STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1487

In re the Marriage of:
Orlin Ole Lerol, petitioner,
Respondent,

vs.

Yvonne J. Lerol,
Appellant.

Filed August 4, 2009
Affirmed as modified
Ross, Judge

Pennington County District Court
File No. 57-FA-07-1009

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Larkin, Judge.

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

ROSS, Judge

This is an appeal from the property division portion of a judgment and decree dissolving a marriage that lasted nearly 50 years. Yvonne Reierson, formerly known as

Yvonne Lerol, appeals from the judgment and decree that dissolved her marriage to Orlin Lerol. She contends that the district court erred in dividing the parties' property and erred in allocating the marital debt. Reierson asserts specifically that the district court erred by finding that Lerol retained his nonmarital interest in the farmstead and, alternatively, that the district court erred by "apportioning the farmstead mortgage only to the marital share of the farmstead and none to the nonmarital share."

Lerol filed a notice of review and challenges the district court's property and debt division. He argues that the district court erred by calculating the value of Reierson's marital interest in the farmstead and by calculating the value of Reierson's marital interest in another piece of real property, on Red Lake Boulevard. Lerol also contends that the district court "err[ed] in determining the marital unsecured debt" and "err[ed] in dividing the marital equity."

Because we conclude that evidence supports the district court's findings that the farmstead was a nonmarital gift to Lerol and that a portion of the farmstead retained its nonmarital character throughout the marriage, we will not disturb the district court's finding on that issue. And based on the record and Reierson's concession at oral argument that the district court erred in calculating the marital portion of the Red Lake Boulevard property, we modify that portion of the order. But because the district court's property and debt allocation was reasonable, we reject Lerol's argument that he is entitled to a property settlement. We affirm the district court's order as modified.

FACTS

Orlin Lerol and Yvonne Reierson married in 1959. When judgment in the marriage-dissolution action was entered in June 2008, the parties were ages 71 and 67. The district court tried the issues of property division and debt allocation. The district court apportioned the parties' property and debt, noting its awareness that the apportionment was unequal but finding that it was equitable, on the following reasoning:

> The Petitioner (Orlin Lerol) will be able to continue his present lifestyle on the farm with the combination of marital and nonmarital property that he is receiving. On the other hand, a significant amount of debt, including [Lerol's] credit card debt, is given to the Respondent (Yvonne Reierson), which will delay her plans for retirement.
>
> The parties had a nearly 50-year marriage, and the parties lived on the farm homestead for nearly all of that time. [Reierson] understood that the entire quarter section of land would be an asset for the parties to use for their retirement. Indeed, [Reierson], in the course of her marriage, had drawn down her 401(k) retirement to use for the parties' living expenses. However, as noted herein, the Court had found that only one-half of the quarter section of the property is marital. In light of [Reierson's] beliefs and actions related to her 401(k), the Court finds that it is fair to grant [Reierson] a slightly higher division of property.

According to the district court's property-and-debt-division balance sheet, Lerol received $3,909.61 of the marital equity and Reierson received $10,384.82 of the marital equity. Without moving for amended findings or a new trial, Reierson filed this appeal. Lerol, also unsatisfied with the property and debt apportionment, filed a notice of review.

D E C I S I O N

Both parties dispute the district court's treatment of the farmstead, which was the parties' marital home and most valuable asset. Reierson argues that the entire farmstead is marital property. Lerol concedes that a portion of the farmstead is marital, but he contends that the district court wrongfully calculated the value of the marital share. Lerol argues that the district court erred in its treatment of another asset, known as the Red Lake Boulevard property—both by miscalculating the value of the marital share and by awarding his nonmarital share to Reierson. Lerol also asserts that the district court erred by classifying some stipulated nonmarital debt as marital debt on the property and debt allocation spreadsheet. Lerol proposes a new spreadsheet in his brief and argues that after the district court's errors are corrected, he is entitled to a property settlement of $48,558.32. We address each argument in turn.

