STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0196

In re the Marriage of:
Tamara C. Rosenthal, petitioner,
Appellant,

vs.

Andrew J. Rosenthal,
Respondent.

Filed October 29, 2012
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-FA-10-4035

Tamara C. Rosenthal, Edina, Minnesota (pro se appellant)

Charles M. Goldstein, Goldstein Law Office, P.A., Golden Valley, Minnesota (for respondent)

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

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

HALBROOKS, Judge

In this pro se appeal from a dissolution judgment, appellant claims that the district court erred in its (1) division, characterization, and allocation of property, assets, and debts the parties held during their marriage; (2) findings and conclusions concerning the

parties' incomes and respondent's child-support obligations; (3) discovery rulings; and (4) determinations concerning the occupancy and sale of the parties' homestead. We affirm.

FACTS

The parties were married in 1986 and divorced on November 29, 2011. At the time of the dissolution, the parties had one minor child. All of the litigated issues were financial in nature. The valuation date of the parties' property was June 28, 2010, the date of the initial case-management conference. On August 1, 2011, appellant moved for child support, retroactive to May 2010, when appellant and the parties' daughter moved out of the family home, and for sanctions against respondent for allegedly failing to comply with appellant's discovery requests. Specifically, appellant contended that respondent dissipated approximately $139,000 over the course of their marriage and subsequently refused to disclose related information (in the form of documents) during discovery.

Following a day-long trial, the district court issued its dissolution judgment and decree. Concerning the child support that respondent had paid to appellant between the date that appellant and the child left home and the trial, the district court found that respondent "has been voluntarily paying familial support during the parties' separation in the amount of $1,733 per month." Because of these payments, the district court denied appellant's motion for retroactive child support.

In its decree, the district court observed that at trial, respondent "provided a significant amount of testimony about transferring debt balances and taking loans from

retirement accounts during the parties' marriage because the parties continuingly [sic] spent above their means." Respondent testified "that his efforts in juggling the family debt were to keep the parties from losing their home and declaring bankruptcy." In his efforts to reduce the debt, respondent "made several credit card balance transfers in an effort to reduce the high interest debt" and "borrowed against his retirement accounts to reduce his credit card [balances] so the parties might qualify for mortgage refinancing."

The district court further noted that despite the extent of respondent's efforts to avoid bankruptcy during the marriage by transferring balances and taking loans, "the extent of the parties' debt over the course of their marriage came as a surprise to [appellant]." In the district court's opinion, the amount of debt remaining at the time of the divorce "led [appellant] to conclude that [respondent] had dissipated a substantial amount of marital assets." The district court found that the parties had outstanding balances on five separate credit-card accounts, for a total debt of approximately $23,000. The district court further observed that in the course of attempting to prove that respondent had dissipated marital assets, appellant "went so far as to spend approximately $5,000 for computer data recovery services in the hopes to find evidence to support her theories."

Appellant asserted at trial that respondent had obtained approximately $139,000 in loans from various retirement accounts, home-equity lines of credit and credit cards over six to eight years of the parties' marriage and that she was entitled to a cash settlement related to these loans. Appellant also argued that respondent's refusal to adequately cooperate in discovery should excuse her from any responsibility for repayment of the

debt associated with the loans. But the district court credited respondent's testimony that he "produced all documentation regarding the parties[']debt in his possession . . . that he printed and produced all statements that were available to him online at no cost, and that he signed authorizations for release of information for all of [the] credit card accounts requested." The district court further stated that respondent "complied with all reasonable requests with respect to producing documents related to [the parties'] debt," and noted that "[t]he only documentation respondent did not produce was copies of statements that were only available at the cost of $20-$25 per statement." Moreover, the district court observed that appellant "admitted having received the authorizations [to obtain information about debt allegedly accumulated by respondent] signed by [respondent] over six months prior to the trial date [and] testified that she sent the releases to obtain the information but never heard back from any of the creditors."

