STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1264

In re the Marriage of:
Terrance Craig DeChaney, petitioner,
Appellant,

vs.

Lisa Marie DeChaney,
Respondent.

Filed July 5, 2011
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-F4-07-001045

Anthony Bushnell, The Bushnell Law Firm, LLC, Minneapolis, Minnesota (for appellant)

Terri A. Melcher, Larson & Melcher, Fridley, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this appeal from a marriage dissolution judgment, appellant-husband challenges the district court's findings of fact, property division, allocation of maintenance and

support payments, custody determinations, and award of attorney fees to respondent-wife. We affirm.

FACTS

Appellant Terrance Craig DeChaney and respondent Lisa Marie DeChaney married on August 13, 2002. The parties have three joint minor children. On January 11, 2007, husband commenced these dissolution proceedings. After a domestic incident on February 14, the parties obtained orders for protection (OFPs) against each other.[1] The district court issued a temporary order directing husband to pay spousal maintenance and child support and ordering wife to pay the mortgage and other expenses related to the homestead. In June 2008, husband was charged with conspiracy to commit first-degree murder for attempting to hire an undercover police officer to murder wife. After a mistrial, husband entered an *Alford* plea of guilty and received a probationary sentence and 365 days' incarceration.

The dissolution trial was held over the course of eight days in June and July 2009. The court heard testimony from the parties, the children's guardian ad litem (GAL), a custody evaluator, and other witnesses. The district court entered its dissolution judgment and decree on December 27, dividing the assets and debts of the parties and giving wife sole legal and physical custody of the minor children. The judgment does not permit husband to have any contact with the children until he completes required therapy and the children's therapists determine they are ready to begin reunification therapy. The

[1] The OFPs were issued by consent without findings of domestic abuse.

district court issued amended findings of fact and conclusions of law on May 12, 2010. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion in dividing the property.

"A [district] court has 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). A district court abuses its discretion if its conclusions are "against logic and the facts on [the] record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). An appellate court will affirm the district court's division of property "if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Antone*, 645 N.W.2d at 100. We will not reweigh evidence or make factual findings on appeal. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Husband challenges three components of the property division: (1) the mortgage debts; (2) husband's 401(k); and (3) wife's student loans. We address each aspect in turn.

Mortgage debts

The judgment awards the homestead to husband along with all encumbrances. The district court found that the house was appraised at $215,000 in April 2008 and had an outstanding mortgage, as of December 2008, in excess of $230,000, including "late fees and penalties for missed payments." The district court acknowledged that the March 2007 temporary order directed wife to pay the mortgage while she was living in the

homestead, and that wife's payments were not "necessarily on a timely basis." But the court further found wife's failure to make timely mortgage payments was in part due to the "erratic timing" of husband's child-support and spousal-maintenance payments. And the district court expressly noted that wife ceased making payments entirely when she moved out of the home after learning of the investigation into whether husband conspired to murder her, using the funds she had for her new living expenses.

Husband first argues that the district court abused its discretion by failing to protect his nonmarital interest in the homestead. Nonmarital property

> means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which
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> (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;
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> (b) is acquired before the marriage;
>
> (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);
>
> (d) is acquired by a spouse after the valuation date; or
>
> (e) is excluded by a valid antenuptial contract.

Minn. Stat. § 518.003, subd. 3b (2010). The district court found that husband has a nonmarital interest in the homestead but that he failed to sustain his burden to establish what portion of the current value of the homestead is nonmarital. *See id.* The court also stated that this failure "may be moot" since the debt against the homestead exceeded its value. We agree. The district court appropriately awarded husband whatever value remained in the homestead free and clear of any interest wife may have had.

Husband next argues that the district court should have compensated him for $34,000 in debts assigned to the homestead because wife failed to pay the mortgage

pursuant to the temporary order. Husband asserts that wife's failure to make the payments created an encumbrance of the homestead for which husband is entitled to compensation under Minn. Stat. § 518.58, subd. 1a (2010). The statute provides that

> [i]f the [district] 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, separation, or annulment proceeding, transferred, encumbered, concealed or disposed of marital assets except in the usual course of business or for the necessities of life, the [district] 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. The burden of proof is on the party claiming that assets were encumbered. *Id.* We review a district court's findings as to whether a party encumbered marital assets for clear error. *See* Minn. R. Civ. P. 52.01.

