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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0094**

In re the Marriage of:
Mandeep Singh Sodhi, petitioner,
Appellant,

vs.

Leisa Lynn-Ketelsen Sodhi,
Respondent.

**Filed March 5, 2018
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-FA-15-4017

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Jeffrey K. Priest, Priest Law Firm, Ltd., Eagan, Minnesota (for appellant)

Michael P. Boulette, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Mandeep Singh Sodhi and Leisa Lynn-Ketelsen Sodhi were married for approximately 25 years before their marriage was dissolved. Mandeep challenges multiple aspects of the district court's dissolution decree. We affirm.

FACTS

Mandeep and Leisa were married in August 1991. This dissolution action was commenced in 2015. The couple has one adult child and two minor children. Before trial, the parties agreed on all matters related to custody of the minor children. The issues at trial and on appeal primarily concern the value and allocation of the couple's marital assets and liabilities.

In the early years of their marriage, both Mandeep and Leisa were employed. Mandeep worked for various consulting companies, and Leisa worked in information systems and project management. In 2002, Mandeep founded Select Source International, LLC (SSI), using \$100,000 of marital funds as an initial capital investment. SSI has nine employees and works with approximately 175 to 250 consultants, whom it assigns to its corporate clients for various projects. Mandeep is the sole member of SSI and its key employee. For purposes of federal income tax, Mandeep elected S-corporation status for SSI, which means that the company does not pay income tax but, rather, passes its net income through to its sole member, Mandeep. *See* 26 U.S.C. § 1366 (2016); 26 C.F.R. §§ 1.1366-1(a), 301.7701-3 (2017). In 2014, Mandeep received a salary of \$263,805, and SSI had net income of approximately \$167,834. Leisa quit her job in 2013, with encouragement from Mandeep.

As of the commencement of this case, the couple had net marital assets of roughly \$5,000,000. The couple's most valuable marital asset was SSI. Mandeep argued that the company was worth \$1,325,000; Leisa argued that the company was worth \$2,050,000. When the case was commenced, the couple jointly owned a parcel of commercial real estate

with net equity of approximately \$800,000, passive investments worth approximately \$531,000, and personal property worth approximately \$50,000, among other assets.

In September 2016, the district court issued its dissolution decree. The district court issued an amended decree in November 2016 after Mandeep moved for amended findings and a new trial. In the amended decree, the district court ordered Mandeep to pay temporary spousal maintenance to Leisa in the amount of \$6,500 per month through December 2016 and \$5,000 per month from January 2017 to March 2022. The district court valued SSI at \$2,000,000 and ruled that Mandeep should retain full ownership of the company. The district court found that SSI had an outstanding debt to Mandeep in the amount of approximately \$186,000 and assigned that marital asset to him. The district court ordered the couple to sell their commercial real property and to divide the net proceeds equally. The district court found that Leisa dissipated \$53,579 in marital assets during the pendency of the dissolution proceeding. The district court awarded Leisa \$90,000 in need-based attorney fees and expert fees, including \$60,000 in attorney fees that she paid with marital assets during the pendency of the case. The district court concluded that each party should be allocated net marital assets worth \$2,099,429 in addition to half of the net proceeds of the sale of the commercial real property. To accomplish that division of marital assets and liabilities in light of its other rulings, the district court ordered Mandeep to make a settlement payment to Leisa in the amount of \$1,124,617, to be paid over five years. Mandeep appeals and raises six issues.

DECISION

When dissolving a marriage, a district court “shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property.” Minn. Stat. § 518.58, subd. 1 (2016). The district court

shall base its findings on 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, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.

Id. A district court may divide marital property by dividing the asset in kind, ordering the sale of the asset and division of the proceeds, or “order[ing] distribution of the entire asset to one of the parties, and order[ing] the recipient to pay to the other spouse a just and equitable share of the value of the asset.” *Nardini v. Nardini*, 414 N.W.2d 184, 188 (Minn. 1978). “An equitable division of marital property is not necessarily an equal division.” *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). “[E]ach case is to be considered in light of its particular facts.” *Lenzmeier v. Lenzmeier*, 304 Minn. 568, 571, 231 N.W.2d 71, 74 (1975). Accordingly, a district court has “broad discretion” in dividing property. *Crosby*, 587 N.W.2d at 296. This court applies a clear-error standard of review to a district court’s findings of fact and an abuse-of-discretion standard of review to its ultimate decision concerning what is just and equitable. *Mauer v. Mauer*, 623 N.W.2d 604, 606 (Minn. 2001).

