STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1892

In re the Marriage of:

Elizabeth Mary Shults, petitioner,
Respondent,

vs.

Fount LeRon Shults,
Appellant.

Filed June 23, 2014
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-FA-10-2324

Valerie A. Arnold, Kendal K. O'Keefe, Arnold, Rodman & Kretchmer PLLC, Bloomington, Minnesota (for respondent)

Gerald O. Williams, Williams Divorce & Family Law, P.A., Woodbury, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

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

REILLY, Judge

Appellant-father Fount Shults challenges the district court's dissolution of his marriage to respondent-mother Elizabeth Shults, as well as the district court's judgment

reserving spousal maintenance and dividing the parties' Minnesota property. Father argues that the district court (1) erred in ruling that mother properly served father with the summons and petition for the Minnesota dissolution proceeding by leaving them in father's mailbox in Norway, (2) lacked subject-matter jurisdiction to dissolve the marriage because a dissolution proceeding had previously been started in Norway, (3) improperly reserved the issue of spousal maintenance because the Minnesota district court lacks personal jurisdiction over him, and (4) inequitably divided the parties' marital property. We affirm.

FACTS

In essence, this is a case about two parties who both want a divorce but dispute where the divorce should occur. The parties were married in New York in 1984, moved to New Brighton, Minnesota, in 1998, and moved to Norway in April 2006. Mother returned to Minnesota with the parties' youngest child in July 2009. Father continued to live in Norway and there is no evidence in the record that he has ever returned to Minnesota.

In August 2009, the parties signed a Norwegian "[a]pplication for separation" form addressed to the county governor of Vest-Agder in Norway. The document's signature page shows that mother signed it in St. Anthony, Minnesota, on August 14, 2009, and that father signed it in Kristiansand, Norway, on August 23. The county governor granted the parties a separation license on August 31, 2009.

Father's attorney states that, on February 1, 2010, the parties entered a written agreement addressing property division, spousal maintenance, and child support. Mother

denies entering a formal settlement agreement, asserting that the parties had only discussed settlement terms by e-mail. No written agreement is in the record before this court.

Father applied to the county governor of Vest-Agder for a dissolution license on July 15, 2010. While father's attorney states that, on September 2, 2010, the county governor "wrote to" mother to notify her of father's application, he does not specify what "wrote to" means and the record does not reveal the meaning. Nor does the record show that mother was properly served under Minnesota law with whatever document the county governor directed to mother.

Mother petitioned the Minnesota district court to dissolve the parties' marriage. Her Norwegian process server placed a copy of her summons and petition in father's mailbox in Norway on August 31, 2010. While mother's petition lists father's address as Presteheia 59, his registered address was actually Presteheia 49, and it is in the mailbox at Presteheia 49 that the process server left the documents. Father claims that he never received mother's summons and petition.

By letter dated October 4, 2010, father, asserting that the county governor of Vest-Agder had already dissolved the parties' marriage on September 30, 2010, asked the Minnesota district court to dismiss mother's Minnesota dissolution proceeding. On October 8, 2010, mother's process server served father personally with the summons and petition for mother's Minnesota dissolution proceeding.

On November 5, 2010, the Minnesota district court ruled that mother's mailbox service of her summons and petition on father was insufficient under Minn. Stat.

§ 518.11(a) (2010) because that statute required personal service. The district court also ruled that the Norwegian county governor had dissolved the parties' marriage on September 3, 2009, and dismissed the Minnesota proceeding because mother had commenced it after the Norwegian proceeding had been concluded.

Mother requested reconsideration, which the district court denied. In doing so, the district court ruled that the Minnesota proceeding started on October 8, 2010 (when mother personally served father with the summons and petition for the Minnesota proceeding) and that, because the proper service on father of mother's summons and petition occurred after the parties' marriage had been dissolved in Norway, "[t]he Norwegian Court had jurisdictional primacy[.]"

Mother appealed to this court, arguing that the district court erred when it ruled that the August 31, 2010 mailbox service of her summons and petition on father was defective. This court reversed and remanded for the district court to determine (1) whether the August 31, 2010 service complied with the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, November 15, 1965, 20 U.S.T. 361 (Hague Service Convention) and (2) if it did, whether the district court in Minnesota had jurisdiction to proceed.

On remand, the district court found that the mailbox service of father was proper under Norwegian law, and hence it satisfied the Hague Service Convention. The district court then ruled that mother's service of her papers for the Minnesota proceeding occurred before she had notice of the dissolution in Norway. Therefore, the district court concluded it could dissolve the marriage. The district court further found that it lacked

personal jurisdiction over father and jurisdiction over real and personal property outside Minnesota, gave father 30 days to serve and file an answer and counterpetition, and later denied the motions of both parties for amended findings.