At the time of the dissolution, the parties owned a home in Minnetonka. Appellant and the parties' minor daughter moved out of the home in May 2010, and the parties agreed to place the home on the market and to list it as "for sale by owner." In the interim, respondent resided in the home and made the mortgage and other payments. In September 2010, appellant requested that she be granted exclusive occupancy of the home until the sale; the district court denied the request. At a May 2011 hearing, appellant's attorney stated that the parties had decided to hire a realtor to sell the house. But at trial, appellant asked again that she be allowed to occupy the home and that she, and not a realtor, be allowed to sell the home. The district court denied the request, and

ordered that the home be sold by a realtor with the net proceeds divided between the parties.

The district court awarded appellant $1,500 in monthly spousal maintenance. The award was based upon appellant's potential gross annual income, which a vocational assessment determined to be between $25,000 and $58,000, and upon respondent's gross annual income of approximately $100,000. The district court did not use appellant's actual gross annual income of $9,360 from her part-time retail job. The district court further awarded appellant $754 a month in child support, to begin on December 1, 2011, and, as noted above, denied appellant's motion for child support retroactive to June 2010 on the grounds that respondent had been voluntarily paying appellant monthly familial support in the amount of $1,733 since May 2010.

The district court denied appellant conduct-based attorney fees in connection with respondent's alleged failure to produce adequate documentation concerning debt accumulated during the marriage and assets respondent obtained by means of various credit lines. The district court credited respondent's testimony that he frequently transferred debt balances and took loans out of retirement accounts during the marriage because the parties continuously lived above their means and were in frequent need of extra money to cover their expenses. Respondent also testified that he encouraged appellant to become involved in managing the parties' finances by monitoring their checking and credit card accounts online, but that appellant was unwilling to do so.

Concerning the marital debt and appellant's theory that respondent had dissipated a substantial amount of the parties' marital assets, the district court made a specific

finding that appellant had "expended an extraordinary amount of energy pursuing this theory and attempting to reconstruct that debt, including loans taken from respondent's retirement accounts, as far back as 2004." The district court also found that amounts owing on credit cards used by respondent, loans taken against respondent's 401(k) accounts, and home-equity lines of credit were marital debts for which respondent was responsible.

In addition, the district court made several discovery rulings, addressing issues arising from appellant's theory that she was unable to prove her case because respondent dissipated marital assets and then concealed the dissipation by refusing to produce relevant documents during discovery. The district court found that, except for several financial statements that cost up to $25 each to obtain, respondent had produced all the discoverable evidence requested by appellant and testified that he would have produced the statements in question if appellant had paid for them. The district court declined to sanction respondent for allegedly refusing to give appellant the passwords to various bank accounts.

The district court found that appellant's claimed monthly living expenses of approximately $6,738, which amounted to over 80% of respondent's gross monthly income, were "overstated and unreasonable" and reduced appellant's reasonable monthly living expenses to approximately $4,000. The district court found that respondent's claimed monthly living expenses of approximately $4,598 (excluding the $1,733 in voluntary monthly child support) was reasonable.

The district court also allocated the parties' debt, assets, and personal property. The district court awarded appellant an automobile, the parties' 2009 tax refund, one-half of the parties' joint US Bank account, all other assets under her control, and all tangible personal property in her possession. The district court awarded respondent the parties' second car, the other one-half of the US Bank account, and all tangible personal property in his possession. The district court ordered respondent to pay debts owing on five separate credit lines—the debts whose existence surprised appellant and led her to believe respondent had dissipated marital assets—the total value of which was approximately $23,000. The district court also determined that respondent's 2010 bonus, worth approximately $14,000, was a marital asset and found that respondent had paid $3,000 of it to appellant. This appeal follows.

D E C I S I O N

I.

Appellant challenges several of the district court's determinations concerning the parties' finances, including the allocation and characterization of the property, assets, and debts the parties accumulated during their marriage. Whether property is marital or nonmarital is a legal question subject to de novo review, but our analysis of this issue relies upon the district court's underlying findings unless those findings are clearly erroneous. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). The division of marital property in a marriage-dissolution proceeding intends to be equitable, but not necessarily equal. Minn. Stat. § 518.58, subd. 1 (2006); *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). A district court generally has broad discretion in dividing property during a

dissolution action and will not be reversed unless it abuses this discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989). "We 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 v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). But if the division of property is "against logic and the facts on record . . . this court will find that the [district] court abused its discretion." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Detailed findings regarding the division of property are not necessary, but the findings must demonstrate consideration of the relevant statutory factors, express a rationale for the chosen division of assets, and allow for effective appellate review. *Dick v. Dick*, 438 N.W.2d 435, 437 (Minn. App. 1989); *Vinnes v. Vinnes*, 384 N.W.2d 589, 592 (Minn. App. 1986).

