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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0945**

In re the Marriage of: Cathy Elaine Bassett-Hegner, petitioner,
Appellant,

vs.

Theodore Eugene Hegner,
Respondent.

**Filed June 9, 2009
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. 62F006001064

Cathy Elaine Bassett, 5300 Audobon Avenue, #104, Inver Grove Heights, MN 55077
(pro se appellant)

John P. Guzik, Guzik Law Office P.A., 2332 Lexington Avenue North, Roseville, MN
55113 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant, pro se, challenges the judgment and amended judgment in this
dissolution matter. Based on the record and our understanding of the issues presented,
we conclude that the district court did not err in holding that an antenuptial agreement

between the parties was valid and that respondent was entitled to a portion of the equity in the homestead; therefore, we affirm.

FACTS

Appellant Cathy Elaine Bassett and Theodore Eugene Hegner entered into an agreement titled “Ante-Nuptial Agreement” and a warranty deed, both dated August 20, 1999, making the parties joint owners of a home on Woodbridge Street in St. Paul (Woodbridge home) that Bassett had been awarded in the dissolution of her prior marriage. The agreement appears to have been created as part of Hegner’s obtaining a loan in the amount of \$13,400 to prevent foreclosure of Bassett’s home.

The parties married on July 3, 2001. It was the second marriage for both, and there are no children born of this marriage. The marriage was dissolved in November 2007 after a six-day trial to resolve property division.¹

At the time of the marriage, Hegner owned a home on Barclay Street in St. Paul (Barclay property). The Barclay property was sold during the marriage, and the \$38,000 net proceeds were deposited into the parties’ joint checking account. The primary dispute at trial involved division of the Woodbridge home in which Bassett claimed a non-marital interest.

The district court found that the parties, despite the on-again-off-again nature of their relationship prior to and during the marriage, “basically pooled their resources and

¹ This matter was tried to a referee of the district court whose recommended findings of fact, conclusions of law, and order for judgment, and amended order for judgment following posttrial motions were approved by the district court.

shared their income, assets and obligations, with the exception of credit card debt, which the parties maintained separately.”

The district court credited Hegner’s testimony that he performed labor and contributed to the cost of materials for numerous major repairs and improvements to the homestead, thereby making a substantial contribution in preserving and increasing the value of the Woodbridge home. The district court found Bassett’s assertion at trial that Hegner did not contribute financially to the marriage or to the acquisition and preservation of the marital estate “lacking in factual basis, and without merit.”

At the time of trial, the Woodbridge home was on the market, listed at \$154,888 and was subject to first and second mortgages totaling \$114,000. The district court found that Bassett exercised nearly exclusive control of the second mortgage line-of-credit from which she made payments on her credit card debt and cell phone bills, paid her son for work on the Woodbridge home, paid for repairs for her vehicle, took cash advances, and paid outstanding joint state and federal income tax liabilities. The district court, based on trial Exhibit 132, found that each party benefited equally from use of the funds to pay taxes and the first mortgage on the Woodbridge home, but that of the remaining line-of-credit funds, Bassett “directly benefitted from about two-thirds (\$28,920.72), and [Hegner] from about one-third (\$10,562).”

The district court ordered the Woodbridge home to be sold and the net proceeds to be divided equally between the parties, but Bassett was ordered to pay Hegner a portion of her proceeds from the sale to “equalize the benefit to each of the parties from the . . . home equity line of credit.” Both parties moved for amended findings of fact and

conclusions of law or a new trial. The district court denied all relief requested except Bassett's request for an award of half of the proceeds of a motorcycle buy-back. In amended findings, the district court adjusted the amount of the equalizer payment to Hegner to reflect this award, minus the cost of airplane tickets that Hegner had provided to Bassett.

On appeal, Bassett asserts that (1) the district court erred in its determination that the Woodbridge home was marital property because the antenuptial agreement and 2005 quitclaim deed, relied on by the district court, were invalid; (2) the district court erred by awarding Hegner a one-half interest in the Woodbridge home; and (3) the district court erred in identifying the Barclay property proceeds as nonmarital. Bassett also challenges a number of the district court's factual findings.

D E C I S I O N

In a dissolution action, a trial court has broad discretion in evaluating and dividing property and will not be overturned except for abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). Whether property is marital or nonmarital is a question of law reviewed de novo, but underlying facts found by the district court will not be set aside unless clearly erroneous. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Nonmarital property includes property acquired before the marriage. Minn. Stat. § 518.003, subd. 3b(b) (2008). "For property to retain its nonmarital character, it must be kept separate from marital property or be readily traceable to an identifiable nonmarital asset." *Robert v. Zygmunt*, 652 N.W.2d 537, 541 (Minn. App. 2002).

