IN THE COURT OF APPEALS OF IOWA

No. 1999-448 (9-705) / 98-1688
Filed March 15, 2000

IN RE THE MARRIAGE OF CHARLES WEBER AND GLORIA WEBER

Upon the Petition of
CHARLES WEBER,
Petitioner-Appellant/Cross-Appellee,

And Concerning
GLORIA WEBER,
Respondent-Appellee/Cross-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Page County, Timothy O'Grady, Judge.

The petitioner appeals, and respondent cross-appeals, from various economic provisions of the parties' dissolution decree. Petitioner contends: (1) the property division was inequitable; (2) the district court erred in failing to take into account the parties' premarital property when dividing marital property; (3) the district court failed to take into consideration the built-in tax consequences of two closely-held corporations; (4) the alimony award was excessive; (5) the district court erred in ordering him to purchase a $500,000 life insurance policy to secure his alimony obligation; (6) the district court failed to take into consideration the parties' 1997 tax liabilities; and (7) respondent was not entitled to a $7500 award for attorney fees. On cross-appeal respondent argues the district court erred in failing to award her a lump sum property settlement. **AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

R. Laubenthal and Daniel L. Fretheim of Smith Peterson Law Firm, Council Bluffs, for appellant.

Stephen A. Rubes and Joseph J. Hrvol, Council Bluffs, for appellee.

Heard by Sackett, C.J., and Zimmer and Miller, J.J.

MILLER, J.

Petitioner Charles K. Weber appeals the economic provisions of the decree dissolving his marriage to Respondent Gloria J. Weber. His claims of error include valuation and division of assets, valuation and assignment of responsibility for debts and income taxes, an award of spousal support to Gloria, a requirement he maintain life insurance to secure spousal support, and an award of attorney fees to Gloria. Gloria cross appeals, urging she should receive a "lump sum property settlement" if we reduce the trial court's property award to her or modify to delete the decree's requirement that Charles maintain a life insurance policy with her as beneficiary during the period he is obligated to pay spousal support. We affirm as modified on the appeal, and affirm on the cross-appeal.

I. Background Facts and Proceedings

The parties were married May 30, 1982. This was the second marriage for each. No children were born of this marriage, but each party has adult children from their previous marriage. The parties separated in April 1997.

The parties cohabited for more than a year before they married. They had no prenuptial agreement.

Gloria was born December 30, 1942, and was fifty-five years of age at the time of trial. She enjoyed relatively good health, except for a "small back problem" and a hernia. She graduated from high school but has no additional formal education. She had been employed as a secretary and bookkeeper prior to the parties' marriage. She had worked for Weber Engineering, Inc. as a secretary for eighteen to twenty-four months when the parties married. She

continued that employment throughout the marriage, until January 1998. Gloria was the parties' homemaker and from the evidence it appears that she was supportive of Charles in his business endeavors. When her employment with Weber Engineering ended, her gross pay was $900 per week.

When the parties married Gloria had net assets of approximately $35,000, consisting of $25,000 in equity in a home in Shenandoah upon dissolution fo her first marriage, a vehicle worth approximately $5,000, and household furniture, furnishings and appliances with a value of approximately $5,000. Her children from her first marriage resided with her and Charles after they were married.

Charles was born December 10, 1936, and was sixty-one years of age at the time of trial. He had for many years, including the years that the parties were living together and were married, worked very hard in the businesses he established and which are described below. Although he has in the past performed hard physical labor, operating heavy equipment in his business and performing various other types of manual labor, he no longer performs heavy physical labor for his companies. He is in reasonably good health. His children from his first marriage did not reside with the parties while they cohabited or were married. Charles earned a degree in engineering before the parties were married. He had a net worth shortly before the marriage of $599,233, comprised principally of real estate and his interest in Weber Engineering, Inc.

Charles is the president and chief operator of Weber Engineering, Inc. and Weber Contracting, Inc. He and others incorporated Weber Engineering in 1972 as a concrete contracting company. Over the years following its incorporation, Weber Engineering has owned Ready Mix Concrete plants in Glenwood, Iowa,

Shenandoah, Iowa, and near Clarinda, Iowa. Charles has been the sole shareholder in Weber Engineering since 1978 when he bought the interests of the other shareholders. Over time, the Ready Mix plants have been sold. Through use of a "Section 1031 Exchange" some portions of the proceeds of the sale have been invested in farmland still owned by Weber Engineering, with income taxes deferred.

