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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-848**

In re the Marriage of: Kelley Kovar, petitioner,
Appellant,

vs.

Robert Kovar,
Respondent.

**Filed June 18, 2012
Affirmed
Rodenberg, Judge**

Polk County District Court
File Nos. 60FA081415; 60FA10159

DeWayne Johnston, Johnston Law Office, Grand Forks, North Dakota (for appellant)

Sara R. Behrens, Carol E. Johnson, Zimney Foster P.C., Grand Forks, North Dakota (for
respondent)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this marriage-dissolution dispute, appellant-wife challenges various aspects of
the district court's determinations regarding child custody, property division, and
procedural matters. We affirm.

FACTS

Appellant Kelley Kovar and respondent Robert Kovar were married in 1994. On March 3, 2008, there was a heated argument between the parties. During the argument, respondent spun appellant into the exterior of the house, causing appellant's hand to scratch against the bricks. Respondent was arrested and pled guilty to disorderly conduct. A temporary no-contact order was also put in place.

Appellant filed a petition for dissolution in May 2008. She also obtained an ex parte order for protection against respondent, alleging immediate danger of domestic abuse. In August 2008, the parties stipulated to dismiss the order for protection and instead agreed to a civil no-contact order.

In January 2010, appellant filed a petition for an extended order for protection, and the district court heard the matter contemporaneously with the divorce trial. After weighing extensive testimony regarding appellant's allegations of domestic abuse, the district court concluded that the only incident of abuse that actually occurred was the March 3rd altercation described above. The district court found appellant's other allegations of abuse not credible and denied her motion for an extended order for protection.

The parties have three minor children together. They stipulated to joint legal custody but each sought physical custody of the children. While the divorce proceedings were pending, appellant initially had temporary custody of the children in East Grand Forks, Minnesota, where the children had grown up and were enrolled in school, church, and other activities. Nine months before trial, she filed a motion to relocate the children

to Fargo, where appellant planned to permanently reside with her fiancé and their newborn child. The district court denied the motion, concluding that the best interests of the children required preserving their status quo in East Grand Forks. It therefore made a “temporary placement” of the children with respondent, who was residing in the marital home. Following trial, the district court awarded primary physical custody of the children to respondent and granted appellant parenting time on alternating holidays, weekends, and during the summer months. The parties were granted joint legal custody of the children.

During the marriage, appellant was employed as an elementary-school teacher, and respondent worked as a farmer. Respondent conducted farming operations through his own farm on the parties’ five-acre homestead and nearby farmland and through his father’s family-operated farm corporation, KO-R Farms, Inc. The parties agreed to award respondent the marital homestead, though they disagreed on its valuation. The district court found respondent’s appraiser credible and valued the homestead and farmland in accordance with his appraisal report.

The district court awarded respondent the farmland, farming equipment, crops in storage, and all farm-related debt. It declined to assign a separate business value for his own farming operation because no evidence supported such a valuation. The district court also awarded respondent his shares of the KO-R farm corporation, finding that the shares were nonmarital property as they had been gifted to respondent alone. Finally, the district court awarded respondent all of the parties’ shares of sugar-beet stock, finding that they were fully collateralized to secure respondents’ debts. To equalize the marital

estate, the district court ordered respondent to pay appellant a cash settlement of \$263,515 through ten annual, interest-bearing installments.

On appeal, appellant challenges numerous aspects of (1) the district court's denial of her request for a continuance or bifurcation of the trial; (2) its award of sole physical custody to respondent; (3) its denial of her petition for an extended order for protection, (4) its determinations regarding property division; and (5) its decision requiring the parties to bear their own attorney fees and costs.

D E C I S I O N

I.

Appellant argues that the district court erred in failing to grant either a continuance or bifurcation of the trial due to the complex property valuations involved. "A trial court has discretion in ruling on a request for a continuance and should base its decision on the facts and circumstances surrounding the request." *Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986). We review a district court's decision whether to grant a continuance or bifurcation for abuse of discretion. *Id.*; *see also Hollander v. Hollander*, 359 N.W.2d 55, 57 (Minn. App. 1984) (applying abuse-of-discretion standard to district court's decision to bifurcate dissolution proceeding).

