**IN THE COURT OF APPEALS OF IOWA**

No. 5-273 / 94-916

**IN RE THE MARRIAGE OF JANE ALTA TURNER AND ROBERT JOHN TURNER**

Upon the Petition of

**JANE ALTA TURNER,**

Plaintiff-Appellee,

And Concerning

**ROBERT JOHN TURNER,**

Respondent-Appellant.

FILED
SEP 22 1995
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Carroll County, Ronald H. Schectman, Chief Judge.

John appeals the property provisions of the decree of dissolution of marriage.

**AFFIRMED.**

James R. Van Dyke of Van Dyke & Werden, P.C., Carroll, for appellant.

Dee Ann Wunschel Crouse of Wunschel Law Firm, P.C., Carroll, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

**HABHAB, J.**

John and Jane Turner were married in 1963. They have three adult children. In August 1993 Jane filed a petition for dissolution.

John was fifty and Jane was forty-nine at the time of the May 1994 trial. John entered the marriage with a family farm partnership and has worked on the farm throughout the marriage. In 1993 John earned $9036. Jane also worked on the farm until 1978 when she began working at the General Electric Plant in Carroll. She was laid off work from 1988 until 1992, and during this time she obtained an LPN license in nursing. In 1993 Jane earned $28,743 working at the plant; about $3500 of this amount was overtime pay.

The parties own three farm properties. In 1973 the parties bought 158 acres of land in Union Township for $89,000. In 1975 they purchased 360 acres of land on contract from John's mother for $178,250. The parties have their home on this farm. In 1979 the parties bought eighty acres of land in Newton Township for $96,000.

John introduced evidence of two appraisers at trial to value the farm machinery. John Scharfenkamp valued a grain drill at $10,000 and the total farm machinery, including the drill and two pickup trucks, at $90,625. Gary Rupiper valued the grain drill at $9500 and the total farm machinery, including the drill and trucks, at $94,150.

In distributing the marital property, the district court awarded Jane the Union Township property but ordered John to pay the $106,700 encumbrance on it. John was awarded the home place and the Newton Township property and given the option to rent the Union Township property at an "advantageous" price of $15,745 per year. John was awarded the farm machinery and two pickup trucks which the court valued at $100,815 and his guns which the court valued at $500. The court specifically found that the grain drill was undervalued by $7000.

John appeals.

In this equity action, our review is de novo. Iowa R. App. P. 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 fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

**I.** ***Property Valuation***. John contends the district court erred in making the property valuation. Specifically, he argues the district court erred in valuing (1) John's machinery and trucks; (2) John's grain drill; (3) miscellany; (4) the advantageous rental; and (5) John's guns.

John correctly points out the appraisals made by both Gary Rupiper and John Scharfenkamp were $90,625 and $94,150 respectively, and both appraisals included the value of two pickup trucks owned by John. The district court, however, valued John's machinery at $100,815 without including the value of the trucks. While it is

unclear how the district court arrived at the specific value for the machinery, some support for the value can be found in a financial affidavit completed by John and admitted into evidence. The affidavit is dated January 8, 1993. The affidavit shows a claimed value of $126,100 for machinery and equipment. This value included the two pickups valued at $21,000. We find this evidence provides support for the district court's valuation of the farm machinery.

We find the valuations of the advantageous rental and the miscellany are within the permissible range of evidence. We find the same to be true regarding John's grain drill. While the guns may have been overvalued by the district court, we find nothing in the record which would provide a more accurate and definite valuation. John testified the guns were worth at least $500 and some of them were given to him by his parents. No testimony was given regarding exactly how many guns were actually purchased by John and what the value of these specific guns were. We find the district court made a reasonable valuation of the guns based on the testimony at trial.

In conclusion, we find the values placed on the assets by the district court to be well within the permissible range of evidence and will not disturb them on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

**II.** ***Property Distribution***. John contends the district court made an inequitable distribution of the property.

The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division of percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). We reject precise percentage divisions because "[t]he question is always what is an equitable and just award in a given set of circumstances." *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975).

John testified at trial that he wanted to continue farming after the dissolution. Further, the parties had little property that was not somehow tied up in the farming operations. The district court gave a substantial amount of farmland to John and gave John all of the farm machinery and equipment. Jane received the Union Township farm, her car, and $2541 from a bank account. While the Union Township farm was given to Jane, John was given the option to rent the land for five years at a reasonable rate. Simply because John can come up with other distribution schemes which he believes to be more equitable does not mean the scheme devised by the district court is not equitable. We affirm the district court's distribution. We conclude the district court made a reasonable distribution of the property given the circumstances in this case.

**III.** ***Attorney Fees***. On appeal, Jane requests appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). Jane's request for appellate attorney fees is denied.

**AFFIRMED.**