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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2142**

In re the Marriage of:
Joseph P. K. Tran, petitioner,
Respondent,

vs.

Bonavy Chou Tran,
Appellant.

**Filed June 29, 2010
Affirmed
Johnson, Judge**

Clay County District Court
File No. 14-FA-08-2585

Stephen R. Dawson, Fargo, North Dakota (for respondent)

Craig M. Richie, Fargo, North Dakota (for appellant)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Joseph P. K. Tran and Bonavy Chou Tran were married for approximately 22
years before their marriage was dissolved. On appeal, Ms. Tran challenges the district

court's award of physical custody of the parties' son to Mr. Tran and certain aspects of the district court's division of their marital property. We affirm.

FACTS

The parties were married in 1986. They presently have two minor children: B.T., a 16-year-old boy at the time of trial, and J.T., an 8-year-old girl at the time of trial. An older daughter committed suicide in 2006. Mr. Tran petitioned the district court for dissolution of the marriage in May 2008, and the district court granted the petition in September 2009.

Mr. Tran works as a plant engineer, and Ms. Tran works as a licensed practical nurse. During their marriage, the parties owned several parcels of real property. The parties also owned an interest in a grocery store and the building in which the grocery store is located, but that building was sold or transferred prior to this dissolution action. The parties have substantial credit-card debt, which was incurred primarily in the operation of the grocery store.

A trial was held on the disputed issues over three days in March and May 2009. At trial, Mr. Tran sought physical custody of B.T. but agreed that physical custody of J.T. should be granted to Ms. Tran. Joan Kohlmeyer, who performed a custody evaluation, recommended that custody of B.T. be awarded to Mr. Tran. The parties also disputed numerous issues related to the division of their marital property and indebtedness.

The district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree in September 2009. The district court followed the recommendations of Kohlmeyer's custody evaluation by awarding custody of J.T. to Ms.

Tran and custody of B.T. to Mr. Tran. The district court also ordered Mr. Tran to arrange for counseling for B.T. that would help reestablish contact between B.T. and Ms. Tran, who were estranged.

The district court also divided the parties' assets and liabilities. The district court awarded the marital home to Ms. Tran and allocated the mortgage debt on that property to her. The district court awarded a second home, where Mr. Tran lived after the parties' separation, to Mr. Tran and allocated the mortgage debt on that property to him. The district court ordered Mr. Tran to pay all the parties' credit-card debt and awarded the parties' retirement accounts and checking accounts on the basis of their then-existing ownership. As a result, the district court awarded Mr. Tran \$18,000 in net assets and Ms. Tran \$96,000 in net assets. Ms. Tran appeals.

D E C I S I O N

I. Custody

Ms. Tran argues that the district court erred by granting custody of B.T. to Mr. Tran. We review the district court's custody determination by considering "whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008) (quoting *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002)).

An award of child custody must be determined by the best interests of the child. Minn. Stat. § 518.17, subd. 1 (2008). When making a custody determination, a district court must consider 13 statutory factors. Minn. Stat. § 518.17, subd. 1(a); *Zander v. Zander*, 720 N.W.2d 360, 366 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006).

The district court is not required to make specific findings on each statutory factor. *See Rosenfeld v. Rosenfeld*, 311 Minn. 76, 83, 249 N.W.2d 168, 172 (1976). A district court's custody determination may be affirmed "if the findings as a whole reflect that the trial court has taken the relevant statutory factors into consideration in reaching its decision." *Peterson v. Peterson*, 393 N.W.2d 503, 505 (Minn. App. 1986). This is so, for example, if a district court relies on a custody evaluation that is thorough and detailed. *See Roehrdanz v. Roehrdanz*, 410 N.W.2d 359, 362 (Minn. App. 1987) (affirming district court's findings, despite failure to address statutory factors, because district court referred to custody evaluation that addressed statutory factors), *review denied* (Minn. Oct. 28, 1987).

In this case, the district court found that it is in B.T.'s best interests for physical custody to be awarded to Mr. Tran. The district court relied heavily on the custody evaluation performed by Kohlmeyer. That evaluation addressed each of the statutory factors. Kohlmeyer recommended that the parties share legal custody of both children, that Mr. Tran be granted sole physical custody of B.T., and Ms. Tran be granted sole physical custody of J.T. This is what the district court ordered.

Ms. Tran contends that the district court erred for two reasons. First, Ms. Tran challenges the district court's finding that "[b]oth parties are fit and proper persons and able to provide parenting for their children." Ms. Tran contends that this finding is erroneous because the evidence shows that Mr. Tran is a very strict parent and that he engaged in abusive conduct that contributed to the older daughter's suicide. Kohlmeyer considered these issues thoroughly in her analysis of the fourth, fifth, tenth, and twelfth

factors specified by section 518.17. Second, Ms. Tran contends that the district court erred by failing to place sufficient emphasis on Mr. Tran's culpability in B.T.'s alienation from Ms. Tran. Kohlmeyer testified to her belief that Mr. Tran did contribute to the alienation between B.T. and Ms. Tran, but she testified that Mr. Tran's statements to B.T. were "fairly mild statements of alienation." Kohlmeyer also identified other causes for the estrangement between Ms. Tran and B.T., including B.T.'s awareness of Ms. Tran's extramarital affair. Ultimately, Kohlmeyer concluded that Mr. Tran's contribution to the alienation between B.T. and Ms. Tran did not justify an award of custody to Ms. Tran. Kohlmeyer testified that B.T. would "suffer emotionally" if he were to be placed with Ms. Tran and that, in light of the history of suicide in the family, she would be "very frightened for him" if he were placed with Ms. Tran.