Appellant moved for a continuance or bifurcation in October 2009. By that time, the district court had already continued the trial twice before and had also extended the discovery deadline several times.¹ Moreover, appellant retained new attorneys twice in

¹ The date on which trial actually commenced had been agreed upon on August 24, 2009, in a conference between the court and counsel.

the months preceding trial. A party cannot create the need for a continuance by changing counsel. *See* Minn. R. Gen. Pract. 105 (“Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.”).

In any event, appellant cannot show that any prejudice resulted from the denial of her motion for a continuance. The record reflects that she did not make any motions to compel discovery, indicating that responses to her discovery requests were satisfactory. Appellant’s new counsel had adequate time to prepare for trial; at the time he entered an appearance, the rescheduled discovery deadline was still more than three months away. As the trial had already been delayed nearly a year, the district court found that it was in the best interests of the parties and the children to avoid further postponing the trial and to resolve the case as scheduled. The district court properly based its decision on the facts and circumstances surrounding the request. The court did not abuse its discretion in denying appellant’s motion. *Cf. Maranda v. Maranda*, 449 N.W.2d 158, 163, 167 (Minn. 1989) (holding that the district court did not abuse its discretion in denying a continuance when the party had requested and received numerous prior continuances).

II.

Appellant raises several arguments regarding the district court’s award of sole physical custody to respondent. District courts enjoy broad discretion in determining child-custody matters. *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 692 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). We affirm the court’s factual findings unless they are clearly erroneous. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We review the district court’s conclusions regarding custody under the abuse-of-

discretion standard, and will overturn its conclusions only if the court improperly applied the law. *Id.*

A. Domestic abuse allegations

1. Single incident of abuse

Appellant argues that the district court clearly erred in finding that respondent committed only one act of domestic abuse. The district court entered detailed findings regarding the allegations of abuse. It found that the only act of abuse was the incident that occurred on March 3, 2008.

Appellant testified regarding other acts of physical and emotional abuse that respondent allegedly inflicted on her. Respondent denied the allegations, offering non-abusive explanations for each incident. He admitted telling appellant that he could snap her neck, and that if she ever cheated on him, “there’s enough land around here [that] they would probably never find you.” Respondent claimed that these statements, taken in context, were jokes. He testified that appellant did not take them seriously. He also admitted to breaking appellant’s cell phone.

Ultimately, the district court found respondent’s testimony credible. It found that none of appellant’s friends actually witnessed the alleged abuse, and the children did not corroborate any of appellant’s allegations in their interviews with the custody investigator. We recognize the concerning nature of the allegations and alleged threats. However, the district court considered them in the context of the complete record and was able to observe the parties and witnesses. Because a determination on this issue required reconciling conflicting testimony and weighing witness credibility, we defer to

the district court's finding that only a single, isolated incident of domestic abuse actually occurred. *See Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (recognizing role of factfinder to reconcile conflicting testimony); *Vangsness v. Vangsness*, 607 N.W.2d 468, 475 (Minn. App. 2000) (recognizing that it is not the role of this court to reweigh evidence).

2. Testimony of domestic-abuse experts

Appellant asserts that the district court abused its discretion by according limited weight to the testimony of two domestic-abuse experts. The experts testified that respondent's reported behaviors were indicative of an abusive relationship. However, these witnesses based their opinions largely on appellant's allegations. The experts did not conduct an independent investigation and they did not meet with the parties or seek any input from respondent. Accordingly, the district court gave their testimony limited weight.

The district court was not required to credit the witnesses' testimony simply because it qualified them as experts. *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 167 (Minn. App. 2005). As with its findings regarding domestic abuse, this was a credibility determination that fell within the court's fact-finding province. *See Prahl*, 627 N.W.2d at 702 (emphasizing the factfinder's role in reconciling conflicting testimony). Although the record may support findings other than those actually made, that alone does not render the findings defective. *Vangsness*, 607 N.W.2d at 474; *see also Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) ("It is not the province of

[appellate courts] to reconcile conflicting evidence.”). Accordingly, the district court did not abuse its discretion in according the testimony limited weight.

