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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0207**

In re the Marriage of:  
Richard Leo Bassing, petitioner,  
Appellant,

vs.

Barbara Laraine Bassing,  
Respondent.

**Filed December 27, 2022  
Affirmed  
Segal, Chief Judge**

Anoka County District Court  
File No. 02-FA-19-1286

Glenn P. Bruder, Mitchell, Bruder and Johnson, Eden Prairie, Minnesota (for appellant)

Beverly K. Dodge, Rachel L. Farhi, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota  
(for respondent)

Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and Kirk,  
Judge.\*

**NONPRECEDENTIAL OPINION**

**SEGAL**, Chief Judge

In this appeal from a marriage-dissolution judgment and decree, appellant-husband claims that the district court abused its discretion when it awarded respondent-wife a

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

disproportionate share of the value of the marital estate. Husband also claims that the district court incorrectly valued promissory notes and a bank account and assigned a value of \$0 to cash awarded to wife. We affirm.

## **FACTS**

In July 2019, appellant Richard Leo Bassing (husband) petitioned the district court for a dissolution judgment to end his nearly 50-year marriage with respondent Barbara Laraine Bassing (wife). The case was tried to the district court in April 2021. The parties stipulated to the value and distribution of a significant portion of their marital assets, including real property and vehicles, but disputed the value of several items. Wife sought spousal maintenance or, in the alternative, a disproportionate marital property award in lieu of maintenance. Wife also sought conduct-based attorney fees, claiming that husband caused her to incur unnecessary litigation expenses.

The district court heard testimony from the parties regarding their health and medical costs, employment histories, hobbies, businesses, income, and expenses. In addition, wife presented testimony from an electrician who stated that husband asked him to lie at the trial and say that he had performed work on the parties' home that he did not do. Prior to trial, husband provided wife's attorney with a falsified invoice from the electrician. Husband claimed, untruthfully, that he had paid the invoice and was entitled to reimbursement for the alleged payment as a marital expense.

Following trial, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree. In the judgment, the court found wife's monthly income to be \$1,213 from Social Security, and that she received additional income of

\$1,187.42 per month from the parties' son to repay a loan wife had made to the son from her nonmarital inheritance. The court found wife's reasonable monthly expenses to be \$2,793. The court found husband's monthly income to be \$2,132. Husband claimed monthly expenses of \$2,571, which included \$1,000 for gambling and \$300 for hobbies. The court rejected husband's proposed gambling expense as discretionary and reduced husband's reasonable monthly expenses to \$1,571. The court found that wife's monthly income was insufficient to pay her monthly expenses and that husband's monthly income exceeded his monthly expenses.

The district court also concluded that husband's conduct during the litigation process had increased the length and expense of the proceedings. The court supported this conclusion with findings that husband arranged to sell the parties' rental property and "attempted to evade disclosure of the sale to Wife," and that husband failed to disclose a loan, a bank account, and \$19,400 in cash he had hidden in a safe at the parties' cabin. The court also pointed to husband's attempt to suborn perjury from the electrician in order to inflate the amount husband claimed he spent on improvements to the parties' marital home prior to sale.

The district court awarded wife a disproportionate share of the marital estate in lieu of making an award to wife of spousal maintenance and conduct-based attorney fees. The court found the total value of marital assets to be \$2,452,880.97 and awarded wife about \$259,000 more than husband.

Following the district's court order, husband moved for an amended order. Relevant to this appeal, husband argued that the disproportionate division of the marital estate was

inequitable, and he challenged the district court's valuation of certain assets. The district court denied husband's motion.

## **DECISION**

On appeal, husband challenges the district court's decision to award a greater share of the marital estate to wife and asserts that the district court failed to apply a proper valuation of certain promissory notes, assigned an erroneous value to a bank account that husband claims had a zero balance, and improperly accounted for cash awarded to wife that she had discovered in a safe at the parties' cabin. In our analysis, we first review husband's argument about the disproportionate division of the marital estate and then address husband's challenges to the district court's valuation of various assets.

### **I. The district court did not abuse its discretion in awarding a disproportionate share of the marital estate to wife.**

Husband argues that the district court abused its discretion by awarding a greater share of the marital estate to wife. He challenges the district court's determination that the disparity was justified as an alternative to awarding spousal maintenance and conduct-based attorney fees to wife.

Minnesota law requires that, in marriage-dissolution cases, a district court must "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 (2022). Even though a district court's authority "is limited to that provided for by [the marriage-dissolution] statute, the district courts are guided by equitable principles in determining the rights and liabilities of the parties upon a dissolution

of the marriage relationship.” *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 757-78 (Minn. 1981) (citation omitted). An “equitable division does not *require* equal division.” *Vinnes v. Vinnes*, 384 N.W.2d 589, 592 (Minn. App. 1986).