Appellant argues that the district court erred when it failed to find that a $14,000 bonus that respondent received in 2010 was a marital asset that should be divided evenly between the parties. A bonus that provides a dependable source of income may be considered income. *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987). But a bonus is a marital asset when receipt of that bonus is not guaranteed or depends on company profitability. *See Haasken v. Haasken*, 396 N.W.2d 253, 261 (Minn. App. 1986) (holding that it was not error for the district court to conclude that husband's bonus was not income when it was subject to employer's profitability). When a bonus earned during marriage is a marital asset, it is divisible upon dissolution. *In re Marriage of Steffan*, 423 N.W.2d 729, 733 (Minn. App. 1988). That division need not be mathematically equal; it need only be just and equitable. *Lynch*, 411 N.W.2d at 266.

Here, appellant's reading of the dissolution decree is imprecise. The district court found that respondent's 2010 bonus was a marital asset (and not income). This finding was based on the district court's observation that the bonus was paid as a function not of respondent's performance but of his employer's profits. The district court was not required, as appellant argues, to then divide that asset equally between the parties.

In its decree, the district court ordered respondent to pay the entirety of the couple's marital debt incurred on five credit cards. Appellant had no similar obligation. And the district court found that respondent had voluntarily paid appellant $1,733 per month from May 2010 to the time of trial and had already paid $3,000 of his 2010 bonus to appellant. In light of the full context of the court's distribution of the parties' assets, property, and debt, on this record, we cannot say the district court abused its discretion in failing to award appellant an additional $4,000 of respondent's 2010 bonus.

Appellant's objection to the district court's allocation of marital debt again reflects a misconstruction of the dissolution decree. She argues that she should not be responsible for repaying debts owed in connection with the 401(k) and home-equity loans because she had no knowledge of the loans when respondent obtained them. "A [district] court's apportionment of marital debt is treated as a property division." *Berenberg v. Berenberg*, 474 N.W.2d 843, 848 (Minn. App. 1991), *review denied* (Minn. Nov. 13, 1991). The district court noted the presumption that debt accrued during the marriage is marital, but made respondent responsible for the debt's repayment.

The district court generally divided the marital property evenly and made findings concerning each party's income and reasonable monthly expenses. It is true that

respondent's retirement accounts, which he was awarded, totaled approximately $50,000 more than appellant's. But it is also true that respondent was made responsible for all of the parties' debt. On this record, the district court did not abuse its discretion in concluding that the property settlement in its order "is fair and equitable under the circumstances."

A final issue related to the parties' finances during the marriage concerns the origin of approximately $139,000 in loans that respondent obtained during the marriage. Appellant argues that the district court's finding that respondent accessed the funds by means of credit cards and home-equity loans constituted an abuse of discretion because the money "can be clearly traced to just loans from [r]espondent's 401(k)" account. She contends that she is entitled to a cash property settlement related to the loans. Because the district court found that respondent did not dissipate the parties marital assets and ordered respondent to repay the funds, appellant's argument is without merit.

II.

Appellant challenges the district court's determination of the parties' incomes for the purpose of establishing child support. She argues specifically that the district court abused its discretion by using 2010 income information from respondent to determine his child-support obligation and by determining her child-support obligation by using her potential income instead of her actual income.

Appellant does not explain the significance of her assertion that the district court abused its discretion by allegedly using 2010 income information from respondent to determine child support. Nor does she provide any argument in support of the assertion.

And the findings of fact in the dissolution judgment and decree do not state that the parties' child-support obligations were calculated on the basis of 2010 income information. But even if they were, that fact alone would not constitute an abuse of the district court's discretion. On this record, we cannot conclude that the district court abused its discretion by using respondent's 2010 income information.

We review the district court's decisions concerning child support for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). A ruling "that is against logic and the facts on record" constitutes an abuse of discretion, *Rutten*, 347 N.W.2d at 50, as does a misapplication of the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). We will not reverse the district court's findings as to a parent's income unless they are clearly erroneous. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005).