The record reflects that the district court considered Ms. Tran's allegations about Mr. Tran's conduct. The record also reflects that the district court had reasonable grounds for awarding physical custody of B.T. to Mr. Tran. Kohlmeyer had concerns about Mr. Tran's parenting style but nonetheless concluded that B.T.'s best interests would be served by residing with Mr. Tran. Kohlmeyer stated that there were reasons to award custody of B.T. to Ms. Tran, that her recommendation presented a "very difficult" choice, and that she likely would recommend awarding custody to Ms. Tran if B.T. were younger. One important consideration for the district court undoubtedly was the practical question whether the estrangement between B.T. and Ms. Tran -- whatever its origin -- could be overcome in the relatively short time before B.T. is emancipated. We conclude that the district court's findings are supported by the evidence and that the district court

did not abuse its discretion by awarding physical custody of B.T. to Mr. Tran. *See Goldman*, 748 N.W.2d 281-82 (discussing district court’s broad discretion in determining custody).

At oral argument, Ms. Tran’s counsel attempted to expand on the issues discussed above by challenging the district court’s determination of Mr. Tran’s parenting time with respect to J.T. That issue, however, is not included in Ms. Tran’s brief and, therefore, has been forfeited. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

We remind the parties and their counsel that the district court ordered counseling for B.T. “to address trust and communication issues” because “[t]here is a need for therapeutic intervention to help heal the relationship between [Ms. Tran] and [B.T.] and a need to start parenting time slowly between the two.” The district court ordered both parties to participate in that counseling and ordered Mr. Tran to arrange for the counseling and “to assist the parties in reestablishing contact between [B.T.] and [Ms. Tran].” The matter was raised by counsel in oral argument, but there is nothing in this court’s record to indicate whether the parties are complying with their respective obligations. We encourage the parties to follow through on this important aspect of the district court’s ruling. And we note that the parties’ obligations are subject to enforcement by the district court. *See Johnson v. Johnson*, 627 N.W.2d 359, 363 (Minn. App. 2001) (noting that district court retains jurisdiction to “implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties’ substantive rights”), *review denied* (Minn. Aug. 15, 2001).

II. Division of Marital Property

Ms. Tran also argues that the district court erred in its division of marital property. “All property obtained by either spouse during the marriage is presumed to be marital property, regardless of the form of ownership.” *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997); *see also* Minn. Stat. § 518.003, subd. 3b (2008). We apply a clearly erroneous standard of review to a district court’s findings of facts concerning marital property. *Thompson v. Thompson*, 739 N.W.2d 424, 429 (Minn. App. 2007). “When applying the clearly erroneous standard, we view the record in the light most favorable to the district court’s findings.” *Id.* (citation omitted). Once the relevant facts are established, we apply an abuse-of-discretion standard of review to a district court’s division of property. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). 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. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

A. Marital Assets

Ms. Tran argues that the district court erred in its findings of fact concerning the assets of the marital estate. Ms. Tran contends generally that Mr. Tran misrepresented his assets to the district court and that the district court erred by relying on Mr. Tran’s misrepresentations when making its findings of fact. In the argument portion of her brief, she specifically identifies only two disputed assets: the interest in the grocery store and a Corvette automobile.

Ms. Tran essentially accuses Mr. Tran of hiding assets. In a dissolution proceeding, each party owes the other a fiduciary duty with respect to the use or transfer of marital assets:

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 . . . not occurred.

Minn. Stat. § 518.58, subd. 1a (2008). The party alleging an improper disposition of a marital asset carries the burden of proving improper disposition. *Id.* Ms. Tran, however, contends that Mr. Tran should bear the burden of proving that “he lawfully no longer has the property” he claims not to own. But Ms. Tran cites no caselaw in support of this argument so as to overcome the burden placed on her by the statute.

With respect to the grocery store, it is undisputed that the parties once had an ownership interest in the store in partnership with Tiffany Nguyen and her husband. The district court implicitly found that, at the time of trial, the parties did not own an interest in the grocery store; the district court stated that the parties “were at one time co-owners along with the Nguyens.” Ms. Tran contends that the district court’s finding is clearly erroneous because the evidence shows that Mr. Tran actually continues to own the store.

