STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1135

In re the Marriage of:
Mary Jane Chaignot, petitioner,
Respondent,

vs.

Edward Barton Chapin, Jr.,
Appellant.

Filed May 6, 2008
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-FA-000280008

Denis E. Grande, Robert Due, Mackall, Crounse & Moore, PLC, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, Minnesota 55402 (for respondent)

Linda R. Allen, Butler, Huson & Allen, P.A., 2330 U.S. Bank Center, 101 Fifth Street East, St. Paul, Minnesota 55101 (for appellant)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal after remand, appellant argues that the district court failed to follow this court's remand instructions by failing to consider a debt when dividing the marital estate thereby rendering the division of the marital estate inequitable. We affirm.

FACTS

The judgment dissolving the marriage of Edward Chapin and Mary Jane Chaignot held that certain debts, including one owed to attorney Frank Mabley, were unenforceable and did not consider them when dividing the marital estate. Husband appealed. In that appeal, this court (a) noted that because husband signed a promissory note, Mabley could, under the relevant statute of limitations, sue on the note until August 2008; (b) reversed the determination that the Mabley debt was unenforceable; (c) ruled that the district court abused its discretion by excluding the Mabley debt from the marital estate; and (d) remanded for a determination of whether the Mabley debt was marital. *Chaignot v. Chapin*, No. A05-1966, 2006 WL 2348119, at *11–*12 (Minn. App. Aug. 15, 2006) (*Chaignot I*).

On remand, the district court found that (a) the Mabley debt "is attributable to corporations owned in whole or in part by [husband or wife], and, therefore, neither [party] has any liability for this debt, nor can it be considered a marital debt"; (b) Mabley accepted stock in various businesses of the parties as payment for some of the services he provided, but he had limited records of his services, the amounts owed, the stock received, or the businesses in which he received stock; and (c) "[t]he questionable

liability to [Mabley] is highly speculative and highly contingent and will not be added to the calculations of the marital estate." The district court also found:

> [The Mabley debt] is speculative and contingent, and the Court will not order either party to be responsible for this debt, nor will it be considered in determining how to divide the marital estate. The parties will have to deal with this liability separately if and when [Mabley] seeks to enforce it against the corporations or the parties as corporate officers or shareholders.

The associated conclusion of law states that the Mabley debt is not marital and that the parties "will be left to assert whatever defenses each may have in the event of litigation." Husband appeals.

D E C I S I O N

I

Husband argues[1] that the district court exceeded the scope of the remand when it addressed the "validity and enforceability of the [Mabley] debt" and found it to be "'speculative and contingent' despite the fact that [*Chaignot I*] previously opined otherwise." We reject husband's argument.[2] On remand, a district court must strictly

[1] Most aspects of husband's argument do not distinguish between the note and the underlying debt. To the extent husband's argument does not do so, this opinion does not address the legal effect, if any, of a distinction between the note and the underlying debt.

[2] The record of the proceedings occurring on remand is less than optimal, but there is no allegation that it is inadequate to allow review, that the copies of the documents in the appendices to the parties' briefs are inaccurate, or that the record needed to be corrected or modified under Minn. R. Civ. App. P. 110.05. Therefore, we will not dismiss this appeal. *See Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530, 531 (1968) (dismissing appeal for an inadequate record, stating both that "[e]rror cannot be presumed" and that the appellant has the burden to provide adequate record on appeal); *see generally Custom Farm Servs. v. Collins*, 306 Minn. 571, 572, 238 N.W.2d 608, 609 (1976) (stating that "[a]n appellant has the burden of providing an adequate record for

execute the remanding court's instructions without altering the mandate. *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982); *Rooney v. Rooney*, 669 N.W.2d 362, 371 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). But if on remand, the district court does not have "specific directions as to how it should proceed," it has discretion to "proceed in any manner not inconsistent with the remand order." *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988), *review denied* (Minn. Feb. 24, 1989). Whether a district court exceeds the scope of its remand instructions is a question of law. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 217 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

The relevant portions of the remand instructions state that "the district court erroneously concluded that [the Mabley] debt is unenforceable" and that "the district court abused its discretion by excluding the [Mabley] debt from the marital estate." *Chaignot I*, 2006 WL 2348119, at *12. Husband reads those remand instructions to mean that the Mabley debt is enforceable and must be included in the marital estate. But *Chaignot I*'s next sentence states: "On remand, the district court may reopen the record to consider whether the debt is marital property." *Id.* A marital estate does not include property that is not marital. Therefore, the remand instruction directing the district court to consider whether the debt is marital property contemplates the possibility that, depending on the record generated on remand, the Mabley debt would be excluded from the marital estate because it was not marital property. And if the Mabley debt was

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appeal"); *Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964) (stating that "the party seeking review has the duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors").

excluded from the marital estate, it would also be excluded from consideration in the division of that marital estate.

