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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1265**

In re the Marriage of:
Stephanie Jan Claybaugh, n/k/a Stephanie Jan Hoppe, petitioner,
Appellant,

vs.

Robert Joseph Claybaugh,
Respondent.

**Filed April 8, 2013
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge**

Blue Earth County District Court
File No. 07FA111558

Carrie L. Huffer, Huffer Law Office, Nicollet, Minnesota (for appellant)

Robert Claybaugh, Janesville, Minnesota (pro se respondent)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Crippen, Judge.*

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

STONEBURNER, Judge

In this dissolution action, appellant wife challenges the portions of the dissolution
judgment that (1) awarded her nonmarital property consisting of a GMC truck and

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

household furnishings to respondent husband and (2) ordered her to return or pay husband for tools not shown by the evidence or found by the district court to be in wife's possession. Wife also challenges the district court's denial of her motion to remove for gender bias, but does not seek a new trial.

Because the district court abused its discretion by (1) awarding the GMC truck to husband without finding that such award was required to avoid unfair hardship and (2) by ordering wife to return or pay for tools absent evidence or a finding that she possessed or disposed of the tools, we reverse and remand for entry of an amended judgment awarding the GMC truck to wife and eliminating any obligation of wife to return or pay for husband's tools. Because, pursuant to Minnesota Statutes, section 518.58, subdivision 1 (2012), the district court has the discretion to award household goods and furniture of the parties to either party, regardless of whether the items are nonmarital property, we affirm the district court's award of furniture purchased with wife's nonmarital funds to husband.

Because we are not remanding this matter for any discretionary rulings by the district court, we conclude that wife's arguments on the issue of bias are moot. But even if not moot, we conclude that the district court did not abuse its discretion by denying the motion to remove.

FACTS

Appellant Stephanie Hoppe and respondent Robert Claybaugh were married in 2007. Each party has children, but there are no children of this marriage.

In December 2010, Hoppe inherited approximately \$282,700 from her grandmother. She deposited this money in a bank account that was solely in her name.

On December 30, 2010, Hoppe used \$19,083.25 of her nonmarital funds to purchase a 2008 GMC truck, titled and insured in her name, for husband to use in connection with his flooring and tiling work.¹

In February 2011, Hoppe used \$134,223 of her nonmarital funds to purchase a home in Eagle Lake. She also used approximately \$16,000 of her nonmarital funds to purchase furniture for the Eagle Lake home.

On Easter Sunday in April 2011, an incident occurred in the home that caused Hoppe to abruptly leave the home with her children. Hoppe was absent from the home for approximately a week, during which Claybaugh locked her out of the home. Hoppe obtained a harassment restraining order against Claybaugh and initiated this dissolution action.² She regained possession of the home, from which Claybaugh was excluded, but Claybaugh took the GMC truck and most of the newly purchased furniture with him, including an orthopedic mattress and bedframe.

Hoppe moved for temporary relief, including return of the GMC truck and specific items of furniture that she had purchased. Claybaugh failed to appear at the May 18, 2011 hearing on Hoppe's motion for temporary relief. The district court issued an order requiring Claybaugh to return all of the property listed on Hoppe's attachment to her motion, which included the GMC truck, furniture purchased by Hoppe, items intended for improvements to the home, and personal property belonging to Hoppe. Claybaugh

¹ The dealer who sold the 2008 GMC truck gave Hoppe a \$250 credit for a truck that had belonged to Claybaugh. Claybaugh had never argued, nor did the district court find, that Claybaugh has any marital or nonmarital interest in the 2008 GMC truck.

² At Hoppe's request, the district court took judicial notice of the harassment restraining order.

did not comply, and, on Hoppe's motion, the district court issued a show-cause order instructing him to appear in court to show why he should not be held in contempt. Hoppe requested that she be allowed to elicit testimony at the show-cause hearing. The district court denied Hoppe's request.

