STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2211

In re the Marriage of:
Edward F. Lang, petitioner,
Respondent,

vs.

Jessica Johnson Lang,
Appellant.

Filed December 24, 2012
Affirmed
Stauber, Judge

Stearns County District Court
File No. 73FA102454

John T. Lund, Lund, Kain & Scott, P.A., St. Cloud, Minnesota (for respondent)

Douglas D. Kluver, Kluver Law Office and Mediation Center, P.L.L.C., Montevideo, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

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

STAUBER, Judge

Appellant challenges the district court's characterization of certain parcels of real property as respondent's nonmarital property and argues that the district court abused its

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

discretion in dividing the parties' personal property. Because the district court did not err by determining that the real property was respondent's nonmarital property and the division of the parties' personal property does not constitute an abuse of discretion, we affirm.

FACTS

Appellant Jessica Johnson Lang and respondent Edward Floyd Lang were married in 1995 and are the parents of two minor children. The parties, either individually or jointly, own three parcels of real property: an 8.86-acre parcel, an 18.75-acre parcel, and a 39.85-acre parcel. While the 8.86-acre parcel is titled in both appellant and respondent's names, the two larger parcels are titled solely in respondent's name.

The 8.86-acre parcel, along with the 39.85-acre parcel, was originally part of a larger tract of real property that was gifted to respondent and his father, Floyd Lang, by respondent's paternal grandmother in 1991. Floyd Lang later conveyed his interest in the larger tract to respondent in July 1999. In order to finance the construction of a home, the parties borrowed $105,000. As a financing condition, respondent sought and received a variance from the Stearns County Board of Adjustment, allowing him to divide the larger tract into the 8.86- and 39.85-acre parcels. The variance, however, prohibited ownership of the 8.86-acre parcel from being transferred separately from the 39.85-acre parcel. With the financing and variance approved, respondent split off the 8.86-acre parcel, in October 1999, conveying it to himself and appellant, specifically noting on the deed that it was "given for mortgage purposes." The parties then constructed and have maintained their home on the property.

The 18.75-acre parcel was conveyed to respondent by warranty deed in March 2006. According to testimony before the district court, no marital funds were used to acquire the property, and in fact the property had been purchased by Floyd Lang who then conveyed the property to respondent.

The 39.85-acre parcel is the remainder of the once-larger tract gifted jointly to respondent and Floyd Lang, as discussed above. After transferring his interest in this property to respondent, Floyd Lang moved an old farmhouse onto the property, occupying it as his residence. There is no evidence in the record indicating that Floyd Lang transferred his interest in the property in exchange for respondent allowing him to reside on the property, nor does the record indicate that any marital funds were expended relative to the relocated farmhouse.

In March 2010, respondent petitioned for dissolution of the parties' marriage. Following a series of motions not relevant to this appeal, the matter came for trial in the summer of 2011. After a three-day trial, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree. The district court determined that all three real-estate parcels were respondent's nonmarital property, although the house constructed on the 8.86-acre parcel was marital property. The district court also determined that "each of the parties has in their possession personal property, including but not limited to household furnishings, sports equipment and decorative items, of essentially equal value" and awarded the parties "all right, title and interest in and to the personalty in his/her respective possessions."

Appellant now challenges the district court's determinations that the parcels of real property are respondent's nonmarital property and argues that the district court's distribution of personal property is inequitable.[1]

D E C I S I O N

I.

On established facts, the characterization of property as marital or nonmarital is a question of law that an appellate court reviews de novo. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003). But a reviewing court defers to the district court's underlying findings of fact unless the reviewing court is left with a definite and firm conviction that a mistake has been made by the district court. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997).

