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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0509**

In re the Marriage of: Jodi Siljendahl, petitioner,
Respondent,

vs.

Eric Joseph Siljendahl,
Appellant.

**Filed March 3, 2009
Affirmed
Peterson, Judge**

St. Louis County District Court
File No. 69DU-FA-07-43

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a marital-dissolution judgment, pro se appellant-husband argues that the district court (1) abused its discretion by (a) excluding evidence regarding the value of respondent-wife's retirement accounts and the value of improvements that appellant made to the marital home, and (b) refusing to consider wife's severance pay

when dividing the marital property; and (2) failed to make comprehensive findings. We affirm.

FACTS

Appellant-husband Eric Siljendahl and respondent-wife Jodi Siljendhal were married in 1997. They legally separated and dissolution proceedings began in 2007. Before and during the marriage, husband worked for Wells Fargo for eleven years, during which he acquired a 401(k) retirement plan with a market value of \$137,779 and Wells Fargo stock worth \$1,053. Wife worked as a teacher in the Hermantown school district for ten years, but she was employed full-time only during the last three years. Through her employment, wife acquired a 403(b) retirement plan with a market value of \$4,950 and a Teachers Retirement Association (TRA) pension. An estimate of retirement benefits prepared by the TRA states that the “approximate present value” of wife’s TRA account on February 26, 2007, was \$10,710.43. Under her employment contract, wife was also entitled to receive severance pay.

On the day of trial, before the trial began, husband’s counsel requested that husband be allowed to testify about the value of wife’s TRA account. Counsel stated:

[Wife] has an account through [TRA] here in Minnesota, and [wife’s counsel] is going to make an argument that the value of the plan is approximately \$10,000. . . . My client intends to testify that actually that is not the correct value of her account, again, being approximately \$10,000, [and] that the true value is a present future value of that account. And instead, because of that standard, the value of her plan is significantly more than \$10,000. It brings us, basically, near to where [husband]’s account is with his retirement account.

In the alternative, husband requested that the district court appoint an actuary to prepare a valuation of wife's TRA plan and present the information to the court. The court denied husband's request and did not allow husband's testimony or appoint an actuary.

Also on the day of trial, husband's counsel requested that husband be allowed to testify "as to the work that he has done in the [marital] home since the parties bought the home, basically make a sweat equity argument." Counsel stated:

And I have documentation from [husband] as to the sort of work that he's done in the house and what he believes is a value as to the work that he has done in the house. And, again, this is something we certainly talked about with the [district court] before we started here today.¹ And the argument that [husband] is asking me to make is that he has done work in the home to improve the value of the home and [wife] should not benefit from the work that he has done in the home.

The district court did not allow husband to present his argument regarding sweat equity at trial.

In its Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree, the district court found that the present value of wife's TRA plan is \$10,710. The court did not address wife's severance pay. In its conclusions of law, the district court granted husband title to the parties' home and required husband to pay wife an amount equal to one half of the equity in the property. The court also ordered husband to pay \$61,586 from his 401(k) plan into an account in wife's name in order to equalize the value of the parties' pension, retirement, and stock accounts. The court stated that it

¹ The record on appeal does not include a transcript of any discussion that the parties or counsel had with the district court before trial.

“finds that using the present value of both parties’ retirement accounts is just and equitable.”

Husband filed a motion for reconsideration asking the district court to reconsider its rulings that (1) it would not allow husband or anyone else to testify about the present future value of wife’s retirement account because it intended to use the current present value of the account; and (2) any improvements to the marital home should and must be shared equally. The court denied the motion. This appeal follows.

D E C I S I O N

I.

Husband argues that the district court erred by refusing to (1) allow him to testify about the value of wife’s retirement accounts or (2) appoint an actuary to determine the present value of the future benefits of both parties’ retirement accounts. “The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted).

In responding to husband’s request at the beginning of trial to allow him to testify about the value of wife’s pension benefits or to appoint an actuary to value both parties’ retirement accounts, the district court stated:

Regarding the retirement accounts, this Court is not going to delay this matter any further. I am not going to ask or require the parties to get an actuary that is going to figure out future value of both retirement accounts. The present

value of the retirement accounts will be what this Court considers when deciding these issues.

The supreme court has expressly recognized two methods for dividing pension rights in a marital dissolution. *DuBois v. DuBois*, 335 N.W.2d 503, 505 (Minn. 1983).

The first method,

commonly referred to as the “present cash value method,” is to award the employee spouse the pension and assign the non-employee spouse assets of a value equal to a portion of the present value of the benefits. The other method, usually referred to as the “reserved jurisdiction method,” is to reserve jurisdiction until retirement and divide the actual monetary benefit if and when received.

Id.