Claybaugh appeared with counsel at the show-cause hearing. Despite having denied Hoppe's request for an evidentiary hearing, the district court allowed Claybaugh to make unsworn statements on his own behalf, including that he had left all of his tools in the garage. Based in part on Claybaugh's unsworn statements, the district court issued a temporary order in August 2011, reversing its previous order and allowing Claybaugh to retain all property in his possession, including the GMC truck. The district court also ordered Hoppe to give Claybaugh any of his work tools that she possessed. Claybaugh subsequently, and in the presence of a law enforcement officer, removed three pickup trucks full of his personal property from the garage of the home, including a tool box and other large items.

Hoppe moved to remove the district court judge for gender bias or the appearance of gender bias. After a hearing, the district court denied the motion. Hoppe appealed to the acting chief judge of the district, who affirmed denial of the motion.

Trial began on November 29, 2011. Because the trial did not conclude on that date, the trial resumed on February 13, 2012. At trial, Hoppe presented basically uncontested evidence that the home, GMC truck, and all of the furniture in the home were purchased with her nonmarital funds. Claybaugh testified that due to tax liens against him, he purposefully did not own any real property or valuable personal property

in his name, fearing any such property would be seized by the federal government, but he also attempted to present evidence that Hoppe gave him the GMC truck as a gift. There was inconsistent evidence at trial concerning the location and even ownership of some work tools that Claybaugh claimed had not been returned to him. There was no evidence that any of the claimed-missing tools were in the possession of Hoppe or had been disposed of by Hoppe. Claybaugh testified that the value of the missing tools was \$5,000. Hoppe's testimony that she did not possess any of Claybaugh's tools was uncontested.

Claybaugh testified that Hoppe violated the temporary order by selling a vehicle that was in her possession during the pendency of the dissolution without Claybaugh's permission. Hoppe's attorney made an offer of proof that she (attorney) had communicated the details of the sale of Hoppe's Lincoln Navigator and purchase of a Saturn to Claybaugh's attorney. And there is evidence in the record that Hoppe purchased the Lincoln Navigator for herself at the time she purchased the GMC truck. Each party testified that the orthopedic mattress was purchased specifically for his or her needs: Claybaugh said it was purchased to support his bulk, and Hoppe said it was purchased to ease her lifelong issues with scoliosis. Hoppe introduced medical records to support her testimony that she has back problems.

Findings of fact, conclusions of law, order for judgment and judgment were issued on May 3, 2012. The district court found, in relevant part, that Hoppe's inheritance, as well as the assets purchased with the inherited funds, were Hoppe's nonmarital property. But, noting Claybaugh's testimony that, during the marriage, he had "sold a home for

\$10,000, provided significant labor in improving the Eagle Lake home, and contributed his [\$250] vehicle to the purchase of the pickup truck, and stating that Claybaugh “undoubtedly worked and supported the marriage in other ways,” the district court awarded Claybaugh the GMC truck and the contested furniture.³ The court noted that there had been testimony that the truck was a gift, but it did not make any factual finding or credibility determination regarding that testimony. Instead, it said that the award of the truck to Claybaugh was justified “as compensation for his contributions to the marriage” and by Hoppe’s sale of another vehicle “without receiving permission from [Claybaugh] or this Court.” The district court, without explanation, found that the Lincoln Navigator was marital property. The district court concluded, without explanation, that some contested items of personal property do not exist and awarded all other contested items of personal property to Claybaugh. The district court ordered Hoppe to return Claybaugh’s tools or pay him \$2,500. Hoppe moved for amended findings, and the district court denied the motion in all relevant parts, and this appeal followed.

D E C I S I O N

“A district court has broad discretion regarding the division of 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]n appellate court will affirm the

³ Claybaugh, who represented himself at trial, did not assert any marital interest in the Eagle Lake home and did not represent that any funds from the sale of his home during the marriage had been invested in the Eagle Lake home or in any other asset that existed at the time of the dissolution of marriage.