I. Value of SSI

Mandeep first argues that the district court erred by finding that the fair market value of SSI was \$2,000,000. He argues that the district court should have found that the value of the company was a lesser amount, such as the amount to which his expert witness testified.

“There is . . . no universal formula for determining the value of a closely held business.” *Nardini*, 414 N.W.2d at 189. A district court must “determine the value of the business as if the transaction were a sale of the entire business by a willing seller to a willing buyer.” *Id.* The district court should consider all relevant facts and use common sense in weighing the relevant facts. *Id.* at 190. This court applies a clear-error standard of review to a district court’s finding of the value of a marital asset. *Maurer*, 623 N.W.2d at 606. The district court has broad discretion, and “the value . . . need only fall ‘within a reasonable range of figures.’” *Id.* (quoting *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975)).

Before trial, the district court appointed Arthur Cobb to serve as a neutral expert to conduct a valuation of SSI. *See* Minn. R. Evid. 706. Cobb issued a written report and testified at trial. Cobb opined that, as of June 30, 2015, the fair market value of SSI was \$2,050,000. Mandeep retained his own expert, Howard Kaminsky, for the same purpose. Kaminsky also issued a written report and testified at trial. Kaminsky opined that, as of June 30, 2015, the fair market value of SSI was \$1,325,000.

Both Cobb and Kaminsky used the discounted-cash-flow method of estimating the value of SSI. The difference between their respective estimates is due primarily to their

differing views concerning the effect of income taxes on the company's market value. Cobb reasoned that, if SSI were sold, the buyer likely would maintain the company's S-corporation status, which would allow SSI to continue passing its profits through the company to the individual owner without taxation at the company level, which would increase the company's value to the buyer. Accordingly, when estimating SSI's value, Cobb did not reduce the amounts of its estimated annual profits by the income tax rates that normally apply to companies that have not elected S-corporation status. Kaminsky, however, reasoned that, if SSI were sold, the buyer likely would consider the impact of income taxes when estimating a company's cash flow. Accordingly, when estimating SSI's value, Kaminsky reduced the amounts of its estimated annual profits by the income tax rates that normally apply to companies that have not elected S-corporation status, a reduction known as "tax affecting." The district court decided "not to tax-affect the business's earnings for the purpose of valuation in this case." In essence, the district court adopted Cobb's opinion that the value of SSI should be based on an assumption that, after a sale, the company likely would retain its S-corporation status and, thus, would not pay income taxes at the company level.¹

¹We are aware that, since oral argument in this case, federal tax law has changed. *See* Pub. L. No. 115-97 (2018). Specifically, in 2018, corporations will pay federal income tax at the rate of 21 percent, which is significantly lower than the highest 35-percent rate that applied in 2017 and significantly lower than some individual rates. *See* 26 U.S.C. § 11(a), (b) (2016); H.R. 1, § 13001, 115th Cong. (2018) (enacted). Accordingly, in the future, a business such as SSI may wish to employ different tax strategies than the strategies about which Cobb and Kaminsky testified. *See, e.g.,* Ruth Simon, *Pass-Through Businesses Are Rethinking Their Status in Wake of Tax Law*, Wall Street Journal, Feb. 22, 2018; Kelly Phillips Erb, *What Tax Reform Means for Small Businesses & Pass-Through Entities*, Forbes, Dec. 22, 2017. Neither party has called our attention to the new federal tax law,