We acknowledge that the district court did not address wife's failure to make timely and full mortgage payments in any significant detail or address Minn. Stat. § 518.58, subd. 1a. More explicit detail would have clarified the district court's rationale in not apportioning some of the mortgage debt to wife. But to the extent husband asks us to itemize and apportion the payments missed and fees incurred, we decline to do so. *See Sefkow*, 427 N.W.2d at 210 (holding that we may not reweigh evidence or make factual findings on appeal). Based on our review of the record, including husband's failure to provide timely and full support payments and wife's decision to leave the homestead at the urging of law enforcement in June 2008, we conclude that the district court's findings are not "against logic and the facts on [the] record." *See Rutten*, 347 N.W.2d at 50.

Husband's 401(k)

Husband argues that the district court failed to protect his premarital interest in his 401(k) and "penalized him for withdrawing money" before the dissolution filing. A district court's valuation of an item of property is a finding of fact and 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). We do not require the district court to be exact in its valuation of assets so long as the value "lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

The district court used March 31, 2008, as the valuation date for the 401(k), finding a balance of $22,733.88. The court added back amounts husband withdrew in late 2006 and early 2008 to pay attorney fees to augment the account to $44,787, and awarded husband the entire account. Husband does not challenge the valuation date but argues that the district court erred in finding that he did not carry his burden to establish the nonmarital portion of the account and in failing to account for the decline in value of the account due to economic factors.

We disagree. Husband has not demonstrated, and the record does not clearly establish, what portion of the 401(k) account existed before the marriage. And, as wife notes, the reality of changing asset values "is the precise reason for establishing a valuation date." Accordingly, we conclude that the district court did not err or abuse its discretion in its valuation of the 401(k).

Student-loan debt

Husband argues that the district court abused its discretion by assigning to him portions of wife's student-loan debt that predate the marriage. In dissolution proceedings, debts are apportioned as part of the property settlement and are treated in the same manner as the division of assets. *Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996). Whether a debt is marital or nonmarital is a question of law, subject to de novo review; we review the findings supporting the characterization of a debt for clear error. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008); *Burns v. Burns*, 466 N.W.2d 421, 423 (Minn. App. 1991).

The district court may award a spouse up to one-half of the other party's nonmarital property "[i]f the court finds that either spouse's resources or property, including the spouse's portion of the marital property . . . are so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2 (2010). If the court does apportion property other than marital property, it must make supporting findings "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, and opportunity for future acquisition of capital assets and income of each party." *Id.* Although the district court has broad discretion in awarding nonmarital property, a "very severe disparity between the parties is required to sustain a finding of unfair hardship." *Reynolds v. Reynolds*, 498 N.W.2d 266, 271 (Minn. App. 1993).

Husband argues that the district court "failed to make any findings that would support" assigning the nonmarital debt based on hardship. We agree. The district court included wife's student-loan debt in determining the $43,286.28 marital debt. The district court found that the student-loan debt totals $19,318.41, of which $8,752.66 "was incurred prior to the marriage." The district court further found that it was "equitable" to include the entire student-loan obligation as a marital debt because husband received "the augment[ed] retirement account" of $44,797. While this finding illuminates the district court's rationale, it does not constitute an express hardship finding.

But our conclusion that the district court erred does not end our analysis. To prevail on appeal, a party must show both error by the district court and resulting prejudice to the complaining party. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (holding that to prevail on appeal appellant must show both error and prejudice); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a district court will not be reversed if it reached an affirmable result for the wrong reason). Moreover, remand may not be appropriate where the error is de minimis. *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for a de minimis error).

On this record, we conclude that the district court's failure to make the requisite hardship finding is not prejudicial in light of the district court's expressed intention to effectuate a complete and equitable property division. Husband received the 401(k) account and any equity in the homestead free and clear of wife's marital interests.

Attributing wife's nonmarital student-loan debt to husband is not inequitable in the context of the overall property division. Accordingly, to the extent that the district court assigned a portion of wife's student loans to husband without first making an express hardship finding, we conclude that the error and prejudice were de minimis, and the district court did not abuse its discretion in apportioning the marital debts.