District courts have “broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). An appellate court “will affirm the [district] court’s division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach.” *Id.* “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

**A. The district court did not abuse its discretion in considering wife’s need for spousal maintenance in making its disproportionate award.**

Husband claims that the record demonstrates that the parties had equal financial statuses and that the district court erred in determining that wife had a need for spousal maintenance. We are not persuaded.

Under Minnesota statutes, the court’s marital-property division should be based “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.” Minn. Stat. § 518.58, subd. 1.

A district court “may” grant maintenance if a spouse “lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage.” Minn. Stat. § 518.552, subd. 1(a) (2022); *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of spousal maintenance requires a showing of need). In determining the amount and duration of maintenance, the court should consider “all relevant factors including: . . . the financial resources of the party seeking maintenance”; “the standard of living established during the marriage”; “the duration of the marriage”; “the age, and the physical and emotional condition of the spouse seeking maintenance”; and “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.” *Id.*, subd. 2(a),(c),(d),(f),(g) (2022).

We review for abuse of discretion the district court’s decision to award spousal maintenance. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016) (“Given the fact-dependent nature of the inquiry, we have said that a trial court has broad discretion in deciding whether to award maintenance . . . .” (quotation omitted)).

The district court’s determination regarding wife’s need for maintenance after the dissolution of this nearly 50-year marriage is supported by the district court’s findings: the court found that wife’s reasonable monthly expenses were approximately \$400 more per month than her income and that husband had sufficient income both to meet his own reasonable monthly expenses and to contribute to spousal maintenance. The district court thus acted within its discretion in concluding that wife had a need for spousal maintenance.

Husband also disputes the district court's findings on wife's income. Husband states that the court should have assigned income potential to a rental property awarded to wife. The parties' son lived at the property and the district court noted that wife did not want this property "but agreed to take it [as part of her share of the marital estate] after Husband repeatedly threatened to evict the parties' son and sell the property . . . . Wife believe[d] [the son] would find himself homeless if he were evicted."

In its order on husband's posttrial motion, the court directly addressed husband's argument regarding rental income, stating that the "stipulated value of the property was assigned to [wife] and accounted for in her portion of the . . . award. Furthermore, no evidence was presented—at trial or in the motion paperwork—as to the value of renting the property." With no evidence provided by husband as to the rental value of the property or that rent would be paid by the son, we conclude that the district court acted within its discretion in excluding any potential rental payments from wife's income calculation. *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 her 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"), *rev. denied* (Minn. Nov. 25, 2003); *see Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (applying this aspect of *Eisenschenk*).

Husband also argues that the district court should have found wife had income-producing assets related to an inheritance. The district court, however, credited wife's testimony at trial that she had no such income because she gave her inheritance money to

husband when she agreed to take over the loan to the parties' son.<sup>1</sup> As an appellate court, we defer to the district court's credibility determinations. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

**B. The district court did not penalize husband for marital misconduct; it was within the court's discretion to consider conduct-based attorney fees in the disproportionate award.**

Husband argues next that the district court erred in determining that wife was entitled to conduct-based attorney fees. Husband maintains that the award violates the statutory prohibition against basing a division of marital property on "marital misconduct."<sup>2</sup> Minn. Stat. § 518.58, subd. 1. The district court, however, did not base the determination on husband's *marital* misconduct, but on his misconduct in the litigation process.

A district court impermissibly divides marital property based on "marital misconduct" under the statute when it makes its findings based on the fault or behavior of one party during the marriage. *Stassen v. Stassen*, 351 N.W.2d 20, 23-24 (Minn. App. 1984). In contrast, a district court may award conduct-based attorney fees "based on behavior occurring during the litigation process." *Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001). Such "[c]onduct-based attorney fees . . . may be awarded against any party 'who unreasonably contributes to the length or expense' of family-law

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<sup>1</sup> We note that the district court stated in its posttrial order that it found wife "generally credible and believable" and found husband "generally incredible and unbelievable."

<sup>2</sup> Minn. Stat. § 518.58, subd. 1, provides in applicable part that "the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct."



proceedings under Minnesota Statutes chapters 518 and 518A.” *Baertsch v. Baertsch*, 886 N.W.2d 235, 236 (Minn. App. 2016) (quoting Minn. Stat. § 518.14, subd. 1 (2014)). While these awards are within the district court’s discretion, “[t]he district court must make findings to explain an award of conduct-based attorney fees.” *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007); *see also Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

Here, the district court did not consider husband’s fault or behavior toward wife in the context of their marital relationship. The district court’s findings were based, instead, on husband’s conduct in the litigation of this case. The court found that “the length and expense of trial was increased by Husband’s failures of disclosures and repudiation of multiple agreements on the record.” The district court made specific findings of fact regarding husband’s conduct during the proceedings, including:

37. The electrical work Husband claimed was performed by [an electrical contractor] was actually done by Husband himself. Husband compounded this fraud by asking its owner . . . to lie in court. [The electrician] refused to lie and upon being subpoenaed by Wife testified in Court that he never performed the work, was never paid by Husband, and had refused Husband’s request that he commit perjury.