Here, the district court found that "[respondent's] parental income for determining child support is $6,792 and [appellant's] [parental income for determining child support] is $2,280." Respondent's parental income was calculated as his gross monthly salary, $8,292, less the $1,500 he gave appellant each month as maintenance. Appellant's monthly parental income was calculated as $2,280, based on her gross monthly income of $780 from her part-time retail job and the $1,500 in child support she received from respondent. The district court then calculated the parties' combined basic support obligation for one child, determined respondent's share of that amount, adjusted the result to reflect a parenting-time adjustment, and concluded that respondent's basic support obligation is $754 a month.

As for the potential income imputed to appellant, if a party is voluntarily underemployed, the district court "must" calculate child support based on that parent's potential income. Minn. Stat. § 518A .32, subd. 1 (2010). In this case, a certified rehabilitation counselor conducted a vocational assessment of appellant. Based on the expert's conclusions, the district court found that appellant "has the ability to contribute much more to her own support than she currently is." At trial, appellant testified that she is capable of earning more than the $9 an hour she was making at her retail job and agreed that she could work full-time. The district court did not abuse its discretion by using appellant's potential income as a basis for establishing her child-support obligation.

Appellant also contends that the district court erred by characterizing as "familial support" the monthly payments of $1,733 that she received from respondent between the date that she and the parties' child left the family home in May 2010 and the time of trial. Appellant contends that the voluntary monthly payments were in fact spousal maintenance and were designated as such in an October 2010 district court order.

A district court has broad discretion when determining a spousal-maintenance obligation. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). We will not disturb the district court's decision as to the amount of spousal maintenance ordered absent an abuse of discretion. *Id*. And unless the district court's findings of fact in support of a spousal-maintenance obligation are clearly erroneous, they will not be set aside on appeal. *Bourassa v. Bourassa*, 481 N.W.2d 113, 115 (Minn. App. 1992).

Appellant is correct that the district court, in its October 14, 2010 order, stated that "[r]espondent is hereby ordered to pay [appellant] on a temporary basis spousal

maintenance in the amount of $1,733 per month." In a November 2011 order, the district court stated that "[r]espondent has been voluntarily paying familial support during the parties' separation in the amount of $1,733 per month." Appellant maintains that the difference in terminology—between spousal maintenance and familial support—is significant because characterizing the payments as familial support creates the false impression that they included spousal maintenance as well as child support, when in fact they did not. Although appellant is correct that the district court's terminology changed, we disagree with appellant's contention that the district court's characterization constitutes clear error warranting reversal. The monthly child support ordered by the district court in the decree was $754 and the monthly maintenance $1,500, meaning that appellant's familial support—that is, the sum of support and maintenance (less $38 for the child's medical insurance)—was $2,216, or approximately $500 more than the $1,733 familial support that she received monthly from respondent after the separation but before the divorce. In light of the record in its entirety and the temporary nature of the support in question, we conclude that the district court did not clearly err by altering the characterization of the earlier payments from maintenance to familial support.

III.

Appellant argues that the district court abused its discretion by denying her motion for child support retroactive to the date that the parties' minor child began living with appellant full-time. "A district court order regarding child support will be reversed only where a district court abused its discretion by resolving the matter in a manner that is against logic and the facts on the record. Misapplying the law is an abuse of discretion."

Bauerly v. Bauerly, 765 N.W.2d 108, 110 (Minn. App. 2009) (citation omitted). The district court can award retroactive child support in the final dissolution decree. *See Korf v. Korf*, 553 N.W.2d 706, 710 (Minn. App. 1996) (holding that district court may, in final decree, award retroactive child support to time parties separated but before action commenced under chapter 518). The district court, in fashioning the retroactive award, may consider any payments made since the time of the parties' separation. *In re J.M.K.*, 507 N.W.2d 459, 461 (Minn. App. 1993).

Here, the district court denied appellant's request for retroactive child support on the ground that respondent had been voluntarily paying familial support. Because we concluded that the district court did not abuse its discretion by characterizing the support that respondent paid between May 2010 and the August 2011 trial as familial maintenance, the district court did not abuse its discretion by denying appellant's motion for retroactive child support.

IV.

