

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1694**

In re the Marriage of:

Vickie Lynn Erickson, petitioner,
Respondent,

vs.

David R. Erickson,
Appellant.

**Filed November 18, 2013
Affirmed
Schellhas, Judge**

Washington County District Court
File No. 82-FA-11-5033

Aleksandra Ljubisavljevic, Minneapolis, Minnesota (for appellant)

James A. Lawton III, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Worke, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's characterization and allocation of marital debt in a dissolution judgment. We affirm.

FACTS

Appellant-husband David Erickson and respondent-wife Vickie Erickson married on January 1, 1997, separated on May 27, 2011, and wife commenced a marriage-dissolution. In March 2012, the district court conducted a hearing to address outstanding issues, including whether an unpaid debt of \$12,651.00 owed to wife's 401(k) plan at Andersen Corporation was a marital debt.

Wife knew very little about the 401(k) debt, testifying that husband "took care of all the finances." When asked when the 401(k) debt originated, wife stated, "I'm not positive." When asked if the debt originated in May 2008, wife stated, "[p]ossibly." Wife also testified that she had "no idea" of the interest rate applicable to the 401(k) debt. She summarized her knowledge about the debt as follows: "I don't know the dates. I don't know the dates we started the loan. I don't know anything other than it's payroll deducted and I pay \$606 a month." She also stated that she could not borrow more from her 401(k) account until she paid all her current 401(k) debt.

Husband testified that wife obtained a loan of about \$14,000 with an interest rate of 4% or 5% against her Andersen Corporation 401(k) account in May 2008. Assuming the origination of a \$14,000 loan in May 2008 with 4% interest and monthly payments of \$600, husband projected that the loan should have been repaid within 24 months. Contrary to husband's projection, \$12,651.00 of debt remained unpaid as of September 30, 2011. Husband opined that the only possible explanation for the remaining loan balance was that wife incurred a second loan after the parties' separation.

In a July 26, 2012 order, the district court found that the loan was marital and gave wife credit for the balance owed on the 401(k) debt in the distribution of the parties' marital property.

This appeal follows.

D E C I S I O N

We review whether property is marital or nonmarital de novo, but we defer to the district court's findings of fact. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). “[W]e review the district court’s factual findings for clear error.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013); *see also* Minn. R. Civ. P. 52.01. We defer to the district court’s credibility determinations, even where implicit. *In re Guardianship of Pates*, 823 N.W.2d 881, 887–88 (Minn. App. 2012) (noting that the district court’s action “implies that the district court found him to be more credible” and deferring to this determination).

“In dissolution proceedings, debts are apportioned as part of the property settlement and are treated in the same manner as the division of assets.” *Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996). All property acquired during a marriage and before the valuation date is presumed to be marital; nonmarital property includes property acquired after the date of valuation. Minn. Stat. § 518.003, subd. 3b (2012).¹ “[A] spouse may defeat the presumption [that property is marital] by showing by a preponderance of

¹ We cite the most recent version of this statute in this opinion because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”).

the evidence that the property acquired is nonmarital.” *Baker*, 753 N.W.2d at 649–50 (citing Minn. Stat. § 518.003, subd. 3b (2006)).

Here, husband prepared a loan-payment projection to support his contention that wife incurred a second loan after the parties’ separation and that the 401(k) loan balance should therefore be characterized as nonmarital property. Apart from husband’s loan-payment projection, the only evidence offered about the subject debt was husband’s testimony; wife’s testimony; and wife’s written 401(k) statement from September 2011. The district court found that husband’s testimony was not credible. Based on the evidence, the district court found that

[the 401(k) plan] had an account balance of \$62,886.00 as of September 26, 2011. The parties took out a \$14,000 loan against the 401k in approximately May 2008. [Wife] pays \$606.00 per month toward the loan. [Husband] speculated that the current loan was taken out by [wife] after the parties separated, but he did not provide any proof of this. The Court finds that the loan is marital.

Nothing in the record supports a conclusion that the district court clearly erred in finding that husband offered no proof that wife incurred the 401(k) debt that existed at the time of the hearing, after the parties separated, or erred in ruling that the debt is marital. Debt originating during the marriage is presumed marital. Minn. Stat. § 518.003, subd. 3b. Husband did not rebut this presumption.

Affirmed.