Regardless of whether title to real property is held individually or in some form of coownership, property acquired during a marriage is presumptively marital property. Minn. Stat. § 518.003, subd. 3b (2012). Though such property is presumptively marital, a party spouse may overcome this presumption if he or she demonstrates by a

[1] Appellant's notice of appeal and statement of the case identified nine issues, including four pertaining to various evidentiary rulings by the district court. Respondent filed a notice of related appeal approximately two weeks later. Respondent moved to dismiss appellant's arguments concerning the district court's evidentiary rulings, arguing that the issues were not properly before this court due to the lack of a post-trial motion, and we granted the motion to dismiss the appeal in part. Appellant's brief was filed just over one week after we granted respondent's motion. Respondent's brief addresses the arguments raised in appellant's brief but does not raise any issues identified in his notice of related appeal. Respondent has not formally withdrawn his notice of related appeal, but his failure to raise any such issues in his brief precludes appellate review of the issues. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating issues not briefed on appeal are waived). The cross appeal is therefore no longer of any consequence, but is noted here to explain the existence of the non-withdrawn notice of related appeal.

preponderance of the evidence that the property is nonmarital. *Antone v. Antone*, 645 N.W.2d 96, 101 (Minn. 2002). A party spouse can establish property as nonmarital by, among other possibilities, showing that the property was acquired as a gift made by a third party to only one spouse, acquired before the marriage, or acquired in exchange for nonmarital property. Minn. Stat. § 518.003, subds. 3b(a)-(c). "In order to maintain its nonmarital character, nonmarital property must be kept separate from marital property or, if comingled, must be readily traceable" to its nonmarital origins. *Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993). But given the preponderance-of-the-evidence standard in rebutting the marital-property presumption, the stringency of the evidence needed to trace property back to its purported nonmarital origins is not an unduly strict one. *Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997). We review the district court's determination as to each parcel separately.

A. 8.86-acre Parcel

Appellant argues that the district court erred by characterizing the 8.86-acre parcel partially as respondent's nonmarital property (the real estate) and partially as the parties' marital property (the homestead). As an initial matter, appellant's argument that this parcel is marital property appears to be based, at least in part, on the fact that respondent conveyed the property to himself and appellant as joint tenants. But "the state of the title will not determine whether property acquired during the marriage is marital or nonmarital property." *Montgomery v. Montgomery*, 358 N.W.2d 169, 172 (Minn. App. 1984). "[M]erely transferring title from individual ownership to joint tenancy does not transform nonmarital property into marital property." *Id.* Because respondent received the property

before the marriage in joint ownership with Floyd Lang, who later transferred his interest in the property solely to respondent, the district court did not err by classifying the 8.86-acre parcel as respondent's nonmarital property.

It is undisputed, however, that the value of the 8.86-acre parcel increased as a result of the construction of the home on the property. Appreciation in the value of a nonmarital asset is marital to the extent that marital effort—defined as "the financial or nonfinancial efforts of one or both spouses during the marriage"—has been expended to generate the appreciation. *Baker v. Baker*, 753 N.W.2d 644, 645-46 (Minn. 2008). Here, the construction of the home on the 8.86-acre parcel was marital effort; the parties took out a mortgage against the property to finance construction of the home and related improvements and there is no evidence in the record that the debt secured by the mortgage was repaid with nonmarital funds. Any increase in the value of the 8.86-acre parcel due to marital effort is therefore marital.

The record contains an appraisal of the property that concludes that the improved 8.86-acre parcel is valued at $240,000; $81,000 attributable to the land and $159,000 attributable to the improvements. The district court found the appraisal credible and found that the value of the land, separate from the home and related improvements, was $81,000. While appellant challenges the credibility of the appraisal, appellate courts give deference to the district court in assessing credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Determining the specific value of an asset is a finding of fact, and therefore a district court's valuation of an asset "shall not be set aside unless clearly erroneous on the record as a whole." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn.

2001) (quotation omitted). Because the district court's valuation of the homestead property is supported by the record, it is not clearly erroneous.