I. Validity of 1999 antenuptial agreement and warranty deed

Bassett questions the validity of the 1999 antenuptial agreement and concurrent warranty deed, relied on by the district court in its analysis of whether the Woodbridge home was marital or nonmarital property. Bassett argues that she was coerced into signing the documents through a combination of Hegner's misrepresentations about his financial affairs, her ill health, and a pending foreclosure brought about by Hegner's having induced her to cancel arrangements that she had made to save the Woodbridge home from foreclosure. Although Bassett makes some compelling arguments on these issues in her appellate brief, the district court rejected these arguments in the judgment and in its denial of her motion for postjudgment relief because it found that Bassett was not credible. An appellate court defers to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). That the record might have supported findings other than those made by the trial court does not show that the trial court's findings are defective. *Vangsness*, 607 N.W.2d at 474. In order to successfully challenge a district court's findings of fact, the party challenging the findings "must show that despite viewing the 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.* In this case, Bassett has failed to make such a showing.

Hegner argues that the district court's property division does not rest on the validity of the antenuptial agreement but on the findings that, but for Hegner's financial assistance, the Woodbridge home would have been lost to foreclosure and that Hegner

made substantial contributions to the value of the property during the marriage. Although Bassett vigorously disputes those findings, based on the record, we are not able to say that those findings are clearly erroneous.

The next issue raised by Bassett is the effect of the deeds executed by the parties before and during the marriage. The first deed is the warranty deed executed at the time of the antenuptial agreement in 1999. In 2001, the parties separated and Hegner quit-claimed his interest in the Woodbridge home to Bassett. In 2005, in order to obtain a home equity line of credit, the Woodbridge home was again put in joint tenancy. Bassett appears to argue that the 2001 quit-claim deed extinguished any interest Hegner had in the property as a result of the 1999 warranty deed and that the 2005 deed was ineffective to revive any interest Hegner had in the property.

In the original judgment, the district court did not address the 2001 and 2005 quit-claim deeds. Bassett argued in her posttrial motion that the 2001 quit-claim deed voided the antenuptial-agreement provision for joint tenancy of the Woodbridge home. The district court then concluded that the 2001 quit-claim deed is moot because the 2005 quit-claim deed revived the joint tenancy and supports the conclusion that the parties recognized Hegner's equity in the Woodbridge home. We agree. The Woodbridge home was in joint tenancy at the time of the marriage and at the time of the dissolution.

II. Hegner's interest in the Woodbridge home

Bassett next questions whether Hegner was entitled to half of the equity in the Woodbridge home. The district court concluded that he was entitled to such equity, based on joint tenancy ownership and on its finding that Hegner contributed significantly

to the preservation and improvement of the Woodbridge home. The district court's findings are supported by evidence in the record, they are not clearly erroneous and they support the district court's conclusion that Hegner is entitled to half of the equity in the Woodbridge home.

III. Barclay property proceeds

Bassett's last identified issue on appeal questions whether the Barclay property proceeds were nonmarital. But the district court did not characterize the proceeds from the sale of the Barclay property as nonmarital and did not make any award of nonmarital property to Hegner from the proceeds. The proceeds were deposited into the parties' joint account and spent for the benefit of both parties prior to the dissolution of the parties' marriage. The district court's treatment of the Barclay property proceeds as marital property is not clearly erroneous.

Although not identified as an issue on appeal, Bassett argues in her appellate brief that the verbatim adoption of Hegner's proposed findings of fact and conclusions of law demonstrates that the district court failed to exercise its independent judgment. *See Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005) (stating that a district court's verbatim adoption of a proposed order raises the question of whether the district court independently evaluated the evidence). Bassett raised this issue in her posttrial motion, and the district court responded that at the time of the judgment it found Hegner's proposed findings of fact and conclusions of law supported by the evidence and that on re-review of the evidence the district court's opinion had not changed. Based on

our review of the record, we conclude that the adoption of Hegner's proposals does not, in this case, reflect a failure of the district court to independently evaluate the evidence.

At the conclusion of her appellate brief, Bassett essentially asks this court to amend numerous findings of fact based on her arguments made throughout the brief that many of the district court's findings were clearly erroneous. These requests appear to result from Bassett's misunderstanding of the role of this court. We do not relitigate the issues. *See* Minn. R. Civ. P. 52.01 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). And even if arguments presented by Bassett could be said to point to evidence supporting the findings of fact she advances, there is also evidence in the record to support the findings made. Therefore, even if this court might have made different findings, the findings made are not clearly erroneous and will not be reversed on appeal.

To the extent that Bassett asks this court to enforce provisions in the judgment requiring deduction of the sale expenses from the Woodbridge home sale proceeds and return of property awarded to her in the judgment, Bassett's request is misplaced: she must pursue enforcement of the judgment in district court.

Affirmed.