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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0877**

In re the Marriage of: John Daniel Shanku, petitioner,
Appellant,

vs.

Katherine Marie Shanku,
Respondent.

**Filed June 2, 2009
Affirmed
Stauber, Judge**

Clay County District Court
File No. 14F707000795

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Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this dissolution dispute, appellant-husband John Daniel Shanku argues that
(a) the award to respondent-wife Katherine Marie Shanku of spousal maintenance is
inappropriate because the finding that wife's medical condition precludes her from

supporting herself is unsupported by the record; and (b) the record does not support awarding wife \$10,000 secured by a lien on the homestead because the district court's valuation of the homestead is clearly erroneous. Because the record supports the district court's factual findings, we affirm.

FACTS

Husband and wife were married in 1987 and have one minor child. In February 2007, husband petitioned to dissolve the parties' marriage. The parties settled several matters by stipulation, but submitted the issues of spousal maintenance and a potential lien on the marital homestead to the district court for resolution.

A. Spousal maintenance

With respect to spousal maintenance, the parties focused on wife's need for support. Wife was 52 years old at the time of trial, had a high school education, and had worked exclusively in the food-service industry since 1984. In 2003, wife quit working after husband began receiving disability benefits. Wife testified that she decided to quit because husband was able to support the family on his disability benefits, and because it would allow her to drive husband to his medical appointments and take care of the household. After the parties separated in 2007, wife made two attempts at returning to work in food service. However, wife quit both jobs shortly after starting them due to pain in her leg and trouble walking. Wife testified that she was later diagnosed with osteoporosis in her knees, bulging discs in her back, and also needed a hip replacement. Due to these health issues, wife claimed that she was no longer able to satisfy the physical demands of food-service employment, which involved bending, stretching,

standing for eight hours at a time, and lifting heavy objects of 50 pounds or more. Wife also offered a letter from her doctor indicating that she should be limited to sedentary activities due to the significant osteoarthritis in her knee. After leaving the food-service industry, wife began to care for her grandchild, who was 14 months old at the time of trial. Wife testified that she is able to care for her grandchild if she continuously alternates her body position, lies down at least once a day, and refrains from strenuous recreational activities. Since wife began caring for her grandchild, her gross monthly income is only \$441, while her reasonable monthly expenses are \$1,500.

Husband disputed wife's alleged health problems, insinuating that wife was voluntarily underemployed. Husband testified that wife had refused to continue working in 2003, long before her alleged health problems arose, and she began to experience deterioration in her health only after the parties separated.

B. Lien on the marital homestead

The parties stipulated that husband should be awarded ownership of the marital homestead. However, wife requested that the district court award her \$10,000 secured by a lien on the homestead in order to achieve an equitable distribution of the marital estate. Wife argued that the lien was necessary because, during the pendency of the dissolution, husband encumbered marital assets as security for a loan to satisfy his credit card debt. Due to the encumbrance, these assets were no longer available for distribution. Husband challenged wife's request, claiming that the homestead held insufficient equity to provide such an award. Husband testified that he believed the homestead was worth approximately \$80,000, or \$3,000 more than the \$77,000 remaining mortgage balance.

In arriving at this estimate, husband claimed that the homestead was in need of significant repairs and noted that the real estate market had recently declined. Conversely, wife testified that, based on the improvements she had made since the parties purchased the homestead in 2003, the homestead was worth at least the tax-assessed value of \$86,400.

After trial on these issues, the district court ordered husband to pay wife spousal maintenance of \$500 per month, and also awarded wife her requested \$10,000 lien against the parties' homestead. Husband did not move for a new trial or amended findings, but instead filed this direct appeal.

D E C I S I O N

I.