The district court record contains evidence supporting the district court’s finding. Mr. Tran testified that he chose to leave the partnership because he was incurring large amounts of debt to support the business and because he no longer was interested in the

business after his daughter's death. Nguyen testified that Mr. Tran gave up his portion of the business in "[a]bout 2007" and that her sister now owns the business. Nguyen testified that there was no partnership agreement and no written contracts because that is the norm in their Asian culture. She stated, "we talk and do it on a trust." According to Nguyen's testimony and Mr. Tran's credit-card records, the store is not profitable. Ms. Tran testified that she believed that Mr. Tran still has an interest in the grocery store. Ms. Tran introduced no other evidence that Mr. Tran still has an interest in the grocery store. Ms. Tran essentially contends that Mr. Tran's testimony and Nguyen's testimony is not credible. Credibility determinations, however, are a matter for the district court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Thus, the district court's finding that the marital estate does not include an ownership interest in the grocery store is not clearly erroneous.

With respect to the Corvette automobile, the district court found that "the parties have no interest in [the] vehicle[]" because it "was transferred to the Nguyens as satisfaction of a portion of debt [Mr. Tran] claims is owed to the Nguyens." Ms. Tran contends that Mr. Tran transferred the Corvette to Nguyen in an attempt to hide marital assets and that there was no debt owed to Nguyen. The record contains evidence supporting the district court's finding. Mr. Tran introduced evidence that title to the car was in Nguyen's name on April 27, 2007, more than one year before the petition for dissolution was filed. Nguyen testified that the car was transferred to her to pay off a \$12,000 debt that Mr. Tran owed her. Ms. Tran introduced no evidence, other than her own assertions, that the car was transferred in contemplation of the dissolution. Thus, the

district court's finding that the marital estate does not include the Corvette automobile is not clearly erroneous.

B. Marital Debt

Ms. Tran argues that the district court erred by making her responsible for mortgage payments on the marital homestead despite an alleged contract in which, she asserts, Mr. Tran agreed to be responsible for those payments. Debt may be apportioned in the same manner as assets in a dissolution proceeding. *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 414 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

In April 2007, the parties signed a handwritten agreement stating that Mr. Tran “agree[s] to release the house . . . to [Ms.] Tran” and that Mr. Tran “will agree to make the house payment as well.” The district court awarded the marital home to Ms. Tran and concluded that she should be responsible for the mortgage payments on the residence. The district court did not address the alleged contract in its findings. Because Ms. Tran does not ask us to reverse and remand for additional findings, our review is limited to whether the evidence relevant to that factual issue supports the district court's conclusions of law. *See* Minn. R. Civ. P. 52.02.

At trial, Ms. Tran testified to her understanding that, in exchange for giving up her interest in the store, Mr. Tran would pay the mortgage until it is paid off. The document does not state the duration of Mr. Tran's obligation. Mr. Tran testified that the agreement obligated him to pay the mortgage only until the parties separated. Thus, there is evidence in the record to support the district court's implicit conclusion that the alleged

contract does not obligate Mr. Tran to make the mortgage payments on the marital homestead until the mortgage loan is fully paid.

Ms. Tran cites Minn. Stat. §§ 500.19, subds. 4, 5, 519.06 (2008), in support of her argument that the alleged contract is a valid contract. Ms. Tran, however, did not make this argument in the district court. Thus, she has forfeited it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Even if the alleged contract were within the scope of the statutes, Ms. Tran would need to show, at a minimum, that the written agreement imposed an obligation on Mr. Tran that is inconsistent with the district court's order. Because she has not done so, we need not analyze whether the contract would be valid under section 519.06.

Ms. Tran's contention concerning the mortgage obligation must be viewed in light of the district court's overall distribution of all assets and liabilities belonging to the marital estate, which favored Ms. Tran. The district court awarded approximately \$180,000 in assets to Mr. Tran and approximately \$167,000 in assets to Ms. Tran. The district court ordered Mr. Tran to pay approximately \$162,000 of the parties' debts and ordered Ms. Tran to pay approximately \$71,000 of the parties' debts. Thus, Mr. Tran was awarded approximately \$13,000 more of the parties' assets but was burdened with approximately \$89,000 more of the parties' liabilities. As a result, Mr. Tran was awarded \$18,000 in net assets, and Ms. Tran was awarded \$96,000 in net assets. The district court reasoned, "it is only equitable that [Mr. Tran] be allocated the lion's share of the marital debts, although it will result in a wide disparity in the division of the parties' assets and debts." The district court explained the disparity in part by pointing to several

countervailing factors, including the fact that Ms. Tran is responsible for the mortgage on the parties' marital home. Ms. Tran cannot challenge the requirement that she pay the mortgage on her home by discussing that one item in isolation, without considering it in light of other items. To reverse the district court's ruling on that one factor would result in an inequitable balance among the remaining factors. *See Melina v. Melina*, 411 N.W.2d 204, 208 (Minn. App. 1987) (concluding that property division, taken as whole, was not inequitable, even if district court erred on one aspect of division). On the whole, Ms. Tran received the more favorable division of the parties' marital assets.

Thus, Ms. Tran has not established that the district court erred by requiring her to pay the mortgage on the residence that was awarded to her.

Affirmed.