Present value is the sum which a person would take *now* in return for giving up the right to receive an unknown number of monthly checks in the future. The present value is discounted by various actuarial calculations to reflect contingencies affecting the eventual payout, including discounts for mortality, inflation, interest, probability of vesting and probability of continued employment. Not all of these calculations are applicable to every retirement plan. . . . The present value is reduced to reflect the risk of [the employee’s] death prior to receipt of pension benefits and to take account of the interest that could be earned if the money were now available for investment.

Id. at 506.

Because he believed that the true value of wife’s TRA plan was greater than the \$10,710.43 “approximate present value” listed on the statement prepared by the TRA, husband sought to testify about the valuation of the plan. Husband’s counsel told the district court that husband intended to testify “that the true value is a present future value of that account.” Wife argues on appeal that “present future value” is not a valuation

method recognized in Minnesota and that husband “cannot simply create a new valuation calculation and find error with the District Court in failing to adopt it.” But husband contends on appeal, that he “sought the opportunity to present evidence as to the present value of future benefits of the retirement accounts.” It appears that husband’s counsel simply misspoke in the district court when describing husband’s intended testimony and that husband did not intend to testify about a “present future value” method of valuation that has not been recognized in Minnesota.

However, even if we assume that husband wanted to testify about a recognized valuation method for retirement accounts, the record does not demonstrate that the district court abused its discretion when it denied husband’s request to testify. Husband did not make an offer of proof establishing his qualifications to testify about valuation or the substance of his testimony that would allow us to determine whether the valuation testimony was properly excluded. “[A] party fails to preserve for appeal a ruling excluding evidence when that party fails to make an offer of proof showing the nature of the evidence excluded.” *State v. Wolf*, 605 N.W.2d 381, 385 (Minn. 2000); *see also State v. Harris*, 713 N.W.2d 844, 848 (Minn. 2006) (holding that district court did not err in limiting expert testimony when appellant “neither established an adequate foundation for the opinion nor made an offer of proof of the substance of the evidence”).

Discounting wife’s future TRA pension payments by various actuarial calculations to reflect contingencies that could affect the eventual payout requires specialized knowledge. Under Minn. R. Evid. R. 702:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability.

Husband argues on appeal that “[a]s an individual with a Bachelor’s of Business Administration with a major in Finance and Economics who was employed as a manager of Wells Fargo for eleven years,” the present value of wife’s future pension benefits “would have been within his realm of knowledge.” But the record does not show that husband even attempted to establish in the district court that he possessed the “knowledge, skill, experience, training, or education” needed to determine the present value of wife’s future pension benefits or to demonstrate that the “approximate present value” reported by the TRA was incorrect. Because husband did not establish in the district court either his qualifications to testify about valuation or the substance of his testimony, he did not preserve for appeal the district court’s ruling that husband could not testify about the present value of wife’s future pension benefits.

Husband argues in the alternative that the district court should have appointed an actuary to testify regarding the valuation of wife’s retirement accounts. The district court “*may* appoint a qualified person experienced in the valuation of pension benefits and rights to function as an expert witness in valuing pension benefits or rights.” Minn. Stat. § 518.582, subd. 1 (2008) (emphasis added); *see also* Minn. R. Evid. R. 706 (“The court may appoint any expert witnesses agreed upon by parties and may appoint expert

witnesses of its own selection.”). “‘May’ is permissive.” Minn. Stat. § 645.44, subd. 15 (2008). Thus, whether to appoint an actuary is within the district court’s discretion.

Husband did not ask the district court to appoint an actuary until the morning when trial was to begin. Appointing an actuary would have required the district court to continue the trial to permit the actuary to analyze wife’s retirement benefits. The district court chose not to delay the matter any further. Husband offers no explanation for his delaying his request to appoint an actuary until the day of trial. Husband has not shown that the district court abused its discretion when it denied the request. *C.f. Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982) (stating that a district court may grant continuance if party requesting the continuance has been diligent in obtaining and seeking discovery prior to requesting continuance and has a good-faith belief that material facts will be uncovered).

II.

Husband argues that the district court erred by not allowing him to present evidence about the improvements he made to the parties’ home that, he contends, contributed to the increase in its value. The district court stated that

the argument regarding the sweat equity, that is not going to be presented to the Court. Certainly, if the parties had been separated or if there were some other issue other than what I have heard so far, and I am assuming it based upon your proffer here, that the work done on the house was done while it was marital property and while both parties were living together. You know, with that said, that’s—the argument just isn’t going to be presented.

When dividing marital property,

[t]he court shall base its findings 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, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. *It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife.*

Minn. Stat. § 518.58, subd. 1 (2008) (emphasis added).

In *Kowalzek v. Kowalzek*, the district court awarded the husband a lien against the marital home in an amount that included seventy-five percent of the \$7,340 increase in value due to improvements made during the 16-month marriage. 360 N.W.2d 423, 425 (Minn. App. 1985). The evidence showed that, in 16 months of marriage, the fair market value of the house, which wife owned before the marriage, increased from \$60,700 to \$73,500. *Id.* Husband spent 20-30 hours each week during the marriage on improvements and produced a list of improvements at trial. *Id.* at 427.

