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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0171**

In re the Marriage of:
Arlene Harriet Olson, n/k/a
Arlene Harriet Anderson, petitioner,
Respondent,

vs.

Todd Arnold Olson,
Appellant.

**Filed January 27, 2009
Affirmed
Bjorkman, Judge**

Becker County District Court
File No. 03-F8-06-000995

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's factual findings underlying its conclusion that his former wife's interest in her family's business was entirely nonmarital. Because the district court's findings are amply supported by the record, we affirm.

FACTS

Appellant Todd Olson and respondent Arlene Anderson were married in 1992. The district court dissolved the marriage on February 14, 2007, but left unresolved the issue of dividing the couple's property. A major asset and point of contention was Anderson's interest in Rock Ridge Resources, LLP, which Anderson claims is her nonmarital property and Olson asserts is marital property.

Rock Ridge was formed in 1995, during the couple's marriage, by Anderson and her parents and two siblings. Each of the five partners has a 20% interest in the partnership. Rock Ridge was capitalized with \$125,000; \$25,000 from each of the five partners. Anderson's father actually made each of the initial contributions on behalf of the five partners, and he neither requested nor received repayment. From this initial \$125,000 investment, Rock Ridge grew to a stipulated value of \$3 million. The district court concluded that Anderson's interest in Rock Ridge was her nonmarital property because the initial investment was a gift. But the district court awarded Olson a one-time

lump sum of \$60,908.50,¹ because he had enjoyed dividend income from Anderson’s interest in the partnership during the marriage.

Olson moved the district court to amend the judgment to conclude that Anderson’s interest in Rock Ridge was marital and to divide it equally between the parties. The district court denied the motion, but it issued amended findings, conclusions, and a judgment clarifying that Anderson’s entire interest in Rock Ridge was nonmarital because the growth in the value of her interest was attributable to passive appreciation. The district court also explained that the lump-sum award to Olson was “equitable and just.”² This appeal follows.

DECISION

I.

Olson first challenges the district court’s determination that Anderson’s interest in Rock Ridge is nonmarital. Whether property is marital or nonmarital is a question of law we review de novo, but we will disturb the district court’s underlying findings of fact only if they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). All property acquired during a marriage is presumed to be marital. Minn. Stat. § 518.003, subd. 3b (2008). A spouse may overcome this presumption by demonstrating,

¹ This amount was arrived at by calculating one-fourth of what Anderson would receive if she triggered the buyout provisions of the partnership agreement.

² We note that the law permits the district court to invade a nonmarital estate when it is necessary to “prevent . . . unfair hardship.” Minn. Stat. § 518.58, subd. 2 (2008). Here, the district court applied a different standard. But because Anderson did not file a notice of review on this issue, we decline to address it. *City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996).

by a preponderance of the evidence, that an asset is nonmarital. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997).

A. Substantial evidence supports the district court’s finding that Anderson received her initial interest in Rock Ridge as a gift.

Nonmarital property includes a gift “made by a third party to one but not to the other spouse.” Minn. Stat. § 518.003, subd. 3b(a). In determining whether a gift is made to one spouse to the exclusion of the other, the most important factor is the donor’s intent. *Olsen*, 562 N.W.2d at 800. Intent is essential to determining both whether a gift was intended at all and to whom it was intended to be made. *Id.* Intent questions are fact questions that depend on the surrounding circumstances. *Id.*

Here, the district court found Anderson’s initial contribution to Rock Ridge was a gift from her father. Olson argued it was a loan that the couple repaid, but the district court found there was “no credible evidence” of repayment. The court also relied on the structure of Rock Ridge to determine donative intent, finding Anderson’s father intended the partnership to be an estate-planning tool to pass the family business to his children only.

The record supports these findings. Both Anderson and her father testified that the \$25,000 initial investment representing her 20% partnership interest was made by her father and never repaid—it was a gift. Additionally, Anderson’s evidence included the partnership agreement, which explicitly restricts partners from acting in a manner that permits an outsider to obtain an interest in the partnership.

