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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1538**

In re the Marriage of: Lisa Kay Milani, petitioner,  
Respondent,

vs.

Patrick Brent Doolittle,  
Appellant.

**Filed May 19, 2009  
Affirmed  
Stauber, Judge**

Hennepin County District Court  
File No. 27FA000297837

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Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

In this property-distribution dispute, appellant-husband argues that (1) the district court should not have found that either party was more credible than the other where respondent-wife committed perjury; (2) the district court erred by awarding a

disproportionate portion of the marital assets to wife; (3) the record does not support the district court's disposition of certain items of property; and (4) the district court should have awarded appellant conduct-based attorney fees. Because the findings of fact are not clearly erroneous and the district court did not abuse its discretion in making credibility determinations, dividing marital property, or denying award of attorney fees, we affirm.

## **FACTS**

Appellant Patrick Brent Doolittle (husband) and respondent Lisa Kay Milani Doolittle (wife) were married on January 5, 1997. In February 2005, wife filed a petition to dissolve the marriage. Husband and wife agreed on the division of some but not all of their marital property. After several motion hearings, a trial was held on May 1-2, 2006. Both parties failed to identify several items of personal property at trial, and disposition of those items was not resolved. Husband filed a motion for a stay of judgment and for a new trial. The district court granted the motion as one to reopen the proceedings, but limited it to disposition of certain disputed personal property items. Following additional testimony, the district court issued amended findings of fact and order for judgment as to property issues on January 9, 2007. This appeal followed.<sup>1</sup>

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

Under Minn. R. Civ. P. 52.01, findings of fact made by the district court are set aside only if clearly erroneous, and “due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01.

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<sup>1</sup> Husband initially filed an appeal on February 22, 2007, but was advised by this court that the January 9 order was not a final, appealable order as child custody and support issues were still being litigated. A final order was issued on June 30, 2008.

Findings of fact are clearly erroneous only if the reviewing court, when looking at all the evidence, is left with a definite and firm conviction that a mistake has been committed.

*Northern States Power Co. v. Lyon Food Prods., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

## **I. Credibility**

An appellate court defers to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Here, the district court initially found that:

This is a high-conflict divorce. Both parties are presently, or have been in the recent past, addicted to controlled substances. [Husband] is a convicted felon. [Wife] is an admitted perjurer . . . Both parties' credibility is challenged. Neither party is more credible than the other. The parties' business dealings are irregular and unorthodox. It is within this context that the Court must consider the testimony of the witnesses, making assessments on the individual disputes pertaining to the matters at issue.

The district court reaffirmed this finding nine months later after subsequent proceedings, determining that "after having had additional opportunity to observe and listen to the parties" still neither party was more credible than the other.

Husband argues that the only reason the district court did not find him credible is because of a prior felony conviction for which he served time in prison. He argues that the conviction should not have been considered as it occurred more than ten years ago. Husband apparently believes that by restoring his credibility, his property division

argument should prevail. However, husband's testimony was contradicted several times, including as to his ownership interests in pawn shops.

Husband also argues that wife was clearly less credible than he because she admittedly and repeatedly lied on the stand. But the court did not determine that wife was more or less credible than husband, finding them equally lacking credibility. Since we defer to the district court's credibility determinations, and we find no mistake in the record, the district court did not err in finding neither husband nor wife credible. *See Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996) (stating that appellate courts give great deference to the district court because "it has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it.").

## **II. Division of Assets**

A trial court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. [An appellate court] will affirm the trial court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach.

*Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted); *see Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005) ("District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law.").

Here, our review is limited to those property division errors alleged on appeal.

First, husband argues that the district court erred in assigning a value of \$270,000 to husband's share of the marital assets from outstanding and allegedly high-risk loans owed to husband. Husband further argues that he offered the loans to wife for \$27,000 and that amount should be the value for allocation purposes. The district court found that husband was engaged in "an irregular loan business" in which he used \$270,000 from marital funds to make loans at a higher face-value to his friends. The district court stated that it was "fair, just, and reasonable to value these loans based upon the marital funds used by [husband] to extend these loans and acquire these assets, \$270,000, . . . . [since the] face value of the loans is at least \$113,000 greater than the marital funds used to advance the loans."

