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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0801**

In re the Marriage of:
Patrice Ann Little, n/k/a Patrice Ann Fredericks, petitioner,
Respondent,

vs.

Jay Richard Little,
Appellant.

**Filed January 14, 2013
Reversed in part and remanded
Bjorkman, Judge**

Carlton County District Court
File No. 09-FA-10-2339

Terry A. Trogdon, Gerlach, Beaumier & Trogdon, Duluth, Minnesota (for respondent)

Bill L. Thompson, Falsani, Balmer, Peterson, Quinn & Beyer, Duluth, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges three aspects of the district court's property division in this marital dissolution, arguing that the district court abused its discretion by (1) erroneously valuing respondent's pension and awarding it entirely to respondent, (2) assigning

appellant sole responsibility for a loan from appellant's mother, and (3) assigning unequal responsibility for the parties' home-equity line of credit. Because the district court's treatment of respondent's pension and the parties' line of credit lacks record support, we reverse and remand those aspects of the district court's decision. And because the district court's findings regarding the loan from appellant's mother are insufficient for effective review, we remand for additional factual findings.

FACTS

Appellant-husband Jay Little and respondent-wife Patrice Little, n/k/a Patrice Fredericks, were married in May 1990 and separated in August 2010. The district court dissolved the parties' marriage in December 2011, reserving the issue of property division. Following a three-day trial, the district court accepted the parties' mutual waiver of spousal maintenance and divided the parties' property. This appeal follows.

DECISION

We review a district court's division of property in a marital dissolution for abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). We will affirm the district court's property division if it has "an acceptable basis in fact and principle," even if we might have taken a different approach. *Id.* A district court abuses its discretion if it divides property in a manner that is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Misapplying the law also constitutes abuse of discretion. *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009).

I. The limited record does not support the district court's valuation and division of wife's pension.

The tasks of valuing and dividing a party's pension fall within the district court's exercise of discretion in dividing the parties' property. *Johnson v. Johnson*, 627 N.W.2d 359, 362 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). A party's pension-plan benefits or rights acquired during the marriage are marital property and must be justly and equitably divided between the parties. Minn. Stat. §§ 518.003, subd. 3b, .58, subd. 1 (2012). Pension-plan benefits or rights acquired prior to the marriage, and any passive appreciation thereof, are the employee spouse's nonmarital property. Minn. Stat. § 518.003, subd. 3b; *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). A pension may be part marital and part nonmarital. *White*, 521 N.W.2d at 878.

Husband contends that the district court erred by finding that the pension wife received through her employer has no cash value and abused its discretion by awarding the entire pension to wife. The district court made no findings about the pension other than the one husband challenges and did not determine whether the pension is wholly or partially marital property.

The evidence as to the status and value of wife's pension is limited. Wife has been employed at Essentia Health, previously known as St. Mary's Medical Center, since before the parties' marriage. She testified that when she "first started at St. Mary's," in 1988 or 1989, "there was a pension, and then it was frozen, and we have a new kind of retirement now." Wife testified that she did not "know for how many years the pension was growing after [she] started," but it "wasn't real long."

The only other evidence addressing wife's pension is a September 2010 letter Essentia Health wrote at wife's request.¹ The letter does not indicate a present cash value of the pension but states that "[a]ctual benefits will be calculated at the time of [her] retirement based upon all available employee information." The letter explains that wife may retire and start receiving pension benefits as early as age 55 but benefits "will be reduced" from the listed \$579 monthly accrued benefit if she retires prior to age 65. An "age reduction table" apparently was included with the letter to wife, but the table is not in the record.

Though limited, this record supports husband's assignments of error. First, there is no evidence as to the pension's current value, but the record plainly indicates and the parties do not dispute that the pension *has* value. The absence of evidence as to a pension's current value does not warrant a finding of no value but a continuation of jurisdiction until benefits are paid and a value can be determined. *See Taylor v. Taylor*, 329 N.W.2d 795, 798-99 (Minn. 1983) (stating that in the absence of reliable evidence of a pension's current value, a district court may require continued jurisdiction over the issue for later distribution of the asset as a fixed percentage of benefits paid to the employee spouse). We conclude that the finding that the pension has no value is clearly erroneous.

Second, the district court abused its discretion by awarding the entire pension to wife without addressing husband's claim that a portion of the pension is marital and

¹ We observe that the record also contains an exhibit detailing wife's benefits under her current retirement plan, which indicates that her account for that plan was created in November 1992. But there is no testimony explaining this exhibit.

should be divided equitably between the parties. While the record is insufficient for the district court to have determined the percentage of the pension that is marital property or the value of that percentage, the record does not support a conclusion that the pension is wholly wife's nonmarital property. Indeed, the evidence suggests and wife concedes that a portion of the pension is marital.

Because of these errors, we reverse the district court's valuation and allocation of wife's pension and remand the issue to the district court. We observe that the dearth of evidence as to the pension's value and duration likely will require reopening the record for additional evidence. The district court then has discretion to award a cash distribution to equalize the value of husband's marital portion of the pension or, if the pension's present value still is not readily ascertainable, to enter a qualified domestic relations order for distribution of husband's marital portion when wife begins receiving benefits. *See id.*

II. The district court did not make sufficient findings to permit this court to review the decision to hold husband solely responsible for a loan from his mother.