A district court may award spousal maintenance if a spouse is unable to support herself through employment in view of the marital standard of living. Minn. Stat. § 518.552, subd. 1(b) (2008). “[P]oor health is a proper reason for awarding permanent maintenance.” *McConnell v. McConnell*, 710 N.W.2d 583, 586 (Minn. App. 2006) (quotation omitted). In deciding whether to award maintenance, a district court balances the recipient’s need against the obligor’s ability to pay. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

An appellate court generally reviews a district court’s maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). But because there was no motion for a new trial, our scope of review is limited to

substantive legal issues properly raised at trial, whether the evidence sustains the findings of fact, and whether such findings sustain the conclusions of law and judgment. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 308-11 (Minn. 2003) (determining that substantive legal issues were properly raised at trial); *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976) (stating that appellate courts limit review to whether the evidence supports the findings and the findings support the conclusions of law and judgment). “Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous.” *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). A finding is “clearly erroneous” if, on review, this court is “left with the definite and firm conviction that a mistake has been made.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). When reviewing the findings for clear error, appellate courts consider the record in the light most favorable to the findings and defer to the fact-finder’s credibility determinations. *Id.* A finding is not clearly erroneous simply because there is also evidence in the record to support a finding other than that made by the district court. *Id.* at 474.

In awarding spousal maintenance, the district court found that respondent’s reasonable expenses far exceed her income, and due to her health problems, advanced age, and limited education, respondent is unable to obtain suitable employment or retraining that will allow her to meet her needs. The court also concluded that appellant has the ability to pay maintenance, as his net monthly income exceeds his reasonable monthly expenses by more than \$500.

Husband challenges the finding that wife's health problems prevent her from supporting herself, claiming wife's testimony regarding her alleged physical impairment is self-serving and not credible. We disagree. The district court's findings of fact with respect to wife's physical impairment are largely based on the testimony of the parties and amount to a credibility determination in favor of wife. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations). Assuming the district court believed wife's testimony, there is sufficient evidentiary support in the record for the conclusion that wife suffers from health issues that limit her ability to support herself. Accordingly, we decline to disturb the award of maintenance.

II.

Upon dissolution of a marriage, a district court is required to "make a just and equitable division of the marital property of the parties . . . after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2008). "District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law." *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). "We will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). Assigning a specific value to an asset is a finding of fact reviewed for clear error. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

The court found that a \$10,000 lien in favor of respondent was necessary to arrive at an equitable division of the marital estate. In awarding the lien, the district court did not assign an exact market value to the homestead. However, the court did find that approximately \$10,000 in equity had accumulated since it was purchased in 2003.

Husband argues that the district court abused its discretion in awarding wife a \$10,000 lien against the homestead, claiming it does not hold sufficient equity to grant such an award. Husband relies on his testimony that the homestead is in need of significant repairs and is worth only \$3,000 more than the mortgage balance remaining on the property. But, like the award of spousal maintenance, the amount of equity available in the homestead was resolved by weighing the conflicting testimony of the parties. *See Sefkow*, 427 N.W.2d at 210 (stating that appellate courts defer to district court credibility determinations). In concluding that the homestead held approximately \$10,000 in equity, the district court implicitly adopted wife's valuation of the property. Wife testified that the homestead was worth at least the tax-assessed value of \$86,400, and identified numerous improvements she had made that increased its value. Based on wife's valuation, the homestead held approximately \$10,000 in equity. The court also discredited husband's testimony, noting that the repairs he identified do not substantially affect the value of the homestead as they "are not emergency or necessary repairs and are within the realm of home maintenance."

Moreover, regardless of the amount of available equity, it was within the court's equitable discretion to award a lien under these circumstances. The lien award resulted from appellant's encumbrance of the parties' two Harley Davidson motorcycles during

the pendency of the dissolution proceeding without respondent's consent and without a permissible purpose. *See* Minn. Stat. § 518.58, subd. 1a (2008) (stating that a spouse may not encumber marital assets during the pendency of a marital-dissolution proceeding unless the spouse does so with the other spouse's consent or "in the usual course of business or for the necessities of life"). Therefore, we conclude that the district court appropriately awarded the lien. *See id.* (providing that a district court must compensate the other spouse "by placing both parties in the same position that they would have been in had the . . . encumbrance . . . not occurred").

Affirmed.