Mandeep contends that the district court erred by not tax-affecting SSI's profits. He contends that the district court's approach to valuation does not comport with common sense because it implies that an S corporation is worth more than other forms of business entities merely because of its tax status. Mandeep cites caselaw from other jurisdictions that have considered the issue and have concluded that it is appropriate to tax-affect a company's estimated profits when estimating the company's value. *See, e.g., Bernier v. Bernier*, 873 N.E.2d 216 (Mass. 2007); *Delaware Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290 (Del. Ch. 2006). In response, Leisa contends that "whether or not to tax-effect is a nuanced question of fact, the answer to which will vary on a case-by-case basis." Leisa cites caselaw from other jurisdictions that have considered the issue and concluded that whether to tax-affect a business's earnings is a factual determination, made with knowledge of the facts and circumstances of the case. *See, e.g., Gross v. Commissioner*, 78 T.C.M. (CCH) 201 (1999), *aff'd* 272 F.3d 333 (6th Cir. 2001). Leisa also cites an unpublished opinion of this court, which analyzed the issue of tax-affecting in depth. *See Hamelink v. Hamelink*, A13-0244, 2013 WL 6839700 (Minn. App. 2013), *review denied* (Minn. Feb. 26, 2014); *see also* Minn. Stat. § 480A.08, subd. 3(b) (2016) (providing that "[u]npublished opinions of the Court of Appeals are not precedential").

We agree with Leisa that a district court's decision concerning whether to tax-affect a company's profits necessarily depends on the facts of a particular case. Specifically, the decision depends primarily on whether, after a hypothetical sale to a hypothetical buyer,

see Minn. R. Civ. App. P. 128.05, let alone suggested that we should analyze the district court's decision differently in light of the new federal tax law.

the company is likely to pay income taxes on its profits at the company level. In this case, the district court found that SSI likely would be purchased by a small company or an individual, “either of which presents a high probability of retaining the pass-through status.” This finding is not clearly erroneous in light of the evidence in the record. SSI is a relatively small company, with only nine employees, and it is managed exclusively by Mandeep. Cobb testified that the company most likely would retain its pass-through status in a hypothetical sale. That evidence supports an inference that a larger company is less likely to acquire SSI and make it a subsidiary or a division. In that way, SSI is a different kind of company than the company in *Bernier*, which owned and operated two supermarkets, which likely had more than nine employees and likely did not depend on the skills and contacts of a single key employee. *Bernier*, 873 N.E.2d at 221. Thus, given the particular facts of this case, the district court did not abuse its discretion by not tax-affecting SSI’s profits.

Mandeep also contends that the district court erred by finding that the value of SSI is \$2,000,000 despite the fact that Cobb testified that a hypothetical buyer likely would pay between \$800,000 and \$1,000,000 on the date of a sale and would pay the balance of the purchase price over approximately two to three years. Mandeep contends that the fair market value of SSI should be no more than the amount of money that he could receive on the date of a sale. In a similar context, this court recently concluded that if a business is sold pursuant to a purchase agreement that requires the buyer to make payments to the seller after the date of the sale, the market value of the company is the sum of all payments, even those made after the date of the sale. *See Gill v. Gill*, 900 N.W.2d 717, 721-22 (Minn.

App. 2017), *review granted* (Minn. Oct. 17, 2017). Mandeep does not cite any caselaw to indicate that an estimate of a company's value must be limited to the payment that is received when the transaction occurs. Even if future payments are variable, they are capable of estimation. *See id.* The district court reasonably determined that the value of SSI is equal to the sum of all payments that a hypothetical buyer likely would make in buying the company.

Thus, the district court did not err by finding that the fair market value of SSI on the valuation date was \$2,000,000.

II. Loan from Mandeep to SSI

Mandeep next argues that the district court erred by finding the existence of an outstanding debt from SSI to Mandeep in the amount of approximately \$186,000 and by assigning that marital asset to him.

SSI's balance sheet reflects a "loan from stockholder" in the amount of \$185,658. Both Kaminsky and Cobb treated that amount as a liability of SSI when estimating the value of the company. The district court found that Mandeep had lent money to SSI, found that the outstanding loan was a marital asset, and assigned the asset to Mandeep.

On appeal, Mandeep contends that the \$185,658 figure does not reflect a loan to the company but, rather, a capital contribution that is included in SSI's equity and is not a separate marital asset. Alternatively, Mandeep contends that, if there is an outstanding loan, the amount is only \$129,658 because a \$56,000 transfer from the company to him in early 2015 was a return of capital. In response, Leisa contends that SSI recognized the debt on its financial statements for several years and that Mandeep did not introduce any

credible evidence to contradict the financial statements. We agree with Leisa that there is evidence in the record to support the district court's findings on this issue.

