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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1809**

In re the Marriage of: Mai Yang Xiong, petitioner,
Respondent,

vs.

Paul Xiong,
Appellant.

**Filed August 19, 2008
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-F8-06-000616

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Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's judgment, arguing that the district court
abused its discretion in (1) finding that respondent needed permanent spousal

maintenance, (2) awarding respondent a disproportionate share of the marital property, and (3) awarding respondent need-based attorney fees. Because the district court did not abuse its discretion in finding that respondent needed permanent spousal maintenance and awarding a disproportionate share of the marital property to respondent, and because a review of the order “reasonably implies” that the district court considered the relevant statutory factors in awarding need-based attorney fees, we affirm.

FACTS

Appellant Paul Xiong and Respondent Mai Yang (f/k/a Mai Yang Xiong) were married on October 8, 1982. Their marriage was dissolved approximately 24 years later on July 26, 2007. During the course of the marriage the parties had six children together. Two of these children were minors in the physical custody of respondent at the time of the trial at issue in this appeal.

For the first 17 years of their marriage, respondent was a full-time homemaker who raised the parties’ children. In 1996, respondent began to work part time in her home as a daycare provider; however, it was not until 1999 that she began to work outside the home. Respondent now works full time as an assembly-line worker earning \$13.50 per hour. Her monthly income is \$1,559, she receives \$677 in child-support payments, and her monthly expenses are \$2,343.26. Thus, her monthly deficit is \$107.26. Appellant works part time as a baggage handler for American Airlines, Inc. He works four to six hours a day and a maximum of five consecutive days during the workweek. His monthly income is \$2,505, his monthly expenses are \$1,907.75, and his

child-support obligation to respondent is \$677 per month. Thus, his monthly deficit is \$79.75.

The parties purchased a homestead from Habitat for Humanity on a contract for deed for \$39,600 on November 18, 1991. It is currently appraised at \$185,000. Under the terms of the contract for deed, if the parties attempt to sell the home, Habitat for Humanity has the option of purchasing it for two-thirds of the appraisal value.

The parties' marital difficulties began in earnest in 1997 when appellant began making frequent trips to Laos. Appellant started dating another woman in Laos and eventually began a family with her. As the frequency and duration of the trips increased, so too did the tension between respondent and appellant.

On November 13, 2002, the parties separated their finances. Specifically, they split evenly \$60,000 that had been held in a joint account. Respondent used her \$30,000 to purchase a business that ultimately failed and was sold at a loss of \$5,000. Her remaining \$25,000 was used to pay for household expenses. Appellant never disclosed to the district court where his \$30,000 went, but the district court heard credible testimony at trial that he used the money to purchase property in Laos. The district court found by a preponderance of the evidence that appellant owned some property in Laos.

Eventually, the parties physically separated in January 2005. The district court entered its judgment on July 26, 2007. This appeal follows.

DECISION

I. The district court did not abuse its discretion in finding that respondent needed permanent spousal maintenance.

Appellate courts review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id.* at 202 & n.3 (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

An award of spousal maintenance depends on a showing of need. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). A district court may award spousal maintenance if it finds that the spouse seeking maintenance

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

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

Minn. Stat. § 518.552, subd. 1 (2006). “That the record might support findings other than those made by the trial court does not show that the court's findings are defective.” *Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In order to successfully challenge a district court's findings of fact, the party challenging the findings “must show that despite viewing that evidence in the light most favorable to the

trial court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Id.* An appellate court defers to the district court's credibility determinations. *Id.* at 472.

Appellant argues that the district court abused its discretion in finding that respondent needed spousal maintenance because respondent has "not established a need for an award of spousal maintenance." In determining whether a party needs spousal maintenance, a district court is directed to consider "all relevant factors." Minn. Stat. § 518.552, subd. 2 (2006) (listing eight factors that are relevant for consideration for an award of spousal maintenance). "No single factor is dispositive and each case must be determined on its own facts." *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006). The district court made findings addressing all eight statutory factors in finding that respondent needed spousal maintenance.

1. *The financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian.* Minn. Stat. § 518.552, subd. 2(a).

The district court's findings addressing this factor are supported by evidence in the record. Appellant acknowledges that respondent lacks substantial financial resources. The district court found that respondent's financial resources were insufficient to provide for her needs unless she was awarded a disproportionate share of the home. This was based on the finding that, even with child-support payments and her income, respondent had a monthly shortfall of \$107.26.