3. Definition of domestic abuse

Appellant argues that the district court erred by failing to recognize that domestic abuse does not need to be physical in nature. Appellant correctly notes that in making child-custody determinations, the district court must consider non-physical acts of abuse, including any terroristic threats or acts inflicting fear of imminent harm. *See* Minn. Stat. §§ 518B.01, subd. 2(a) (defining domestic abuse), .17, subds. 1(a)(12), 2(d) (requiring court to consider domestic abuse) (2010).

The record does not support appellant’s assertion that the district court relied on an erroneously narrow definition of domestic abuse. To the contrary, in addressing this factor, the district court specifically referenced “domestic abuse, *as defined in Minnesota Statute[s] § 518B.01.*” (Emphasis added.) As noted above, the district court heard appellant’s testimony regarding other acts of abuse, including her allegations of threats and acts inflicting fear. After considering her testimony and evidence bearing on her credibility, the district court ultimately did not credit her allegations.

4. Long-term effect of domestic abuse on children

Appellant argues that the district court clearly erred in finding that the single incident of domestic abuse did not have a long-term effect on the children. The court found that the March 3rd altercation between the parties “was alarming to the children and negatively affected them” at the time of the occurrence. But the court further found

that the incident did not have any longstanding impact on the children's well-being, as they continued to thrive while in respondent's care.

Appellant argues that these findings contradict each other. But the findings, fairly read, convey that the incident alarmed and upset the children at the time it happened, but did not negatively affect them in the long run.

Appellant argues that the court's prior entry of an ex parte order for protection, and the resulting temporary transfer of custody to appellant, undermine the court's findings regarding the effect of abuse on the children. The ex parte order included a boilerplate finding that the safety of appellant and her children required transferring temporary custody to appellant. But the petition itself did not contain any allegations that respondent abused the children. In fact, it stated that appellant was willing to grant respondent visitation while she had temporary custody. Additionally, the district court was entitled to issue an ex parte order for protection based solely on *allegations* of domestic abuse, without finding that any abuse actually occurred. *See* Minn. Stat. § 518B.01, subd. 7 (2010) (authorizing ex parte orders for protection). The order for protection was later dismissed when the parties stipulated to a civil no-contact order.

The custody investigator reported that the children did not experience any lasting negative effects after witnessing the March 3rd altercation. They felt comfortable around respondent and were not afraid of him. Aside from the turbulent emotions that normally accompany a difficult divorce, the children were happy and well-adjusted. The investigator found that they had strong relationships with both parents and had thrived while in respondent's custody.

The district court considered the order for protection along with the custody investigator's report and the other evidence presented at trial. It did not clearly err in finding that the lone incident of domestic abuse had no long-term effect on the children.

B. Custody Determination

Appellant argues that the district court abused its discretion in awarding sole physical custody of the children to respondent. She raises several arguments with respect to the custody decision. We address each in turn.

1. Decision not to appoint guardian ad litem

First, appellant argues that the district court abused its discretion in denying her motion to dismiss the custody investigator and appoint a guardian ad litem. The decision whether to appoint a guardian ad litem when child custody is in dispute is generally discretionary. Minn. Stat. § 518.165, subd. 1 (2010). A district court is *required* to appoint a guardian ad litem only when it “has reason to believe that the minor child is a victim of domestic abuse or neglect, as those terms are defined in sections 260C.007 and 626.556.” *Id.* at subd. 2 (2010).

Appellant did not allege that respondent committed any of acts of child abuse or neglect. The only allegations of domestic abuse concerned herself as the sole victim. As a result, the district court did not have reason to believe that the children were victims of domestic abuse or neglect, and it was therefore not required to appoint a guardian ad litem. Its decision whether or not to appoint one was discretionary.

Appellant also argues that the parties initially stipulated to appointing a guardian ad litem. However, the district court found that despite the parties' and court's

occasional erroneous references to the investigator as a guardian ad litem, her role had always been that of a custody investigator. The record supports this determination.

2. Findings of custody investigator

Appellant challenges the district court's reliance on the findings of the custody investigator. Appellant maintains that this reliance was inappropriate because the investigator was not trained in recognizing domestic abuse.