The district court further found no merit in husband's assertions that he would not be able to collect on these unorthodox loans. We agree. Husband had made similar loans in the past which he collected. There is record support for the finding that these loans should also be collectable, through husband's customary debt collection procedures. There is no allocation error or abuse of discretion.

Second, husband also argues that the district court erroneously double credited wife for the \$20,000 paid to accounting firm Virchow Krause for appraisal services. The record is not clear whether the \$20,000 fee was double credited or double deducted. This issue was further explored at oral argument, but no additional clarity was provided. Since husband has not shown a definite and firm mistake, the district court's finding is not clearly erroneous.

### **III. Evidence of Existence of Certain Property and Debt**

Husband argues that there was testimony and written documentation of a debt owed to his grandmother which should have been allocated in the property division. The district court found that husband “failed to sustain his burden of proving the existence of an alleged marital debt owed to his grandmother, [L.I.]. There was an absence of reliable documentary evidence for the loans or the status of the loans, if made.”

Husband testified that he owed his grandmother more than \$90,000 and paid \$41,000 in partial satisfaction of her Chase line of credit from which the loan was allegedly made. In the record, there are copies of two cashier checks made out to Chase totaling \$41,000, but nothing establishes that these checks were paid to husband’s grandmother’s Chase line of credit. At oral argument on appeal, husband argued that \$42,000 was owed his grandmother at the commencement of these proceedings and that he borrowed additional money against her line of credit during these proceedings. Husband does not provide any further evidence, such as a writing or independent testimony, regarding this alleged loan, nor is there anything in the record establishing that any money was owed to L.I. The district court’s finding is not clearly erroneous, and it did not abuse its discretion by refusing to allocate the alleged but unsubstantiated debt in the division of property.

Husband also argues that there was proof of the existence of a \$16,500 hot tub rebate opportunity which the parties would have received if wife had simply mailed it in, and that the district court erred in not determining that the lost rebate should be attributable as an asset to wife and allocated in the marital asset division. The district

court found that there was “inadequate proof at trial to sustain [husband’s] claim that the parties had a \$16,500 rebate, the rebate was collectable, and that [wife] caused the parties to lose the asset through her inaction or other misconduct.” The rebate was never tendered or received and has since expired. The district court’s finding of inadequate proof was not clearly erroneous.

Finally, husband also argues that the district court erred in including the wedding ring in the court’s property division allocation. Testimony established that the ring had already been exchanged by the parties, so the district court did err in specifically listing the ring in its allocation findings. Appellant, however, has not shown error prejudicial to his rights. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (holding that to prevail on appeal appellant must show both error and prejudice). Therefore we will not reverse the district court on this point. Minn. R. Civ. P. 61 (stating that harmless error is to be ignored).

#### **IV. Attorney’s Fees**

Conduct-based fee awards “are discretionary with the district court.” *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007); *see Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007) (same); *see also* Minn. Stat. § 518.14, subd. 1 (2008).

The district court found that “both parties to this litigation have unnecessarily extended the length and cost involved. Because the Court finds that both parties are equally at fault, neither party should be awarded conduct-based attorney fees pursuant to Minn. Stat. § 518.14.”

Husband argues that the record clearly establishes that the repeated perjury of the wife extended the length and cost of the dissolution proceedings, and that the court erred in not awarding him attorney's fees due to wife's bad faith. Husband contends there is nothing in the court's findings that support the district court's assertion that he prolonged this litigation. However, there was a lengthy and extensive custody issue which was not resolved until long after the property issues were litigated. While these arguments might have merit, the district court has discretion in awarding attorney's fees and it did not abuse its discretion by declining to award fees. *See Szarzynski*, 732 N.W.2d at 295.

The district court showed consistency and patience in the litigation of this unusual case where credibility was at issue and business dealings "irregular and unorthodox."

**Affirmed.**