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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-857**

In re the Marriage of:
Gary Thomas Floria, petitioner,
Appellant,

vs.

Candace Ann Floria,
Respondent.

**Filed March 19, 2012
Affirmed
Halbrooks, Judge**

Todd County District Court
File No. 77-FA-09-958

G. Marlene Clark, G. Marlene Clark, P.A., Long Prairie, Minnesota (for appellant)

Jason R. Sellnow, Sellnow Law Office, P.A., Long Prairie, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's judgment dissolving the parties' marriage, arguing that the district court abused its discretion by ordering him to pay spousal

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

maintenance, in its division of the parties' assets and debts, and by "irregularities" in the proceedings. Because we conclude that the district court acted within its discretion, we affirm.

FACTS

Appellant Gary Floria (husband) and respondent Candace Floria (wife) were married in 1975 and separated in 2009. Since 2001, neither has worked. Husband is disabled, and wife took care of him. Husband receives monthly disability and retirement totaling \$3,843, and wife receives monthly retirement totaling \$764. They own their home, personal property, and some additional land. Following husband's petition to dissolve the marriage, a trial was held to determine the issues of spousal maintenance and the division of assets. After three days of testimony (spread over months), the district court ordered that the parties' assets be sold and the proceeds split and that husband pay \$900 per month in permanent spousal maintenance. This appeal follows.

DECISION

I.

Husband challenges the district court's decision ordering him to pay \$900 per month in permanent spousal maintenance. We review a district court's decision to award spousal maintenance for abuse of discretion. *Maeder v. Maeder*, 480 N.W.2d 677, 679 (Minn. App. 1992), *review denied* (Minn. Mar. 19, 1992). The district court abuses its discretion if it orders spousal maintenance based on findings that are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). Findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably

supported by the evidence as a whole.” *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

Husband claims that the district court failed to make a threshold finding of wife’s need, failed to adequately consider the required factors, and erroneously found that permanent maintenance is appropriate. We address each of these contentions in turn.

A. Threshold finding of wife’s need

Husband argues that the district court failed to make a threshold finding under Minn. Stat. § 518.552, subd. 1 (2010), that wife:

(a) 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, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

While it is true that the district court did not make either finding verbatim, the district court found that “[wife’s] ability to support herself in accordance with the lifestyle established during the marriage is permanently diminished and cannot reasonably be expected to be restored by an education program” and “[wife] is 57 years old and while her physical health is fair, her memory is faulty and she has difficulties completing higher level tasks. . . . These factors also make it unlikely that [she] will be

able to find employment to make her self-sustaining.” These findings sufficiently address the elements of Minn. Stat. § 518.552, subd. 1(b).

B. Findings demonstrating consideration of relevant factors

Husband argues that the district court failed to make sufficient findings demonstrating its consideration of the factors listed in Minn. Stat. § 518.552, subd. 2 (2010).

1. Financial resources of wife

The district court must consider “the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party’s ability to meet needs independently.” Minn. Stat. § 518.552, subd. 2(a). Husband argues that the district court abused its discretion by improperly considering wife’s net income (as opposed to her gross income); failing to address wife’s ability to meet her needs independently; and failing to consider wife’s award of one-half of the homestead. None of these arguments are persuasive. With regard to wife’s income, the statute does not require that the district court consider gross income. *Id.* Concerning wife’s ability to meet her needs independently, the district court found that “it is unlikely [wife] will be able to find employment to make her self-supporting, now or in the future.” With respect to the homestead, the district court found that “both parties are being awarded a fair share of marital property.”

2. Probability of wife becoming self-supporting

The district court must consider “the time necessary to acquire sufficient education or training to enable [wife] to find appropriate employment, and the probability, given the

party's age and skills, of completing education or training and becoming fully or partially self-supporting." Minn. Stat. § 518.552, subd. 2(b). Husband argues that the district court clearly erred by finding that wife applied for "several" types of employment and that she lacks employable skills. But the district court's findings are supported by the record. The district court found that wife has not worked since 2001. Wife testified that she applied for jobs at a potato farm, a café, and a creamery, but was unsuccessful in obtaining employment. She also testified that she has cognition and memory problems, difficulty staying on task, and takes medication that affects her concentration and makes her dizzy. The district court concluded that "[g]iven her age, skills, and the depressed state of the economy in the area, it is unlikely [wife] will be able to find employment to make her self-supporting, now or in the future." This conclusion is sufficiently supported by the findings.

