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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2050**

In re the Marriage of:
Susan Kay Hage, petitioner,
Appellant,

vs.

Sleiman Emile Hage,
Respondent.

**Filed August 27, 2012
Reversed and remanded
Bjorkman, Judge**

Blue Earth County District Court
File No. 07-FA-10-4582

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Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's award to respondent of property in which
appellant claims a nonmarital interest. Because the district court erroneously concluded

that the property is marital and its findings are insufficient to explain its unfair-hardship award of the property, we reverse and remand.

FACTS

Appellant-wife Susan Hage and respondent-husband Sleiman Hage were married in 1981, divorced in 1985, and remarried in January 2006. They separated in October 2010, and wife petitioned for divorce. The district court dissolved the parties' marriage and divided their property, awarding the \$37,804.59 remaining from the proceeds of the sale of wife's parents' homestead to husband. Wife moved for amended findings or a new trial, arguing that the sale proceeds are her nonmarital property and the district court erred in awarding them to husband. The district court denied the motion. This appeal follows.

DECISION

The district court concluded that the sale proceeds are marital property and also awarded them to husband as a distribution of nonmarital property necessary to prevent unfair hardship. Wife contends that neither basis supports the award. We address each in turn.

Marital or nonmarital property

We review de novo the district court's conclusion as to whether property is marital or nonmarital, deferring to the underlying findings of fact. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). The party asserting that property is nonmarital has the burden of proving the nature of the property by a preponderance of the evidence. *Prahl v. Prahl*, 627 N.W.2d 698, 705 (Minn. App. 2001). There is a presumption that all property

acquired during the marriage is marital; this can be overcome by proving that it is “nonmarital property.” Minn. Stat. § 518.003, subd. 3b (2010). “Nonmarital property” includes gifts or inheritances “made by a third party to one but not to the other spouse” and property acquired in exchange for such a gift or inheritance. *Id.*

The district court made almost no findings addressing the status of the sale proceeds. However, the relevant facts are established by wife’s testimony and various exhibits and are undisputed. On February 11, 2009, wife’s parents executed a transfer-on-death deed for their homestead. The deed conveys to “[wife’s sister], a married person, an undivided one-half interest and to Susan K. Hage, a married person, an undivided one-half interest” in the homestead. Wife’s mother predeceased wife’s father, who died on June 24, 2009. The homestead was sold, and the parties executed an undated agreement with wife’s sister and her husband, dividing the proceeds from the sale. Consistent with the undated agreement, the bank holding the sale proceeds issued a check for \$75,148.14 to the parties on May 3, 2010, which husband endorsed over to wife and wife deposited in her individual bank account. Wife subsequently used a significant portion of the funds to pay legal fees for a probate dispute with her sister, and \$37,804.59 remained in the account at the time of trial. The district court concluded that the \$37,804.59 is marital property.

Wife asserts that the sale proceeds are her nonmarital property because they are a gift made to her but not to husband. Because wife received the sale proceeds during the parties’ marriage, they are presumptively marital property. *See* Minn. Stat. § 518.003, subd. 3b. Wife argues that this presumption is overcome because the deed plainly

indicates that the homestead was conveyed to wife and her sister as their inheritance, bringing the sale proceeds within the definition of nonmarital property. We agree.

Husband argues that the deed is ambiguous because of the phrase “a married person” after wife’s name and that the undated agreement dividing the sale proceeds supports a determination that wife’s parents intended to include husband in the inheritance. We are not persuaded. First, we discern no ambiguity in the language of the deed, so we apply its plain terms. *Danielson v. Danielson*, 721 N.W.2d 335, 338 (Minn. App. 2006) (noting de novo standard of review and stating that a court looks first to a deed’s plain language when construing its meaning). The deed identifies wife and her sister as the only recipients of the property. Husband’s name does not appear on the deed, and the phrase “a married person” identifies wife’s status but does not incorporate husband into the deed. *Cf. Wells Fargo Home Mortg., Inc. v. Chojnacki*, 668 N.W.2d 1, 6 (Minn. App. 2003) (stating that a mortgage document identifying purchaser as “a married person” demonstrated his status only such that failure to obtain his wife’s signature on the document was not a justifiable mistake). Second, even if the language of the deed were ambiguous, the undated agreement, which was signed by both sisters and their husbands, plainly identifies only wife and her sister as recipients of the sale proceeds.

Husband next argues that even if the proceeds were nonmarital property, wife comingled the proceeds with marital property, thereby converting them to marital property. *See Prahl*, 627 N.W.2d at 705 (stating that nonmarital property will lose that status if comingled with marital property unless the party making the claim can trace it to

a nonmarital source). We disagree. The sale proceeds were placed into wife's individual account with contract-for-deed payments wife received in connection with farmland she received from her parents,¹ which the district court correctly determined are wife's nonmarital property.