I

The district court found that the farmstead was Orlin Lerol's nonmarital property because it "was a nonmarital gift to [him] from his parents . . . by virtue of a deed dated May 5, 1962." Reierson contends that this finding lacks evidentiary support.

All property, real or personal, is presumed to be marital if "acquired by the parties, or either of them . . . at any time during which the parties were living together as husband and wife." Minn. Stat. § 518.003, subd. 3b (2008). This presumption of marital property attaches "regardless of whether title is held individually or by the spouses . . . in . . . joint tenancy." *Id*. It is undisputed that the farmstead was transferred from Orlin Lerol's parents approximately three years into the marriage. Because the farm was acquired

during the marriage, there is a presumption that it is marital property. But the presumption of marital property is rebutted when the property at issue is "acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse." *Id.*, subd. 3b(a). Lerol contended, and the district court found, that the farm was gifted to him and not to Reierson. Reierson contests the validity of that finding.

On a direct appeal from a judgment without a motion for a new trial, we review for whether the evidence sustains the findings of fact and whether those findings sustain the conclusions of law and the judgment. *Erickson v. Erickson*, 434 N.W.2d 284, 286 (Minn. App. 1989) (citation omitted). This court reviews a district court's determination of whether property is marital or nonmarital as a question of law, but we defer to the district court's findings of fact unless they are clearly erroneous. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Findings are clearly erroneous if "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999) (quotation omitted). "If there is reasonable evidence to support the district court's findings, [the reviewing court] will not disturb them." *Id.*

In *Olsen*, the supreme court faced the question that we now face: "whether [a] gift was made to only one spouse and not the other so as to be classified as nonmarital property." 562 N.W.2d at 800. To answer that question, the supreme court directed as follows:

> The most important factor in determining whether a gift is marital or nonmarital is the donor's intent. To constitute a valid gift inter vivos, the donor must intend to

> make a gift, the property must be delivered and the donor must absolutely dispose of the property. Although the issue of intent typically concerns whether the donor intended a gift at all, it logically follows that the identity of the donee also turns on the donor's intent. Questions of intent are fact questions. Donative intent is demonstrated by the surrounding circumstances, including the form of transfer.

Id. (citations omitted). The party seeking to establish that property is nonmarital has the burden of proof. *Id*.

Conveyance of the Farmstead in 1962

The evidence supports the district court's finding that the farmstead was a gift to Lerol and not Reierson. The evidence includes Lerol's testimony and testimony from his sister, Beulah Weiss. Their testimony explained that Lerol's parents, Ole and Olga Lerol, acquired the farmstead in the 1930s. When Lerol's parents moved from the farm in 1962, the whole family decided that Lerol should receive the farm, because he had health issues that convinced the family that he needed the farm as financial support. Weiss specifically testified that the whole family agreed that Ole and Olga Lerol "should gift the farm to Orlin." Weiss also testified that "[n]o money was paid for the farm" by Lerol because "[w]e all decided that they should just give it to him." Lerol also testified that he did not pay for the farm, but it was a gift to him from his parents and that his brothers and sisters agreed that his parents should give it to him. This testimony supports the district court's finding that Lerol "paid nothing for this farm." The deed conveying the farmstead also lists Lerol as the sole recipient of the property. This evidence supports the district court's finding that the farmstead was a gift to Lerol alone.

Reierson points to her own testimony and other documents in the record that suggest that the farmstead might not have been a gift to Lerol alone. Some of the documents support her argument. But our review from a direct appeal without a motion for a new trial or amended findings is limited as stated. Because reasonable evidence supports the district court's findings, we will not disturb them.

"Straw" Conveyance in 1974

Reierson argues that even if the farmstead was originally a gift to Lerol alone, Lerol's nonmarital interest was extinguished by a 1974 "straw transfer" of the farm from Lerol to Lerol's attorney and then to Lerol and Reierson as joint tenants. We reject this argument because Reierson has not shown that Lerol intended to gift his nonmarital share in the farmstead to her, and reasonable evidence supports the district court's finding that the 1974 transfer was for estate planning purposes only and that "[i]t was not [Lerol's] intent to waive his nonmarital interest in the property."