As found by the district court, the $159,000 value of the home and related improvements is the parties' marital property, while respondent retains an $81,000 nonmarital interest attributable to the current value of the real estate. Appellant also assigns error to the district court subtracting the mortgage from the equity in the home and improvements as opposed to the equally encumbered land. But in determining whether property is marital or nonmarital, the focus is not what property is encumbered by a marital mortgage, but rather what the proceeds from the loan were used for. *See* Minn. Stat. § 518.003, subd. 3b (defining marital property). Because it is undisputed that the $105,000 loan secured by the mortgage was used for the construction of the marital home on land already owned by respondent, the district court did not err by subtracting the mortgage solely from the marital portion of the property. *See Kerr v. Kerr*, 770 N.W.2d 567, 570 (Minn. App. 2009) (holding that "nonmarital interest is not lost or decreased by increasing the marital debt secured by a homestead").

B. 18.75-acre Parcel

Because respondent acquired title to the 18.75-acre parcel in 2006, the property is presumptively marital. *See* Minn. Stat. § 518.003, subd. 3b ("All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property."). Respondent could overcome this presumption if he established the property's nonmarital character by a preponderance of the evidence. *Olsen*, 562 N.W.2d at 800. Appellant challenges the district court's conclusion that the 18.75-acre parcel was

respondent's nonmarital property, arguing that respondent failed to meet his burden of proof and the district court improperly placed the burden on her.

Both respondent and Floyd Lang testified that no marital funds were used to acquire the 18.75-acre parcel. Both testified that the property had been purchased by Floyd Lang, who had then conveyed the property to respondent without consideration. The district court specifically found that this testimony was credible, and we defer to this credibility determination. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (stating that this court defers to a district court's credibility determinations).

Oral testimony, if believed, may be sufficient to trace a nonmarital interest in property. *Risk ex rel Miller v. Stark*¸ 787 N.W.2d 690, 697 (Minn. App. 2010) (citing *Doering v. Doering*, 385 N.W.2d 387, 391 (Minn. App. 1986)), *review denied* (Minn. Nov. 16, 2010). This is directly contrary to appellant's suggestion that "evidence required to overcome the presumption[] must have existed contemporaneous[ly] with the acquisition." Appellant's assertion to the contrary notwithstanding, respondent and Floyd Lang testified that the 18.75-acre parcel was purchased by Floyd Lang. Gift-tax returns, closing documents, bank records, attorney records, and other documentary evidence that appellant suggests "should have been readily available" are not required to rebut the marital-property presumption. Given the district court's unique opportunity to observe the parties and to appraise their testimony, credibility, general character, and disposition, this testimonial evidence is sufficient to rebut the marital-property presumption with regard to the 18.75-acre parcel. *See Kottke v. Kottke*, 353 N.W.2d 633, 636 (Minn. App. 1984) (stating that a spouse seeking to trace an asset to a nonmarital source is not held to

a "strict tracing" standard, but need only show by a preponderance of the evidence that the asset was "acquired in exchange for" nonmarital property), *review denied* (Minn. Dec. 20, 1984).

Appellant also asserts that the district court impermissibly shifted the burden by requiring "appellant to prove that the [18.75]-acre [parcel] was purchased with marital funds." The district court's order does note that there is no evidence in the record that marital funds were used to purchase the property; but when the order is read in its entirety it is clear that the district court correctly placed the burden of proof on respondent and found that he "met his burden of proof by showing by a preponderance of the evidence that the 18.75 acre tract is [his] nonmarital property." Despite commenting on the lack of evidence that the property was marital, the district court applied the correct burden of proof to rebut the presumption. The district court therefore did not err by concluding that the 18.75-acre parcel was respondent's nonmarital property.

C. 39.85-acre Parcel

Appellant concedes that the district court correctly classified the 39.85-acre parcel as respondent's nonmarital property, but she argues that the increase in value resulting from Floyd Lang moving a house onto the property was "an in kind prepayment of rent, in which she also would have had a marital interest." Appellant argues that the increase in value of the 39.85-acre parcel was "due to respondent's entrepreneurial decision to allow his father to erect a residence on an undeveloped portion of his land," that the increase in value was therefore "active appreciation," and is as such marital property.

