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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-760**

In re the Marriage of:
Lori M. Matz, petitioner,
Respondent,

vs.

Troy M. Matz,
Appellant.

**Filed July 5, 2011
Affirmed
Wright, Judge**

Waseca County District Court
File No. 81-FA-08-1420

Jeremy T. Kramer, Law Office of Jeremy T. Kramer, Owatonna, Minnesota (for respondent)

Keith L. Deike, Patton, Hoversten & Berg, P.A., Waseca, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this appeal from the district court's judgment dissolving the parties' marriage, appellant-husband challenges the district court's decision to award respondent-wife a lien for approximately one-half of the value of real property owned by the parties during the

marriage. Appellant-husband argues that the district court erroneously determined that certain real property was marital property. We affirm.

FACTS

Respondent-wife Lori M. Matz petitioned to dissolve her marriage to appellant-husband Troy M. Matz in September 2008. Following a trial, the district court issued findings of fact, conclusions of law, and a judgment and decree dissolving the marriage. The district court divided the parties' property, established custody of the parties' minor children, and ordered husband to pay child support.

The real property in dispute in this appeal is located on State Highway 13 North in Waseca. Husband's parents purchased the property in December 1995, paying \$25,000 and financing the balance of the purchase price with a mortgage for \$100,000. Husband began residing at a home on the property in December 1995, shortly after the purchase. In May 1996, wife began living with husband at the property. And in 2006, husband's parents transferred the property by quitclaim deed to husband and wife.

The property was significantly renovated between 1996 and the parties' marriage on June 22, 2002. Husband and wife resided together at the property until spring 2008, except for a short period before the marriage when wife lived elsewhere. Husband's parents never resided at the property.

During the dissolution proceedings, husband asserted that the property is nonmarital property because he acquired it before the marriage. At trial, husband testified that his parents agreed to purchase the property on his behalf in 1995 because his credit was poor. He testified that he paid his parents \$25,000 for the down payment at

the time they purchased the property and continued to pay them in subsequent years until the mortgage debt was satisfied. Husband's mother testified that she and husband's father agreed to purchase the home for husband, although they did not memorialize this agreement in writing. She also testified that, when she received funds for the property from husband, she deposited them in the checking account of husband's parents and paid a corresponding amount to the bank for the mortgage debt. According to her testimony, she documented many of these transactions in her checkbook ledger. Notations such as "Troy's house" or "Troy's payment" appear in her checkbook ledger next to several of the deposits, which she testified were payments from husband for the property.

Husband's parents paid the mortgage debt in full in 2000. And both husband and his mother testified that, between 1995 and 2000, husband paid his parents the full amount of the mortgage debt. The parties stipulated that, other than the checkbook ledger of husband's mother, the record contains no documentation of husband's alleged payments to his parents.

Finding that the only written evidence relating to title of the property is the quitclaim deed, the district court determined that the property was acquired during the marriage and that husband failed to establish "with credible evidence" that the property is a nonmarital asset. After concluding that the property is marital property, the district court awarded it to husband subject to a marital lien in wife's favor in the amount of \$115,000. This amount represents approximately one-half of the property's value. This appeal followed.

DECISION

Husband challenges the district court's determination that the property is marital property. When, as here, a party does not move for a new trial or amended findings, our review is limited to substantive legal issues properly raised in and considered by the district court and determinations of whether the evidence supports the district court's findings of fact and whether those findings support the conclusions of law. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2010) (stating that new-trial motion is not prerequisite to appellate review of substantive legal issues properly raised and considered in district court); *Erickson v. Erickson*, 434 N.W.2d 284, 286 (Minn. App. 1989) (stating that absent motion for new trial, appellate courts may review whether evidence supports findings of fact and whether findings support conclusions of law and judgment).