Charles incorporated Weber Contracting, Inc. in 1984. Weber Engineering now functions as a holding company with various investments, including investments in road building equipment it leases to Weber Contracting. Weber Contracting does concrete contracting work. Weber Contracting contracts to do both public and private paving contracts, such as streets and highways for public entities and streets for subdivision developers. Charles owns 62.38 percent of the stock in Weber Contracting, Gloria owns 9.90 percent of its stock, and three others own the rest.

As found by the trial court, the evidence shows that through hard work and acumen Charles built successful companies and a good life for himself and his family. Charles and Gloria have substantial investments in life insurance, securities, certificates of deposit, and numerous tracts of real estate in addition to their home and real estate owned by the two Weber companies. However, in order to maintain and enjoy the lifestyle they have enjoyed and to make the investments which they have made, Charles borrowed large amounts of money from Weber Engineering, as discussed further below.

The trial court awarded Charles assets it valued at $1,789,945.70 and awarded Gloria assets it valued at $588,404.33. In addition, the trial court

ordered that five tracts of real estate with total gross value of $670,000, encumbrances of $378,512, and resulting net equity of $291,488 be sold and the net proceeds be divided evenly between the parties. Ignoring for the moment sales expenses and any income tax consequences, this would result in each party receiving an additional $145,744, increasing the assets Charles would receive to $1,935,689.70, and increasing the assets Gloria would receive to $734,148.33.

The trial court ordered Charles be responsible for $5,000 of accounts payable owned by the parties and any and all local, state or federal income taxes owed by the parties. The evidence shows those income taxes were estimated at $87,000 if the parties were to file a joint return, but within all likelihood would be substantially more if they were not to file a joint return for the last year for which they were eligible to do so. These two debts would thus reduce the net assets Charles was to receive to $1,843,689.70.

The trial court ordered Gloria to be responsible for and pay $6002 of the parties' debts. This would reduce the net assets she was to receive to $728,146.33.

In listing and valuing the assets Charles was to receive, the trial court awarded Weber Contracting to Charles and included it at full fair market value of $554,601.75. However, in ruling on a post trial motion the court amended its findings to reflect that because the parties together owned only 72.28 percent of the stock of Weber Contracting, the value Charles was receiving in Weber contracting was $400,866.14 rather than $554,601.75, a reduction of

$153,735.61. Therefore, after this adjustment Charles would be receiving net assets of $1,689,954.09, according to the trial court's reasoning.

II. Scope of Review

In this equity case our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). 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).

III. Property Issues

Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are 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 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 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). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Adjudicating property rights in a dissolution action extricably involves a division between the parties of both their marital assets and liabilities. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). The allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets. *Id.* The allocation of marital debts

therefore inheres in the property division. *Id.*; *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa App. 1996).

We consider property division and spousal support together in evaluating their individual sufficiency. *Russell*, 473 N.W.2d at 246.

A. Parties' Debt to Weber Engineering

Charles urges that the district court erred in the value it attributed to Weber Engineering, $1,124,871, because that value failed to take into account a debt owed to Weber Engineering by the parties. The evidence shows that from early 1981 through the date of trial, Charles and Gloria borrowed from Weber Engineering, in the form of cash advances and loans. They did so in order to maintain their desired lifestyle and to have funds to invest in the various assets they now own. From time to time they made some repayments, but subsequently borrowed again. At the time of trial they owed Weber Engineering $752,057. This Weber Engineering receivable was included at its full value in valuing Weber Engineering at $1,124,871.

The trial court found, "[t]he evidence clearly shows that the advances were made and that the debts exist." It went on to reason that, "[n]onetheless the debt to Weber Engineering is an asset of the corporation, and once it is paid, Charles, as the sole shareholder of Weber Engineering, will benefit from the money repaid." The trial court gave no further consideration to the parties' debt to Weber Engineering in dividing assets and liabilities.