This court explained that

[t]he language of section 518.58 indicates a conclusive presumption that each spouse made a substantial contribution to the acquisition of income and property during the marriage. Once this conclusive presumption is applied, the statute still gives the trial court discretion to determine what is a fair division, which is not mandated in all cases to be exactly one-half.

Id. This court concluded that there was sufficient evidence before the trial court to conclude that the unequal division of marital property was equitable. *Id.*

Thus, it is within the district court's discretion to award a spouse additional marital property in recognition of efforts that the spouse made to improve property and increase its value, but a district court is not required to award to a spouse every increase in property value that is attributable to improvements made by that spouse. Husband's attorney argued to the district court that "[husband] has done work in the home to improve the value of the home and that [wife] should not benefit from the work that he has done in the home." In the memorandum of law accompanying his motion for reconsideration, husband argued that he intended to testify as to the improvements that he completed to the basement and exterior of the marital home increasing the fair market value of the home. But the record does not include an offer of proof that shows the efforts that husband made to improve the homestead and the increase in value attributable to the improvements. And nothing in the arguments that husband presented to the district court suggests that his efforts were sufficient to overcome the presumption of equal contribution. Without an offer of proof that includes evidence sufficient to overcome the statutory presumption, the record does not demonstrate that the district court abused its discretion by refusing to hear husband's testimony regarding his contribution to the value of the home.

III.

Husband argues that the district court erred by not considering wife's severance pay when dividing the marital property. The district court made no findings regarding severance pay and did not include severance pay in the property division. Husband

contends that because the district court did not consider the severance pay, the property division was not fair or equitable.

Although the record indicates that wife's employment contract includes a severance-pay provision, the contract was not admitted into evidence. Wife testified that to be eligible to receive severance pay:

You must be an employee for—full-time employee for ten consecutive years; you must retire from the district; you must be at least 52 years old; and you have to ensure that you don't need to use those sick days throughout your working career so you have them to use as a severance.

In addition, you have to ensure that the school board and the union will never negotiate a different plan or change that part of our agreement. And since we renegotiate every two years, that's not something that will always be a guaranteed benefit.

Husband testified that "severance pay is one where she can accumulate up to 85 days paid on a daily rate that she, [wife], had previously submitted to me that, back in February, had a value of \$14,000 that is now being withheld."

Parties are presumptively competent to testify to the value of their assets. *Bury v. Bury*, 416 N.W.2d 133, 136 (Minn. App. 1987). But even if we assume that the district court found both parties' testimony about severance pay credible and that the testimony accurately describes wife's severance-pay benefit, the district court did not abuse its discretion by not including severance pay in the property distribution. At the time of trial, wife was 34 years old and had been working full time for the school district for just three years. Consequently, even if she had already accumulated \$14,000 in a severance-pay account, she will not be able to receive severance pay for at least 18 years and then

only if she continues to work for the district full time for at least seven more consecutive years, does not need to use her accumulated sick days before she retires, and the severance-pay provision remains a part of her employment contract. These are all variables that make the present value of wife's severance pay speculative, and there is no evidence that provided a basis for the district court to determine the value of severance-pay benefits acquired during the marriage. Without an evidentiary basis for determining the value of the severance pay, the district court did not abuse its discretion by omitting it from the property division.

IV.

Citing *Ronnkvist v. Ronnkvist*, 331 N.W.2d 764 (Minn. 1983), husband argues that the district court failed to render comprehensive findings regarding its (1) disallowance of husband's testimony about wife's TRA account and 403(b) retirement plan,² (2) denial of husband's request to have an actuary appointed, and (3) failure to consider wife's severance pay in the property division. In *Ronnkvist*, the supreme court stated:

While we have often stated that [district] courts are accorded broad discretion in both the valuation and distribution of an asset, exercise of that discretion is not unlimited and should be supported by either clear documentary or testimonial evidence or by comprehensive findings issued by the court. The absence of such findings renders review of the amended judgment difficult.

331 N.W.2d at 766.

² The district court did not disallow husband's testimony about wife's 403(b) plan. Husband testified, "The 403(b) is the one thing that she has that would be identical to my 401(k); it's basically you put it in, it sits in the market, and then you can draw from it when you retire."

Ronnkvist does not require the district court to make comprehensive findings regarding its decisions to admit or exclude evidence. It addresses comprehensive findings regarding the valuation and distribution of assets, and it does not require comprehensive findings when a decision regarding valuation or distribution of an asset is supported by clear documentary or testimonial evidence. *Id.* The district court's denial of husband's request to allow him to testify about the value of wife's TRA benefits or appoint an actuary to prepare a valuation of the benefits was a decision to exclude evidence that did not need to be supported by comprehensive findings. And although it would have been helpful to our review if the district court had stated why it omitted the severance pay from the property distribution, it is apparent that the parties' testimony did not provide a basis for the district court to determine a value for the severance pay.

Affirmed.