The classification of property as marital or nonmarital is a question of law, which we review de novo. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). But we review the district court's findings underlying this determination for clear error. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). In doing so, we defer to the district court's assessment of witness credibility and view the record in the light most favorable to the district court's findings. *Chafoulias v. Peterson*, 668 N.W.2d 642, 662-63 (Minn. 2003); *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). We will not reverse the district court's findings absent a firm and definite conviction that a mistake was made. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

Minnesota Statutes section 518.003 governs the determination of marital and nonmarital property.

“Marital property” means property, real or personal, . . . acquired by the parties . . . to a dissolution . . . at any time during the existence of the marriage relation between them All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property The presumption of marital property is overcome by a showing that the property is nonmarital property.

“Nonmarital property” means property . . . which . . .

- (b) is acquired before the marriage; [or]
- (c) is acquired in exchange for or is the increase in value of property which is described in clause[] (b)

Minn. Stat. § 518.003, subd. 3b (2010). To overcome the marital-property presumption, a spouse has the burden to establish the property’s nonmarital character by a preponderance of the evidence. *Olsen*, 562 N.W.2d at 800.

To retain its nonmarital character, nonmarital property must be kept separate from marital property; or if it is commingled with marital property, it must be readily traceable to an identifiable nonmarital asset. *Id.*; *Robert v. Zygmunt*, 652 N.W.2d 537, 541 (Minn. App. 2002), *review denied* (Minn. Dec. 30, 2002). The party asserting the nonmarital character of the property bears the burden of establishing by a preponderance of the evidence that the asset was acquired with nonmarital funds. *Prahl*, 627 N.W.2d at 705; *Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997). Whether a nonmarital interest has been traced is a question of fact. *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009).

The district court made specific factual findings supporting its conclusion that the property is marital property. The district court found that the only written evidence relating to title of the property is the quitclaim deed, which transferred the title to husband and wife as joint tenants in 2006, four years after their marriage. The record supports these findings.

Because section 518.003, subdivision 3b, creates a presumption that property acquired during the marriage is marital property, it was husband's burden to rebut the marital-property presumption, *Olsen*, 562 N.W.2d at 800-01, by demonstrating that the property was acquired before the marriage or with nonmarital funds, Minn. Stat. § 518.003, subd. 3b(b)-(c). Although a nonmarital interest in property may be established by credible testimony, *Kerr*, 770 N.W.2d at 570, husband's efforts to rebut the marital-property presumption with his testimony and that of his mother regarding their purported purchase agreement and his mother's checkbook ledger were unpersuasive. Finding that the testimonial and documentary evidence was not credible, the district court rejected husband's theory of the case. As the determination of the weight and credibility of the evidence is the exclusive province of the district court, *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996), we defer to the district court's assessment of the evidentiary weight and credibility as insufficient to establish the nonmarital character of the property, *Vangness*, 607 N.W.2d at 472.

Husband asserts that, because the evidence that he used nonmarital funds to purchase the property is uncontroverted, the district court is not free to disregard it. But when the surrounding facts and circumstances provide reasonable grounds for doubting

the credibility of uncontroverted evidence, a fact-finder is not required to accept it. *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987). Absent credible evidence establishing that husband acquired the property before the marriage or acquired it with nonmarital funds, the 2006 quitclaim deed is the only credible evidence relating to the acquisition of the property. Contrary to husband's argument, the district court did not erroneously require only documentary evidence. The district court's references to the tracing requirement relate to its determination that husband had not adequately traced the purchase to nonmarital funds. Although "strict tracing" to a nonmarital asset is not required, in order to overcome the marital-property presumption, husband was required to establish the nonmarital character of the property by a preponderance of the evidence. *See Carrick*, 560 N.W.2d at 413. The district court ruled that husband failed to do so here.

The district court's finding that the parties acquired the property during the marriage is amply supported by the evidence deemed credible by the district court. Based on this finding, the district court's conclusion that the property is marital property is legally sound. We, therefore, affirm the district court's decision to award wife a lien for one-half of the value of the property.

Affirmed.