The $752,057 receivable of Weber Engineering can be an asset of Weber Engineering only if it is payable by another person or persons, here the parties. The trial court treated it as an asset of Weber Engineering, but did not treat it as

a debt of the parties in its property division. The trial court's failure to take the debt into consideration in its property distribution constitutes a failure to do equity.

Charles appears to suggest that in dividing assets and debts we decrease the value of Weber Engineering by $752,057 to take into account the debt in question. However, Charles asserted and the trial court found that the value of Weber Engineering was $1,124,871, including and based in part on the $752,057 receivable. We find it more appropriate to treat the $752,057 as what it actually is, a debt of the parties owed to Weber Engineering. Accordingly, we find that the parties have a debt in the amount of $752,057 they owe to Weber Engineering. We assign responsibility for that debt to Charles. This results, to this point, in Charles receiving net assets of $937,897.09.

B. Interest on Debt Owed to Weber Engineering

Charles urges that the district court also erred in failing to address and treat as a debt of the parties accrued interest on the debt owed to Weber Engineering. The evidence shows that when corporate officers borrow money from a corporation the corporation is required to assess interest on the borrowings at rates established by federal income tax law. The evidence further shows that as of the time of trial interest in the amount of $167,802 had accrued on the $752,057 debt noted above. This receivable of Weber Engineering was included at full value in determining the value of Weber Engineering, but the trial court did not treat it as a debt of the parties in its property division. For the same reasons noted above concerning the $752,057 debt, we conclude it is a debt and must be treated as a debt of the parties. We assign responsibility for this debt to

Charles. This results, to this point, in Charles receiving net assets of $770,095.09.

C. Award of Certain Items Twice

Charles urges that the district court erred by overstating the value awarded to him in the form of Weber Engineering because it awarded certain property owned by Weber Engineering to Gloria while not reducing the established value of Weber Engineering. For the reasons that follow we agree that the trial court erred, but conclude that the solution is to modify the decree so that the two items in question are not awarded to Gloria.

Weber Engineering owns a 0.65-acre parcel next to the parties' family home. It has a value of $20,000. It is included at full value in the value of Weber Engineering, which the trial court awarded to Charles. However, the trial court also awarded it to Gloria and included its value, $20,000, in its calculation of the value of the assets awarded to her. It cannot both be awarded to Gloria and be awarded as part of Weber Engineering. We conclude it should remain part of Weber Engineering, and we modify the decree to delete its award to Gloria. This reduces the net value of assets awarded to Gloria to $708,146.33 to this point. No increase in the value of assets awarded to Charles is required because the parcel's value is already included in the value of Weber Engineering.

Weber Engineering owns sixty-five acres of certain farmland known as the Sheib farm. The 65 acres has a fair market value of $91,000 and is subject to an encumbrance of $1,000. This sixty-five acres is included at full net value of $90,000 in the value of Weber Engineering, which the trial court awarded to Charles. Another 113 acres of the Sheib farm is titled in Gloria's name. The 113

acres has a fair market value of $159,000 and is subject to an encumbrance of $90,000. The trial court awarded the entire Sheib farm, the sixty-five acres and 113 acres, to Gloria, and included its net value of $159,000 in its calculation of the value of assets awarded to her. The sixty-five acres cannot both be awarded to Gloria and be awarded as part of Weber Engineering and we modify the decree to delete its award to Gloria. In order that the farm remain one unit, and in order to equitably divide the parties' property, we conclude the 113 acres should be awarded to Charles as well. This reduces the net assets awarded to Gloria to this point by $159,000, to $549,146.33. Because the $90,000 net value of the 65 acres was already included in the value of Weber Engineering, this results in only an increase of $69,000 in the value of net assets awarded to Charles, an increase to $839,095.09 to this point.

D. Reduced Value of Weber Contracting

As noted above, after dividing the parties' assets and liabilities in its decree, on post-trial motion the court noted that it had overstated the value of Weber Contracting, which was awarded to Charles, by $153,735.61. Charles urges that the district court erred by not then modifying the property division to take into account the fact that he was receiving $153,735.61 less than the trial court originally intended. He argues that if the trial court's property division as initially intended was equitable, a decrease of $153,735.61 in assets awarded to him with no change in the property awarded to Gloria cannot have been equitable. We agree. However, because of the several modifications which we make, some discussed above and some yet to be discussed below, no separate and independent modification need be made to take this one item into account.