For Lerol's nonmarital interest in the farmstead to be extinguished on the bases that Reierson asserts, the record must show that he intended to gift his nonmarital interest to Reierson, because "merely transferring title from individual ownership to joint tenancy does not transform non-marital property into marital property." *McCulloch v. McCulloch*, 435 N.W.2d 564, 568 (Minn. App. 1989) (quotation omitted). Reierson, as "the party asserting that there was a gift," has the burden to prove by clear and convincing evidence that Lerol intended to gift the asset and extinguish his nonmarital claim to it. *Id*.

Reierson did not meet her burden to show that Lerol intended to gift his nonmarital share in the farmstead to her. Lerol testified regarding his intent behind the 1974 conveyance. He stated that he wanted to "keep [his nonmarital interest in the farm], but if something happened to me, [then] give it to [Reierson], I mean if I died." Reierson's attorney asked Lerol whether he "wanted Yvonne to have the property if something happened to [him]." Lerol answered: "Yeah. If something—if I died." The attorney continued, "So in essence you were just basically kind of gifting it to her so that if something happened to you, she would be able to stay on the marital farm with the kids." Lerol answered, "That's right. Four kids." Reierson argues that this testimony shows that Lerol intended to give up his nonmarital interest in the property and gift it to her. Her argument is not persuasive. The testimony appears to indicate that the purpose of the 1974 straw conveyance was for estate planning purposes, as the district court found. And this court has reasoned that when property is transferred for estate planning purposes, it does not affect its status as marital or nonmarital property. *Cf. Pfleiderer v. Pfleiderer*, 591 N.W.2d 729, 733 (Minn. App. 1999) (reasoning that "it is . . . clear that transferring joint property into one party's name for estate planning purposes does not convert marital property into nonmarital property").

Because reasonable evidence supports the district court's findings that the farmstead was a gift to Lerol alone, and Lerol did not intend to gift his nonmarital share of the farmstead to Reierson by the straw conveyance, we will not disturb them.

II

We next address Lerol's arguments that the district court erred by calculating the value of the marital share of the farmstead and the Red Lake Boulevard property. He argues that "[t]here is no basis in the record" for the district court to conclude that Reierson obtained a one-half marital interest in the farmstead and that the district court erred in determining the value of the marital interest in Lerol's nonmarital property on Red Lake Boulevard. We first address the marital interest in the farmstead and then the marital interest in the Red Lake Boulevard property.

Farmstead

The appraised value of the farmstead is $198,000. It is encumbered by a $79,586.39 mortgage. Lerol concedes that a portion of the farmstead is marital property, but he contends the marital interest is limited to $35,940—the cost of improvements made to the farmhouse during the marriage. The district court determined that Reierson "has acquired a marital interest to the entire [farmstead], because of improvements that were made to the property through the efforts of both parties." The district court found that $99,000 of the farmstead was marital property. The district court is not required to be exact in its valuation of assets, "it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) (citing *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975)).

As an initial matter, we are not persuaded by Lerol's argument that Reierson's marital interest is limited to $35,940. The record shows that $35,940 represents only the cost of improvements made to the farm*house*. Other improvements were made to the

property during the course of the marriage, including trenching and ditching portions of the acreage. The district court noted the value of some of these improvements in its findings, including $867.87 for trenching, $1,688 for ditching, and $71.50 for bulldozing. Because the record supports the findings, we will not disturb them on appeal.

Lerol next argues that even if the marital portion of the farmstead may be greater in value than the cost of the improvements, the district court erred because the record does not contain evidence from which the district court could "extrapolate how much of the current value of the real estate is represented by the marital contributions." But Lerol did not make this argument to the district court and failed to present any evidence of the farmstead's value before the improvements. Because we typically do not address issues that a party failed to raise at the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and because the district court's valuation of the marital interest is not clearly erroneous and "lies within a reasonable range of figures," we will not disturb the district court's valuation of the marital share of the farmstead. *Johnson*, 277 N.W.2d at 211.