3. Standard of living during the marriage

The district court must consider the standard of living established during the marriage. Minn. Stat. § 518.552, subd. 2(c). The district court found that "the parties enjoyed a comfortable lifestyle" and "high standard of living." Husband argues that these findings fail to account for evidence that the parties had to sell items in garage sales to pay the bills. But the fact that the record might support findings other than those that the district court made does not make the district court's findings defective. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). The district court's findings that the parties enjoyed a high standard of living are supported by the record. Wife testified that the parties frequently ate out and took trips to gamble or attend sporting events. The

parties owned a home on a lake and collected a significant amount of personal property, including a painting valued at approximately \$20,000.

4. Duration of marriage and likelihood of wife’s return to workforce

The district court is required to consider “the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished.” Minn. Stat. § 518.552, subd. 2(d). Husband argues that when considering this factor, the district court erred by failing to recognize that wife could use her nine years of caretaking experience to become a professional caretaker. But there was no evidence at trial that wife could procure employment as a caretaker. Husband also argues that the district court erred because its finding that wife cannot procure employment is not supported by medical evidence. But whether or not medical records would assist a district court, there is no statutory requirement that the district court base its finding on medical evidence. Finally, husband argues that the district court erred by failing to explain how wife’s skills have become “outmoded.” This was also not error; the district court’s finding that wife’s skills were outmoded is supported by evidence that her computer skills have diminished.

5. Opportunities forgone by wife

The district court is required to consider “the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance.” Minn. Stat. § 518.552, subd. 2(e). When considering this factor, the district court found, among other things, that wife’s “limitations apparently led to her

early retirement.” Husband challenges that finding by arguing that it is unsupported by the record. But the record shows that wife has trouble concentrating and completing tasks, and it is reasonable for the district court to conclude that these problems led to her discharge for dissatisfactory job performance from her position at Metro Transit Authority.

6. Age and physical and emotional condition of wife

The district court is required to consider “the age, and the physical and emotional condition of the spouse seeking maintenance.” Minn. Stat. § 518.552, subd. 2(f). The district court found:

[Wife] is 57 years old and while her physical health is fair, her memory is faulty and she has difficulties completing higher level tasks. Her testimony reflected this, and showed her to be confused much of the time. She testified that both she and [husband] drank alcohol to excess during their marriage, and she believes that this is a source of mental or physical health issues for both parties. These factors also make it unlikely that [wife] will be able to find employment to make her self-sustaining.

Husband argues that the district court clearly erred by finding that wife is not competent to work yet found her competent to testify and by finding that she has problems with higher-level tasks. But a person can be a competent witness and still have difficulty acquiring and maintaining a job. Moreover, the finding that wife has problems with higher-level tasks is supported by her testimony that she has trouble concentrating and staying on task and gets dizzy.

7. The ability of husband to meet needs while meeting those of wife

The district court is required to consider “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.” Minn. Stat. § 518.522, subd. 2(g). The district court found that husband receives \$3,848.13 per month in income and that wife has fixed monthly income of \$764.36 in retirement benefits. Husband asserted that his monthly expenses are \$3,352.51. But the district court found that husband’s stated expenses are unreasonable and that husband can afford to pay wife maintenance. Husband argues that the district court’s finding that he can afford maintenance is error because of his stated expenses; he essentially asserts that his stated expenses must be adopted by the district court. But the district court is free to reject husband’s assertion of his expenses. *See Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) (observing that the district court “is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afforded reasonable grounds for doubting its credibility”).

8. The contributions of each party

The district court must consider “the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount of value of the marital property.” Minn. Stat. § 518.552, subd. 2(h). Husband argues that the district court improperly addressed this factor by addressing wife’s allegation that husband depreciated the parties’ assets. There is no merit to husband’s claim.

In sum, we conclude that the district court properly considered the statutory factors in reaching its decision to award permanent spousal maintenance to wife.

II.

Husband argues that the district court abused its discretion by ordering him to maintain life insurance in the amount of \$150,000 in order to secure his spousal-maintenance obligation. The district court “has discretion to determine whether the circumstances justifying an award of maintenance also justify securing it with life insurance.” *Maeder*, 480 N.W.2d at 680 (quotations omitted); *see also* Minn. Stat. § 518A.71 (2010) (“In all cases when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order.”).

