

**IN THE COURT OF APPEALS OF IOWA**

No. 8-529 / 97-1281

**IN RE THE MARRIAGE OF JANELL M. YORK  
AND RICHARD REX YORK**

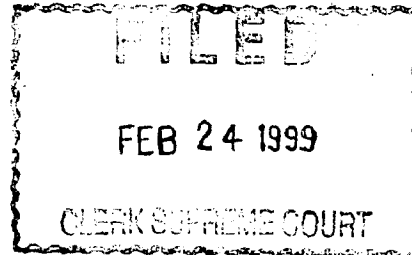
**Upon the Petition of  
JANELL M. YORK,**

Petitioner-Appellee,

**And Concerning  
RICHARD REX YORK,**

Respondent-Appellant.

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Appeal from the Iowa District Court for Fremont County, James S. Heckerman, Judge.

Respondent appeals from the economic provisions of the dissolution decree and a separate order appointing a receiver. **AFFIRMED.**

Patrick A. Sondag of Root, Tinley & Sondag, Council Bluffs, for appellant.

Mark D. Swanson of the Swanson Law Firm, Red Oak, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

**SACKETT, C.J.**

Respondent-appellant Richard York appeals challenging the economic provisions of the June 1997 decree dissolving his marriage to petitioner-appellee Janell York. Richard also challenges the district court's decision to appoint a receiver to manage the parties' farm land. We affirm.

Janell and Richard York were married in 1970. They have two adult children. Richard has been employed by Eaton Transmission since 1984. His annual salary is about \$35,000. Since 1986, Janell has worked as a real estate agent for her father. She receives an annual salary of \$7800 plus commissions. She testified she earned about \$50,000 in 1996.

The district court, in dissolving the marriage, determined each party should keep the personal property in his or her possession. The court awarded Janell property worth \$96,888, and set aside to Janell gifts she had received from her parents, including a bank account, an interest in a limited partnership, a laptop computer, and a one-half interest in a vehicle. The court awarded Richard property worth \$338,111, including farm land, farm equipment, and personal property. The court divided the 1996 crop proceeds to give Janell \$5780 and Richard \$17,780.

The district court determined Richard should pay Janell \$120,650 for her interest in the farm land and farm equipment by August 1, 1997. This would give Janell total property of \$217,538, and Richard total property of \$217,461. If Richard decided not to exercise this option, then Janell would receive the farm land and

equipment, and Janell would then be required to pay Richard \$124,280, which would give her total property of \$217,498 and Richard total property of \$217,501.

Appellate review of this equitable proceeding is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). The appellate court gives weight to the fact findings of the district court, especially in determining the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7).

Richard first asserts the value placed on the parties' farm land is outside the range of the evidence. Janell valued the property at \$225,000. She based her opinion on her experience as a real estate agent. Richard valued the property at \$154,800. The court valued the property at \$200,000.

A district court's real estate valuation will not be disturbed on appeal unless it is outside the permissible range of the evidence. *In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa App. 1997); *see also In re Marriage of Coulter*, 502 N.W.2d 168, 172 (Iowa App. 1987). The district court's valuation is within the permissible range of the evidence. We affirm on this issue.

Richard next claims Janell wasted assets during the marriage. The dissipation of assets by a spouse prior to the dissolution of marriage may be considered in making a property division. *In re Marriage of Burgess*, 568 N.W.2d 827, 828 (Iowa App. 1997). Richard asserts Janell wasted assets by (1) putting \$63,353 representing

commissions she earned into a savings account in her name alone; (2) not depositing about \$38,000 of his paychecks in a joint account; (3) maintaining a separate health insurance policy, and (4) overspending for clothing, jewelry, and accessories.

Janell's savings account was considered by the district court in its property division. It was not necessary for the district court to consider Janell's spending for insurance and personal items. Equitably allocating the assets in a dissolution does not necessitate a complete accounting of the income of each party during the marriage and the expenses he or she paid. *See Driscoll*, 563 N.W.2d at 643. We affirm the trial court on this issue.

Richard next challenges the district court's allocation to Janell of gifts from her parents. Under Iowa Code section 598.21(2), gifts received by either party in the marriage remain with that party and are not subject to a property division unless refusal to divide the property is inequitable to the other party. Richard advances because the marriage lasted over twenty-five years, the district court should not have set the gifts aside to Janell.

Richard admits the gifts he challenges were made only to Janell. In addition, Janell's parents made other gifts to both Janell and Richard. Richard benefitted from these gifts in the property division. Richard has failed to show it was inequitable to set aside to Janell the gifts made to her.

Richard next contends he should receive a greater share of the property. The partners to a marriage are entitled to a just and equitable share of property

accumulated through their joint efforts. *In re Marriage of Wendell*, 581 N.W.2d 197, 199 (Iowa App. 1998). The property distribution should be made pursuant to the criteria codified in section 598.21(1). *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa 1997).

In 1978, the parties, together with Richard's parents, purchased farm land in partnership. In 1984, the partnership was dissolved and the parties received the farm. Richard would like to keep the farm. The division made by the district court provides Richard with this opportunity.

Richard also challenges the district court's award to Janell of a Polaris 4-wheeler. Richard claims the 4-wheeler should be his. The property allocation divides nearly equally all property except gifts made specifically to Janell. It is equitable. We affirm it on appeal.

Richard contends the district court should not have appointed a receiver to take charge of the parties' farm land.

In April 1998, after Richard appealed, Janell filed an application for the appointment of a receiver pursuant to Iowa Code chapter 680. Janell alleged concern about the management of the farm. The district court appointed a receiver to manage the property. Richard appealed this decision. The supreme court ordered the two appeals to be consolidated.

Richard asserts Janell did not raise sufficient allegations to justify the appointment of a receiver.

Iowa Code section 680.1 provides:

On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.

Iowa Code § 680.1.

The decision to appoint a receiver is within the discretion of the district court.

*See Holden v. Construction Mach. Co.*, 202 N.W.2d 348, 360 (Iowa 1972). Janell alleges she had not received any portion of the proceeds from 1997 crops and has had no input about 1998 crops. The district court did not abuse its discretion in appointing a receiver under the facts of this case.

Each party seeks appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Bell*, 576 N.W.2d 618, 625 (Iowa App. 1998). We award Janell \$1000 in appellate attorney fees.

We affirm the property division in the parties' dissolution decree and the appointment of a receiver. Costs of this appeal are assessed to Richard.

**AFFIRMED.**