STATE OF MINNESOTA
IN COURT OF APPEALS
A09-980

In re the Marriage of:

Deborah Rosemary Schultz, petitioner,
Respondent,

vs.

David Arnold Schultz,
Appellant.

Filed April 27, 2010
Affirmed
Kalitowski, Judge

Meeker County District Court
File No. 47-FA-07-1530

Rebecca M. Rue, Wood, Berry & Rue, PLLP, Litchfield, Minnesota (for respondent)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

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

KALITOWSKI, Judge

Appellant David Arnold Schultz challenges the judgment and decree dissolving the parties' marriage, arguing that the district court (1) erred in determining appellant's nonmarital interest in the parties' real property; (2) abused its discretion in awarding

respondent Deborah Rosemary Schultz $50,000 more of the parties' assets in lieu of maintenance; and (3) abused its discretion in awarding attorney fees to respondent. We affirm.

D E C I S I O N

I.

Appellant argues that the district court erred in calculating appellant's nonmarital interest in three parcels of the parties' real property. Specifically, appellant contends that the district court erred by determining that his nonmarital interest in each of the properties was the amount of nonmarital funds that he contributed to the property rather than the appreciated amount as determined by the *Schmitz* formula. Because appellant failed to provide evidence necessary to apply the *Schmitz* formula, we disagree.

Whether property is marital or nonmarital is a question of law, but we defer to the district court's underlying findings of fact. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). If the reviewing court is "left with the definite and firm conviction that a mistake has been made," it may find the district court's decision to be clearly erroneous, even if there is evidence to support the findings. *Id*. (quotation omitted).

Property acquired by either spouse during the marriage is presumed to be marital property; this presumption is overcome by a showing that the property is nonmarital. Minn. Stat. § 518.003, subd. 3b (2008). Nonmarital property includes property acquired by one spouse before the marriage, property acquired by one spouse, but not by the other, as a gift, bequest, devise, or inheritance, and property received in exchange for

nonmarital property. *Id*. at subd. 3b(a), (b), (c). A spouse claiming a nonmarital interest must prove that interest by a preponderance of the evidence. *Olsen*, 562 N.W.2d at 800.

"[I]ncreases in value of nonmarital property remain nonmarital if shown to be attributable solely to market forces or conditions, such as simple appreciation in value of an asset." *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 413 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Oct. 25, 2000). When property is acquired during the marriage with a nonmarital down payment or partial payment, the district court may determine the present marital and nonmarital interests in the property using the *Schmitz* formula. *Kerr v. Kerr*, 770 N.W.2d 567, 570 (Minn. App. 2009). The *Schmitz* formula provides that "[t]he present value of a party's nonmarital interest in a marital homestead is calculated by dividing the party's equity in the property at the time of purchase by the value of the property at the time of purchase and then multiplying by the value of the property at the time of dissolution[.]" *Id*.; *see Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981).

The *Schmitz* formula need not be strictly applied, and it is sufficient that the district court arrive at a figure that is close to the figure derived from the *Schmitz* formula. *Montgomery v. Montgomery*, 358 N.W.2d 169, 172 (Minn. App. 1984). In *Fitzgerald v. Fitzgerald*, we held that where the wife, a pro se litigant claiming a $10,000 nonmarital interest in the parties' homestead, failed to present evidence of her original contribution or the homestead's value at the time of the parties' marriage, the district court was unable to calculate the claimed interest. 629 N.W.2d 115, 119 (Minn. App. 2001). We reasoned that even though appellant was not represented by counsel, "the

district court explained, and appellant understood, the necessity of presenting evidence at trial." *Id*. at 119-20.

Manannah Property

Appellant is claiming an appreciated nonmarital interest in 39.50 acres in Manannah Township. In 1992, the Federal Land Bank of St. Paul (AgriBank) foreclosed on the Manannah property and subsequently purchased the property at a sheriff's sale for $32,794.81. But pursuant to a 1993 lawsuit against AgriBank alleging foreclosure-law violations, the parties reached a settlement with AgriBank that included the repurchase of the Manannah property for $25,000. In 1995, the parties took out a $25,000 mortgage to repurchase the property. In 1998, appellant received an inheritance, and used the nonmarital inheritance funds to pay off the $25,000 mortgage.

