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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2078**

In re the Marriage of:

Dmitri Mikhaylovich Medvedovski, petitioner,
Appellant,

vs.

Nadezhda Ivanovna Medvedovski,
Respondent.

**Filed July 27, 2010
Affirmed as modified
Lansing, Judge**

Chisago County District Court
File No. 13-FA-07-258

Dmitri Medvedovski, St. Paul, Minnesota (pro se appellant)

Jack DeWalt, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Lansing, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

LANSING, Judge

Following a series of interim orders in the final two years of Dmitri and Nadezhda Medvedovski's six-year marriage, the district court entered a dissolution judgment. On appeal, Dmitri Medvedovski contends that the district court erred by finding the prenuptial agreement invalid and abused its discretion in the division of the Medvedovskis' property, the denial of joint custody, the determination of maintenance and child support, and the allowance of need-and-conduct-based attorneys' fees. We conclude that, except for inadvertently double counting \$11,313.39 of dissipated assets, the district court properly applied the law and reasonably exercised its judgment, and affirm as modified.

FACTS

Dmitri and Nadezhda Medvedovski were married in October 2003 and separated in June 2007. They are the parents of two children, the first born in 2005 and the second born in 2006. Dmitri Medvedovski, originally from Russia, is a college instructor in St. Paul. Nadezhda Medvedovski, originally from the Ukraine, was employed briefly in a nursing home during the marriage.

In 2002 Dimitri Medvedovski bought a home in Stacy, Minnesota, and Nadezhda Medvedovski moved into the home in spring 2003. Before the Medvedovskis' October 2003 marriage, they each signed the final page of a prenuptial agreement that purported to govern the disposition of property.

As part of a plan to rent out their home, the Medvedovskis renovated a barn on the property to use as their living quarters. They lived in the barn from 2004 to 2005. They also purchased an additional house in Stacy to use as rental property.

The Medvedovskis' relationship deteriorated in 2007 and in June, Nadezhda Medvedovskii moved out because of domestic violence. Dmitri Medvedovskii denied any physical altercation, but resolved the pending order-for-protection proceeding by agreeing to a no-contact order, granting Nadezhda Medvedovskii temporary sole physical custody of the children, allowing supervised visitation, and agreeing to the appointment of a guardian ad litem.

Following Dmitri Medvedovskii's petition for dissolution, the district court conducted a preliminary hearing. The resulting order continued the protection order and provided Nadezhda Medvedovskii \$500 for monthly maintenance and \$7,500 for attorneys' fees. The preliminary order also provided for ongoing supervised visitation. The supervision ended in July 2008, but Nadezhda Medvedovskii's protection order continued and was extended in September. Nadezhda Medvedovskii sought an additional protection order on behalf of the children in December. The petition stated that the older child reported that her father had removed her underpants and "rubbed his head between her legs [and] made noises." Dmitri Medvedovskii denied any sexual contact, and the ensuing investigation was inconclusive.

The September 2009 dissolution judgment granted sole legal and physical custody to Nadezhda Medvedovskii. The district court discontinued the children's protection order, but denied Dmitri Medvedovskii visitation pending assessment by a therapist and

until “appropriate mechanisms” were put in place to ensure the children’s safety. The judgment invalidated the prenuptial agreement, apportioned the homestead as part of the marital property, and found that Dmitri Medvedovski had dissipated \$64,627.74 of marital funds. Child support was set at the monthly guidelines amount of \$1,174 and monthly spousal maintenance was set at \$500, to continue until the younger child begins first grade. The district court also ordered that Nadezhda Medvedovski receive an additional \$30,000 in attorneys’ fees. Dmitri Medvedovski appeals from the judgment.

D E C I S I O N

Five issues are raised on appeal: the validity of the prenuptial agreement, the accuracy of and legal basis for the property division, the denial of joint custody, the failure to impute income to Nadezhda Medvedovski in setting maintenance and child support, and the allowance of attorneys’ fees. We address the issues separately, but we start from the general principle that the district court has broad discretion in determining issues in marital-dissolution proceedings. *Rutter v. Rutter*, 347 N.W.2d 47, 50 (Minn. 1984). Our review of the district court’s discretion is limited to whether its findings are supported by the evidence. *Holmes v. Holmes*, 255 Minn. 270, 274, 96 N.W.2d 547, 551 (1959). And, finally, the district court’s credibility determinations or findings that rely on credibility determinations will not be reassessed on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

