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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2245**

In re the Marriage of: Laura Helen Shores, petitioner,
Respondent,

vs.

Kevin Richard Shores,
Appellant.

**Filed May 5, 2014
Affirmed
Stauber, Judge**

Clay County District Court
File No. 14FA11992

Timothy J. McLarnan, McLarnan & Skatvold, Moorhead, Minnesota (for respondent)

Jesse Matson, Matson Law Firm, L.L.C., Fargo, North Dakota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal in this marital dissolution, appellant-father argues that the district court
(1) abused its discretion by awarding respondent-wife a portion of appellant's nonmarital
property; (2) abused its discretion by not setting his child-support obligation below the

presumptively appropriate guideline amount; (3) clearly erred by finding respondent to be a putative spouse; and (4) erred by quashing his answer and counterclaim. We affirm.

FACTS

Appellant Kevin Shores and respondent Laura Shores were married in September 2004. In February 2011, respondent petitioned to dissolve the marriage. The summons provided that appellant must serve his answer upon respondent within 30 days of the date he was served.

When trial commenced on February 3, 2012, the district court informed appellant that he was in default because he had not filed the required answer to the petition.

Appellant, who has multiple physical disabilities, including blindness, and is confined to a wheelchair, was instructed by the district court to promptly file the required answer.

But in light of his disabilities, and pro se status, the district court permitted appellant to participate in the trial with the expectation that he would file his answer pursuant to the court's directives.

The trial, which was scheduled to resume on March 9, 2012, was continued at appellant's request until April 26, 2012. When the trial resumed on April 26, appellant still had not served or filed an answer, and the district court again informed appellant that in order to participate, he must file an answer to the petition. The court again considered appellant's disabilities and pro se status and allowed him to participate in the proceedings. During the hearing, appellant raised the allegation that the parties were not legally married based on his claim that the person who signed the marriage certificate

was not present at the ceremony. The trial, however, did not conclude on April 26, and was scheduled to resume on May 23, 2012.

At appellant's request, the trial was continued again until May 31, 2012. On May 30, 2012, appellant filed a photocopy of an answer and counter-petition. But appellant failed to provide proof of service, and counsel for respondent confirmed that he had not been served. The district court then informed appellant that his answer and counter-petition would not be accepted and that he would be considered in default. Appellant was also informed that he would not be permitted to participate in the trial and that a judgment by default would be entered.

Following the trial, the district court awarded respondent sole physical custody of the parties' two minor children because appellant's "disabilities make him unable to physically take care of the children." The district court also found that because the "child support calculated by the guidelines is insufficient to enable [respondent] to meet [her] expenses," an upward deviation of \$1,000 per month in basic child support was appropriate. The district court further concluded that "to avoid an unfair hardship to [respondent] and because [appellant] has significant assets," respondent should be awarded \$100,000 from appellant's financial assets. Finally, the district court rejected appellant's claim that the parties were not legally married, concluding that respondent "had a good faith belief that she was legally married to [appellant], and, even if there were some irregularity in the parties' marriage ceremony, [respondent] has been a putative spouse." This appeal followed.

DECISION

On direct appeal from a default judgment, only three issues are appropriate for our review: (1) whether the evidence supports the findings of fact; (2) whether those findings of fact support the conclusions of law and judgment; and (3) substantive questions of law that were properly raised during trial. *Michaels v. First USA Title, LLC*, __ N.W.2d __, __, 2014 WL 996519, at *3 (Minn. App. Mar. 17, 2014); *see also Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 493 (Minn. App. 1995). But under Minn. R. Civ. App. P. 103.04, we have discretion to address any issue as the interests of justice require.¹

I.

A district court has broad discretion regarding the division of property in marriage-dissolution cases. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The district court also has some discretion to award nonmarital assets, but that discretion is narrower than in the property division context. *Stageberg v. Stageberg*, 695 N.W.2d 609, 618 (Minn. App. 2005), *review denied* (Minn. June 19, 2005). A district court may only invade a spouse's nonmarital assets if the marital assets are so minimal that the other spouse will suffer an undue hardship without an additional award. Minn. Stat. § 518.58, subd. 2 (2012). An "undue hardship" exists when there is a "very severe disparity" in