Husband’s argument is an extension of his position that wife is not entitled to spousal maintenance and that she will be entitled to Social Security benefits soon. But as discussed, the district court’s finding that wife is entitled to spousal maintenance is not clearly erroneous. If wife does procure additional income in the future, husband can move to modify the award. *See* Minn. Stat. § 518A.39, subd. 2 (2010) (permitting modification of spousal maintenance if substantial increase in obligee’s income results in a payment that is “unreasonable and unfair”). Husband also argues that forcing him to maintain life insurance poses an unfair burden on him because his monthly expenses already exceed his income. But the cost of life insurance is already accounted for in husband’s submitted budget.

III.

Husband argues that the district court erred by finding that the painting titled “Diana Met Her Nymph Calypso” (Diana) by a Flemish master painter that the parties

acquired during their marriage is marital property. Property acquired during the marriage is presumed to be marital unless one party can prove by a preponderance of the evidence that it is nonmarital. Minn. Stat. § 518.003, subd. 3b (2010); *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Nonmarital property includes property that was acquired by one spouse “as a gift, bequest, devise or inheritance.” Minn. Stat. § 518.003, subd. 3b(a). It also includes property that was acquired by one spouse in exchange for property acquired by gift, bequest, devise, or inheritance. *Id.*, subd. 3b(c). Although we independently review the legal question of whether property is marital or nonmarital, we do so in reliance on the district court’s findings unless those findings are clearly erroneous. *Olsen*, 562 N.W.2d at 800. We also defer to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The district court found that, although both parties presented evidence that the painting is nonmarital, neither party “carried their burden to prove the painting is nonmarital.” The district court acknowledged that husband presented evidence that Diana was acquired by him as a gift from his mother and that wife presented evidence that she acquired Diana in exchange for a portion of her inheritance from her father. But the district court did not credit either party’s story. Based on its finding that neither party proved their version of the events by a preponderance of the evidence, the district court did not abuse its discretion by determining that the painting is marital property.

IV.

Husband argues that the district court erred by not addressing his claim that he has a \$30,000 nonmarital interest in the home. Before trial, husband and wife entered into a

stipulation in which they agreed that the homestead would be awarded to husband and that husband “can advance his premarital claim.” At trial, husband testified that his mother gave him the property as a gift during the marriage and that he subsequently added his wife’s name to the deed. Husband stated that he was “coerced” into adding her name to the deed. He said, “[Wife] made it a living hell for me, constantly badgering me and complaining, so I finally said, fine, and I went ahead and had that deed changed over.” In contrast, wife testified that husband added her name to the deed and “didn’t do it . . . under duress.” She also testified that she had thought her name was on the deed from the start, “but evidently it wasn’t.”

The district court ultimately awarded the homestead to husband and awarded one-half of its value to wife. The fact that the district court treated the entire homestead as marital property implies that it ruled against husband’s premarital claim. This ruling is supported by the record. The land was acquired during the marriage, so it is presumed to be marital. Minn. Stat. § 518.003, subd. 3b. The district court was not required to accept husband’s testimony that the land was a gift to him or his testimony that wife coerced him into converting the deed to one in joint tenancy.

V.

Husband argues that the district court erred by ordering him to pay all of the parties’ debt. The district court’s discretion in dividing debts is the same as its discretion in dividing assets. *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. App. 1984). This court must affirm the allocation if “it has a reasonable and acceptable basis in fact and principle.” *Id.* (quotation omitted). The district court reasoned that “it is not possible to

find [that the parties' debt] is other than a marital debt.” And “since [husband] is being awarded substantially more real property, it is just and equitable that [he] be ordered to pay the [debt].” The district court also found that “[husband] must also pay and hold [wife] harmless from the \$10,000 debt to his mother, because it was incurred following the separation and went to his legal fees, at least in part, and did not benefit [wife].” Based on these findings, the district court’s allocation of debt has a reasonable basis. Husband points to evidence in the record that wife incurred debt prior to the separation and that the loan he took from his mother was to pay that debt. But the district court found that the record does not support husband’s assertion. The fact that the record might support findings other than those that the district court made does not make the district court’s findings defective. *Vangsness*, 607 N.W.2d at 474.

VI.

Husband argues that “irregularities” in the proceedings amounted to an abuse of the district court’s discretion, asserting that the district court should have found that he owned the Diana painting. He also contends that his attorney should have been given the time that she reserved in lieu of making an opening statement, despite the fact that she never appeared to request such time, and that wife’s attorney inappropriately testified by telling the district court the contents of an already admitted exhibit. After carefully reviewing the trial transcript, we conclude that there is no merit in husband’s contentions.

Affirmed.