E. Property Brought to the Marriage

Charles claims that the district court erred by not taking into account the property brought into the marriage by both parties. He argues that the property brought into the marriage by him should not have been divided.

The trial court found that Charles had a net worth shortly before the marriage of $599,233. It also found that at the time of marriage Gloria owned a house in Shenandoah that had been awarded to her in the dissolution of her first marriage, and that the house was encumbered by a mortgage. The evidence shows, as noted above, that Gloria had equity in the house of approximately $25,000, and other assets of approximately $10,000, total assets at the time of marriage of approximately $35,000.

What we stated in a previous case has particular applicability to this issue.

> Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(1)(b). In some instances, this factor may justify a full credit, but does not require it. Antenuptial agreements are available to preserve premarital assets. See Iowa Code § 598.21(1)(l). A premarital asset is not otherwise set aside like gifted and inherited property. Instead, it is a factor to consider, together with all the other circumstances, in making an overall division. Its impact on the ultimate distribution will vary with the particular circumstance of each case. Furthermore, in considering accumulations to premarital assets, we do not limit our focus to the parties' direct contributions to the increase. Instead, we broadly consider the contributions of each party to the overall marriage, as well as all other factors. Iowa Code § 598.21(1). Financial matters make up but a portion of a marriage, and must not be emphasized over the other contributions made to a marriage in determining an equitable distribution.

In re Marriage of Miller, 552 N.W.2d 460, 465 (Iowa App. 1996). The length of the marriage is an important factor in determining whether to and to what extent property brought into a marriage should be divided, and the shorter the marriage

the less inclined we are to divide such property. *See, e.g., In re Marriage of Lattig*, 318 N.W.2d 811, 815-16 (Iowa App. 1982).

The parties were married for sixteen years. Under such circumstances it would be inappropriate to set aside to Charles the entire difference between the amounts of property the parties brought to the marriage. However, because of the very large difference between the amounts of property they brought to the marriage, some consideration should be given to this difference in the property division. We reject Charles' apparent assertion that the property which he brought into the marriage should have been awarded entirely to him.

F. Tax Consequences

Charles claims the district court erred in not taking into account the built-in tax consequences of the two closely held corporations, Weber Engineering and Weber Contracting.

Charles presented evidence that there would be substantial tax liabilities upon the liquidation of both of the two closely held corporations. The trial court declined to take tax consequences of liquidation into consideration in valuing those two corporations. It noted evidence that appropriate tax planning could greatly minimize the income tax effects of a liquidation of the businesses, that in a deposition and testimony given the first day of trial Charles had stated that he planned to continue to work in those businesses for several more years, that in a memorandum presented to employees shortly before commencement of trial Charles indicated he intended to operate the businesses for five years and that the future of the company looked bright, and that it was only after trial was not concluded on the first day and was not reconvened for two months that Charles

then "had backed away somewhat from his stated intention to work through age 65 . . . ."

Iowa Code section 598.21(1)(j) states that in dividing property the court is to consider the tax consequences to each party. The Iowa Supreme Court has recognized that income tax consequences to a party may be taken into account in the division of property. *In re Marriage of Hoak*, 364 N.W.2d 185, 193 (Iowa 1985). However, in *In re Marriage of Friedman*, 466 N.W.2d 689 (Iowa 1991), the trial court reduced the value of certain corporate stock awarded to a party in order to take into consideration capital gains taxes and costs of selling the stock, but the Iowa Supreme Court rejected the reduction under the facts of the case. It noted that there was no evidence that a sale was pending or even contemplated, and that the trial court had not ordered a sale. *Friedman*, 466 N.W.2d at 691. It stated the reduction was the result of the inappropriate infusion of tax consequences on an illusory future sale of stock. *Id.*

In making a property division we have taken into consideration the tax consequences a party is expected to face in satisfying a property distribution. *See, e.g., In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). We also have held that where payment of a lump sum of cash to a spouse will in all probability require the liquidation of capital assets, the income tax consequences of such a sale should be considered by the trial court in assessing the equities of the property and spousal support award. *In re Marriage of Hogeland*, 448 N.W.2d 678, 680-81 (Iowa App. 1989).