¹ Because appellant was found to be in default, and in light of our limited scope of review of appeal taken from a default judgment, we have serious reservations regarding whether the issues raised by appellant are properly before us. But despite appellant's default status, the district court allowed appellant to participate throughout much of the proceedings, and ultimately addressed the issues raised by appellant in the findings of fact, conclusions of law, and order for judgment. And in this appeal, respondent did not address our scope of review in her brief. Thus, in light of the convoluted nature of these proceedings, we address the merits of appellant's arguments in the interests of justice. *See* Minn. R. Civ. App. P. 103.04.

assets and future earning potential between parties. *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990). Awards of nonmarital property should occur only in an “unusual case.” *Id.*

If the district court apportions property other than marital property, it is required to make findings in support of the apportionment. Minn. Stat. § 518.58, subd. 2. “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.” *Id.* The record must support the finding of an undue hardship, and the failure to make findings on the record constitutes an abuse of discretion. *Ward*, 453 N.W.2d at 733.

Here, the district court found that:

Based on the eight-year length of the marriage, the facts that [respondent] acquired no assets or retirement accounts, that there was no payment on her debt, and that she cannot meet her minimal monthly living expenses, . . . [respondent] would suffer a financial hardship if only marital assets were divided and that it would be inequitable if she were not awarded a portion of the non-marital assets.

The court also found that “[t]o avoid an unfair hardship” to respondent, and because appellant has significant assets, which exceed \$400,000, it is equitable in this case to award respondent “\$100,000 from the financial assets of [appellant].”

Appellant argues that the district court abused its discretion by awarding respondent a portion of his nonmarital assets because the district court failed to evaluate his health and needs as required by section 518.58, subdivision 2. We disagree. In

making its decision, the district court found that respondent “was the personal care attendant/caregiver for [appellant] from at least the time of their marriage until separation, on call 24 hours a day, seven days a week.” The court also found that as a result of her duties caring for appellant, respondent was not able to be employed outside the home or accumulate any retirement funds or other assets. The court further noted that respondent had significant student-loan and credit-card debt that she was not able to “pay down” due to her responsibilities in caring for appellant. The district court’s findings clearly indicate that the court considered appellant’s health and needs in making its decision because the court repeatedly referenced respondent’s assiduous care of appellant. Moreover, the court recognized that appellant “has financial assets exceeding \$400,000.”² The district court’s findings indicate that despite appellant’s health concerns, his significant assets and “social security and other disability benefits of \$4,000 per month” are more than sufficient to adequately provide for appellant’s caretaking. The district court’s findings are supported by the record. Thus, the district court did not abuse its discretion by awarding a portion of appellant’s nonmarital assets to respondent.

Appellant also contends that the property award was rendered unenforceable under Minn. R. Civ. P. 52.01, because the district court “failed to enter the nonmarital property award in its conclusions of law.” We acknowledge that the order does not contain a separate “conclusion of law” pertaining to the award of a portion of appellant’s nonmarital property to respondent. But the district court’s legal conclusion on this issue is contained in the findings of fact section wherein the district court awarded respondent

² The record indicates that appellant has cash or liquid assets of approximately \$478,384.

“\$100,000 from the financial assets of [appellant], to be paid within 30 days of entry of judgment.” The district court’s formatting of its decision in this manner is not a basis for reversal. *See Graphic Arts Educ. Found., Inc. v. State*, 240 Minn. 143, 145-46, 59 N.W.2d 841, 844 (1953) (noting that if a finding of fact is labeled a conclusion of law or a conclusion of law is labeled a finding of fact, the determination will be treated in accordance with its nature and not its incorrect label, and that the relevant question is whether the determination is adequately supported); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal a party must show error and resulting prejudice).

II.

Appellant next challenges the district court’s decision to impose an upward deviation from the child-support guidelines. A district court has broad discretion to address issues of child support, and its decisions are reviewed for an abuse of discretion. *Rutten*, 347 N.W.2d at 50.

A parent’s presumptive child-support obligation is calculated pursuant to Minn. Stat. § 518A.34(b) (2012). A district court has discretion to deviate from the presumptive child-support obligation and establish a different amount. Minn. Stat. § 518A.37, subd. 2 (2012). When deciding whether a deviation from the presumptive child-support obligation is appropriate, the district court must consider several factors, including “all earnings, income, circumstances, and resources of each parent.” Minn. Stat. § 518A.43, subd. 1 (2012).

Appellant argues that because his ongoing medical expenses exceed his income, the district court abused its discretion by ordering an upward deviation from the child-support guidelines. Instead, appellant contends that a “downward deviation is justified given [that he] does not have enough for self-support based upon his present income.”

