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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1545**

In re the Marriage of:  
Michael Clayton Rollins, petitioner,  
Respondent,

vs.

Carol Diane Eibes-Rollins,  
Appellant.

**Filed May 7, 2012  
Affirmed  
Worke, Judge**

Cass County District Court  
File No. 11-FA-09-2105

Timothy J. McLarnan, McLarnan & Skatvold, Moorhead, Minnesota (for respondent)

Richard A. Ohlsen, Brainerd, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Worke, Judge; and  
Connolly, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

Appellant challenges the district court's dissolution judgment, arguing that the district court erred by determining that property she claimed as nonmarital was in fact marital property and by denying her motion for amended findings. Because the district court's decision as to the marital nature of the property is supported by record evidence

and because the district court did not abuse its discretion by denying appellant's motion for amended findings, we affirm.

## **D E C I S I O N**

Appellant Carol Diane Eibes-Rollins asserts that the district court erred by ruling that property on Lake Ada (Lake Ada property) that she owned prior to her marriage to respondent Michael Clayton Rollins was marital property to be divided between the parties. We review the district court's conclusion as to whether property is marital or nonmarital de novo. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). The district court's factual findings are reviewed for clear error. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A finding is "clearly erroneous" if it is unsupported by the record or if the reviewing court is "left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted).

### **Division of Property**

There is a presumption that all property acquired after the marriage date is marital; this can be overcome by proving that it is "nonmarital property." Minn. Stat. § 518.003, subd. 3b (2010). "Nonmarital property" includes gifts or inheritances to one spouse, but not the other; property owned prior to the marriage; property excluded by a valid antenuptial contract; property acquired after the dissolution valuation date; or any property acquired in exchange for nonmarital property. *Id.* It also includes the passive increase in value due to market or economic forces. *Baker*, 753 N.W.2d at 650. But

income earned during the marriage from nonmarital property or an increase in value in nonmarital property that is due to the active efforts of the parties is marital property. *Id.*

The parties were married in 1996. Appellant bought the Lake Ada property in 1989, prior to the marriage, for \$46,900, and made the mortgage payments from 1989 until 1998; including the down payment, appellant paid a total of \$22,094 of the purchase price of the property. In 1998, respondent sold a piece of his nonmarital property, and used the money to pay off the remaining mortgage balance of \$24,794 on the Lake Ada property. After paying off the mortgage, the parties built the marital homestead on the Lake Ada property. Respondent acted as general contractor and did much of the construction with the assistance of friends, family, and subcontractors; the parties built a house, two garages, a sauna, and a woodshed on the property. At the dissolution valuation date, the property was appraised at \$575,000. There was no mortgage on the property. No evidence as to the value of the Lake Ada property on the date of marriage was introduced.

The party asserting that property is nonmarital has the burden of proving the nature of the property by a preponderance of the evidence. *Prahl v. Prahl*, 627 N.W.2d 698, 705 (Minn. App. 2001) If nonmarital and marital property are commingled, the nonmarital property will lose that status unless the party making the claim can trace it to a nonmarital source. *Id.* If the value of nonmarital property is enhanced by marital effort, the court can determine the value of the marital and nonmarital interests in the property by applying the *Schmitz* formula. *See Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981). The *Schmitz* formula calculates a party's current nonmarital interest based on a

ratio of net equity to value on the date of marriage multiplied by the value on the date of separation. *See Antone*, 645 N.W.2d at 102. But appellant failed to submit evidence of the value of the Lake Ada property on the date of marriage and the district court was therefore unable to make a *Schmitz* calculation.

Instead, the district court subtracted the nonmarital contributions of both parties, the down payment and mortgage payments made by appellant and the mortgage payoff by respondent, from the current value of the property and found the remaining value to be marital property. Implicit in this finding are two things. First, that the value of the property increased dramatically because of the new home the parties constructed on the property during the marriage. Second, that any passive increase in the value of appellant's nonmarital interest in the property was comingled with the increase in the value of the property attributable to the marital home constructed on the property, and that appellant did not adequately trace or otherwise identify how much of that increase was attributable to her nonmarital interest. When the value of nonmarital property is increased during the marriage due to "marital effort," the amount of appreciation due to active investment or effort is deemed to be marital. *Baker*, 753 N.W.2d at 651; *Nardini v. Nardini*, 414 N.W.2d 184, 195 (Minn. 1987).

Based on the record before us, the district court's findings are not clearly erroneous; furthermore, appellant failed to sustain her burden of proving the nonmarital nature of the property by a preponderance of the evidence. We conclude that the district court did not abuse its discretion in the division of property. *See Antone v. Antone*, 645

N.W.2d 96, 100 (Minn. 2002) (stating that district court has broad discretion in dividing marital property).

### **Amended Findings**

Appellant contends that the district court abused its discretion when it denied her motion to amend findings to reflect that she had paid respondent's business loan with her nonmarital assets and that respondent paid off the Lake Ada property mortgage over her objection. The district court's decision to grant or deny a motion for amended findings is reviewed for an abuse of discretion. *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Rec. Bd.*, 673 N.W.2d 169, 177-78 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004).

“Upon motion of a party . . . the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered.” Minn. R. Civ. P. 52.02. “The purpose of a motion for amended findings is to permit the [district] court a review of its own exercise of discretion.” *Lewis v. Lewis*, 572 N.W.2d 313, 315 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Feb. 19, 1998).<sup>1</sup> The party moving for amended findings must specify the defect in the findings and explain why the findings are defective. *Id.* The moving party must explain why the record evidence does not support the district court's findings, and why the proposed findings are correct. *Id.* at 316.

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<sup>1</sup> *Lewis* has been overruled as far as its conclusion that an improper motion to amend fails to toll the time to appeal; it remains good law as far as determining “whether a motion for amended findings has the necessary components and, if it does, . . . whether to grant the motion.” *FSSPA*, 673 N.W.2d at 178 n.1.

The district court stated:

The main thrust of [appellant's] motion is virtually unchanged from her position at trial, which is the contention that the Lake Ada property was 100% non-marital subject to no claim by [respondent]. In fact, [appellant's] proposed amended findings on this motion are identical to her requested findings from the close of trial. [Appellant] also chose not to provide the Court with any memorandum or legal brief in support of this motion. Consequently, the Court was once again furnished with bare findings and conclusions unsupported by any reference to evidence, testimony, or law.

In *Lewis*, this court rejected as “incomplete” and “improper” a motion for amended findings that did no more than repeat the arguments previously made. *Id.* at 316. The district court did not abuse its discretion by denying appellant's motion to amend the findings.

**Affirmed.**