The key to these and other cases is that where sale of an asset is ordered, necessary, or otherwise relatively certain, consideration of tax

consequences is appropriate, and where sale will not occur or is rather doubtful, consideration of tax consequences is inappropriate. In this case no sale or liquidation of either of the two closely held corporations has been ordered, no such sale or liquidation is necessary to effectuate property division and no such sale or liquidation is relatively certain to occur within the reasonably foreseeable future. In addition, for reasons found by the trial court, it appears that any such tax consequences may be minimized by appropriate tax planning. We conclude the trial court did not act inequitably in declining to reduce the value of the two closely held corporations by such speculative and uncertain income tax consequences.

G. 1997 Federal and Iowa Income Tax Liabilities

Charles claims that the district court erred by failing to take into account the parties' 1997 federal and Iowa income tax liability. The trial court ordered that he assume and pay such income taxes and hold Gloria harmless for them. The evidence showed that those taxes would be approximately $87,000 if the parties filed a joint federal return but would be somewhat larger if they filed separate federal returns. Charles argues that the allocation of the entire $87,000 tax liability to Charles was inequitable, "[b]ased upon the actual property division between the parties . . . ." He further asserts that if the district court did not abuse its discretion in placing responsibility for that entire tax debt on Charles, it failed to adequately address that assessment in the overall property division. In our de novo review we make several modifications to the trial court's property division and spousal support order. In doing so we have taken into consideration this income tax liability. No further separate treatment of it is necessary.

H. Summary of Property Issues

Charles brought to the marriage approximately $599,000 in net assets and Gloria brought to the marriage approximately $35,000 in net assets. They have through their joint efforts accumulated additional net assets of approximately $754,000 in value. Based on the factors set forth in section 598.21(1) of the Code, with some emphasis on the substantial difference between the amounts of net assets the parties brought to the marriage and the sixteen-year length of the marriage, we conclude that in dividing property each party should be given credit for approximately one-half of the net assets that party brought to the marriage and that the balance of their assets, both the remainder of the assets brought to the marriage and those accumulated during the marriage, should be divided approximately equally. This would result in Charles receiving property with a value of approximately $835,000 and Gloria receiving property with a value of approximately $553,000.

IV. Spousal Support

Charles claims that the district court erred in its award of spousal support to Gloria. He argues that any award of spousal support constituted an abuse of discretion and must be reversed.

Any form of spousal support is discretionary with the court. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). Spousal support is not an absolute right; an award depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). The discretionary award of spousal award is made after considering the factors listed in Iowa Code

section 598.21(3). *Id.* We consider the division of property in determining spousal support. *In re Marriage of Bell*, 576 N.W.2d 618, 622 (Iowa App. 1998).

A. Amount of Spousal Support

The parties were married sixteen years; Charles is six years older than Gloria; Charles will receive property with a value of approximately $839,000 and Gloria will receive property with a value of approximately $549,000, a property distribution which appears somewhat favorable to Gloria given the length of marriage and the substantially different amounts of property which the parties brought to the marriage; Gloria has a high school degree and no further formal education and Charles is a college graduate in engineering who has a substantially greater earning capacity than Gloria; and an award of spousal support is necessary if Gloria is to become self supporting at a standard of living reasonably comparable to and approaching that enjoyed during the parties' marriage. We conclude that an award of spousal support is appropriate. The question that remains is what the amount should be.

The trial court's property division, after ruling on the post trial motion, presumed that Charles would be receiving approximately $1,690,000 in net assets and Gloria would be receiving $728,000 in net assets. The trial court assumed this property division in awarding Gloria $2000 per month in permanent spousal support. We believe that amount of spousal support would be reasonable, equitable and within the trial court's discretion if its property division were accurate and equitable. However, after correcting the trial court's property division to take into account the parties' debt to Weber Engineering and the interest on that debt, and after correcting and modifying with respect to the 0.65

acre parcel and the Sheib farm, Charles will in fact be receiving approximately $839,000 in net assets and Gloria will be receiving approximately $549,000 in net assets. After considering all relevant factors we conclude the amount of spousal support should be set at $1000 per month rather than $2000 per month. We modify accordingly.