On this record, we conclude that the district court erred in determining that the sale proceeds are marital property. Accordingly, we turn to whether the district court's award to husband may be sustained as an unfair-hardship distribution.

Unfair-hardship

A district court has broad discretion to award nonmarital property on the basis of "unfair hardship." *Reynolds v. Reynolds*, 498 N.W.2d 266, 270 (Minn. App. 1993).

If the court finds that either spouse's resources or property, including the spouse's portion of the marital property . . . are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the [nonmarital property], to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based 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, and opportunity for future acquisition of capital assets and income of each party.

Minn. Stat. § 518.58, subd. 2 (2010). "A very severe disparity between the parties is required to sustain a finding of unfair hardship necessary to apportion nonmarital

¹ The deed from wife's parents conveyed their interests as vendors in a contract for deed regarding certain farmland to wife and wife's sister. The district court determined that the contract-for-deed interest is wife's nonmarital property. Husband does not challenge that conclusion on appeal.

property.” *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990). This standard typically requires not only a disparity in financial resources but also one party’s lack of or inability to obtain resources that renders the disparity unfair. *See Stageberg v. Stageberg*, 695 N.W.2d 609, 618-19 (Minn. App. 2005) (reversing “unfair hardship” award because the party seeking the award was in “good health,” had “achieved professional success,” earned significant income, and received a generous property settlement), *review denied* (Minn. July 19, 2005); *Robert v. Zygmunt*, 652 N.W.2d 537, 546 (Minn. App. 2002) (affirming denial of “unfair hardship” request, despite one party’s “superior financial condition,” because party seeking the award was in “good health,” possessed “marketable skills,” and received generous property settlement), *review denied* (Minn. Dec. 30, 2002). “If the court apportions nonmarital property, it must make specific findings in support of apportionment based on all relevant factors and those included in section 518.58.” *Ward*, 453 N.W.2d at 733.

The district court found, and wife does not dispute, that there is a substantial disparity between the parties’ financial resources. Wife has \$167,266 in nonmarital assets (including the subject sale proceeds) and a 401(k) worth \$5,248.05, which is marital property. Wife also is employed, earning a net monthly income of \$1,140.20, although her reasonable monthly expenses exceed her income. Husband, by contrast, is unemployed, lives with a family member, and has no demonstrated assets.

The critical issue, therefore, is whether the district court abused its discretion by determining that this disparity is “unfair.” The district court’s findings related to this issue are limited and contradictory. On the one hand, the district court found that

husband has “significant health issues” and is “aged and foreign in a struggling economy.” Based on that evidence, the district court determined that husband is “likely to have a difficult time finding employment” so it would be “unjustifiable” to leave him “with close to nothing.” The record confirms that husband, a 53-year-old Lebanese immigrant, suffered a brain infection in 1992, which left him with long-term disabilities, including impaired balance and vision that require use of a walker, headaches, and the sensation of “noise in [his] head.” On the other hand, the district court noted that husband is college-educated, owned his own business in Lebanon, and speaks three languages, and found that husband is “able to work in the United States to satisfy his monthly living expenses.”² Based on that finding, the district court determined that “[e]ach of the parties is individually able to care for themselves” such that husband is not entitled to spousal maintenance.

The district court did not explain why husband’s barriers to employment justify redistributing wife’s nonmarital property but do not prevent him from supporting himself. And the district court’s failure to make findings regarding other unfair-hardship factors, such as the length of the parties’ marriage and husband’s expected income or reasonably anticipated expenses, makes it impossible for us to reconcile this conflict.³ *See Sefkow v.*

² The district court did not make an express finding as to husband’s reasonable living expenses, but husband submitted anticipated monthly living expenses of \$1,420.

³ We observe that the district court’s conflicting conclusions can be explained by husband’s argument that, based on his disabilities and difficulties securing employment, the district court should either “award him a reasonable and just amount of ongoing spousal maintenance,” or make “a sufficient property award, to allow him to relocate to the United States and get back on his feet.”

Sefkow, 427 N.W.2d 203, 210 (Minn. 1988) (stating that the appellate court usurps the district court's role when it reweighs evidence and finds facts). Because the failure to make findings necessary to support an unfair-hardship award is an abuse of discretion, *see Ward*, 453 N.W.2d at 733, the district court's award of the sale proceeds to husband cannot stand.

Remand to the district court to make the necessary findings is warranted in these circumstances unless "on the basis of the record, no finding of undue hardship could be made." *Id.* Given the record as to husband's age, disabilities, foreign status, and the poor economy, we cannot say, as a matter of law, that no finding of unfair hardship could be made. We therefore remand for the district court to make express findings as to whether the disparity between the parties' financial resources is "unfair," based on consideration of all relevant circumstances, including the factors listed in Minn. Stat. § 518.58, subd. 2, and to consider husband's alternative request for maintenance. *See Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984) (permitting balancing of maintenance and unfair-hardship requests). Whether to reopen the record on remand is left to the district court's discretion.

Reversed and remanded.