Appellant challenges several of the district court's discovery rulings, including the court's refusal to sanction respondent for various alleged discovery violations. The district court has broad discretion in granting or denying discovery requests. *Erickson v. MacArthur*, 414 N.W.2d 406, 407 (Minn. 1987). "Absent a clear abuse of discretion, [the district] court's decision regarding discovery will not be disturbed." *Id.* Nor will we disturb the district court's decision on sanctions absent an abuse of discretion. *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 787 (Minn. App. 2003).

First, appellant contends that the district court should have sanctioned respondent for failing to adequately cooperate in discovery. Appellant argues that by withholding documents concerning the parties' marital debt and respondent's alleged dissipation of marital funds, respondent prevented her from proving her case. But the district court found, in part based on respondent's testimony, that respondent produced all the documents regarding the parties' debt in his possession with the exception of those documents that would cost more than $20 apiece to obtain. The district court also found that despite spending approximately $5,000 on data recovery, appellant was unable to prove that respondent had dissipated assets and was hiding evidence related to the parties' debt. The district court did not abuse its discretion when it found that respondent testified credibly and that there was no basis to grant appellant conduct-based attorney fees in connection with the alleged discovery violations.

Second, appellant argues that the district court should have sanctioned respondent for failing to provide her with the passwords to various bank accounts so that she could inspect them for evidence of dissipation. Respondent testified that he had no objection to giving appellant the information contained in the accounts, but he was unwilling to disclose the passwords. The district court's refusal to sanction respondent in connection with the passwords was within its discretion.

Third, appellant contends that the district court abused its discretion by not timely addressing her August 1, 2010 motion for retroactive child support and for sanctions against respondent in connection with his alleged refusal to cooperate with discovery. The district court found that by the time of trial (in August 2011) these issues had been

addressed and were therefore moot. This finding is not clearly erroneous. The district court credited respondent's testimony that he would have produced the documents if appellant had paid for them, and the record indicates that respondent's attorney informed appellant's attorney by letter of the cost of production, but received no response. On this record, we cannot conclude that the district court abused its discretion in ruling that respondent complied with all reasonable discovery requests and that the request for the $20 documents was unreasonable.

V.

Appellant objects to two of the district court's determinations concerning the parties' homestead. First, she challenges the district court's denial of her request that she and the parties' child be allowed to occupy the home pending its sale, which the parties had agreed upon in May 2010. The district court denied the request by order dated October 14, 2010.

Concerning occupancy of the homestead, Minn. Stat. § 518.63 (2010) provides that

> [t]he court, having due regard to all the circumstances and the custody of children of the parties, may award to either party the right of occupancy of the homestead of the parties, exclusive or otherwise, upon a final decree of dissolution or legal separation or proper modification of it, for a period of time determined by the court.

Appellant argued that it was in the best interests of their child, and consistent with her history as a homemaker, to allow her to occupy the home. But the child was 16 when appellant and the child moved out in May 2010. And respondent, who remained in the

house, was the one making the mortgage and insurance payments. Further, appellant testified that while she wanted "a house" to live in, she didn't particularly need the parties' homestead. Under these circumstances, the district court acted within its discretion by declining to award appellant occupancy of the house, pending its sale.

Second, appellant maintains that the district court abused its discretion by ordering that a realtor be appointed to sell the parties' homestead. The parties originally agreed to list the house as "for sale by owner." But in light of subsequent disagreements about which realtor to use, the listing agreement, and who should occupy the house pending sale, the district court determined that a realtor should be retained to supervise the sale, the net proceeds of which would be divided equally between the parties.

Under Minn. Stat. § 518.58, subd. 1 (2010), the district court is to make "a just and equitable division of the marital property of the parties." The district court should be guided by equitable considerations in distributing rights and liabilities and has broad discretion in such distribution. *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981). We conclude that the district court did not abuse its discretion by ordering that the parties use a realtor. *See Sullivan v. Sullivan*, 374 N.W.2d 517, 519 (Minn. App. 1985) (approving the district court's decision to have an uninvolved realtor sell the marital home because the parties' disagreements about the price and other terms of the sale of the home were delaying the sale and increasing the likelihood that the terms of the sale might be unfair to both parties).

Affirmed.