B. Life Insurance to Secure Spousal Support

The trial court ordered Charles to pay Gloria spousal support of $2000 per month with the payments to cease in the event of Gloria's remarriage or the death of either party. "To secure said spousal support payments," the trial court further ordered that Charles maintain a life insurance policy with Gloria as beneficiary, in the amount of $500,000 during the period he is obligated to pay spousal support. Charles claims the district court erred by requiring him to maintain this insurance policy. More specifically, he notes that neither party had requested this type of security for spousal support, he asserts that therefore neither party offered evidence on his ability to obtain life insurance or the cost of such a policy, and he asserts that the trial court abused its discretion in ordering the life insurance both because he had made all required temporary spousal support payments and the trial court made no findings he was insurable or what the cost to him would be. He requests we reverse the trial court on this issue or, alternatively, reduce the required life insurance to an amount required to secure any required spousal support payments.

Where the trial court ordered life insurance to secure child support and college expenses for children and to secure spousal support, we remanded to the trial court to limit the insurance to an amount necessary "to guarantee the

obligation imposed by the decree." *In re Marriage of Boehlje*, 443 N.W.2d 81, 85 (Iowa App. 1989). However, of some significance are the facts that *Boehlje* involved not only spousal support but child support, and that the *amount* of life insurance was the issue on appeal, not the *obligation* to maintain such insurance.

In another case we affirmed the trial court's dismissal of a contempt application, which claimed a former husband was in contempt for failure to maintain life insurance with the former wife as beneficiary. *In re Marriage of Lytle*, 475 N.W.2d 11 (Iowa App. 1991). We noted that although the dissolution decree, as modified on post trial motion, required ten years of spousal support and ordered the husband to maintain only enough life insurance to cover the unpaid portion of that obligation, on appeal by the wife the decree had been modified to award permanent spousal support until the wife remarried or either party died, and the decision on appeal did not mention life insurance. *Lytle*, 475 N.W.2d at 12. We stated that the reason the opinion on appeal did not address the issue of life insurance was obviously because there was no need for insurance to pay spousal support after the husband's death because the award of alimony ceased at the death of either party.

Gloria cites *Stackhouse v. Russell*, 447 N.W.2d 124 (Iowa 1989). As she points out, that case held that a provision in a dissolution decree which requires a party to maintain life insurance is enforceable. *Id.* at 125. However, the issue in this case is not whether such a provision is legally permissible, but rather whether such a provision is appropriate and equitable under the facts of this case.

Gloria cites *In re Marriage of Debler*, 459 N.W.2d 267 (Iowa 1990) for its requirement that a party maintain life insurance as long as his spousal support obligation continued. In *Debler*, the Iowa Supreme Court held that Iowa Code section 598.21(3) is broad enough to authorize spousal support payments after death (of the obligor), deleted a decree provision calling for spousal support payments after the obligor husband's death, and ordered him to list his former ife as beneficiary on a $15,000 life insurance policy as long as he had an obligation to pay spousal support (which continued until her remarriage or either party's death). A significant difference between that case and this is that in *Debler* the life insurance policy was provided by the husband's union, so there were no unresolved questions or issues concerning insurability and cost. Another significant difference is that in *Debler* the parties had extremely limited assets and the wife received only approximately $21,000 in property.

We conclude that a requirement to maintain life insurance to secure spousal support is permissible. However, because spousal support normally ends upon the death of either party and because there may be substantial costs involved, such a requirement should be imposed only when the cost is known or can be reasonably estimated and the cost is neither unduly burdensome nor out of proportion to the benefits of providing such security. Further, there should be some significant reason for imposing such a requirement. Possible reasons might include a substantial prior refusal or failure to pay, or some demonstrated need to provide funds beyond the obligor's death.

The record in this case contains no evidence of insurability or costs, and no evidence of a significant reason for such a requirement. We modify the

decree to delete the requirement that Charles maintain a life insurance policy with Gloria as beneficiary.