Mother served and filed a notice of intent to proceed by default. On April 17, 2013, father filed an answer in which he requested that the district court take notice that the marriage had been dissolved in Norway, deny mother's request for spousal maintenance because the court lacked personal jurisdiction over him, and reserve division of certain property pending resolution of the proceeding in Norway. Father also stated that, when he filed his Minnesota answer, a proceeding was pending in Norway regarding what he alleged was mother's breach of the parties' February 2010 written agreement. The record before this court contains no other reference to this proceeding.

Counsel for both parties participated in an initial case management conference, and the resulting scheduling order permitted father to withdraw his answer and proceed by default without the Minnesota district court acquiring personal jurisdiction over him. Father then withdrew his answer, and the district court entered a dissolution judgment on August 6, 2013. That judgment states that the district court did not have jurisdiction to award spousal maintenance but notes that "[s]pousal maintenance is reserved." It also awards all marital property under its jurisdiction to mother.

Father appeals.

D E C I S I O N

I.

Father challenges the district court's determination that mother accomplished mailbox service by having the summons and petition for her Minnesota dissolution proceeding placed in his mailbox on August 31, 2010. "Whether service of process was effective . . . is a question of law that we review de novo. But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008) (citation omitted).

The district court's determination that mother accomplished mailbox service on father on August 31, 2010, is based on its findings that mother's process server put mother's summons and petition in father's mailbox on that date. Father argues that these factual findings are not supported by the record because he stated that he did not receive the summons and petition. The record contains the amended affidavit of the process server stating that she placed the summons and petition in the mailbox of father's residence on August 31, 2010. Therefore, the district court's findings on these matters are supported by the record and not clearly erroneous.

We must determine whether the service was effective. The Hague Service Convention provides that "[t]he Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency . . . by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory." Hague Service Convention art. 5. Under the Hague

Service Convention, then, service on father is effective when accomplished according to Norwegian law.

The record contains the affidavit of mother's process server, in which the process server swore that service was accomplished in accordance with Norwegian court law 176, "which is considered due and proper service under the laws of Norway." The record also contains the affidavit of the attorney representing mother in the proceedings in Norway, who stated that the mailbox service was properly accomplished under Norwegian law. Attached to the affidavit of mother's Norwegian attorney as Exhibit 1 is an English translation of the Norwegian Courts of Justice Act. Section 168 of that act provides that personal service by a process server is required "whenever possible." Section 176 permits a process server to "leave a written notice in closed cover" when "there is no one on whom the service can be performed." Mother's Norwegian attorney explains that the documents were placed in father's mailbox because father was not at home when service was attempted and that, under Norwegian law, mailbox service is proper, regardless of whether the person served actually receives knowledge of the document's service. The record before this court contains no indication that service was not properly accomplished according to Norwegian law. Therefore, we affirm the Minnesota district court's conclusion that mother's service of father on August 31, 2010, was effective.

II.

In his principal brief to this court, father argues that the Minnesota district court lacked "subject-matter jurisdiction" to dissolve the parties' marriage because, when mother filed her Minnesota dissolution proceeding, a proceeding to dissolve the parties'

marriage had already been started in Norway. At oral argument before this court, however, father's counsel stated that he actually was not challenging the district court's subject-matter jurisdiction to dissolve the parties' marriage but that instead, he was arguing that the dissolution of the parties' marriage should be handled in Norway because an action had been filed there first. *See generally Moore v. Moore*, 734 N.W.2d 285, 287 n.1 (Minn. App. 2007) (noting that parties and courts have often used phraseology associated with jurisdictional concepts imprecisely to refer to nonjurisdictional limits on a court's ability to act), *review denied* (Minn. Sept. 18, 2007).

Father argues that the proceeding to dissolve the parties' marriage in Norway began in August 2009, when the parties applied to the county governor of Vest-Agder for a separation license. To support his assertion, father cites an October 2010 letter from the executive director of the Vest-Agder governor's office, stating that the parties' "case must be handled here because the parties were granted a separation by the Vest-Agder Governor's Office on 31 August, 2009, which means that the dissolution of the marriage had begun here." The same letter states that "[t]he legal conditions for divorce are . . . in place" because the office received the appropriate form showing that father and mother had lived apart during the requisite separation period. But the fact that the "legal conditions for divorce are . . . in place" does not necessarily lead to divorce.