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43. At the beginning of this dissolution action Husband made written disclosures to Wife in the hopes of procuring a quick settlement without discovery. Husband failed to disclose the sum of \$19,400 cash he had hidden in a safe at the parties’ cabin property.

The district court also cited husband’s failure to disclose a loan to an acquaintance and a bank account—nondisclosures that necessitated “subpoenaing and deposing bank

and investment records.” The district court noted wife’s evidence that her attorney fees, which totaled nearly \$35,000 before trial even started, were due in part to husband’s conduct in the litigation.

The only conduct within the marriage that the district court mentioned was husband’s gambling. However, the court did so not to demonstrate husband’s fault during the marriage, but to highlight the incompatibility of husband’s reported income with his gambling losses—these losses ranged from \$37,000 to \$42,000 for the years 2015 to 2018, despite husband’s claimed annual income of \$25,584. *Cf. Stassen*, 351 N.W.2d at 24 (affirming the district court’s property division even though the court referenced husband’s alcohol consumption because the decision was based on nonmarital-misconduct factors).

The court made findings of fact that support its determination that husband unreasonably increased wife’s litigation costs and expenses. We therefore discern no abuse of discretion in the district court’s determination that conduct-based attorney fees were appropriate and in factoring that into the division of the marital estate.

**C. The disproportionate division of the marital estate was within the district court’s broad discretion to allocate marital property.**

Husband asserts that, even if the court did not err in making allowances for spousal maintenance and conduct-based attorney fees in its division of marital property, the extent of the disparity in the award is inequitable and an abuse of discretion. We disagree.

Husband complains that wife received in her portion of the division a rental property worth \$265,200, noting that the value was nearly equivalent to the approximately \$259,000 discrepancy between husband’s and wife’s shares of the marital property. But the district

court here credited wife’s testimony that she only agreed to accept that property out of fear that husband would otherwise evict the parties’ son and sell the property. And “[a] [district] court has broad discretion in utilizing its equitable powers to achieve a just result in a marriage dissolution.” *Nelson v. Nelson*, 384 N.W.2d 468, 474 (Minn. App. 1986); *see also Vinnes*, 384 N.W.2d at 592 (stating that an “equitable division does not *require* equal division”).

Moreover, the disparate division here—approximately 55%-45%—is consistent with the scope of disparity upheld in other cases. *See Erlandson v. Erlandson*, 318 N.W.2d 36, 40 (Minn. 1982) (affirming 54%-46% property division); *Gummow v. Gummow*, 375 N.W.2d 30, 36 (Minn. App. 1985) (affirming 53%-47% property division); *Reynolds v. Reynolds*, 498 N.W.2d 266, 270 (Minn. App. 1993) (affirming 57.5%-42.5% property division where the district court considered that, “were it not for appellant’s sporadic employment history and historically low earnings from employment, respondent would receive greater child support and spousal maintenance” (quotation omitted)). Therefore, the district court did not abuse its discretion in making the disparate property division in this case.

## **II. The district court did not err in its property valuations.**

Husband’s second group of arguments revolves around the district court’s valuation of promissory notes and a bank account awarded to him, as well as the court’s assignment of a value of \$0 to the cash awarded to wife that she had discovered in the safe at their cabin. A district court’s valuation of an item of property is a finding of fact, and it will not

be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

**A. The district court did not err in its valuation of husband’s promissory notes.**

Husband argues that the district court clearly erred in its valuation of promissory notes awarded to him because the court utilized the wrong date for valuation. The district court valued the notes at \$126,667, which was the value at the time of husband’s discovery responses. Husband argues that the district court should have instead valued the notes at \$76,842, which reflects the notes’ value at the time of trial. He cites Minn. Stat. § 518.58, subd. 1, which states that “[i]f there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.” Husband also contends that because he used funds to pay marital expenses, he did not actually benefit from the monies he collected during the proceedings.

While we review a district court’s property valuations for clear error, we review for abuse of discretion the district court’s selection of the valuation date. *See Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *rev. denied* (Minn. Oct. 15, 2002) (stating that district courts have “broad discretion in setting the marital property valuation date”).

