

IN THE COURT OF APPEALS OF IOWA

No. 8-590 / 98-0384

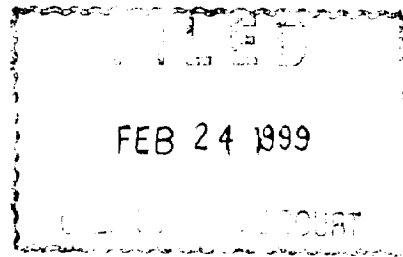
**IN RE THE MARRIAGE OF LOIS COVINGTON
AND ELDON COVINGTON**

**Upon the Petition of
LOIS COVINGTON,**

Petitioner-Appellant,

**And Concerning
ELDON COVINGTON,**

Respondent-Appellee.



Appeal from the Iowa District Court for Jones County, Van D. Zimmer, Judge.

Petitioner appeals from certain provisions of the dissolution decree.

AFFIRMED.

Paul D. Gamez and Thomas D. Wolle of Moyer & Bergman, P.L.C., Cedar Rapids, for appellant.

Adrian T. Knuth, Anamosa and Ronald L. Ricklefs, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ. Zimmer, J., takes no part.

SACKETT, C.J.

Petitioner-appellant Lois Covington appeals from the decree dissolving her nearly forty-year marriage to respondent-appellee Eldon Covington. Lois contends the district court incorrectly valued a family business known as Covington Electric. Lois contends the business, which was allocated to Eldon, was undervalued by the district court. We affirm.

The parties stipulated to many of the economic matters, including the provision Eldon would receive Covington Electric. They could not, however, agree on certain other issues, including the value to be placed on the business. These issues were submitted to the district court. The district court valued Covington Electric at \$65,000 and then crafted a property division based on that valuation giving Lois and Eldon each net equities of \$380,975. To reach this result, Eldon was ordered to pay Lois \$32,142. Certain other assets were to be sold, and other assets and liabilities were divided. Additionally, Eldon was ordered to pay Lois alimony of \$1000 a month until April 1, 2004, or until the death of Eldon or Lois, whichever occurred first. On April 1, 2004, the alimony was to be reviewed and reduced to an amount which is one-half of the difference between the parties' respective incomes from Social Security.

Covington Electric was started in 1965. At the time of the dissolution, it had three full-time employees and operated out of a thirty-foot by sixty-foot pole building located in a rural setting. Eldon, sixty years old at the time of trial, was the key employee in the business. It was not incorporated and he reported the business

income on a Schedule C. Covington Electric showed net profits in the seven years beginning in 1991 and ending in 1997. The profits were distributed to Eldon for tax purposes. He took no additional salary. These profits were as follows:

1991	\$ 53,118
1992	37,992
1993	23,036
1994	59,161
1995	65,463
1996	109,690
1997	73,000

There appears to be no dispute the business had equipment and trucks valued at \$26,490 and business inventory valued at \$20,000. The district court valued the accounts receivable and work in progress at \$89,387 and the accounts payable at \$37,214. The district court found other business debts, including those related to prior years' taxes, to be \$83,180.

At trial, Lois called as an expert witness Michael Sandberg, a professor of finance at Coe College in Cedar Rapids, Iowa, who valued the business using a method based on capitalization of the business earnings. Sandberg determined because Covington Electric was an ongoing business, a valuation based on the capitalization of earnings was the accepted method of valuation. Sandberg was of the opinion the business had a market value of \$158,156. In arriving at that valuation, he explained he considered four factors: (1) he determined a base year's earnings; (2) he considered the reasonable rate of return given the nature of the business and the business risks; (3) he considered the growth rate and specifically the fact the business was established and had been in existence since 1965 and had an average growth rate

in sales and earnings of just over eight percent; and (4) he considered the return on investment or return on ownership versus the human effort Eldon, as an owner-operator, provides the business.

Eldon introduced no expert testimony but did testify to evidence relevant to the valuation of the business.

Lois contends the trial court rejected without explanation the opinion of Lois's expert, erred in rejecting the expert's opinion, arrived at a value not supported by the evidence, and based the valuation on its own knowledge.

We disagree. The district court rejected Sandberg's value as "unrealistic." In doing so, the district court considered Covington Electric was a family business in a small town dependent on Eldon as the key employee. The district court found no basis to determine the business could be sold for three times the value of its assets and inventory. The trial court, in reaching its \$65,000 valuation, noted there was conflicting evidence focused in part on Eldon's value to the business as an employee.

We review de novo. *In re Marriage of Wiedemann*, 402 N.W.2d 744, 747 (Iowa 1987). We will affirm a trial court's valuation that is within the range of the evidence. *See In re Marriage of Coulter*, 502 N.W.2d 168, 172 (Iowa App. 1993) (Oxberger and Schlegel, JJ., dissenting). However, a trial court cannot rely upon its own knowledge or speculate on property values; the valuations must be based on the evidence introduced. *See In re Marriage of Hoak*, 364 N.W.2d 185, 193 (Iowa 1985).

In considering Covington Electric's value, we, as did the district court, consider as a substantial factor the position of Eldon as a key employee. Eldon is the proprietor of the business. He reports income on a schedule. He does not draw a salary but reports his income as a self-employed person. Lois's expert did consider this fact to the extent he considered Eldon's services to the business to be worth about \$30,000 annually. The evidence shows Eldon's personal services to the business are more valuable. Sandberg's valuation undervalues Eldon's services and fails to give adequate consideration to his position as a key employee. Furthermore, Eldon's future earnings are a factor properly considered in awarding Lois alimony. *See In re Marriage of Hogeland*, 448 N.W.2d 678, 681 (Iowa App. 1989).

Lois contends the only evidence as to valuation of the business is her expert. A fact finder has the right to accept or reject an expert's opinion. *Weishar v. Snap-On Tools Corp.*, 506 N.W.2d 786, 790 (Iowa App. 1993). An owner of property is generally qualified and competent to testify to the property's value. *See Beneficial Fin. Co. v. Reed*, 212 N.W.2d 454, 459 (Iowa 1973). We have considered Eldon's testimony.

Lois also contends the capitalization of earnings approach is the only accepted method of valuing an ongoing business such as Covington Electric. We disagree. The valuation of a business operated by one person is difficult. *See Wiedemann*, 402 N.W.2d at 747. When a value is established through a capitalization of earnings approach, it is generally assumed the owner will continue to contribute his or her

expertise and effort. *See id.* at 747-48. In essence, the owner's future earning capacity is capitalized. *See id.* at 748.

The district court's findings as to Covington Electric's value are well within the range of the evidence and we will not disturb them on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973).

Eldon has requested a modification of the alimony award. He has not appealed or cross-appealed and can have no greater relief or redress on appeal than he was accorded by the trial court. *Boyd v. Boyd & Boyd, Inc.*, 386 N.W.2d 540, 545 (Iowa App. 1986). We affirm the alimony award.

We award no appellate attorney fees. Cost on appeal are taxed to Lois.

AFFIRMED.