The district court may order a child-custody report in contested custody proceedings. Minn. Stat. § 518.167, subd. 1 (2010). Absent an abuse of discretion, we will not overturn a district court's decision whether to adopt the findings of the custody investigator. *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991).

Although custody investigators must address each of the statutory best-interests factors, including the effect of any domestic abuse, they are not required to be experts in domestic violence. *See* Minn. Stat. §§ 518.167 (setting forth requirements for custody evaluation), .17, subds. 1, 2 (setting forth best-interests factors) (2010). Here, the custody report addressed each of the statutory best-interests factors in great depth. Furthermore, the district court indicated that it exercised its independent judgment and considered all of the evidence, not just the custody report. The district court therefore did not abuse its discretion in largely adopting the findings of the custody investigator.

3. Best-interests finding

Next, appellant challenges the district court's determination that the best interests of the children favored awarding sole physical custody to respondent. The district court enjoys broad discretion in determining child-custody matters. *Rutten v. Rutten*, 347

N.W.2d 47, 50 (Minn. 1984). The law “leaves scant if any room for an appellate court to question the trial court’s balancing of best-interests considerations.” *Vangsness*, 607 N.W.2d at 477. We will not overturn the court’s custody determination absent clear error or an abuse of discretion. *Pikula*, 374 N.W.2d at 710.

The children’s best interests are paramount in custody determinations. Minn. Stat. § 518.17, subd. 3(a)(3) (2010); *Vangsness*, 607 N.W.2d at 476 (“A child’s best interests are the fundamental focus of custody decisions.”). The district court must consider all relevant factors bearing on the children’s best interests, including the thirteen factors listed in Minn. Stat. § 518.17, subd. 1.

Here, the district court made detailed findings regarding the statutory best-interests factors, ultimately finding that the children’s best interests warranted awarding sole physical custody to respondent. The court found that the children were firmly rooted in the East Grand Forks community, where they were involved in numerous school and church activities. The children also maintained frequent contact with extended relatives on both sides who lived in the area, and with whom they enjoyed close relationships. Respondent was supportive of preserving the children’s relationships with appellant’s extended family, but appellant had no intention of maintaining their relationships with respondent’s relatives.

The district court found that appellant had moved to Fargo to be with her fiancé, and their relationship was too new to be considered a stable environment for the children. It found that respondent was committed to continuing the children’s Catholic upbringing—an important and stable part of their lives—and appellant was not. Finally,

the court found that respondent exhibited a desire to effectively communicate and co-parent with appellant, whereas appellant did not wish to communicate with respondent on any level and had, at times, been uncooperative in parenting matters.

In reaching its custody determination, the district court carefully and fairly weighed each of the statutory best-interests factors. Of the twelve applicable factors, seven weighed in favor of respondent, and only two in favor of appellant. The district court did not abuse its discretion in determining that, on balance, it was in the children's best interests to award sole physical custody to respondent.

4. Parenting time

Appellant also challenges the district court's determination regarding parenting time. Courts enjoy broad discretion in allocating parenting time. *Bear v. Bear*, 415 N.W.2d 389, 393 (Minn. App. 1987). By statute, however, the court must grant sufficient parenting time to (1) allow the parent to maintain a relationship with the child, and (2) satisfy the child's best interests. Minn. Stat. § 518.175, subd. 1(a) (2010). Absent other evidence, the statute imposes a rebuttable presumption that a parent is entitled to at least 25% of the parenting time for each child. *Id.* at subd. 1(e) (2010).

Here, the district court appears to have carefully tailored the parenting-time schedule to fit each party's needs, taking into account their differing work schedules as well as the children's school schedule. It awarded appellant substantial parenting time, including what it characterized as "nearly all of the summer months." It divided holidays equally between the parties. Given the district court's careful consideration of the

parties' schedules and the best interests of the children, there was no abuse of discretion in the court's allocation of parenting time.