The record contains an English translation of the Norwegian marriage law. Section 21 of that law provides that "[e]ach of the spouses *may* demand a divorce when they have been separated for *at least* one year." (Emphasis added.) This language implies that a marital dissolution does not necessarily follow a separation. Further, the

separation license states that, "[i]f the parties wish to divorce, *they* must apply to the County Governor for a divorce after they have been separated for at least one year." (Emphasis added.) While the record shows that father applied to the county governor of Vest-Agder for a marital dissolution, the record contains no indication that mother also did so. Moreover, section 29 of the marriage act provides that "[n]otice of the administrative decision of the county governor regarding . . . divorce pursuant to section 21 . . . shall be served on the parties unless they have waived notification." The record before this court lacks any indication that mother was served with the county governor's decision regarding the dissolution or that she waived notification of a decision. Furthermore, the language of the Norwegian laws on the record before this court appears to indicate that the process of dissolving and settling a marriage under Norwegian law consists of three separate actions: a legal separation, a dissolution of marriage, and an action to address division of the marital estate. Although the record establishes that both parties requested a legal separation, the record is devoid of evidence that mother joined in or consented to the request for a marriage dissolution or agreed to a division of the marital estate. Additionally, when father applied for divorce in Norway, he did so on July 15, 2010, before the one-year separation requirement had run.

Based on this record, and consistent with the language of the Norwegian laws quoted above, the Minnesota district court implicitly rejected father's argument that the initiation of the Norwegian dissolution proceeding functionally related back to the date the parties applied for their Norwegian separation license. As a result, the Minnesota district court determined that mother's mailbox service of her summons and complaint on

August 31, 2010, occurred before service of notice of the Norwegian proceeding occurred. On appeal, it is the burden of the party alleging error to show error exists. *Waters v. Fiebelkorn*, 216 Minn. 489, 495, 13 N.W.2d 461, 464-65 (1944). And "[t]he function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right." *Engquist v. Wirtjes*, 243 Minn. 502, 503, 68 N.W.2d 412, 414 (1955). "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Kaehler v. Kaehler*, 219 Minn. 536, 537, 18 N.W.2d 312, 313 (1945). Father has failed to show that the district court erred when it concluded mother commenced the Minnesota proceeding before a dissolution proceeding had begun in Norway. And the conflicting and ambiguous nature of the key evidence in the record indicates that prejudicial error is certainly not obvious on mere inspection. We therefore affirm the district court's grant of dissolution.

III.

A

Citing *Allegrezza v. Allegrezza*, 236 Minn. 464, 467, 53 N.W.2d 133, 135 (1952), father contends that, because he was not personally served, in Minnesota, with mother's dissolution summons and complaint, the district court lacked personal jurisdiction over him and therefore erred by reserving the issue of spousal maintenance. "District courts are vested with broad discretion to determine whether to reserve maintenance." *Haefele*

v. Haefele, 621 N.W.2d 758, 766 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). Here, we reject father's argument for two reasons.

First, *Allegrezza* states that "[t]he general rule is that a court has no jurisdiction to award a personal judgment for alimony in a divorce action against a nonresident if there is no personal service of process in the action within the state and defendant does not appear[.]" 236 Minn. at 467, 53 N.W.2d at 135 (citation omitted). The district court, however, did not award a judgment for spousal maintenance against father; it merely reserved the authority to do so in the future, if it does acquire jurisdiction over father. Therefore, the district court's reservation of spousal maintenance does not run afoul of *Allegreeza*'s prohibition on awarding spousal maintenance when the district court lacks personal jurisdiction over the obligor.

Second, after the 1952 *Allegrezza* decision, Minnesota adopted its version of the Uniform Interstate Family Support Act (UIFSA). *See* 1994 Minn. Laws ch. 630, arts. 1–9, at 1815–38 (enacting Minnesota's version of UIFSA). UIFSA addresses the bases for a Minnesota court exercising personal jurisdiction over a nonresident in connection with the "establish[ment], enforce[ment], or modif[ication]" of a "support order." Minn. Stat. § 518C.201 (2012). Because a "support order" includes "a judgment, decree or order . . . for the benefit of a . . . spouse, or former spouse, which provides for monetary support, health care, arrearages, or reimbursement," Minn. Stat. § 518C.101(u) (2012), Minnesota's version of UIFSA addresses when a Minnesota court can exercise personal jurisdiction over a nonresident in connection with the establishment, enforcement, or modification of an award of spousal maintenance.

