STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1202

Annette Rene Kamphaus, petitioner,
Respondent,

vs.

Eugene Edward Kamphaus,
Appellant.

Filed August 4, 2009
Affirmed
Willis, Judge[*]

Hubbard County District Court
File No. 29-F1-06-000888

John E. Valen, Fifth & Michigan, P.O. Box 1105, Walker, MN 56484 (for respondent)

B. Joseph Majors, II, Thorwaldsen, Malmstrom, Sorum & Majors, P.L.L.P., 618 First Street East, Suite 2, P.O. Box 859, Park Rapids, MN 56470-0859 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Lansing, Judge; and Willis, Judge.

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

WILLIS, Judge

In this marital-dissolution appeal, appellant-father Eugene Edward Kamphaus argues that the district court erred by ruling that there was a marital interest in land that

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

he acquired before he married respondent-mother Annette Rene Kamphaus. Because father has not shown that the district court misapplied the law, we affirm.

FACTS

When the parties married on January 16, 1993, father owned 160 acres of land in Antelope County, Nebraska. During the marriage, the land was not improved, and, while the record is not exact, at least 70 acres of the land was enrolled in a Conservation Reserve Program (CRP), in which "highly erodible ground" is taken "out of tillable acreage and put back into pasture land." Annual CRP payments of approximately $4,600 were deposited into a Nebraska account in father's name and reported on the parties' joint tax returns as income.

In 2006, mother filed for bankruptcy. In that proceeding, she did not claim an interest in the Nebraska land. Mother received a discharge in bankruptcy on September 2, 2006.

During the parties' dissolution trial, father testified that the account into which the CRP payments were deposited was opened when he was in high school, that he "believe[d]" that he had given his mother a power of attorney allowing her to use the funds in that account, and that he did not realize that the account was still open. When asked whether the mortgage on the Nebraska land was paid with CRP funds, he responded, "Partially," and, "I believe so. My mother took care of it." Father also testified that the real-estate taxes on the Nebraska land were paid with CRP funds; that, after the mortgage was paid off in 1997, the CRP payments continued to be deposited into the Nebraska account; and that funds from that account were used to pay the

expenses of, among other things, noxious-weed control on the CRP land, and any necessary reseeding and upkeep of the CRP land.

Mother testified that her bankruptcy had been reopened at father's "urging" and that, as of the time of trial, the reopened bankruptcy proceeding was still pending.

The dissolution judgment awards mother sole legal and physical custody of the parties' minor children. The district court found that when the parties married, the Nebraska land was worth $52,800 and was subject to a $36,371 mortgage, leaving father with $16,429 of premarital equity in that land. The record shows that the Antelope County Assessor valued the land at $119,045 as of June 5, 2007, and that mother's appraiser valued the land at $246,000 as of May 31, 2007. The judgment does not determine the value of the Nebraska land at the time of the parties' separation or dissolution. Nor does the judgment explicitly identify the extent of any marital interest in the land, but it does award the Nebraska land to father and awards mother an $88,000 payment from father, secured by a lien on the Nebraska land. The judgment states that the payment to mother is made "[t]o achieve an equitable division of marital property." The judgment was later amended twice to address questions related to the parties' children. Father appeals.

D E C I S I O N

When a marriage is dissolved, the district court "shall" equitably divide the parties' marital property. Minn. Stat. § 518.58, subd. 1 (2008). Although the district court did not specifically find a marital interest in the Nebraska land, neither did it make the findings required by Minn. Stat. § 518.58, subd. 2 (2008), if nonmarital property is to

be divided. On appeal, consistent with the district court's statement that father's required $88,000 payment to mother was intended to "achieve an equitable division of marital property," both parties assume that the district court treated at least part of the increased equity in the land as marital property. Father challenges this treatment, arguing that because the parties made no contribution for the upkeep and maintenance of the property and because the property's increased value is the result of market forces, the property is his nonmarital property "in its entirety."