2. *The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting.* Minn. Stat. § 518.552, subd. 2(b).

The district court's findings addressing this factor are supported by evidence in the record. Respondent was a stay-at-home mom and has limited work experience. Respondent currently works as an assembly-line worker earning \$13.50 per hour. She testified that she did not see any different future career paths due, in part, to a medical condition related to childbirth that prevents her from standing for long periods of time or doing heavy work. Although respondent is attending school part-time to study medical-records transcription, she described that career path, through an interpreter, as being very difficult. Given respondent's age and lack of skills, the district court's finding that it is unlikely that she will ever be able to become fully self-supporting is not clearly erroneous.

3. *The standard of living established during the marriage.* Minn. Stat. § 518.552, subd. 2(c).

The district court's findings addressing this factor are supported by evidence in the record. The district court found that it was necessary to award respondent the homestead in order to maintain her modest standard of living. This was based on evidence that respondent lacks resources for a buyout of her home and that the proceeds of a forced sale would leave her with insufficient income to support herself and her children. Appellant does not dispute this point and argues only that both parties have modest standards of living.

4. *The duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished.* Minn. Stat. § 518.552, subd. 2(d).

The district court's findings addressing this factor are supported by evidence in the record. The parties were married for 24 years prior to the dissolution of their marriage. Appellant was a full-time homemaker from 1982 until 1999. She has no professional skills and a limited education. Her first job outside of the home was in 1999. She currently earns \$13.50 an hour as an assembly-line worker. These findings all support the district court's conclusion that respondent's earning capacity has been permanently diminished.

5. *The loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance.* Minn. Stat. § 518.552, subd. 2(e).

The district court's findings addressing this factor are supported by evidence in the record. When respondent entered the workforce, it was with a temporary agency at an entry-level position. She currently earns \$13.50 an hour as an assembly-line worker. For 17 years, while she was raising the parties' children, respondent was absent from the workplace. Opportunities were clearly forgone by respondent during the 17 years that she stayed at home to raise the parties' children.

6. *The age, and the physical and emotional condition of the spouse seeking maintenance.* Minn. Stat. § 518.552, subd. 2(f).

The district court's findings addressing this factor are supported by evidence in the record. Respondent was 42 years of age at the time the district court filed its order. Respondent's uncontroverted testimony is that she has health conditions that prevent her

from standing for long periods of time or doing heavy lifting. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (“Deference must be given to the opportunity of the trial court to assess the credibility of the witnesses.”). Respondent’s age and physical impairments support the award of maintenance.

7. *The ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.* Minn. Stat. § 518.552, subd. 2(g).

The district court’s findings addressing this factor are supported by evidence in the record. The district court found that appellant had “sufficient assets and earning capacity to support himself and provide reasonable permanent spousal maintenance to [respondent].” In reaching this conclusion, the district court relied on the fact that “[appellant] has afforded himself the luxury of trips to Laos and part-time work at the expense of [respondent] and their children.”

8. *The contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party’s employment or business.* Minn. Stat. § 518.552, subd. 2(h).

The district court’s findings addressing this factor are supported by evidence in the record. The district court noted that appellant’s contributions since November 2002 have been minimal. The district court also found that respondent “contributed greatly to the parties’ acquisition of an affordable home from Habitat for Humanity.” Both of these statements are supported by the testimony of respondent.

In sum, the district court’s findings establish that respondent is a woman of limited present means and future opportunity who has spent the better part of 24 years caring for

an ever-growing family. She does not currently have the tools to maintain her current standard of living without assistance, and she is unlikely ever to. In contrast, appellant complains that he runs a monthly deficit at the same time he is able to fund frequent, and lengthy, trips to Laos for his own benefit. After reviewing this evidence, we conclude that the district court's findings of fact are not clearly erroneous and that it did not abuse its discretion in finding that respondent needed permanent spousal maintenance.