II. The district court did not abuse its discretion in awarding conduct-based attorney fees to wife.

Husband next challenges the district court's award of attorney fees to wife. "On review, this court will not reverse a [district] court's award or denial of attorney fees absent an abuse of discretion." *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). In a dissolution proceeding, the district court is authorized to award both need-based and conduct-based attorney fees. The district court has the discretion to award need-based attorney fees 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;
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> (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 (2010).

The same section also allows the district court to award attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." *Id.* "An award of conduct-based fees under Minn. Stat. § 518.14, subd. 1, may be made regardless

of the recipient's need for fees and regardless of the payor's ability to contribute to a fee award." *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). But "fee awards made under this provision must indicate to what extent the award was based on need or conduct or both." *Id.* at 816; *see also Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001) (remanding attorney-fee issue because district court failed to "make findings sufficient to show what combination of need or conduct support all, or different parts of, the entire award," precluding effective appellate review), *review denied* (Minn. Feb. 21, 2001).

The district court ordered husband to pay the $25,000 balance of wife's attorney fees, finding that wife did not have the resources to pay these fees, and that husband "needlessly added" to the fees "as a result of his failure to abide by the Court's orders, filing numerous unsuccessful motions and liquidating assets prior to and during the proceedings." The district court also found that husband's criminal proceedings delayed the dissolution proceedings, and that "a substantial portion" of the fees can be attributed to husband's actions.

Husband argues that the district court failed to distinguish between the need-based and conduct-based portions of the attorney fees, failed to identify the specific conduct that warranted conduct-based attorney fees, and abused its discretion by awarding any amount of need-based attorney fees because the record establishes that he lacks the

ability to pay wife's fees.[2] Wife emphasizes that the district court was "familiar with this case" and that several of the court's findings support a conduct-based award, specifically pointing out at least eight paragraphs that illustrate husband's conduct. She also contends that any language relating to her need for fees is extraneous and not intended to indicate the award was based on need.

Wife's argument is persuasive. First, we do not assume district court error. *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949); *see also Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*). Second, the district court's findings relevant to attorney fees primarily center on husband's dilatory conduct and efforts to thwart the equal division of the marital assets. On this record, we conclude that the passing reference to wife's need was extraneous and not intended to indicate that any portion of the fee award is need-based and that the findings are sufficient to support a conduct-based award. *Geske*, 624 N.W.2d at 817 (holding that a lack of specific findings is not fatal where the order "reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case and had access to the parties' financial records" (quotations omitted)). Accordingly, we conclude that the district court acted within its discretion in awarding conduct-based attorney fees to wife.

[2] Husband also urges this court to consider "the reasonableness of the fees." Because this argument was not raised in the district court, we decline to address it here. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

III. The district court did not abuse its discretion in denying husband's motion to reduce his temporary spousal-maintenance and child-support obligations.

An award of spousal maintenance or child support may be modified upon a showing of a substantial change in circumstances that makes the terms of the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2010). The district court has broad discretion in deciding whether to modify a support order, and its decision will not be reversed unless it is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997). In determining a parent's ability to pay or receive support, income is imputed to a parent who is "voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income." Minn. Stat. § 518A.32, subd. 1 (2010).

After husband was charged with conspiring to murder wife in June 2008, his employer suspended him without pay. The district court denied husband's motion to reduce his temporary spousal-maintenance and child-support obligations based on this suspension.[3] In challenging the district court's denial, husband relies on Minn. Stat. § 518A.32, subd. 3 (2010), which provides that, when calculating income for purposes of child support, a parent is not considered voluntarily unemployed when the lack of employment is due to incarceration, except where the reason for incarceration is the parent's nonpayment of support. *See, e.g.*, *Johnson v. O'Neill*, 461 N.W.2d 507, 508 (Minn. App. 1990) (stating that child-support obligation for obligor incarcerated on

[3] The district court retroactively modified husband's child-support obligation and spousal-maintenance obligation in the judgment.

unrelated offense should be computed on actual income unless there is specific, affirmative evidence of intention to evade child support). Husband argues that the statute should be extended to apply to the period after he was criminally charged and that the district court erred in imputing income to him for support purposes during that period at his pre-suspension earnings level. We disagree and decline to extend the law beyond the language of the statute. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (extending existing law is for supreme court or legislature, not court of appeals), *review denied* (Minn. Dec. 18, 1987).