"[C]entral to the classification of appreciation of nonmarital property as marital or nonmarital is the principle that effort expended to generate property during the marriage—that is, 'marital effort'—should benefit both parties rather than one of the parties to the exclusion of the other." *Baker v. Baker*, 753 N.W.2d 644, 651 (Minn. 2008). In cases where the appreciation of nonmarital property has been found to be marital, "significant effort that otherwise could have been devoted to the generation of marital property was diverted and applied toward nonmarital property instead." *Id.* In *Faus v. Faus*, for example, the supreme court affirmed a district court's conclusion that a homestead that had been purchased with nonmarital assets was nonetheless marital property because a significant portion of the homestead's value came from improvements made by the couple during the marriage. 319 N.W.2d 408, 412 (Minn. 1982). But a basic precept of this analysis is that "[o]nly the financial and nonfinancial efforts *of the spouses themselves* are relevant to the assessment of marital effort. *Baker*, 753 N.W.2d at 646 (emphasis added).

Here, it is undisputed that the 39.85-acre parcel increased in value during the parties' marriage as a result of Floyd Lang moving a house onto the property. But the district court found no evidence that the parties used marital funds in regards to the house, and specifically found that Floyd Lang paid for the excavating work. And while the court found that respondent assisted with some of the construction work, it found "no evidence that this contributed significantly to the value of the property." The district court also found no evidence in the record that Floyd Lang's transfer of his interest in the

property was an in-kind payment of rent or a bargained-for exchange allowing him to live on the property.

As such, the appreciation of the 39.85-acre parcel was not the result of marital effort; rather, the appreciation is the result of Floyd Lang's "extramarital" effort in the construction of the house on the parcel. On this record, the district court did not err by designating the entire 39.85-acre parcel—both original value and appreciation—as respondent's nonmarital property.

II.

In a marriage-dissolution proceeding, all marital property is subject to an equitable—but not necessarily equal—division. Minn. Stat. § 518.58, subd. 1 (2012); *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, and its decision will not be reversed on appeal absent an abuse of this discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989). A reviewing court "will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though [the reviewing court] might have taken a different approach." *Antone*, 645 N.W.2d at 100.

Here, the district court found that both parties lacked credibility as to their respective claims to personal property and in the values assigned thereto. Therefore, with very limited exceptions, the district court found "that each of the parties has in their possession personal property, including but not limited to household furnishings, sports equipment and decorative items, of essentially equal value." As such, the district court awarded each party "all right, title and interest in and to the personalty in his/her

respective possessions . . . free and clear of any claim of right, title, or interest in the other."

While detailed findings regarding the division of property are not necessary, 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). Here, while a more-detailed explanation of the rationale for the division of the assets would have been preferable, we conclude that the district court did not abuse its discretion in dividing the marital personal property.

Finally, appellant argues that the district court's finding that various items of personal property belong to the parties' minor children was impermissible because the children "are minors and cannot legally hold title to property." As such, appellant argues that these items "are actually gifts acquired by the parties during their marriage" and should have been divided with the rest of the marital estate. But appellant makes this assertion without any citation to legal authority, and has therefore waived any argument on the issue. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971) (stating that an assignment of error based on mere assertion and not supported by legal authority is waived unless prejudicial error is obvious on mere inspection). And even if the district court did err by finding that the items were the property of the children, the total value of such property was $2,600. Given that the marital estate has a net value of over $130,000, this $2,600 is insufficient to render the distribution inequitable. *See Ruzic v. Ruzic*, 281 N.W.2d 502, 505 (Minn.

1979) (concluding that the district court's division of marital property need not be mathematically equal, but need only be just and equitable); *cf. Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis error).

Affirmed.