, 756 (Iowa Ct. App. 1998).

#### **A. Valuation of ETI.**

Both parties offered an expert opinion from a certified public accountant regarding the value of ETI. Dawn's expert, CPA Harden, concluded ETI should be valued at either \$518,000 (no adjustment to accounts receivable and inventory) or \$129,000 (after adjustment to accounts receivable and inventory). Kevin's expert, CPA Bieber, valued ETI at \$10,084 after adjustment to accounts receivable and inventory. The district court concluded:

At first glance, a value of \$10,084 for the ongoing business of ETI seems low. However, after a review of the facts and circumstances as they actually exist, the Court does find that the value of the common stock of ETI to be \$10,084 (the value of the NTA [net tangible assets] as of September 30, 2008.

Dawn argues the court incorrectly valued ETI and requests we use either of the valuations proposed by her expert, CPA Harden. Dawn claims Harden's evaluation is more appropriate because it was "more thorough, more objective and it utilized recommended standards."

"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.*

Here the district court made specific credibility findings as it detailed problems in Harden's analysis. Harden's \$518,000 valuation does not utilize the adjustments to inventory and accounts receivable made by ETI prior to trial. The district court ruled: "[T]he adjustments to inventory and accounts receivable made by ETI were completed in an appropriate and accurate manner. The resulting reduction in the value of these assets is credible." After our *de novo* review, we agree with the district court.

The court addressed additional problems in Harden's analysis. Harden assumed a potential buyer would be able to reduce rent payments by \$18,000/year for space needed to operate ETI. The court found: "Harden's opinion about the 'excessive space' is mere speculation and there is insufficient evidence to support it." Consequently, "Harden's reduction of the actual amount of rent which is paid by ETI in order to reach the result of an increase to the overall value of ETI is without merit and not supported by credible evidence." After our *de novo* review, we agree with the district court.

Finally, although Harden admitted a potential buyer would be concerned about the low 2006 annual earnings, Harden deleted the 2006 earnings when averaging yearly earnings from 2003 to 2007. Further, Harden's average annual earnings for 2004-2007 included lease point commissions earned by Kevin as a component of ETI's earnings. The district court concluded:

Without addressing the issues of Harden's "normalizing adjustments," his value of CEE [Capitalized Excess Earnings] is not

accurate because he omits 2006 from his averaging, and his average annual earnings are based on the overstated earnings of ETI [by including Kevin's lease point commissions]. The Court finds that Harden's calculation of \$92,616 as the "value of capitalized excess earnings" is not realistic in light of the credible facts.

We agree with the district court and also conclude the value placed on ETI by the district court was within the permissible range of 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 district court's detailed and well-reasoned ETI valuation on appeal.

#### **B. Possession of Marital Home.**

Dawn argues the court erred by awarding the home to Kevin and ordering her to vacate the marital home. She claims the special needs occasioned by her mental health issues along with her proven ability to manage the marital home for the six months prior to trial justify an order granting her possession of the home. We disagree. The monthly cost of maintaining the home is \$2195, as compared to \$765 for a two-bedroom apartment. Due to Dawn's mental health issues, she spends her time in the bedroom and living room. Therefore, as found by the district court, "most of the homestead is not actually utilized by Dawn." Further, Dawn's psychologist testified she "needs to find some sort of life outside of her home to combat or diminish the impact of her mental health on her lifestyle." We agree with and adopt the district court's conclusion "a sale of the house is in the best interest of both parties."

The parties have a substantial mortgage (\$116,885) on the homestead that would be paid off as a result of the sale. The homestead is a four-bedroom house that is too big and burdened with maintenance (including a swimming pool, yard) for one person and for the lifestyle Dawn has been used to for the last several years. The parties cannot afford to maintain the homestead. Dawn can continue a comfortable lifestyle in either a smaller house or a condominium or apartment setting.

### **C. Debt Issues.**

Dawn argues the court erred in not awarding her \$30,000 she received in an accident settlement and subsequently loaned to ETI with the expectation of repayment. At trial, Kevin agreed Dawn had not received a repayment check, however, Kevin explained the money was repaid by ETI “lease overrides treated as repayments.” The money was used for family living expenses. We agree with the district court’s conclusion: “[D]uring the years 2004-2007, loan repayments were made by ETI to Kevin and Dawn.”