[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.” *Id.* But a district court abuses its discretion if its distribution is not in accord with a statute. *See Dammann v. Dammann*, 351 N.W.2d 651, 652 (Minn. App. 1984). And a district court may only award nonmarital property to avoid an “unfair hardship” and must support such an award with appropriate findings, including “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.” Minn. Stat. § 518.58, subd. 2 (2012). Awarding one spouse’s nonmarital property to the other spouse without making the statutory findings is an abuse of discretion. *Reed v. Albaaj*, 723 N.W.2d 50, 58–59 (Minn. App. 2006).

The district court found that Hoppe’s inheritance and the property purchased with the inheritance, including the GMC truck, were Hoppe’s nonmarital property. Claybaugh did not advance an argument in the district court that any part of the GMC truck was marital property. The district court nonetheless awarded the GMC truck to Claybaugh without making any of the statutorily required findings of unfair hardship. Instead, the district court consulted its own “good conscience” and referenced the (largely undefined) contributions that Claybaugh made to the marriage and to home improvements. But both parties worked and contributed to the household during the marriage, such contributions are not part of the statutory factors defining hardship, and section 518.58 does not authorize an otherwise unsupported distribution of nonmarital property under the

equitable powers of the district court or as compensation for contributions to the marriage or to marital property.

The district court implied that the award of the truck to Claybaugh was somehow justified by Hoppe's sale of the Lincoln Navigator and acquisition of a Saturn during the pendency of the dissolution. But the record does not support the district court's finding that the Lincoln Navigator was marital property. Additionally, Claybaugh did not dispute Hoppe's testimony that she needed a more efficient vehicle and that she used any profit for the necessities of life. *See id.* (placing burden of proof on claiming party to show that any unauthorized disposition of marital assets was not for necessities of life).

The district court noted Claybaugh's testimony that Hoppe gave him the GMC truck as a gift, but did not find that this testimony was credible and did not find that Hoppe gifted the GMC truck to Claybaugh. *See Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (holding that acknowledgments of how witnesses testified do not constitute findings that the testimony was true). And a gift finding could not be supported by this record, which includes Hoppe's testimony that she only gifted use of the truck and Claybaugh's testimony that he avoided taking ownership of anything of value to avoid having it seized to satisfy an outstanding tax lien.

The district court also explicitly found that the GMC truck was Hoppe's nonmarital property, and it abused its discretion by awarding the GMC truck to Claybaugh without the required hardship findings. We reverse the award of the GMC

truck to Claybaugh and instruct the district court, on remand, to award this truck to Hoppe as her nonmarital property.⁴

Although the contested items of furniture are also Hoppe's nonmarital property,⁵ section 518.18 specifically authorizes the district court to "award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage." Minn. Stat. § 518.58, subd. 1. This statute does not require a finding of hardship or any other findings to support such an award. Hoppe argues, however, that this merely creates a conflict between subdivision 1 of the statute, which does not require a hardship finding, and subdivision 2, which does, and she urges us to apply

⁴ "Remand [for additional findings] is not necessary when, on the basis of the record, no finding of undue hardship could be made." *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990). The record here would not support a finding of unfair hardship even if the district court had applied the relevant statutory factors. When a party "is in good health and possesses marketable skills . . . enabl[ing] him to meet his reasonable expenses," there is no unfair hardship sufficient to justify distributing nonmarital property to him even if the other party is in a superior financial position overall. *Robert v. Zygmunt*, 652 N.W.2d 537, 546 (Minn. App. 2002). The record demonstrates that Claybaugh is employable. He has marketable skills as an independent contractor and he has earned an average of \$50,000 a year for the three years before the dissolution. By contrast, the record shows that Hoppe makes only \$9.25 per hour working at a day care center. There appears to be no basis in the record to support a finding of unfair hardship sufficient to justify distribution of Hoppe's nonmarital property to Claybaugh, and we remand only for entry of judgment consistent with this opinion.