This fact is confirmed by the scope of *Chaignot I*. Before that appeal, the district court ruled the Mabley debt to be unenforceable because it was barred by the statute of limitations. *See Chaignot I*, 2006 WL 2348119, at *11. This court reversed because the statute of limitations allowed Mabley to sue on the debt until August 2008. *Id.* at *12. Thus, the only enforceability-related question addressed in *Chaignot I* was the statute of limitations, and the remand instructions must be read in light of that fact. *See Skelly Oil Co. v. Comm'r of Taxation*, 269 Minn. 351, 371, 131 N.W.2d 632, 645 (1964) (stating that "'the language used in an opinion must be read in the light of the issues presented'" (quoting *Sinclair v. United States*, 279 U.S. 749, 767, 49 S. Ct. 471, 477 (1929))); *Stageberg v. Stageberg*, 695 N.W.2d 609, 613 n.2 (Minn. App. 2005) (applying *Skelly Oil* in a family-law case), *review denied* (Minn. July 19, 2005). *Chaignot I* did not address non-statute-of-limitations reasons that the Mabley debt could be excluded from the marital estate and hence from consideration in division of that estate. Therefore, the remand instructions directing the district court to determine whether the debt is marital property (and hence whether it is part of the marital estate) is consistent with the instructions stating that "the district court erroneously concluded that [the Mabley] debt is unenforceable" and that "the district court abused its discretion by excluding the [Mabley] debt from the marital estate" based on a misapplication of the statute of limitations. Thus, if the record allowed it, the scope of the remand allowed the district court to exclude the Mabley debt from consideration in the division of the marital estate

for reasons other than an unenforceability arising from the statute of limitations. And on remand, that is what the district court did: It excluded the Mabley debt from the marital estate and hence consideration in the division of that estate because it was property not of the parties but of their businesses, and because it found the likelihood of the debt being enforced unduly speculative.

Husband also asserts that the remand instructions required the district court to determine whether the Mabley debt was "marital or nonmarital" and to divide the marital estate in light of that determination. Husband claims that the district court's ruling makes the debt his nonmarital property for which he is solely, and therefore inequitably, responsible. We reject this argument because it incorrectly assumes that if the debt is not the marital property of the parties, it must be the nonmarital property of one of the parties. In a marital dissolution, courts treat debts as property. *See Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). And for dissolution purposes, "[m]arital property" is property "acquired by the parties, or either of them" during the marriage, while "[n]onmarital property" is property "acquired by either spouse before, during, or after the . . . marriage" that falls into certain statutory categories. Minn. Stat. § 518.003, subds. 1, 3b (2006). Thus, for property to be "marital" or "nonmarital" under Minn. Stat. § 518.003, subd. 3b, it must be the property of one or both spouses. Alternatively stated: Under Minn. Stat. § 518.003, subd. 3b, property of *neither* spouse is not marital. Nor is it nonmarital. It is, essentially, extramarital.

Here, the district court ruled that the Mabley debt "is attributable to corporations owned in whole or in part by [husband or wife.]" And corporations are generally