The district court found that husband failed to present evidence to support his contention that husband used the funds collected from the notes to pay marital expenses, noting inconsistencies in the bank statements. In addition to inconsistencies in the bank

statements, husband testified at trial that he did not always deposit what he collected on the promissory notes and instead cashed some of the checks. Husband testified that he used some of that cash to play poker. Husband thus failed to document all of the funds he collected from the notes or that he used all of the funds collected to pay marital expenses; and we therefore conclude that the district court acted within its discretion in applying the value of the notes at the time of husband's discovery responses. *See Fick v. Fick*, 375 N.W.2d 870, 874 (Minn. App. 1985) (affirming district court's valuation of bank accounts at the time of parties' separation instead of at the time of trial where evidence did not establish how all the assets had been spent and where husband "exercised dominion over the property and had discretion over the use of the money").

**B. The district court's valuation of the Bank of the West account awarded to husband was not clearly erroneous.**

Husband next argues that the district court erred by valuing a Bank of the West account (the first account) allocated to husband at a value of \$32,860.03. Husband states that, because this account was closed early in the dissolution proceedings, it should have been valued at zero. Again, however, the district court's valuation is supported by the discrepancies identified by the district court in the account records and adverse inferences the district court was entitled to draw from that evidence.

In a marital-dissolution proceeding, when parties fail to "make a full and accurate disclosure of their assets and liabilities," this failure "justifies inferences adverse to the party who conceals or evades." *See Bollenbach v. Bollenbach*, 175 N.W.2d 148, 155 (Minn. 1970); *see Crockarell v. Crockarell*, 631 N.W.2d 829, 834 (Minn. App. 2001)

(citing this aspect of *Bollenbach*), *rev. denied* (Minn. Oct. 16, 2001). The district court made such an inference here. Husband initially failed to disclose this account in discovery and did not provide complete bank statements. The court thus based the \$32,860.03 valuation on the account's balance as of February 6, 2019, two days after husband informed wife that he was divorcing her.

When faced with this nondisclosure, husband claimed that he did not initially disclose the first account because he used it to pay taxes and the account had been closed. The district court noted, however, in its order on husband's posttrial motion, that the statements for husband's four accounts at Bank of the West showed that three of those accounts "were drawn down to \$0 at one point or another in the year leading up to the filing for dissolution," and that one of the other accounts "had funds transferred into it from this [first] account that [husband] alleges is empty."

The district court further elaborated that it did not credit husband's testimony that he used multiple accounts "due to fraud in the accounts," stating "[t]hat explanation seems less than satisfactory to explain the use of four accounts, all with the same bank, three of which were drawn to zero within months of each other, particularly with the transfers from the [first] account to another Bank of the West account." The court concluded that "[t]he use of multiple accounts and the transfers back and forth would be suspect in the best of circumstances," but that husband's "lack of credibility exacerbates this problem and his own disclosures indicate that he was not fully truthful on where those funds went and what was done with them."

The district court was thus within its authority in making adverse inferences, which husband failed to refute, and in basing its valuation on credibility findings and the evidence in the bank statements.

**C. The district court did not abuse its discretion in its allocation to wife of the cash found by wife in a safe at the parties' cabin.**

Finally, husband contends that the district court erred in its accounting of the cash that wife found in the parties' cabin and used to pay attorney fees. The parties stipulated at trial that the \$19,400 in cash from the safe was to be allocated to wife. However, in its dissolution award, the district court listed the cash's value as \$0 and noted that the cash was used for wife's attorney fees.

Husband argues that the district court's listing of the cash at \$0 in the division violated Minnesota law providing that parties to a marriage dissolution owe each other a fiduciary duty during the pendency of the proceedings. Minn. Stat. § 518.58, subd. 1a (2022). Based on this fiduciary duty, if a party uses marital assets during the proceedings for uses "except in the usual course of business or for the necessities of life," the court "shall" compensate the other party for such use. *Id.* The Minnesota Supreme Court has recognized this court's holding that paying attorney fees using marital assets violates this statute and that when such a violation occurs, the "amount taken from marital property to pay one party's attorney fees should be accounted for . . . and the other party compensated in the distribution." *Baker v. Baker*, 753 N.W.2d 644, 653-54 (Minn. 2008) (quoting *Thomas v. Thomas*, 407 N.W.2d 124, 128 (Minn. App. 1987)).

*Baker*, however, is distinguishable. In *Baker*, the supreme court noted that the district court had ordered “that each party pay his or her own attorney fees.” *Id.* at 654. In contrast, the district court here determined that husband should pay conduct-based attorney fees and that it would consider such fees in its dissolution order. The district court emphasized this reasoning in its posttrial order on husband’s motion for amended findings, stating that it “did not hold wife to account for these funds as they served to cover a portion of [her attorney fees], which amounted to nearly \$35,000 before the trial had even commenced as a result of the necessity of subpoenaing and deposing bank and investment records.” While the district court’s methodology of valuing cash at \$0 may be unorthodox, the district court’s rationale—that the funds were being allocated to wife to offset the added attorney fees incurred by wife as a result of husband’s conduct—is supported by the district court’s findings and is not an abuse of discretion.

**Affirmed.**