Olson offered no documentary evidence to the contrary. He testified he was “sure” he and Anderson repaid the money, but he could not prove it with any records. He argues that, if Anderson’s father had provided Anderson’s initial stake in Rock Ridge as a gift, he would have filed a gift-tax return with the Internal Revenue Service, which the father acknowledged he did not do. But there are many possible explanations for failing to file a required tax return. And while the act of filing a gift-tax return may evidence the intent to make a gift, the converse is not necessarily true. The failure to file a gift-tax return is not determinative of intent.

On the record before us, we conclude that the district court’s finding that the initial partnership contribution was a gift to Anderson alone is not clearly erroneous. Based on this finding, the district court properly concluded that Anderson’s initial interest in Rock Ridge was nonmarital.

B. The district court’s finding that the increase in value of Rock Ridge is nonmarital is not clearly erroneous.

When determining whether the increase in value of a nonmarital asset is marital or nonmarital, courts look to whether the increase is the result of active management of the asset. *Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008). “[C]entral to the classification of appreciation of nonmarital property as marital or nonmarital is the principle that effort expended to generate property during the marriage . . . should benefit both parties rather than one of the parties to the exclusion of the other.” *Id.* at 651. Thus, if the appreciation is attributable to marital effort, it is marital property, while appreciation “attributable to inflation or to market forces or conditions” is nonmarital.

Nardini v. Nardini, 414 N.W.2d 184, 192 (Minn. 1987). Further, only the personal efforts of the spouses themselves qualify as marital efforts; agency principles do not apply, and a third party's efforts are not relevant to the marital-effort assessment. *Baker*, 753 N.W.2d at 653.

The district court concluded that the increase in value of Anderson's interest in Rock Ridge was nonmarital because neither spouse expended effort to generate the increase. The district court rejected Olson's assertion that the appreciation was due to Anderson's efforts:

The increase in value is not attributable to either [Anderson] or [Olson]. The increase in value is directly [attributable] to [Anderson's father] running the business and making all decisions in relation to investing in Rock Ridge, purchasing land and equipment, and [Anderson's father] had the sole decision-making authority in relation to payment of dividends to the [partners] No actions of [Anderson] nor [Olson] [contributed] to the increase of the value of Rock Ridge

The record supports these findings. Anderson's father testified that he makes the day-to-day decisions with respect to Rock Ridge. Anderson agreed that her father "calls the shots" and that "what Dad says goes." Olson attempted to elicit admissions from Anderson and her father that all five Rock Ridge partners were involved in management, but both testified that while they talk daily, Anderson's father is the sole decision-maker. Anderson was actively involved in the operation of Anderson Gravel, a separate family-owned business that employed both Anderson and Olson. But Anderson Gravel is a wholly separate entity. The evidence demonstrated that well over \$1 million of the growth in Rock Ridge's value was the result of escalating real estate values, which

cannot be attributed to anyone's activity. The district court, as the fact-finder, considered and weighed the evidence and found that Anderson's father's efforts, along with outside market conditions in the gravel industry and increased land prices, were solely responsible for the appreciation of Anderson's interest in Rock Ridge. This finding is not clearly erroneous.

Based on this finding that neither spouse had expended marital effort to increase the value of Rock Ridge, the district court properly concluded that the appreciated value of Anderson's interest in Rock Ridge is nonmarital property.

II.

Olson's second assignment of error concerns the district court's reference to the buyout terms in the Rock Ridge partnership agreement in setting the lump-sum award. Olson argues the district court was required to use the stipulated fair market value of Rock Ridge in making this award.

A district court's valuation of an item of marital property is a finding of fact that will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

While the parties did stipulate that Rock Ridge has a net fair market value of \$3 million, they also agreed that the terms of the partnership agreement are relevant to valuation. Thus, the partial stipulation did not bind the district court. Olson does not point to anything in the record that makes the district court's reliance on the buyout provisions clearly erroneous. And nothing in the record independently indicates clear error. The district court's decision to use the buyout provisions of the partnership

agreement to set the amount of Olson's lump sum income-loss award is not clearly erroneous.

Affirmed.