5. Transportation responsibilities

Appellant next argues that the district court abused its discretion in deciding that the parties would be responsible for their own transportation to and from custody transfers. Appellant contends that because the transfers take place in East Grand Forks and she lives in Fargo, she spends a substantial amount of time driving whereas respondent does not.

At the time of trial, appellant was living and working in East Grand Forks. She testified that she was planning to permanently move back to Fargo. Although she contends that domestic abuse drove her from the marital home, the district court considered this claim and discredited it, finding that appellant moved to Fargo because her fiancé lived there.

In any event, the district court expressly permitted and encouraged the parties to mutually agree on a custody-transfer site other than the East Grand Forks police station. Given the district court's broad discretion in deciding parenting-time issues, including transportation responsibilities, the district court did not abuse its discretion regarding exchanges of the children.

6. Motion to relocate children to Fargo

Appellant argues that the district court abused its discretion in denying her motion to relocate the children to Fargo. The motion was a request for an interim order and temporary relief, made nine months before trial. At that time, appellant had been

awarded temporary physical custody of the children. The district court denied appellant's motion without prejudice to her raising the relocation issue at trial.

Generally, orders denying temporary relief regarding child custody "are not appealable as of right." *Hennepin Cnty. v. Griffin*, 429 N.W.2d 283, 284 (Minn. App. 1988); *see also* Minn. R. Civ. App. P. 103.03 (listing appealable orders and judgments). The order at issue is therefore not appealable. In any event, because appellant was permitted to raise the relocation issue at trial (and did so), she cannot establish any prejudice stemming from the denial of temporary relief. *See Siewert v. Siewert*, 691 N.W.2d 504, 505 (Minn. App. 2005) (permitting appellate courts to review nonappealable orders on appeal from a final judgment "if such orders involve the merits or affect the judgment"), *review denied* (Minn. May 17, 2005).

III.

Appellant argues that because the district court acknowledged that respondent previously violated an order for protection, it abused its discretion in denying her request for an extended order for protection. The district court has broad discretion in deciding whether to issue an order for protection. *Elmasry v. Verdin*, 727 N.W.2d 163, 165 (Minn. App. 2007). We review its factual findings under the clearly-erroneous standard. *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App. 2007). Under this standard, we will reverse a district court's findings only if, upon viewing the entire record, we are "left with the definite and firm conviction that a mistake has been made." *Id.* at 10–11 (quotation omitted).

The district court may issue an extended order for protection if, among other grounds, the respondent violated a prior order for protection. Minn. Stat. § 518B.01, subd. 6a(a)(1) (2010). Here, the district court found that respondent had violated a previous order for protection by contacting appellant, but it further found that the contact was mutual and nonthreatening. Specifically, it found that appellant had initiated many of the hundreds of phone calls between the parties.² Even in the days immediately following appellant's petition for the initial order for protection, she called respondent several times. The court found that appellant's alleged "profound fear" of respondent was not credible. As the record supports these findings, the district court did not abuse its discretion in denying the extended order for protection.

Appellant additionally argues that the district court erred in admitting a voicemail message and respondent's phone records over her objections. The district court relied on the records and voicemail in finding appellant's allegation of fear not credible. Since appellant did not raise these evidentiary objections in her motion for a new trial, she has not preserved them for appellate review. *See Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986) (recognizing that evidentiary rulings are not preserved for appeal if party failed to raise them in motion for new trial).

² Appellant argues that the district court misapplied the law by taking these phone calls into account. She maintains that the district court improperly considered the victim's voluntary contacts with the perpetrator. The district court did find that respondent violated the order for protection, but also properly considered how appellant's numerous phone calls to respondent reflected on her credibility. It reasonably found that the phone calls cast doubt on her claim that she was terrified of respondent.

IV.