⁵ The district court did find that some furniture items claimed by Hoppe to be nonmarital—some pillows that she valued at \$800 each—did not even exist at all. On appeal, Hoppe asks us to revisit this determination, arguing that the district court clearly erred when it concluded that the pillows did not exist in spite of testimony from witnesses describing the pillows as among the items Claybaugh removed from the home. But the district court did not conclude that the pillows did not exist, but rather it found that pillows worth \$800 each did not exist and that the pillows that did exist were accounted for in the other furniture items it awarded to Claybaugh. And since the record does not contain irrefutable evidence that the pillows cost \$800 each, we cannot conclude that the district court clearly erred when it said such costly pillows did not exist.

subdivision 2. But when a specific statutory provision appears to contradict a general provision, the specific provision controls within its scope of application. Minn. Stat. § 645.19 (2012). So a hardship finding would not appear to be required to award nonmarital furniture items, including the most hotly contested item of furniture, an orthopedic mattress that each party claimed was purchased specifically to address his or her medical needs. Given the specific statutory exception for furniture items, we cannot say, based on this record, that the district court abused its discretion in awarding the mattress or any of the furniture to Claybaugh, even though this court might have exercised discretion differently. That the district court did not reference the subdivision 1 exception for nonmarital household furniture does not prevent us from affirming because “we will not reverse a correct decision simply because it is based on incorrect reasons.” *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987).

II.

Hoppe argues that the district court abused its discretion by ordering her to return Claybaugh’s tools or pay him \$2,500 because there is no evidence in the record that she possesses the tools or disposed of the tools. Her argument has merit. The district court did not explicitly find that Hoppe possessed the tools, and its recounting of what the parties said is not a proper finding that either was more credible, *see Dean*, 437 N.W.2d at 764. But a factual finding that Hoppe continued to possess the tools at some point after the district court’s temporary orders is implied by its order that she return the tools or pay compensation if she “no longer be in possession of the . . . tools.” We may review implicit factual findings for clear error. *See Vettleson v. Special Sch. Dist. No. 1*, 361

N.W.2d 425, 428 (Minn. App. 1985). A factual finding is clearly erroneous when it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *N. States Power Co. v. Lyon Food Prods., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

Applying these standards, the district court’s premise regarding Claybaugh’s tools is clearly erroneous. The district court received no evidence at all that Hoppe possessed Claybaugh’s tools at any point after he retrieved his tool box and other personal property from the garage where, according to his own testimony, he left his tools when he finally vacated the home. And there is absolutely no evidence that Hoppe currently possesses the tools or somehow disposed of the tools. Witnesses testified that Claybaugh was either seen with the tools he claims are missing or that he never owned some of them to begin with. Even Claybaugh’s testimony about the tools was uncertain and contradictory. The district court’s implicit finding that Hoppe possesses or disposed of Claybaugh’s tools is manifestly contrary to the weight of the evidence and not reasonably supported by the evidence as a whole. And since the district court abuses its discretion when its decision is “against logic and the facts on record,” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), we conclude that the district court abused its discretion by ordering that Hoppe return Claybaugh’s tools or pay for them. We reverse that portion of the judgment and instruct the district court on remand to eliminate that requirement from the judgment.

III.

Hoppe also argues that the district court erred by denying her motion to remove the judge for actual or apparent gender bias, arguing that various rulings as well as evidentiary and procedural errors constituted evidence of gender bias. Because we are not remanding for any discretionary rulings by the district court, Hoppe's bias claim is moot. But we note that although the record reflects that the district court was quite casual about enforcing the rules of evidence and procedure, particularly with regard to Claybaugh, who appeared at trial pro se, we cannot conclude that the failure to strictly enforce these rules is evidence of gender bias. See *Peterson v. Knutson*, 305 Minn. 53, 60, 233 N.W.2d 716, 720 (1975) ("That the result obtained through the judicial process can later be shown to be fundamentally erroneous does not necessarily show bias or abuse of power."). So the district court did not abuse its discretion by denying Hoppe's motion to remove itself for bias.

Affirmed in part, reversed in part, and remanded.