II. The district court did not abuse its discretion in dividing the marital property.

“District courts have broad discretion over the division of marital property and appellate courts will not alter a district court’s property division absent a clear abuse of discretion or an erroneous application of the law.” *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005); *see also Holmberg v. Holmberg*, 529 N.W.2d 456, 461 (Minn. App. 1995) (“The trial court has broad discretion in dividing marital property, *including the homestead*, and its decision will not be reversed on appeal absent an abuse of discretion.”) (emphasis added), *review denied* (Minn. May 31, 1995). A district court abuses its discretion regarding a property division if its findings of fact are “against logic and the facts on [the] record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellate courts “will affirm the trial court’s division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Courts are directed 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 (2006). But “[a]n 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). In dividing marital property, a court shall base its findings on all relevant factors. Minn. Stat. § 518.58, subd. 1. These factors include “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.” *Id.* Also relevant is the “contribution of each [spouse] in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.” *Id.*

In the present case, the district court awarded respondent with appellant’s interest in the homestead “[i]n lieu of spousal maintenance, and as a disproportionate property settlement.” As respondent notes, the district court made a number of detailed findings to support its distribution of the marital property.¹ Appellant raises a number of objections to this division.

¹ To summarize, the district court found that: (1) the parties would not have acquired the home if not for respondent’s efforts, (2) respondent has made most if not all of the monthly payments since the parties separated their finances in November 2002, (3) respondent has made all of the monthly payments since the parties’ physical separation in January 2005, (4) the contract for deed severely limits or restricts the parties’ ability to sell or encumber the home, (5) appellant has a property interest in Laos, (6) a forced sale would leave respondent and her children in need of a new home which, in turn, would substantially increase appellant’s maintenance obligation, (7) respondent’s monthly shortfall will increase as appellant’s child support obligations diminish, and (8) satisfying appellant’s spousal-maintenance obligation by awarding respondent his share in the homestead is appropriate because appellant claims he is unable to pay spousal maintenance.

First, appellant claims that the district court's finding that respondent made "most if not all of the contract payments and has maintained the premises" since the parties separated their finances in November 2002 is clearly erroneous. As support for his position, appellant cites one statement made by respondent during the trial. When respondent was questioned about appellant's contribution to the mortgage payments from 1997 to 2005 she responded: "He has been helping too. That is why we were able to make it through. But most of the money that he used is for traveling outside." But based on this testimony, and other testimony in the record,² the district court's finding is not clearly erroneous because the testimony establishes only that appellant contributed some money to respondent. Appellant is unable to establish how much he actually contributed during this time frame. Thus, the district court's finding is not clearly erroneous because the testimony heard at trial is not inconsistent with the finding that most of the mortgage payments since November 2002 were made by respondent.

Second, appellant argues that the district court should have awarded a lien in the house to him, payable at a later date. While this might have been permissible, there is nothing to suggest that the district court's failure to do so is reversible error.

Third, appellant argues that the district court incorrectly determined the equity value of the house. This argument is unavailing. In calculating the homestead's equity value, the district court used appellant's proffered calculations. As a result, he cannot now be heard to complain about the figures arrived at in the district court's order.

² Earlier respondent testified that: "My husband's money he's hidden and send it to them to spend. And he used that to travel. He only help a little bit enough for us to eat on."

Next, appellant argues that the evidence in the record does not establish that he has a property interest in Laos. This argument is without merit. The district court heard evidence that indicated appellant has property interests in Laos. Respondent testified that appellant bought “lands and cars” in Laos. Respondent was also able to provide the approximate location of appellant’s property.³ One of the parties’ sons testified that he believed appellant had at least two property interests in Laos. This testimony was based on his personal observations while visiting his father in Laos. While appellant did deny the existence of any property interests in Laos, it is within the discretion of the district court to make credibility determinations. *Sefkow*, 427 N.W.2d at 210.

In the alternative, appellant argues that, even if he does have a property interest in Laos, it should not be awarded to respondent because it was allegedly purchased with the \$30,000 he received when the parties split their finances in November 2002. While appellant cites no authority that supports this position, he places a great deal of weight on the following statement of the district court at trial:

“Can I suggest something to speed this up a little bit. I don’t think that from what I heard at least there is any argument that they split sixty thousand dollars. Thirty went to him. Thirty went to her. She used it, as she described, to buy the business and eventually resold the business. But my point is I don’t care what they did with it. They each got an equal amount of money. That ends the matter in terms of where the money went to after that.”

Appellant’s argument is unpersuasive for several reasons. First, in the quote referred to above, the district court never said that the property that was purchased with the \$30,000

³ When asked where appellant lived while in Laos, respondent replied: “They don’t have number of house and street. All I knew he was living in the kilometer 52.”

would not be considered marital property. When read in its full context, it is clear that the district court was attempting to speed up the trial by saying that it was not concerned with the money trail following the financial division in November 2002. It never said that it was excluding the property of either spouse from its consideration of marital property. Supporting this conclusion is the statutory definition of marital property:

All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. Each spouse shall be deemed to have a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution or annulment.