Thus, the district court did not err by finding that SSI owed Mandeep \$185,658, by finding that the loan is a marital asset, and by assigning the asset to him.

III. Value of Commercial Real Property

Mandeep argues that the district court erred by making a finding of the value of the couple's commercial real property and by ordering the parties to sell the property and divide the proceeds evenly. After oral argument, however, the parties agreed that Mandeep will purchase Leisa's half-interest in the property. The parties jointly supplemented the appellate record with a four-page stipulation and order of the district court, which provides, in part, that the terms of the parties' purchase agreement "shall govern the disposition of the parties' interest in" the property, "notwithstanding" the district court's decision "or the pending decision of the Court of Appeals." We interpret the parties' submission to indicate that Mandeep's argument concerning the parties' commercial real property now is moot. Thus, we need not analyze and resolve the issue that was briefed by the parties.

IV. Dissipation by Leisa

Mandeep next argues that the district court erred by finding that Leisa dissipated only \$53,579 in marital assets. Mandeep contends that the district court should have found that she dissipated \$177,057 in marital assets.

The relevant statute provides:

If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution . . . proceeding,

transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred.

Minn. Stat. § 518.58, subd. 1a (2016). A party alleging dissipation bears the burden of proof on the issue. *Id.* This court applies an abuse-of-discretion standard of review to a district court's determination that a party has dissipated marital assets. *See Rohling v. Rohling*, 379 N.W.2d 519, 522-23 (Minn. 1986).

It is undisputed that, while the case was pending in the district court, Leisa withdrew approximately \$177,000 from an investment account and spent all of those funds. It also is undisputed that Leisa spent approximately \$60,000 of those funds on attorney fees and approximately \$10,000 on expert-witness fees. Leisa testified generally that she spent the remaining \$107,157 in withdrawn funds on living expenses for herself and the parties' children, but she was unable to account for those expenditures with any specificity.

The district court found that Mandeep did not satisfy his burden of proving that all unaccounted-for funds were dissipated. The district court found that some of Leisa's expenditures were not made in the usual course of business or for the necessities of life, in part because she did not adjust her lifestyle to reflect new economic conditions arising from the parties' separation. *See* Minn. Stat. § 518.58, subd. 1a. The district court resolved the issue by finding that, of the \$107,157 in unaccounted-for funds, Leisa justifiably spent half of those funds on necessary living expenses and dissipated the other half.

On appeal, Mandeep contends that the district court should have found that Leisa dissipated the \$70,000 in funds that were spent on professional fees related to the dissolution proceedings. Consistent with his argument, the supreme court has stated that “attorney fees are not . . . in the usual course of business or for the necessities of life.” *Baker v. Baker*, 753 N.W.2d 644, 654 (Minn. 2008) (quotation marks omitted). Accordingly, “Any amount taken from marital property to pay one party’s attorney’s fees should be accounted for . . . and the other party compensated in the distribution.” *Thomas v. Thomas*, 407 N.W.2d 124, 128 (Minn. App. 1987). The district court acknowledged that Leisa used marital funds to pay her own fees and that such expenditures ordinarily would be “charged against” her. But the district court did not find those expenditures to be dissipation because the district court accounted for those expenditures when considering her request for need-based fees, which is discussed separately below. *See infra* part V. Whether the district court erred with respect to Leisa’s expenditures on attorney fees and expert-witness fees depends on whether the district court erred by granting Leisa’s request for need-based fees.

Mandeep also contends that he satisfied his burden of proof because Leisa did not sufficiently explain how she disposed of approximately \$107,000 in unaccounted-for funds. Mandeep contends that the record does not support the district court’s finding that any of those funds were spent on necessities of life. But because the burden of proof of dissipation is on Mandeep, it was his burden to prove that Leisa’s expenditures were *not* spent in the usual course of business or for the necessities of life. *See Rohling*, 379 N.W.2d at 522-23. The district court’s finding that Leisa dissipated \$53,579 in marital assets was

favorable to Mandeep to the extent that the evidentiary record is silent. Because Mandeep did not introduce evidence that Leisa spent more than \$53,579 on goods and services that were not in the usual course of business and not for the necessities of life, he cannot establish that the district court erred by finding that Leisa dissipated half of the unaccounted-for funds.