Appellant challenges various aspects of property division, arguing that the district court erred in its valuation, characterization, and award of certain property. The district court enjoys broad discretion in determining an equitable division of marital property. *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). We must affirm the district court's division of property so long as "it had an acceptable basis in fact and principle." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

A. **KO-R Farms, Inc.**

Appellant argues that the district court erred in failing to award her the active appreciation of respondent's shares of KO-R Farms, Inc., which he acquired by gift. She argues that although the shares themselves were nonmarital property, the appreciation in their value was due to marital efforts, rendering them, in part, marital property. The characterization of property as marital or nonmarital is a question of law, which this court reviews de novo. *Id.* We review the district court's factual findings regarding whether an asset is marital property for clear error. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

Upon dissolution of a marriage, the district court must make an equitable division of marital property. Minn. Stat. § 518.58, subd. 1 (2010). Marital property generally includes any property acquired by either spouse during the marriage. Minn. Stat. § 518.003, subd. 3b (2010). Property is presumed to be marital unless, *inter alia*, it was acquired as a gift to one spouse alone. *Id.* Marital property also includes the increase in value of nonmarital property when there is "active appreciation"—in other words,

appreciation that is attributable to the efforts of one or both spouses during the marriage. *Nardini v. Nardini*, 414 N.W.2d 184, 192 (Minn. 1987). If the property's appreciation is due to market forces, inflation, or other reasons unrelated to the marriage, the property retains its nonmarital character despite the passive appreciation. *Id.*; *see also Gottsacker v. Gottsacker*, 664 N.W.2d 848, 853 (Minn. 2003) (clarifying active versus passive appreciation).

Here, no evidence was presented as to the value of KO-R at the time of the parties' marriage, nor as to any appreciation since respondent acquired his shares. The district court was thus unable to determine the nature and extent of any appreciation over the course of the marriage. Appellant admits that she did not adduce any evidence regarding appreciation. As a result, the district court had no basis for determining the value of the shares' appreciation or whether such appreciation, if it existed, was due to nonmarital forces. It therefore did not clearly err in determining that there was no evidence of appreciation due to marital efforts. *Cf. Baker v. Baker*, 753 N.W.2d 644, 652 (Minn. 2008) (addressing appreciation of spouse's nonmarital stock portfolio and concluding that "absent evidence that the efforts of one or both spouses directly affected the value of an investment, the appreciation in the value of the investment is properly characterized as passive" and therefore nonmarital).

B. Respondent's income

Appellant argues that the district court clearly erred in determining respondent's income because it failed to apply the definition of income for self-employed individuals,

and it did not take into account certain in-kind income. As an income determination is a factual finding, we review it for clear error. *See Maurer*, 623 N.W.2d at 606.

In dividing marital property, the district court must consider the parties' incomes. Minn. Stat. § 518.58, subd. 1. The statute on which appellant relies defines income from self-employment as gross receipts less ordinary and necessary expenses. Minn. Stat. § 518A.30 (2010). The income reflected in respondent's federal tax returns substantially conforms to this definition. At trial, appellant did not challenge the federal tax returns as proof of respondent's income. To the contrary, she requested the court to rely on respondent's schedules F (farming profits based on sales and operating costs). The district court relied on those schedules in determining respondent's past income and in ultimately finding that his income varied from year to year. It therefore did not clearly err in determining respondent's income based on his federal income tax returns.

Appellant also argues that the district court should have accounted for respondent's use of certain farming equipment, owned by KO-R Farms Inc., on his own farm. However, appellant does not dispute that the costs associated with farming equipment are a necessary operating expense. Respondent's ability to use KO-R Farms Inc. equipment increases his net income from farming. The district court properly determined respondent's net income, which was increased by the availability of the equipment at issue. The district court therefore did not clearly err in declining to add to respondent's farm income a separate amount for his use of the farming equipment.

C. Business value of farm

Appellant argues that the district court erred in failing to adopt a separate value for respondent's farm as an ongoing business. The valuation of marital assets is a factual issue, which this court reviews for clear error. *Maurer*, 623 N.W.2d at 606.

The district court separately valued the farm equipment, crops in storage, and other assets of respondent's farm, and awarded those assets to respondent as part of his portion of the marital estate. The district court concluded that there was no evidence supporting appellant's assertion that the farming operation itself merited separate value as a business. The court relied on the testimony of respondent's banker, who had worked with respondent's farm and was familiar with its finances, and who characterized the farm as a small operation. The banker described it as something of a hobby farm; it required other income to support itself and had limited liquidity. The district court found that the farm's value consisted of the assets in the operation.