Red Lake Boulevard Property

The district court found that the Red Lake Boulevard property was a nonmarital gift to Lerol. The record shows that Lerol's aunt had owned the property and that Lerol received it by quit claim deed in 1980. Reierson does not challenge the district court's determination that the Red Lake Boulevard property was a nonmarital gift to Lerol.

The Red Lake Boulevard property has a value of $62,000 and it is encumbered by a mortgage of $48,374.70. A first mortgage of $21,000 was taken out in 2002 to secure a

loan used to make improvements to the property. In March 2006, another mortgage of $49,600 was taken out to pay off the first mortgage and to provide the parties with cash to pay credit card bills. The district court determined that one-third of the value of the property ($20,666.67) was marital because the court "assume[d] that [the] 2002 loan is reflective of the repair costs to the home."

Lerol contends that the district court's finding is erroneous because the record shows that "no marital funds were used to pay on these mortgages" and therefore, the property remained entirely nonmarital. Had the parties used marital funds to reduce the mortgages on the Red Lake Boulevard property, Lerol concedes that a marital interest would exist. But he argues that the record shows that the parties' son, Bruce Lerol, has made all the payments on the mortgage. Reierson claimed that marital funds were used to support the property and testified that "I've always helped Bruce out a lot with that house . . . [Bruce] would say, mom, I need some money for taxes [and] insurance." She specifically testified that the parties used $600 of marital funds to repair the basement. The district court found that the improvements cost $6,922. Lerol asserts that if any part of the Red Lake Boulevard property is marital, it is $7,522—the cost of the improvements to it. At oral argument, Reierson's attorney conceded that the district court's calculation of the marital interest in the Red Lake Boulevard property was erroneous.

Because of Reierson's concession and because the record supports Lerol's argument that the marital portion of the Red Lake Boulevard property should be limited

to $7,522, we modify the district court's finding regarding the value of the marital portion of the Red Lake Boulevard property to $7,522.

III

Both parties contend that the district court's property division and debt allocation was unfair. When dividing property after the dissolution of a marriage, the district court "shall make a just and equitable division of the marital property." Minn. Stat. § 518.58, subd. 1 (2008). The district court may consider many factors when dividing marital property, including "the length of the marriage," "amount and sources of income," and each party's contribution in preserving the marital property.' *Id.*; *Sirek v. Sirek*, 693 N.W.2d 896, 899 (Minn. App. 2005). "District courts have broad discretion over the division of marital property, and [this court] will not disturb the [property] division on appeal absent a clear abuse of discretion." *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000) (citation omitted), *review denied* (Minn. Oct. 25, 2000). "Debt is apportionable as part of the marital property settlement." *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). We will not reverse the district court's property division if it has "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).

Lerol argues that the district court erred in allocating the marital equity, contending that he is entitled to a property settlement of $48,558.32 and that "[a]n equitable division would not support [Reierson] receiving a larger share of marital equity." The following chart illustrates the district court's apportionment:

ASSET	Orlin Lerol	Yvonne Reierson
Marital portion of farmstead	$99,000.00	
Less farmstead mortgage	($79,586.39)	
Conley house	$17,000.00	
Red Lake Boulevard property - marital		$20,667.00
Red Lake Boulevard property - nonmarital	($41,333.00)	$41,333.00
Less Red Lake Boulevard mortgage		($48,374.70)
Personal property	$6,215.00	$6,500.00
1977 pickup truck	$1,000.00	
1989 Oldsmobile	$300.00	
Jeep Cherokee		$10,000.00
Less Jeep debt		($2,000.00)
401(k)		$34,000.00
Checking accounts	$1,314.00	$1,100.00
Less Chase credit card debt		($14,724.06)
Less Capital One credit card debt		($10,727.00)
Less Discover credit card debt		($10,475.42)
Less Bank of America credit card debt		($16,914.00)
Totals	$3,909.61	$10,384.82