Minn. Stat. § 518.003, subd. 3b (2006).⁴

Many of the same reasons that support the finding that respondent needed permanent spousal maintenance also justify awarding her a disproportionate share of the parties' marital property. While appellant raises several objections to the distribution,

⁴ Additionally, any property interest that appellant may have in Laos is not listed in the marital-property exceptions found in Minn. Stat. § 518.003, subd. 3b:

“Nonmarital property” means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after the valuation date; or

(e) is excluded by a valid antenuptial contract.

none of them has merit. After reviewing the evidence, we conclude that the district court did not abuse its discretion in dividing the marital property.

III. The district court did not abuse its discretion in awarding attorney fees to respondent.

A district court shall award need-based attorney fees when it finds

(1) that the fees are necessary for the good-faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2006). An award of attorney fees under Minn. Stat. § 518.14, subd. 1 “rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion.” *Crosby*, 587 N.W.2d at 298 (quotation omitted).

In awarding respondent \$2,000 in attorney fees, the district court found:

[Respondent] requires an award of attorneys' fees from the [appellant.] [Respondent's] request for attorneys' fees is need based. The purpose of the attorney fee award made herein is to supplement the child support and spousal maintenance. The obligation to pay attorneys' fees constitutes support and maintenance under Minnesota law for the benefit of [respondent] and the minor children.

Appellant now challenges the award of need-based attorney fees, arguing that it is “unsupported by the facts in the record and improperly applies the attorney fee statute.”

Appellant is correct in arguing that it was error for the district court to award need-based attorney fees as a means of supplementing child support and spousal maintenance. Minn. Stat. § 518.14, subd. 1, explicitly lists three relevant considerations that a court may take into account when awarding need-based attorney fees, and the supplementation of child support and spousal maintenance is not one of them. In a situation like this, when the legislature has listed the relevant considerations for a district court, a district court does not have the freedom to base its decision on extra-statutory factors. *See Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 457 (Minn. 2006) (“In doing so, we abide by the canon of statutory construction ‘expressio unius exclusio alterius’ meaning the expression of one thing is the exclusion of another.”).

But the failure of the district court to make the findings contemplated by the statute is not fatal to the award of need-based attorney fees because specific findings are not always required under Minnesota law:

[A] lack of specific findings on the statutory factors for a need-based fee award under Minn. Stat. § 518.14, subd. 1, is not fatal to an award where review of the order “reasonably implies” that the district court considered the relevant factors and where the district court “was familiar with the history of the case” and “had access to the parties financial records.”

Geske v. Marcolina, 624 N.W.2d 813, 817 (Minn. App. 2001) (quoting *Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999)).

In the present case, the district court was clearly “familiar with the history of the case” and “had access to the parties financial records.” A review of the district court’s thoughtful opinion also “reasonably implies” that it did consider the relevant factors.

First, respondent's monthly shortfall, combined with the absence of any mention of bad faith on her part by the district court establishes that the attorney fees were necessary for the good-faith assertion of respondent's rights and that she did not unnecessarily contribute to the length of the proceeding. Minn. Stat. § 518.14, subd. 1(1). Second, appellant's unwillingness to account for any investment income he might have obtained from the \$30,000 he received when the parties split their finances and the negative inference the district court drew from this unwillingness and his potential property interest in Laos suggest that appellant has the ability to pay the maintenance award. Minn. Stat. § 518.14, subd. 1(2). Third, respondent's monthly shortfall, minimal assets, and limited opportunity for upward advancement in the workplace establish that respondent does not have the means to pay her attorney fees. Minn. Stat. § 518.14, subd. 1(3). Based on our analysis, there is enough in the district court's opinion to "reasonably imply" that it considered the relevant statutory factors and would only reach the same conclusion on remand. Thus, the district court did not abuse its discretion in awarding \$2,000 in attorney fees to respondent.⁵

Affirmed.

⁵ We note that if the award of fees were higher, our analysis might differ because, at some point, the sheer size of the awarded fees in relation to the parties' assets and monthly deficits may require an explicit statutory analysis. But that is not the case before us.