In this respect, we note three things. First, because a reservation of spousal maintenance is not an establishment, enforcement, or modification of a spousal maintenance award, Minn. Stat. § 518C.201 need not be satisfied when a district court reserves spousal maintenance. Second, because Minn. Stat. § 518C.201 must be satisfied *when* a district court " establish[es], enforce[s], or modif[ies]" spousal maintenance the reservation of spousal maintenance here is not necessarily inconsistent with the district court's current lack of personal jurisdiction over father. Third, for a district court to establish a spousal maintenance award at some point after it dissolves a marriage, the district court must (1) have previously reserved the question of spousal maintenance in the dissolution judgment, *see Moore*, 734 N.W.2d at 287 (stating that a district court lacks authority to address spousal maintenance when there is no existing award of spousal maintenance and the question was not reserved), (2) have personal jurisdiction over the obligor at the time the award is established, Minn. Stat. § 518C.201, and (3) have a record before it that allows an award, *see* Minn. Stat. § 518.552 (2012) (addressing circumstances under which maintenance can be awarded, the amount and duration of any award, the reopening of maintenance awards, and private agreements regarding maintenance).

Here, the district court, consistent with a lack of personal jurisdiction over father when it entered the judgment dissolving the parties' marriage, did not address whether to award spousal maintenance. Indeed, the record before us suggests that the district court may have lacked the information necessary to address the question. By reserving the issue of spousal maintenance, however, the district court retained authority to consider

whether mother should be awarded spousal maintenance if, in the future, the Minnesota district court acquires personal jurisdiction over father. The district court's conclusion that it lacked personal jurisdiction over father is not inconsistent with its reservation of spousal maintenance, and we therefore affirm the reservation of spousal maintenance.

B

In response to father's argument that the reservation of spousal maintenance is inconsistent with a lack of personal jurisdiction over father, mother challenges the district court's determination that it lacked personal jurisdiction over father. Mother, however, did not file a notice of related appeal. *See* Minn. R. Civ. App. P. 106 (noting that a respondent in an appeal may obtain review of an adverse ruling made by the district court by filing a notice of related appeal); *see also* Minn. R. Civ. App. P. 103.02, subd. 2 (addressing the procedure for filing a notice of related appeal); 104.01, subd. 4 (addressing when a notice of related appeal may be filed). Generally, a respondent's failure to file a notice of related appeal means that the respondent "is not entitled to affirmative relief from this court." *In re Guardianship of Pates*, 823 N.W.2d 881, 885 (Minn. App. 2012); *see City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996) (stating that "[e]ven if the judgment below is ultimately in its favor, a party must file a notice of review to challenge the district court's ruling on a particular issue" and that "[i]f a party fails to file a notice of [related appeal] pursuant to Minn. R. Civ. App. P. 106, the issue is not preserved for appeal and a reviewing court cannot address it"), *review denied* (Minn. Aug 6, 1996). We therefore decline to address mother's challenge to the district court's determination that it lacked personal jurisdiction over father.

IV.

The Minnesota district court awarded all of the marital assets of the parties under its jurisdiction to mother. Father asserts the allocation is inequitable. "A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for an abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted). A reviewing court will affirm the district court's division of marital assets if it had "an acceptable basis in fact and principle." *Id.* "An equitable division of marital property is not necessarily an equal division." *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). As noted above, it is the burden of the party alleging error to show error exists. *Waters*, 216 Minn. at 495, 13 N.W.2d at 464-65.

The Minnesota district court determined that it had jurisdiction over certain assets it called "property of the parties" because the assets were located in Minnesota. That property is mother's PERA, mother's IRA, father's IRA, father's 403B retirement account, mother's checking account, mother's savings account, mother and father's joint checking account, and a 2000 Honda Accord. The district court awarded those assets to mother. Although nothing in the record expressly terms these assets "marital property," both the district court in its judgment and mother in her petition treat property called "property of the parties" as marital property. In his brief to this court, father also refers to this property as "marital property."

Minnesota law requires a district court to "make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making

findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2012). The district court must base its findings "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, opportunity for future acquisition of capital assets, and income of each party," as well as "the contribution of a spouse as a homemaker." *Id.*

The district court found that the parties had been married since May 5, 1984, meaning that they had been married for almost 30 years when the district court entered its dissolution judgment. The district court also found that mother is employed part time and earns an average gross monthly income of $1,180.53 and that father earns an average gross monthly income of $12,324.00, excluding additional income from speaking engagements and book royalties. The record indicates that, while the parties were married, father earned two doctoral degrees, and mother stayed at home to care for the couple's three children. On this record, considering the length of the parties' marriage, the large disparity in the parties' incomes, and the impact that mother's role as homemaker has on her current vocational skills and employability, the district court did not abuse its discretion in awarding the marital assets subject to its jurisdiction to mother.

Affirmed.