We also note wife's argument that husband received unemployment benefits and was eligible to work prior to his conviction. And we agree with wife that husband's suspension did not disqualify him from working elsewhere. Accordingly, we conclude that the district court did not abuse its discretion in declining to modify husband's support and maintenance obligations based on his suspension.

IV. The district court's finding that husband committed an act of domestic assault against wife is not clearly erroneous.

Husband argues that the district court clearly erred in crediting wife's testimony that husband assaulted her. "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. In applying rule 52.01, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the

appellate court views the evidence differently." *Id.* "Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted).

Wife testified that on February 14, 2007, she and husband had a "scuffle . . . or an argument" when husband was leaving their home with the children. She stated that husband would not let her hug the youngest child. As wife tried to reach the child inside husband's car, he "pulled the door shut when [her] head was in the door" and "kept pulling." She testified that husband let go of the door only after the children told him to let her go. Wife reported the incident, the police arrested husband, and wife obtained an OFP. The district court credited wife's testimony and found that husband "took no responsibility" for his actions on February 14 and "had no insight" as to the impact of the incident on the children.

Husband argues that the record as a whole contradicts wife's testimony and that the district court "simply adopted" wife's version of the events. He asserts that he presented witnesses to rebut wife's allegations of prior abusive or intimidating behavior and impeached her credibility. Husband also emphasizes that the children did not corroborate wife's assertion that they asked husband to "[l]et mommy go," pointing to the custody evaluator's testimony that the children would remember such a traumatic event.

Based on our careful review of the record, we conclude that sufficient evidence supports the district court's findings and credibility determinations. The record demonstrates that the parties have an abusive relationship. The custody evaluator testified to the ongoing conflicts between husband and wife and that "there's been

domestic abuse in the relationship as reported by both" parties. Wife obtained the OFP days after the incident without objection from husband, and husband later pleaded guilty to conspiring to murder wife. Giving due regard to the district court's opportunity to make credibility determinations, and viewing the evidence in the light most favorable to the judgment, we conclude that reversal of the district court's factual findings is not warranted. *See* Minn. R. Civ. P. 52.01.

V. The district court did not abuse its discretion in authorizing wife to direct the children's counseling.

Husband challenges the district court's decision allowing wife to guide the children's ongoing therapy and counseling. While husband does not directly challenge the district court's grant of sole legal and physical custody to wife, we discern husband's arguments as addressing the district court's legal-custody determination. *See* Minn. Stat. § 518.003, subd. 3(a) (2010) (defining "[l]egal custody" to include the right to make "health care" decisions for a child). A district court has broad discretion to provide for the custody of the parties' children. *Rutten*, 347 N.W.2d at 50. "Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

The district court determined that it is in the best interests of the children that wife have sole legal and physical custody and that husband have "no parenting time or contact with the minor children until further order of the Court." The court ordered wife to continue the children's therapy and counseling, conditioned any contact between husband

and the children upon determinations by the children's therapists that such contact is in their best interests, and limited husband's access to the children's medical and therapy information. Husband asserts that wife is "unlikely to be supportive of him" and his relationship with the children and he "should at the very least have a right to review whether the children are in counseling and a right to contact the counselor."

We disagree. The record amply supports the district court's decision to give wife sole legal custody, including the exclusive authority to direct the children's therapy. Both the GAL and custody evaluator recommended that husband have no contact with the children, and the custody evaluator opined that husband should not have parenting time until he completes therapy required by his probation and until the children's therapists believe the children are ready to begin reunification therapy. The record demonstrates that the parties have a difficult relationship; the custody evaluator emphasized that they are unable to resolve conflict and that they would not be able to "co-parent in an effective manner." Contrary to husband's arguments, the custody evaluator "saw no evidence" that wife has alienated the children from husband. Indeed, wife testified that she has not even disclosed the details of husband's criminal act to the children because of their age. We also note that husband may move the district court to reconsider his contact with the children as he completes his required therapy. On this record, we conclude that the district court did not abuse its discretion in giving wife sole legal custody of the children, including the authority to direct the children's therapy.

Affirmed.