I

Dmitri Medvedovski first challenges the district court’s determination that the prenuptial agreement was invalid and unenforceable. In Minnesota, procedural

requirements for a valid prenuptial agreement are codified. *See* Minn. Stat. § 519.11 (2008) (stating requirements); *see also Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998) (recognizing statutory codification of procedural-fairness requirement). Validity and enforceability require “a full and fair disclosure of the earnings and property of each party,” and the parties must have had “an opportunity to consult with legal counsel of their own choice.” Minn. Stat. § 519.11, subd. 1. A prenuptial agreement must also be substantively fair. *In re Estate of Aspenson*, 470 N.W.2d 692, 696 (Minn. App. 1991).

The Medvedovskis’ ten-page prenuptial agreement includes a listing of the parties’ property and a final page on which both signed their names. Nadezhda Medvedovski testified that she was not fluent in English when she signed the agreement, that Dmitri Medvedovski had shown her only the signature page, and that he had misrepresented the nature of the document. The district court credited this testimony.

Neither of the Medvedovskis consulted an attorney. Because, as the court determined, Nadezhda Medvedovski did not understand that she was signing a prenuptial agreement, she did not have an opportunity to consult with an attorney. In the absence of an opportunity to consult with an attorney and being restricted to seeing only the signature page, Nadezhda Medvedovski did not comprehend that the document was a prenuptial agreement that would govern the disposition of property. The procedural requirements of the statute were not met, and the prenuptial agreement is invalid and unenforceable.

II

Dimitri Medvedovski next raises a series of challenges to the district court's property division. In marital-dissolution property divisions the district court has broad discretion, and we will affirm a division that has an acceptable basis in fact and principle. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). He contends that the homestead should not have been included in the division of marital property. Property acquired before marriage is nonmarital. Minn. Stat. § 518.003, subd. 3b(b) (2008). But in a dissolution proceeding, the district court has the discretion to allocate up to one half of a spouse's nonmarital asset to the other spouse if that spouse's "resources or property . . . are so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2 (2008). In an unfair-hardship allocation, the district court's findings must consider "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, and opportunity for future acquisition of capital assets and income of each party." *Id.*

The district court determined that the homestead had "lost its nonmarital character" and treated it as marital property. The court's findings, viewed as a whole, address the relevant factors necessary to find unfair hardship and to divide the nonmarital property. The court made extensive findings reflecting the disparity in the Medvedovskis' income, employability, assets, and capacity for future income or assets. During the course of the marriage, Dimitri Medvedovski withheld basic support for the family and diverted resources instead to reducing the encumbrance on the property.

Nadezhda Medvedovski, who moved to the property shortly after its purchase, contributed extensively to its improvements, including the barn renovation. The district court's findings are supported by the record, and show that unfair hardship would result by denying Nadezhda Medvedovski a portion of the home's value.

Dmitri Medvedovski also challenges the method of valuing the homestead, the timing of valuation, and the method for complying with the property division. These determinations have an acceptable basis in fact and in principle and are well within the district court's discretion.

The last challenge to the property division relates to the district court's finding that Dmitri Medvedovski dissipated marital funds. Minnesota law restricts a marital party's actions to transfer, encumber, conceal, or dispose of assets "during the pendency of" a dissolution proceeding. Minn. Stat. § 518.58, subd. 1a (2008). If an action that affects the asset is taken without the consent of the other party to the marriage and not "in the usual course of business or for the necessities of life," the district court "shall compensate the other party" by placing that party in the same position that the party would have been in without the transfer, encumbrance, concealment, or disposal. *Id.*

Nadezhda Medvedovski testified that they began contemplating dissolution in April 2007. That month, \$25,216.54 was withdrawn from an account, leaving a zero balance. The balance of two other accounts was later transferred to a checking account at US Bank: \$28,097.81 on June 25, 2007, and \$11,313.39 on January 10, 2008. The district court found that these actions dissipated marital assets and that the money was not used for necessities or in the usual course of business. The dissolution judgment

allocated to Nadezhda Medvedovski half of the total amount of the transactions. The district court's decision is supported by the record, and we affirm the determination with one exception. A January 10, 2008 US Bank checking-account transfer of \$11,313.39 remained in the account five days later and constituted part of the more than \$14,000 balance that was divided equally between the Medvedovskis. As a result, the \$11,313.39 was inadvertently counted first as dissipated funds and then as part of the balance of the US Bank account. We therefore reduce the amount allocated to Nadezhda Medvedovski as a result of dissipation by \$5,656.70.