considered a legal entity separate from the shareholders. *Milwaukee Motor Transp. Co. v. Comm'r of Taxation*, 292 Minn. 66, 71, 193 N.W.2d 605, 608 (1971). Therefore, the district court essentially ruled the Mabley debt to be extramarital. Consistent with its determination that the Mabley debt is extramarital, the district court further ruled that "neither [party] has any liability for this debt, nor can it be considered a marital debt." Refusal to divide or apportion an extramarital debt in the division of marital property is consistent with caselaw. *See Sammons v. Sammons*, 642 N.W.2d 450, 457 (Minn. App. 2002) (stating that the "district court may not exercise jurisdiction over a nonparty" and "[lacked] personal jurisdiction to enter a judgment affecting [the property rights of a nonparty]"); *Fraser v. Fraser*, 642 N.W.2d 34, 38 (Minn. App. 2002) (noting that Minn. Stat. § 518.58 (2000) "does not authorize the district court to adjudicate the interests of third parties"). We conclude that husband's assertion that the district court made the Mabley debt his nonmarital property for which he is solely responsible is inconsistent with the district court's explicit ruling that the debt is corporate in nature. Accordingly, the district court's refusal to rule the Mabley debt to be marital or nonmarital does not violate the terms of the remand.

II

Husband argues that the Mabley debt is marital and that the district court's ruling to the contrary misreads *Lammi v Lammi*, 348 N.W.2d 372 (Minn. App. 1984). He also argues that the parties have personal liability for the debt based on a piercing-of-the-corporate-veil analysis. We review de novo whether property is marital, but we defer to the district court's underlying findings of fact unless they are clearly erroneous.

Gottsacker v. Gottsacker, 664 N.W.2d 848, 852 (Minn. 2003); *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). A district court's division of property and debt will be affirmed if it has an adequate basis in fact and principle, even if we may have taken a different approach. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002); *see Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996) (stating that in dissolution proceedings, debts are apportioned as part of the property settlement).

Husband contends that some of the Mabley debt was for personal services provided by Mabley. This assertion is consistent with evidence presented on remand. But it is not clear that this fact undermines the district court's refusal to consider the Mabley debt in the division of the parties' marital property. The district court found the likelihood of actual liability on the Mabley debt to be too speculative to consider the debt in the division of marital property. Liabilities that are unduly speculative need not be considered when marital property is divided. *See generally Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984) (stating that the district court should not consider tax consequences of its property division when doing so would force the district court to speculate). Thus, even if some of the Mabley debt was personal, any error is prejudicial only if Mabley's collection of that portion of the debt is not unduly speculative. *See* Minn. R. Civ. P. 61 (stating harmless error is to be ignored). And generally, to successfully recover contested attorney fees, fee agreements, time records, and similar documents are required to support the assertion of the amount due. Here, however, Mabley testified that after husband signed the note he destroyed his client agreements, and that because he moved offices before the hearing on remand, he "cull[ed]" his files

and no longer has billing records. On this record, we will not alter the finding that Mabley's ability to successfully sue to recover attorney fees is unduly speculative.

Noting that husband alone signed the 1998 promissory note, the district court ruled that, under *Lammi*, wife was not a participant in the 1998 promissory note and that no judgment could be entered against her based thereon. Husband argues that this misapplies *Lammi* because the purpose of the debt was marital. *Cf. Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn. App. 1984) (affirming apportionment of debt to party who incurred it for his own purposes). But (a) as noted above, at least part of the debt was corporate; (b) the district court explicitly stated that wife might be able to be made liable on the corporate portion of the debt; (c) wife's brief admits that there is a possibility that she can be made personally liable on the debt; and (d) all discussion of possible corporate liability, possible personal liability, and possible personal liability for corporate debt assumes that Mabley will successfully seek to enforce his debt.

Because it was not addressed by the district court, we decline to address husband's assertion of personal liability based on a piercing-of-the-corporate-veil argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only issues presented to and considered by the district court). We note, however, that the record presented to this court of the proceedings on remand does not substantively address the questions associated with a piercing-of-the-corporate-veil analysis. *See Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 319 (Minn. 2007) (addressing piercing of the corporate veil); *cf. Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that "[o]n appeal, a party cannot complain

about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question"), *review denied* (Minn. Nov. 25, 2003). Also, piercing the corporate veil is a mechanism generally used by plaintiffs in suits against corporations in order to gain access to the assets of the individual owners of the corporation. Here, however, husband, an owner of the businesses, is seeking to pierce the corporate veil, and he does not address or acknowledge that what he is seeking is actually a *reverse* piercing of the corporate veil, which includes considerations in addition to those involved in a piercing-of-the-corporate-veil analysis. *See Cargill v. Hedge*, 375 N.W.2d 477, 479 (Minn. 1985). For these reasons, and on this record, we decline to alter the district court's ruling on the Mabley debt.

Affirmed.