The district court awarded the nonmarital portion of the Red Lake Boulevard property to Reierson. "The district court can apportion up to one-half of a spouse's nonmarital property if it finds that the benefitting spouse's resources or property . . . are so inadequate as to work an unfair hardship based on the factors listed in Minn. Stat. 518.58, subd. 2." *Stageberg v. Stageberg*, 695 N.W.2d 609, 618 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). The factors listed in the statute include "length of the marriage, any prior marriage of a party, the age, health, 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." Minn. Stat. § 518.58, subd. 2 (2008).

When the district court awarded the nonmarital portion of the Red Lake Boulevard property to Reierson, it determined that "it would be an unfair hardship to grant [the Red Lake Boulevard property] to [Lerol] rather than to [Reierson]." The district court anticipated an unfair hardship because of "the age of [Reierson], the nearly 50-year marriage of the parties, the near-retirement of [Reierson], the division of other property between the parties, and [Reierson's] health." The record supports the district court's finding. Based on our modification of the marital portion of the Red Lake Boulevard property (reducing the marital portion of the Red Lake Boulevard property to $7,522) the parties' total apportionment adjusts somewhat. But the adjustment is not so substantial that it invalidates the district court's finding of unfair hardship or renders the property division inequitable. Although the district court erred in calculating the marital portion of the Red Lake Boulevard property, with the modification we affirm its award to Reierson.

Reierson argues that the district court erred by attributing the mortgage only to the parties' marital interest in the farmstead. She acknowledges that the parties did not present information regarding the farmstead's value in 1962 or 1974. She might be accurate that it is "impossible to determine if the [district] court properly applied the [*Schmitz* analysis]," which deals with apportioning marital and nonmarital interests that appreciate or depreciate over the course of a marriage. *See Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981); *see also Antone*, 645 N.W.2d at 66, 101–04 (applying *Schmitz* to marital and nonmarital interests to property acquired before marriage but with mortgages reduced using marital funds). *Schmitz* and *Antone* suggest that a district court should consider the values of nonmarital and marital property at the time it was acquired

and mortgaged or refinanced to properly determine the values of the parties' marital and nonmarital interests. But because the parties failed to present evidence regarding the farmstead's value when it was acquired, when the straw transaction took place, or when it was mortgaged and refinanced, we have no basis to upset the district court's treatment of the evidence actually before it.

Lerol disputes the district court's debt allocation. The district court found that the farmstead mortgage of $79.586.39 should be paid by Lerol. The remaining debt, including the $48,374.70 mortgage for the Red Lake Boulevard property, $2,000 for the Jeep, and $52,840.48 of credit card debt was assigned to Reierson. Lerol complains that the district court erred by including $6,916 of credit card debt in the marital estate. He contends that a portion represented Reierson's attorney's fees and that by including those fees in the debt allocation, the district court enlarged the disparity between the marital equity awarded to the parties. But our review of the total property division and debt allocation satisfies us that the district court did not abuse its discretion in its allocation of the parties' debt.

We affirm the district court's property division and debt allocation because, on balance, it is reasonable and supported by the record. The district court awarded the entire farmstead to Lerol, even though Reierson had withdrawn substantial amounts from her retirement plan to prevent the farmstead from going into foreclosure. The district court's division of the Red Lake Boulevard property was reasonable even though it awarded the majority of the nonmarital portion of the property to Reierson; it provided a place for Reierson to live; the district court found that it would be an unfair hardship to

not award her the property; and it made Reierson responsible for the mortgage on the Red Lake Boulevard property. The district court also made Reierson responsible for the parties' entire credit card debt.

Because we conclude that the district court erred in calculating the marital share of the Red Lake Boulevard property, we modify its findings to reflect that the marital share of the property was $7,522. But because the district court did not abuse its discretion by allocating the property based on its weighing of the equitable concerns, we affirm.

Affirmed as modified.