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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2133**

In re the Marriage of:
Luanne Sylvia Baumgartner, petitioner,
Appellant,

vs.

Larry Charles Baumgartner,
Respondent.

**Filed September 30, 2008
Affirmed in part, reversed in part, and remanded
Toussaint, Chief Judge**

Hubbard County District Court
File No. 29-F9-06-000363

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Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

In this appeal from a marital-dissolution judgment, appellant Luanne Sylvia Baumgartner argues that the district court abused its discretion in declining to award her

spousal maintenance and in awarding respondent Larry Charles Baumgartner a disproportionate share of the marital estate and that it erred in valuing marital assets and in failing to rule on her motion to impose sanctions for discovery violations. Because we see an abuse of discretion in the denial of spousal maintenance, we reverse it and remand for further findings; because we see no abuse of discretion in the division of property and no error in the valuation of marital assets or in the failure to rule on the motion for sanctions, we affirm those determinations.

FACTS

The parties were married from 1972 to 2007; their three children are now adults. Respondent was the primary income provider; he was employed by American Garage Door Supply, Inc., a subchapter S corporation in which the parties owned a 50% interest. Appellant was a homemaker for several years but worked intermittently at full and part-time positions. She currently earns \$8.00 per hour as a part-time cashier.

The dissolution judgment awarded each party property valued at \$114,379.51. Respondent received: (1) the parties' stock in American Garage Door; (2) the marital homestead; (3) the interest in a cabin and hunting land acquired by himself and his brothers; (4) a Harley Davidson motorcycle; (5) a pontoon boat; (6) the parties' one-half interest in an airplane; and (7) various personal property. Appellant received: (1) a 1997 Ford Explorer; (2) the parties' interest in a parcel of real property; (3) respondent's IRA account; (4) various personal property; and (5) an \$85,636.57 property equalization payment. Appellant was found to be solely responsible for \$24,000 in credit card debt incurred without respondent's knowledge or consent, and her request for spousal

maintenance was denied.

Appellant moved for amended findings or a new trial. The district court subsequently modified the allocation of the real property but denied all further relief. Appellant challenges the denial of spousal maintenance, the property valuation, the division of assets, and the failure to rule on her motion for sanctions

D E C I S I O N

1. Spousal Maintenance

A district court's decision regarding maintenance is reviewed for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). An abuse of discretion occurs if resolution of the issue is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); see Minn. R. Civ. P. 52.01. And findings of fact are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

A district court may order spousal maintenance if it finds that the spouse seeking maintenance

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a

child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2006). No single factor is dispositive, and the district court must weigh the facts of each case to determine whether maintenance is appropriate. *Weikle v. Weikle*, 403 N.W.2d 682, 687 (Minn. App. 1987), *review denied* (Minn. June 30, 1987).

The district court found that appellant's property award would allow her to meet her living expenses. But, although potential income from investment of a property award may be considered in deciding to award maintenance, a spouse is not required to invade the principal of the award to meet living expenses. *See Fink v. Fink*, 366 N.W.2d 340, 342 (Minn. App. 1985) (considering interest income from property award in determining maintenance award but noting that courts "normally do not expect spouses to invade the principal of their investments to satisfy their monthly financial needs").

The district court also miscalculated respondent's net monthly income. Respondent testified that he receives a \$100 *weekly* draw, but the district court relied on an exhibit showing a *monthly* draw of only \$100.

We reverse the denial of spousal maintenance and remand for a reconsideration of respondent's ability to pay spousal maintenance. On remand, the record may be reopened for both parties to present relevant evidence.

2. Valuation of Marital Assets

Assigning a specific value to an asset is a finding of fact reviewed for clear error. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). A district court is not required to

be exact in its valuation of assets; rather, “it is only necessary that the value arrived at lies within a reasonable range of figures.” *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979). The “market valuation determined by the trier of fact should be sustained if it falls within the limits of credible estimates made by competent witnesses even if it does not coincide exactly with the estimate of any one of them.” *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975).

Appellant contends that the district court clearly erred in its valuation of the parties’ stock in American Garage Door, the cabin and hunting land, the airplane, and the motorcycle. But she presented no evidence to establish values for these assets, and the values assigned were reached almost exclusively by crediting husband’s testimony. We defer to the district court’s credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (deferring to the district court’s assessment of credibility). In light of the record before us, we conclude that the findings on values are not clearly erroneous.

3. Division of Property

The district court has broad discretion when dividing marital property. *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). Appellate courts will not modify “a district court’s property division absent a clear abuse of discretion or an erroneous application of the law.” *Id.* Although a property division must be equitable, it need not be equal. *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). When dividing property, a district court may consider a number of factors, including the length of the parties’ marriage, the parties’ respective sources of income, and the manner in which

each party contributed to the marital property's preservation. *Sirek*, 693 N.W.2d at 899.

Appellant challenges the district court's division of both the parties' marital property and their debt. She argues first that the district court failed to address each of the relevant statutory factors. In determining a just and equitable division of marital property, the district court

shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.

Minn. Stat. § 518.58, subd. 1 (2006).

Appellant claims that the district court failed to consider (1) the length of the marriage, (2) the fact that neither party was previously married, and (3) her income, vocational skills, employability, opportunity to acquire future capital assets, and contributions as a homemaker. But specific findings under each factor are not required: If the district court considered the relevant factors, the property distribution must be upheld. The dissolution judgment indicates that the district court weighed all the relevant factors.

Appellant also argues that the division is unfair because respondent's award exceeded hers. But the record shows an equal division of the parties' property; to equalize the awards, respondent paid appellant \$85,636.57.

Finally, appellant argues that assigning her \$24,000 in credit card debt was an abuse of discretion. She does not dispute that she incurred the debt but challenges the finding that it was incurred without respondent's knowledge or consent. Specifically, she claims respondent obtained a loan secured by a mortgage on the homestead to satisfy the outstanding balance on the credit cards but retained the loan proceeds himself.

But testimony in the record supports the finding that respondent was unaware of the debt. When asked whether respondent "participated in [the] process" of applying for these lines of credit, appellant explained that respondent allowed her to make such decisions on her own. Appellant's testimony also refutes her claim that respondent kept the proceeds of the loan. She admitted on cross-examination that a portion of the proceeds was used to satisfy the \$15,000 balance of another mortgage on the homestead, and she did not dispute the assertion that some of the proceeds may have been used to pay "a couple thousand dollars" in medical bills.

Thus, the district court's factual findings are not clearly erroneous and support the decision to assign this debt to appellant. *See Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn. App. 1984) (apportionment of majority of parties' debt to husband upheld when debts were made by him for his own purposes); *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. 1984) (finding no abuse of discretion in assigning entire marital debt to husband in part because he incurred most of marital debt without consulting his wife).

4. Discovery Sanctions

Finally, appellant implies if not argues that the district erred by failing to sanction respondent for his failure to timely serve discovery by limiting his testimony at trial. But

appellant neither moved to compel discovery nor sought a continuance. *See* Minn. R. Civ. P. 37.01 (allowing party to move to compel discovery); Minn. R. Civ. P. 37.02 (granting district court authority to impose sanctions for noncompliance with discovery order). Thus, the district court had no grounds for sanctioning respondent.

Affirmed in part, reversed in part, and remanded.