Appellant did not adduce any evidence at trial supporting a separate business valuation for the farm. Instead, she relied on the bare assertion that "the farm is better valued at two times the farm revenue of 2008 or \$566,471.62." The district court did not clearly err in declining to assign the farm a separate business value when there was no evidence in the record to support such a finding.

D. Sugar-beet stock

Appellant argues that the district court abused its discretion in awarding the parties' shares of American Crystal Sugar beet stock to respondent. She argues that the shares were purchased as a joint retirement asset and therefore should have been divided

between the parties. The district court found that the stock was fully collateralized to secure respondent's farm loans and his prepayment of a property settlement to appellant. Because the stock could not be released as collateral, and respondent needed the asset to continue farming, the court awarded the stock to respondent and applied its full value toward his portion of the marital estate.

Appellant argues that the lenders could have released her shares of the stock at any time, but she does not point to any evidence in the record supporting this assertion. To the contrary, respondent's banker testified that due to the financial situation of the farm, he would likely not be able to release the shares. The district court therefore did not clearly err in awarding the shares to respondent.

E. Real-estate valuation

Appellant argues that the district court clearly erred by undervaluing the parties' homestead and farmland. She maintains that the district court should have adopted the valuation offered by her appraiser, based on the quantitative approach, instead of that offered by respondent's appraiser, who used a qualitative approach. The valuation of real property is a factual issue, which we review for clear error. *Maurer*, 623 N.W.2d at 606.

Appellant's appraiser did not conduct an independent appraisal, but merely critiqued respondent's appraisal and offered a counter-valuation of the properties. Appellant's appraiser testified that the qualitative method (used by respondent's appraiser) was less precise than the quantitative method, but that it was not wrong or unethical to perform a qualitative analysis.

The district court found respondent's appraisal more persuasive for a number of identified reasons. For example, respondent's appraiser had completed hundreds of appraisals in western Polk County, and approximately two dozen in the Tabor area, where the parties' real estate was located. In contrast, appellant's appraiser was more experienced in the Bygland area of Polk County, where the farmland is generally more valuable. Respondent's appraiser physically inspected the parties' properties as well as the comparable properties, whereas appellant's appraiser did not personally inspect any of the properties. As the valuation ultimately turned on a credibility determination, the district court did not clearly err in crediting respondent's appraisal.

Appellant also argues that the district court erred in adopting respondent's appraisal because the appraisal report valued the properties as of mid-2008, and property values had increased by the time of trial. But appellant's appraisal also valued the properties as of mid-2008, and appellant did not present any evidence regarding how the claimed upward trend in property values affected both appraisals. As a result, the district court did not err in declining to adopt more recent valuations when no evidence in the record established any increased valuations. The court's findings on valuation were reasonable and supported by the evidence. *Cf. Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) ("Exactitude is not required of the trial court in the valuation of assets in a dissolution proceeding; it is only necessary that the value arrived at lies within a reasonable range of figures.").

V.

Last, appellant challenges the district court's denial of her request for need-based attorney fees and costs. "An award of attorney fees rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999).

A court shall award attorney fees in dissolution proceedings if 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 (2010). Additionally, the district court has discretion to award "additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." *Id.*

Here, the district court found that both parties had the ability to pay their own fees. This finding was supported by the record. While dissolution proceedings were pending, respondent prepaid appellant a \$40,000 property settlement to be applied toward her attorney fees. To equalize the marital estate, the court directed respondent to pay appellant a cash settlement of \$263,515 in ten annual interest-bearing installments. Appellant does not point to any evidence establishing that she was unable to pay attorney fees. Nor does she allege that respondent delayed the proceedings or contributed to excessive expenses in any way. To the contrary, the district court found that appellant

needlessly duplicated fees by twice retaining new counsel. The district court therefore did not abuse its discretion in denying appellant's request for attorney fees.

In sum, we conclude that the district court did not err in its determinations regarding child custody, property division, and procedural matters. With regard to child custody, the court meticulously weighed the best-interests factors and did not abuse its discretion. The district court's thorough findings of fact and conclusions of law are supported by the record.

Affirmed.