III

In resolving child custody disputes, district courts have broad discretion. *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989). The controlling principle in a child-custody determination is the child's best interests. *Pikula*, 374 N.W.2d at 711 (Minn. 1985). A child's best interests are determined by weighing thirteen statutory factors. Minn. Stat. § 518.17, subd. 1(a) (2008). If a parent proposes joint physical or legal custody, the court must also consider the parents' ability to cooperate, the parents' willingness to use reasonable methods for resolving disputes, detriment to the child if sole custody is granted, and whether domestic abuse has occurred between the parents. Minn. Stat. § 518.17, subd. 2 (2008). A "rebuttable presumption that joint legal or physical custody is not in the best interests of the child" is triggered if domestic abuse has occurred between the parents. *Id.* The district court made extensive findings on the thirteen best-interests factors, and its findings are supported by the record. The statute's rebuttable presumption against joint custody was triggered by the district court's findings

on Dmitri Medvedovski's domestic abuse and by the order for protection that was in place throughout the proceedings.

The district court's findings on joint custody specifically rely on the domestic abuse in the Medvedovskis' home and on the fact that the children suffered no detriment in the sole physical custody of Nadezhda Medvedovski. Although the findings do not explicitly address the other two factors—the parents' ability to cooperate and to use methods for resolving conflict—many of the findings discuss the parents' animosity for one another and their inability to interact positively. The district court is not required to make “detailed findings” on all joint-custody factors when it denies a request for joint custody. *See* Minn. Stat. § 518.17, subd. 2 (requiring detailed findings only when joint custody is ordered over objection of party). The record does not contain evidence that would rebut the presumption against joint custody. The district court made findings supported by the evidence and properly applied the law, and its decision was not an abuse of discretion. *Pikula*, 374 N.W.2d at 710.

IV

In his challenge to the determination of child support and spousal maintenance, Dimitri Medvedovski argues that Nadezhda Medvedovski was capable of providing income, and the district court erred by not imputing income to her. In a dissolution proceeding, the district court may provide for maintenance if a spouse lacks sufficient assets to provide for his or her reasonable needs or “is unable to provide adequate self-support . . . 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 (2008).

Once the threshold showing is established, the court considers factors, identified by statute, to determine the amount and duration of maintenance. Minn. Stat. § 518.552, subd. 2 (2008); *see also Dobrin v. Dobrin*, 569 N.W.2d 199, 201 (Minn. 1997) (discussing statute). Child support must be set based on imputed income if a parent is voluntarily unemployed or underemployed. Minn. Stat. § 518A.32, subd. 1 (2008). Imputed income is a parent’s estimated earnings, based on that parent’s “employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community.” *Id.*, subd. 2(1).

Dmitri Medvedovski’s argument on appeal essentially recapitulates his argument at trial, which the district court rejected. In providing that maintenance will terminate when the Medvedovskis’ younger child begins school, the district court took into account that Nadezhda Medvedovski’s employability will improve. But the record provides no evidence of her voluntary underemployment. She left her brief employment in a nursing home at Dmitri Medvedovski’s insistence, and since then she has cared full time for two young children. The district court’s decision not to impute income in setting child support and spousal maintenance was not an abuse of discretion.

V

Finally, Dmitri Medvedovski argues that the district court abused its discretion by allowing additional attorneys’ fees after the initial order for \$7,500. A district court in a dissolution action shall grant attorneys’ fees when necessary for the good-faith assertion

of a party's rights if the party seeking fees lacks the ability to pay and the party from whom the fees are sought is capable of payment. Minn. Stat. § 518.14, subd. 1 (2008); *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). The district court may also order attorneys' fees if a party unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1.

The district court's findings rely on both need and conduct as a basis for the attorneys' fees. The findings address the Medvedovskis' disparate financial standings and states that "there have been extensive delays and non-cooperation displayed by [Dmitri Medvedovski] throughout the entirety of this case." These findings are amply supported by the record and are sufficient to support the order of additional attorneys' fees.

Affirmed as modified.