Thus, the district court did not err by finding that Leisa dissipated \$53,579 in marital assets.

V. Need-Based Attorney Fees

Mandeep argues that the district court erred by awarding Leisa a total of \$90,000 in need-based attorney fees.

A district court “shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on . . . the proceeding” if it finds:

(1) that the fees are necessary for the good faith assertion of the party’s rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2016). We apply an abuse-of-discretion standard of review to a district court’s ruling on a request for need-based attorney fees. *See Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009).

In her motion for need-based attorney fees, Leisa requested an award of \$100,000. The district court reasoned that an award of need-based fees is appropriate because Mandeep's resources were and are far greater than Leisa's resources, because the spousal maintenance awarded to Leisa will be insufficient to allow her to pay her outstanding litigation expenses, and because the amount Leisa requested was reasonable. The district court concluded that Leisa satisfied each of the statutory criteria for need-based fees. The district court determined that Leisa is entitled to the \$60,000 in attorney fees that she already had paid out of a marital investment account and to an additional \$30,000 in attorney fees that were unpaid at the time of trial.

Mandeep contends that the fee award is erroneous because he does not have the means to pay an additional \$30,000. *See* Minn. Stat. § 518.14, subd. 1(2). He asserts that SSI is undercapitalized and that he is obligated to make more than one million dollars in equalizer payments to Leisa over five years. He contends that the district court erred by reasoning that he "has access to substantial distributions and investment income to cover any shortfall." In response, Leisa argues that Mandeep is expected to receive a salary and distributions from SSI that will be sufficient to allow him to pay the fee award. The evidentiary record is consistent with Leisa's argument. The two experts estimated that Mandeep would earn a salary of between \$300,000 and \$335,000 per year in each of the five years following the trial. In addition, Mandeep's own expert estimated that he would receive cash flow from SSI's profits of between \$184,000 and \$218,000 per year during the same period. Even if Mandeep was somewhat illiquid at the time of trial, the evidence suggests that he is likely to experience significant positive cash flow in increasing amounts

in future years, which indicates that his payment of the award of need-based attorney fees is unlikely to impede his ability to make equalizer payments.

Thus, the district court did not err by awarding Leisa \$90,000 in need-based attorney fees.

VI. Settlement Payment

Mandeep last argues that the district court erred by ordering him to pay Leisa \$1,124,617 over five years and by placing liens on his residence and on his interest in SSI to secure the settlement payment.

To reiterate, the applicable statute provides, in part:

Upon a dissolution of a marriage, . . . the court shall make a just and equitable division of the marital property of the parties . . . after making findings regarding the division of the property. The court shall base its findings on 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, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.

Minn. Stat. § 518.58, subd. 1 (2016).

Mandeep contends that the settlement payment is inequitable on the ground that Leisa's entitlement to the payment is risk-free while he bears the risks inherent in SSI's business. In response, Leisa points out that the district court equally divided the parties' marital estate of approximately \$5,000,000, that Mandeep requested that he be awarded all of SSI, and that he is allowed five years' time in which to make the payment. Leisa's

arguments sufficiently explain why the district court did not abuse its discretion. In addition, we note that the evidence of SSI's estimated future profitability supports the district court's decision not to award Mandeep a greater share of the marital estate or to impose more lenient terms on the settlement payment.

Mandeep also contends that the district court erred by imposing liens on his residence and on his interest in SSI. Leisa contends in response that a district court may impose a lien on marital property to secure the payment of a property settlement so long as the lien is supported by "an acceptable basis in fact and principle." *Bakken v. Helgeson*, 785 N.W.2d 791, 795 (Minn. App. 2010) (quoting *Rohling*, 379 N.W.2d at 522). She asserts that the record supports the district court's decision because, as the district court recognized, Mandeep had a lack of liquidity at the time of trial, and Leisa is required to wait five years to fully realize her share of the marital estate. We agree that the district court was authorized to secure the settlement payment with liens and did not abuse its discretion by doing so.

Thus, the district court did not err by ordering Mandeep to pay Leisa \$1,124,617 over five years and by securing his obligation with liens.

Affirmed.