

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0347**

In re the Marriage of:  
Dawn Michelle Colton, petitioner,  
Respondent,

vs.

Sean Thor Colton,  
Appellant.

**Filed November 5, 2012  
Affirmed  
Klaphake, Judge \***

Scott County District Court  
File No. 70-FA-11-8552

Michelle L. Lureen, Shakopee, Minnesota (for respondent)

Amadu Edward Swaray, Brooklyn Center, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Klaphake, Judge.

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

In this dissolution appeal, appellant Sean Thor Colton challenges the district court's judgment dividing property and debts, granting child support arrears and medical-

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

expense reimbursement to respondent Dawn Michelle Colton, and denying him maintenance. Because the district court did not abuse its discretion in dividing the assets and debts, ordering payment of child support arrears and past medical expenses, and declining to award maintenance, we affirm.

## DECISION

### I.

Appellant argues that the district court abused its discretion by making an inequitable division of the assets and debts in his dissolution from respondent. The district court has broad discretion to evaluate and divide marital property, and this court will not overturn the district court's decision absent an abuse of that discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). “A [district] court’s apportionment of marital debt is [also] treated as a property division.” *Berenberg v. Berenberg*, 474 N.W.2d 843, 848 (Minn. App. 1991), *review denied* (Minn. Nov. 13, 1991). An abuse of discretion occurs when the district court’s decision “is against logic and the facts on the record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We defer to the district court’s factual findings and will not overturn them unless they are clearly erroneous, but we review legal issues de novo. *Antone*, 645 N.W.2d at 100.

The district court “shall make a just and equitable division of the marital property.” Minn. Stat. § 518.58, subd. 1 (2010). The property division, however, need not be mathematically equal. *Thomas v. Thomas*, 383 N.W.2d 727, 728 (Minn. App. 1986). We will affirm the district court’s property division if it has “an acceptable basis

in fact and principle,” even if we might have addressed the issue differently. *Antone*, 645 N.W.2d at 100.

*Personal property*

Appellant argues that the district court abused its discretion by awarding respondent all of the personal property in the homestead and erred by not making specific findings regarding the value of that property. We disagree.

The district court essentially denied appellant’s request for a continuance on the personal-property issue. “A [district] court has discretion in ruling on a request for a continuance and should base its decision on the facts and circumstances surrounding the request.” *Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986). On the scheduled hearing date, appellant gave the district court a list of personal property, with no proposal for division, although the district court had issued an order giving appellant access to the homestead in order to reach a personal property division, and appellant had ample opportunity to do so. The district court did not abuse its discretion by refusing to grant appellant additional time in which to submit a proposal and by granting to each party the personal property that each possessed. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that “[o]n appeal, a party cannot complain about a district court's failure to rule in [that party’s] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question”), *review denied* (Minn. Nov. 25, 2003).

We also reject appellant's assertion that the district court permitted post-trial briefing on the personal-property issue. The district court judge expressly informed the parties that he was "not leaving the record open" for further personal-property submissions, absent a joint settlement proposal. The district court did not abuse its discretion by declining to consider appellant's untimely posttrial briefing on that issue.

*Stock-account withdrawal*

Appellant argues that the district court abused its discretion in the division of marital assets by assigning to him \$9,580, which he withdrew from the parties' stock account to pay for living expenses and attorney fees. If one party to a dissolution improperly disposes of a marital asset, the district court shall place the other party in the same position as if the transfer had never occurred. Minn. Stat. § 518.58, subd. 1a (2010). We review for clear error the district court's findings on whether a party improperly disposed of assets. *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 698 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

Because appellant submitted evidence that he paid \$9,750 for legal expenses, the district court did not clearly err by implicitly finding that he dissipated the \$9,580 stock-account withdrawal and did not abuse its discretion by apportioning that amount to him in its property division. *See Baker v. Baker*, 753 N.W.2d 644, 654 (Minn. 2008) (concluding that a district court abused its discretion "to the extent [it] permitted [a party] to subsidize [its] attorney fees with marital assets"); *see also Risk*, 787 N.W.2d at 698 (affirming district court's implicit determination that a party dissipated assets).

### *Retirement accounts*

Appellant argues that because he was in poor health and unemployed, the district court abused its discretion by awarding a significant portion of his retirement accounts to respondent. *See* Minn. Stat. § 518.58, subd. 1 (listing relevant factors on which to base findings of property distribution, which include health, employability, and vocational skills of parties). But “[t]he property division must be viewed as a whole.” *Thomas*, 383 at 728. The district court allocated the net assets of the parties equally, except for their real property. And as to that property, appellant received more equity than respondent because the shop property, which appellant received, had a positive equity of \$19,300, while the homestead property, which respondent received, had a negative equity of \$10,040. Because the parties had no other liquid assets available for distribution, the district court appropriately used a portion of appellant’s retirement accounts as an equalizer.

### *Debt*

Appellant argues that the district court abused its discretion because it did not assign the parties’ two home-equity loans, which were associated with the homestead, to respondent, who was awarded the homestead. But one party may be held liable for marital debts even if the other party receives the benefit of their repayment. *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987). We also reject appellant’s argument that a portion of the original debt relating to the homestead, which was used to fund a down payment on the shop property, “no longer existed” because the shop property had been refinanced. Because that debt still exists as

a portion of the home-equity loan on the homestead, the district court properly considered it in distributing debt.

We conclude that the district court did not abuse its broad discretion by equitably dividing the parties' property and debts, and we affirm that division.

## **II.**

Appellant argues that the district court abused its discretion by ordering him to pay \$300 per month in child support arrears and one-half of the child's past medical/dental expenses. Appellant asserts that the district court's assignment to him of potential income of \$41,604 per year had no basis in fact.

We observe that the parties stipulated to a division of support and medical/dental expenses going forward. The district court divided responsibility for past unreimbursed medical/dental expenses in a manner that mirrors the parties' agreement for future expenses. Although the district court's findings regarding potential income are not extensive, we note that the required child support arrears payment of \$300 per month for eleven months is below what appellant would be required to pay based on the district court's estimation of income. Further, in light of the assets awarded to appellant, the payment of \$2,953.90 for unreimbursed medical/dental expenses is not unreasonable. We conclude that the district court did not abuse its broad discretion. *See Rutten*, 347 N.W.2d at 50.

## **III.**

Appellant argues that the district court abused its discretion by declining to consider his spousal maintenance claim. He argues that he was entitled to maintenance

based on his depression and current unemployment and that he is not precluded from a late assertion of that claim.

A party seeking maintenance must request that relief in dissolution pleadings. Minn. Stat. § 518.10, subd. 1(i) (2010). Appellant failed to request maintenance until the scheduled trial date. *See* Minn. R. Civ. P. 15.01 (setting forth requirements for amending pleadings). A district court has discretion in deciding whether to grant a motion to amend a pleading. *Wagner v. Schwegmann's South Town Liquor, Inc.*, 485 N.W.2d 730, 733 (Minn. App. 1992), *review denied* (Minn. July 16, 1992). Whether to allow such an amendment requires balancing the prejudice to the adverse party if the amendment is allowed against the prejudice to the moving party if the amendment is denied. *Wilson v. City of Eagan*, 297 N.W.2d 146, 151 (Minn. 1980). The stage of the proceedings at which amendment is requested may be considered. *Envall v. Indep. Sch. Dist. No. 704*, 399 N.W.2d 593, 597 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). The district court did not abuse its discretion by declining to consider appellant's newly asserted maintenance claim when respondent would have been prejudiced by the lack of opportunity to respond to that claim by conducting discovery or otherwise preparing for trial.

**Affirmed.**