Dawn next argues Kevin acknowledged \$23,225 of ETI debt was paid off by the May 2008 refinancing of the homestead and the court erred in not increasing the home equity by this amount. The record does not support Dawn’s claim. Dawn’s argument is apparently based on dividing the Bank of America debt (\$44,605) in half and then asserting, without record support, \$23,225 was given to ETI. The only testimony Dawn cites in support of her argument is:

Q. Is it true that the Bank of America line of credit that was paid off was money that was given to ETI? A. [Kevin] No, not entirely, if that’s the case. We used some of it to build the pool, and I couldn’t tell what the rest of the numbers were.

We agree with the court’s valuation of home equity.

#### **D. Accounts Receivable.**

The decree did not mention ETI's \$58,082 in "uncollectable" accounts receivable. At trial Kevin explained they were uncollectable, but he agreed to give Dawn one-half of the collection if any of those specific accounts are collected in the future. We modify the district court award to so order.

#### **IV. Alimony.**

Dawn asserts she is incapable of working and contends even if she moves to an apartment she needs \$3290/month alimony instead of the \$2200/month she receives after the home equity is paid.

In his cross-appeal, Kevin asserts the court incorrectly determined Dawn's alimony needs by "underestimating her earning capacity to be only \$1256 [gross] per month," based on the court's finding Dawn's maximum earning capacity is minimum wage. Kevin argues Dawn's earning capacity is ten dollars/hour or \$1720/month. Further Kevin claims a thirty-five year alimony obligation (assuming seventy-eight year life expectancy) is inequitable. Kevin requests an adjustment to either \$1000/month for five years or \$1000/month with elimination of alimony when Dawn is eligible for social security. Dawn's social security benefit is estimated to be \$754/month at age sixty-two.

"[Spousal support] is an allowance to the spouse in lieu of the legal obligation for support." *In re Marriage of Sjulín*, 431 N.W.2d 773, 775 (Iowa 1998). Spousal support is not an absolute right; an award is discretionary and depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). The discretionary award is made

after considering the factors listed in Iowa Code section 589.21(3). *Id.* at 570. Even though our review is de novo, we grant the district court considerable latitude in determining alimony and “will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005).

Kevin and Dawn were married for over twenty years. Kevin is in good health with a current income of \$8804/month while Dawn has significant mental health issues and no current income. The court found Dawn was able to work until May 2008 “because she was in a comfortable family environment with Kevin as her supervisor.” The court also found, at the time of trial, Dawn “does not appear to be highly motivated to work.” While the court found Dawn’s maximum earning capacity to be minimum wage, it also found, “it is unlikely and improbable that Dawn could find and maintain employment even at a minimum wage position.” We also note the division of property results in Dawn receiving \$45,869 more in assets than Kevin received. After considering the specific facts and circumstances of the case and all factors relevant to spousal support awards and after recognizing the court’s first-hand ability to hear the testimony and evaluate the credibility of the witnesses, we find no abuse of discretion or inequity in the trial court’s award of spousal support to Dawn. We affirm on this issue.

**V. Expert Witness Fees and Appellate Attorney Fees.**

Kevin was ordered to pay \$3000 in temporary attorney fees and \$3000 in temporary expert witness fees. After trial, the court ordered Kevin to pay an additional \$2000 towards Dawn's attorney fees.

Dawn states she owed \$14,340 in attorney and expert fees at the time briefs were submitted and requests \$13,000 in additional fee payments. However, the court included CPA Harden's post-trial debt of \$3000 in its division of property as a liability for Dawn. Ordering Kevin to pay that \$3000 now would further increase the net deficit Kevin received in the property division. We therefore decline to adjust expert witness fees.

Attorney fees are not a matter of right, but rather rest within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). We review the district court's award of attorney fees for abuse of discretion. *Id.* An award of attorney fees is based upon the respective abilities of the parties to pay and whether the fees are fair and reasonable. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa Ct. App. 1997).

After considering the record, we find no abuse of discretion and affirm the district court's award of trial attorney fees.

Dawn also 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 Dawn's request for appellate attorney fees.

**VI. Conclusion.**

Upon our de novo review, we award Dawn one-half of any of the \$58,082 in “uncollectable” accounts receivable that may be collected. We affirm the district court’s dissolution decree in all other respects. We decline to award appellate attorney fees. Court costs on appeal are taxed to Kevin.

**AFFIRMED AS MODIFIED.**