IV. Attorney Fees

The district court ordered Charles to pay $7,500 toward Gloria's attorney fees. Charles claims error in this award, claiming the district court abused its discretion in awarding any attorney fees.

Trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). To overturn an award, the complaining party must show that the trial court abused its discretion. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa App. 1996). Awards of attorney fees must be for fair and reasonable amounts, and based on the parties' respective abilities to pay. *Id.* An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *Id.* We are to consider the needs of the party making the request and the ability of the other party to pay. *Id.*

Charles asserts the attorney fees award was improper because, among other reasons, Gloria was awarded over 72 percent of the parties' assets and $2000 per month spousal support. This case involved three days of trial, large amounts of assets and debts, numerous issues concerning valuation and division of assets and liabilities, and numerous other issues. After the corrections and modifications we have made, Gloria will receive approximately 40 percent of the parties' property and $1000 per month spousal support, and the property division and Charles' much greater earning capacity shows that Charles has much greater ability to pay attorney fees than Gloria. Under these circumstances, we

are unable to say the district court abused its discretion and see no reason to disturb the district court's order concerning attorney fees.

VI. The Cross Appeal

On cross appeal Gloria requests a "lump sum property settlement" if we reduce the trial court's property award to her or modify to delete the requirement that Charles maintain life insurance to secure spousal support. We have made corrections and modifications to the trial court's ruling to make the decree fair and equitable in its entirety. No further modification is necessary or appropriate and we affirm on Gloria's cross appeal.

VII. Disposition

On Charles' appeal we modify to find the parties owe debts of $752,057 and $167,802 to Weber Engineering and assign responsibility for those debts to Charles; we modify to delete the awards of the 0.65 acre tract and the 65 acres of Sheib farm to Gloria; we modify to award the 113 acres of Sheib farm to Charles rather than Gloria; we modify to reduce the spousal support award to $1000 per month; we modify to delete the requirement that Charles maintain life insurance to secure spousal support; we affirm the award of attorney fees; and we affirm in all other respects. On Gloria's cross appeal we affirm. Costs on appeal are assessed one-fourth to Charles and three-fourths to Gloria.

AFFIRMED AS MODIFIED ON APPEAL; AFFIRMED ON CROSS APPEAL.

Zimmer, J. concurs, Sackett, C.J. concurs in part and dissents in part.

SACKETT, C.J. (concurs in part and dissents in part)

I concur in part and dissent in part.

This appeal and cross appeal challenges the equity of the economic provisions of a decree dissolving a childless sixteen-year marriage. I concur with the majority's conclusion that the property division was not equitable. I agree with its determination that the district court incorrectly valued the assets. I agree with the majority's determination as to the parties net worth. I also agree that the majority correctly modified the decree to exclude from Gloria's share those assets awarded to Gloria that were owned by the corporation. I further agree with the majority's decision not to require Charles to maintain life insurance.

I depart from the majority's treatment of property brought into the marriage. As I understand what the majority has done is take the assets brought into the marriage and divide them in half. The majority then awarded one half of those assets to the party who brought the assets into the marriage. The other half of the asset is then divided with the other party.

I would find it most equitable to give each party credit for the assets he or she brought into the marriage at their value at the time of marriage. Charles had nearly $600,000 in net worth prior to the marriage and Gloria had only $35,000. The assets the parties accumulated during the marriage were accumulated at least in part by an appreciation in the value of the assets Charles had at time of marriage. I find no equity in taking from Charles assets he brought into the marriage, which Gloria had no part in accumulating, and giving him no credit for accumulation on those assets.

I also disagree with the majority's decision to charge Charles with the entire income tax obligation irrespective of whether the parties filed a joint or separate tax return. We owe both of the parties the opportunity to minimize their income tax liability to the extent allowed by law. The provision for income taxes fashioned by the district court and affirmed by this court provides no incentive for Gloria to cooperate to achieve this goal. I would order that the income tax liability be charged as a joint debt. That is that each party should be responsible for one-half.

Unlike the majority I would not reduce the alimony obligation. I believe that the income generated from property Charles had at the time of the marriage properly should be considered on the issue of alimony. I therefore would affirm the alimony award made by the district court.