Husband next argues that the district court abused its discretion by assigning him sole responsibility for a loan from his mother, which he contends is a marital debt. Debts are apportioned as part of a property settlement in the same manner as assets. *Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996).

The parties agree that husband received an undocumented loan from his mother, but the record contains conflicting testimony as to the timing, amount, and purpose of the loan. Husband testified that he borrowed \$5,000 from his mother in early 2010 as an advance against an anticipated \$5,000 refund from the parties' 2009 taxes. Husband also

stated that he did not repay the loan upon receiving the tax refund but asked for an extension from his mother “because finances were tough” and deposited the refund into a joint account to use for routine expenses. Wife remembered husband borrowing \$8,000 from his mother, but agreed that it could have been \$5,000, and testified that husband borrowed the money after he “maxed out” the line of credit around mid-2010. Wife testified that she was uncertain what husband used the funds for but believed that he used them for “his legal expenses or bills.” She did not know whether the loan had been repaid.

Based on this testimony, the district court assigned the loan to husband without making any findings as to when or why the loan was made, its value, or whether it is marital debt. The district court found only that husband and wife “incurred miscellaneous debts during their marriage,” including “loans to [sic] each of the parties’ families,” and concluded that wife “is responsible for any debt to her parents,” while husband “is responsible for any debt to his parents.”

Because these findings do not explain why the district court allocated the loan as it did, they are insufficient for effective appellate review and remand is required. *See Vinnes v. Vinnes*, 384 N.W.2d 589, 592 (Minn. App. 1986) (stating that property division does not require detailed findings but findings “sufficient to allow appellate review”); *see also Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (stating that insufficient findings require remand for further findings). While the judgment appears to offset the loan from husband’s mother against an undisputedly nonmarital loan that wife received from her family, the district court never expressly determined that the two loans are

nonmarital. Nor does the district court's order reflect, as wife contends, an equitably unequal distribution of an undocumented loan that, according to her testimony, husband received around the time of the separation for his sole benefit. *See Novick v. Novick*, 366 N.W.2d 330, 332, 335 (Minn. App. 1985) (affirming finding that undocumented, unsecured, no-interest "loans" to one spouse were nonmarital gifts); *Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn. App. 1984) (affirming as equitable an unequal distribution of marital debt to the party primarily benefitted by it and able to pay for it). We therefore remand this issue for the district court to determine whether the loan from husband's mother is marital or nonmarital and make further findings explaining its allocation of this debt.

III. The district court abused its discretion by assigning unequal responsibility for the parties' home-equity line of credit.

Husband argues that the district court abused its discretion by assigning \$35,000 of the home-equity line of credit solely to him. We agree.

The line of credit has an outstanding balance of approximately \$112,000. At least \$95,000 of that balance is attributable to legal fees husband incurred between 2008 and 2010, pursuing ultimately unsuccessful legal claims relating to his past employment. At trial, wife requested that the district court assign husband sole responsibility for \$85,000 of the credit line, arguing that she told husband not to spend more than \$10,000 on the lawsuits and was unaware that he had exceeded that amount until the parties separated.

The district court rejected wife's argument, finding that she "impliedly agreed to the fees by not questioning them." But the district court determined that husband

dissipated marital funds by continuing to pay legal fees from the line of credit after the fees exceeded \$60,000. The district court based this determination on its findings that wife “was upset when she learned the fees were at \$60,000 or \$70,000 and told [husband] to stop” and that husband “admittedly did not have agreement from [wife] to expend monies for this purpose thereafter.”

The parties agree that the record does not support these findings. Husband testified only that “when [wife] knew how much the money was” she said “[t]hat she could have had a brand new indoor riding arena and new horse facilities for the price that I had spent on the lawsuits, and she had gotten estimates from construction companies of 60, \$70,000.” Nothing in the record indicates that wife was aware of when husband reached \$60,000 in legal fees or asked him to stop drawing from the credit line at that point. Rather, both parties testified that wife never asked husband to stop paying legal fees prior to their separation. On this record, we conclude that the district court clearly erred by finding that husband dissipated marital funds by continuing to pay legal fees from the line of credit after wife told him to stop at \$60,000.

We next consider the appropriate remedy for this error.² The district court’s property division as a whole reflects a determination that the parties’ marital assets

² Wife urges us to correct the district court’s allocation by remanding for the district court to divide \$10,000 of the line of credit equally between the parties and hold husband solely responsible for the remaining \$85,000 in legal-fee expenditures. But this amounts to a challenge to the district court’s division of the line of credit. Because she did not file a notice of related appeal, wife’s argument is not properly before us. *See* Minn. R. Civ. App. P. 106; *Graves v. Wayman*, 816 N.W.2d 655, 669 (Minn. App. 2012). We observe, however, that the district court’s rejection of wife’s claim that she did not consent to expenditures beyond \$10,000 has ample support from her testimony that she was aware

should be divided equally. The only reason the district court identified for holding husband solely responsible for \$35,000 of the line of credit was its finding of dissipation. Because we reverse the dissipation finding, we remand the issue to the district court with direction to include the entire line of credit in its equitable division of the marital estate.

Reversed in part and remanded.

of husband's prolonged and extensive involvement in the lawsuits and had ready access to monthly account statements for the line of credit but chose not to examine them.