Appellant’s argument is without merit. The district court found that respondent’s income earning ability was reduced by her role as appellant’s caregiver, and that she currently has a gross monthly income of \$1,144. The court also found that under the child-support guidelines, appellant’s presumptively appropriate support obligation of \$849 is “insufficient” to meet the children’s needs. Thus, the court determined that an upward deviation was appropriate, noting that the “main purpose of a deviation from the child support guidelines is to prevent either parent or the joint children from living in poverty.” In making its decision, the district court specifically found that appellant has a “gross monthly income of at least \$4,000,” and that “a deviation of an additional \$151 [per month] is not beyond his means, nor does it prevent him from meeting his own needs, given his substantial assets.” The district court’s findings are supported by the record. Therefore, the district court did not abuse its discretion by ordering the upward deviation from the child-support guidelines.

III.

Appellant argues that the district court erred by concluding that respondent was a putative spouse pursuant to Minn. Stat. § 518.055 (2012). “Whether a person is a putative spouse is a question of fact.” *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011), *review denied* (Minn. Aug. 16, 2011). A reviewing court will not disturb the

district court's findings as to a putative-spouse status unless the court is left with a definite and firm conviction that a mistake has been made. *Id.*

Minnesota's putative-spouse law provides:

Any person who has cohabitated with another to whom the person is not legally married in the good faith belief that the person was married to the other is a putative spouse until knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse

Minn. Stat. § 518.055.

Appellant argues that the district court clearly erred by finding respondent to be a putative spouse because she “admitted under oath that she knew that the individual signing the marriage certificate as the party who performed the marriage ceremony did not actually perform the marriage ceremony.” We disagree. The record reflects that respondent admitted that the individual who signed the marriage certificate as the person who performed the marriage ceremony was not the person or persons who actually performed the ceremony. In fact, respondent testified that they “had arranged for [the person who signed the marriage certificate] to be there,” but “after the ceremony was over, [they] found out that he had not shown up.” Respondent's testimony, however, does not demonstrate that the district court clearly erred by finding respondent to be a putative spouse. There is nothing in the record indicating that respondent understood the marriage to be invalid because the person who signed the marriage certificate was not the person who performed the marriage ceremony. Instead, as the district court found, respondent “had a good faith belief that she was legally married” to appellant. This

finding is supported by the record. The record shows that the parties have cohabitated since at least September 2004. The record also indicates that the parties have held themselves out to be married. Moreover, the record reflects that the parties signed documents identifying themselves as husband as wife, including: (1) documents at the Veteran's Administration; (2) real estate documents, such as their mortgage; and (3) documents for the public school system. Accordingly, the district court did not clearly err by finding respondent to be a putative spouse.

IV.

Appellant finally argues that the district court failed to provide reasonable accommodations to help facilitate his response to respondent's petition in violation of Minn. Stat. § 363A.11, subd. 1 (2012). Thus, appellant argues that the district court erred by quashing the answer and counterclaim he filed on May 30, 2012.

Minnesota law prohibits discrimination in places of public accommodation. Minn. Stat. § 363A.11, subd. 1(a)(1). A place of public accommodation is defined as “a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.” Minn. Stat. § 363A.03, subd. 34 (2012). But as respondent points out, a court does not fall into the definition of a place of public accommodation under section 363A.03, subdivision 34. Therefore, appellant's reliance on Minn. Stat. § 363A.11, subd. 1, is misplaced.

Moreover, appellant's contention that the district court did not provide reasonable accommodations to help facilitate appellant in responding to respondent's answer is not supported by the record. It is well settled that "pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). But despite this standard, the record reflects that in light of his pro se status and disabilities, the district court repeatedly attempted to accommodate appellant. The record reflects that on the first day of trial, the district court permitted appellant to participate during trial and allowed him the opportunity to file a late answer to respondent's petition, despite the fact that he was clearly in default. The record also reflects that despite appellant's failure to file an answer in compliance with the court's directives, the district court permitted appellant to participate at the second day of trial. The record further demonstrates that the district court continued the case twice at appellant's request, and allowed appellant ample opportunity to file an answer to the petition. Finally, the record displays that the district court specifically recommended that appellant retain an attorney. Appellant, however, failed to heed the advice of the district court and failed to take advantage of the opportunities provided by the court. It is undisputed that appellant failed to file a timely answer to respondent's petition, and that when he did file an answer on May 30, 2012, appellant failed to provide proof of service. Therefore, the district court did not err by quashing the answer and counterclaim filed by appellant in May 2012.

Affirmed.