Whether property is marital or nonmarital is a legal question, which is reviewed de novo, but appellate courts defer to a district court's findings of fact underlying that decision unless those findings are clearly erroneous. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Income generated by a nonmarital asset during a marriage is marital income. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 854 (Minn. 2003). Therefore, the CRP payments received during the parties' marriage were marital income, and the use of those martial funds to pay off the mortgage on the Nebraska land generated a marital interest in the land. *See* Minn. Stat. § 518.003, subd. 3b (2008) (defining "marital property" to include "property, real or personal, . . . acquired by the parties, . . . to a dissolution, . . . at any time during the existence of the marriage relation between them"); *Antone v. Antone*, 645 N.W.2d 96, 103-05 (Minn. 2002) (holding that there was "marital equity" in rental properties to the extent that the rental income during the marriage reduced the properties' mortgage balances and that the husband's interest in a business was marital because it was purchased with marital funds).

Father asserts that even though the parties jointly paid the income taxes on the marital CRP payments, the payment of those taxes did not increase the value of the Nebraska land, and, therefore, all of the increase in the value of the land is his nonmarital property. Whether the appreciation of a nonmarital asset is marital or nonmarital depends on the extent to which "marital effort" generated the increase. *Baker v. Baker*, 753 N.W.2d 644, 652 (Minn. 2008). Marital effort is "the financial or nonfinancial efforts of one or both spouses during the marriage" generating the appreciation of the asset in question. *Id.* "[E]ffort expended to generate property during the marriage—that is, 'marital effort'—should benefit both parties rather than one of the parties to the exclusion of the other." *Id.* at 651. Here, because the use of the martial CRP funds to pay the mortgage was marital effort that generated a marital interest in the Nebraska land, part of the appreciation of the Nebraska land is attributable to the marital interest in the land.

Father also argues that the fact that the CRP income was used exclusively by his parents in the management of the property highlights the fact that the parties were passive with respect to the property, and that the passive nature of their investment in the land means that it is his nonmarital property. But this misstates what passive appreciation means. "Active appreciation" of a nonmarital asset is marital property, while "passive appreciation" of a nonmarital asset remains nonmarital. *Id.* at 650. The supreme court has

> explained the difference between active and passive appreciation as follows:
>
> > [I]ncrease in the value of nonmarital property attributable to the efforts of one or both spouses

> during their marriage, like the increase resulting from the application of marital funds, is marital property. Conversely, an increase in the value of nonmarital property attributable to inflation or to market forces or conditions[ ] retains its nonmarital character.

Id. (quoting *Nardini v. Nardini*, 414 N.W.2d 184, 192 (Minn. 1987)). Active appreciation includes appreciation occurring during a marriage if marital "time, effort or money" was used in the "maintenance" of the asset. *Swick v. Swick*, 467 N.W.2d 328, 331 (Minn. App. 1991), *review denied* (Minn. May 16, 1991). Here, father testified that the marital CRP funds were used to maintain the land by paying the real-estate taxes on the land, as well as to pay for "noxious weed control, reseeding of the CRP acres if [they] needed to be [reseeded], [and] upkeep of the land." Thus, marital funds were used to maintain the land.

Father further argues that mother's failure to assert an interest in the Nebraska land in her bankruptcy shows that there is no marital interest in the land. While the reason that father "urg[ed]" that mother's bankruptcy be reopened is not specifically identified in the record, because mother's bankruptcy has been reopened, that proceeding may yet address any interest mother had in the Nebraska land. *See* 11 U.S.C.A. § 350(b) (West 2004) (allowing a bankruptcy case to be reopened "to administer assets, to accord relief to the debtor, or for other cause"); *Miller v. Shallowford Comm. Hosp., Inc.*, 767 F.2d 1556, 1559 (11th Cir. 1985) (allowing a creditor who would have benefitted from reopening a bankruptcy to reopen the bankruptcy to administer previously unadministered assets). Therefore, father's argument on this point is currently premature

and, in light of the pendency of mother's reopened bankruptcy, we decline to address it further.

On this record, father has not shown that the district court erred by concluding that there was a marital interest in the Nebraska land.

Affirmed.