The district court concluded that appellant had a nonmarital interest in the Manannah property in the amount of $25,000. Appellant argues that the district court erred in declining to apply the *Schmitz* formula to award appellant an appreciated nonmarital interest based on the property's present fair market value of $118,500. But like the wife in *Fitzgerald*, appellant failed to present the necessary evidence. *See Fitzgerald*, 629 N.W.2d at 119; *see also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On 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).

In order to establish an appreciated nonmarital interest, appellant was required to provide the amount of the original nonmarital contribution, the value of the property at the time of the contribution, and the present value of the property. *See Schmitz*, 309 N.W.2d at 750. Appellant failed to provide any evidence regarding the value of the property in 1998, when appellant made the nonmarital payment.

Appellant argues that the district court should have applied the *Schmitz* formula using $25,000, the amount of the repurchase from AgriBank in 1995, as the fair market value in 1998. But as the district court noted, the repurchase of the property for $25,000 did not reflect the fair market value of the property, but was pursuant to a settlement agreement under which both appellant and respondent should benefit. Likewise, the purchase price of $32,794.81 paid by AgriBank in 1992 is not an accurate valuation of the property in 1998 for purposes of applying the *Schmitz* formula.

Harvey Property

Appellant also claims an appreciated nonmarital interest in 40 acres in Harvey Township. In 1986, appellant borrowed $1,000 from his uncle to purchase the property. Upon the uncle's death in 1994, the $1,000 was deducted from appellant's inheritance from the uncle. In addition, in 1998, appellant made a payment in the amount of $6,375 toward the Harvey property mortgage from funds he inherited from his aunt.

The district court determined that appellant had a nonmarital interest in the Harvey property in the amount of $7,375, comprised of the $1,000 inherited from the uncle and the $6,375 inherited from the aunt. Appellant argues that the district court erred by declining to award appellant an appreciated nonmarital interest in the Harvey property

based on the present market value. But again, appellant failed to establish the fair market value of the Harvey property at the time of the nonmarital contributions in 1994 and 1998. *See Fitzgerald*, 629 N.W.2d at 119; *Eisenschenk*, 668 N.W.2d at 243.

Homestead Property

Appellant claims an appreciated nonmarital interest in the parties' homestead. In March 1998, appellant used $7,300 of funds inherited from his aunt as a partial payment for the parties' mobile home, acquired pursuant to a trade-in of their old mobile home. Appellant argues that the district court erred in determining his nonmarital interest in the homestead to be $7,300, rather than an appreciated nonmarital interest based on the present fair market value of $130,850. But as with the Manannah and Harvey properties, appellant failed to provide the fair market value of the homestead property in 1998, when the parties purchased the new mobile home and appellant contributed nonmarital funds.

Significantly, as in *Fitzgerald*, where the district court explained the importance of presenting evidence to the pro se party, appellant here understood the importance of presenting evidence because the district court twice ordered him to answer discovery requests. Moreover, respondent requested the fair market value of all nonmarital assets at the time of acquisition, and respondent's attorney wrote appellant a letter explaining the purpose and value of obtaining this information in order to calculate the present value of appellant's nonmarital interests. Appellant failed to respond.

Finally, appellant argues that the district court erred in declining to award him an additional nonmarital interest in the homestead based on his alleged expenditure of $15,052.01 of inherited funds to pay for improvements and repairs to the home. But the

district court found that appellant failed to adequately trace the inherited funds to the various improvements and repairs. Rather, he documented his expenditures by producing checks written from the parties' general checking account. *See Olsen*, 562 N.W.2d at 800 (stating that for nonmarital property to retain its nonmarital nature, "it must either be kept separate from marital property or, if commingled with marital property, be readily traceable").

In sum, appellant failed to present the evidence necessary for the application of the *Schmitz* formula. Thus, we conclude that the district court did not err in declining to award appellant appreciated nonmarital interests in the parties' real property.

II.

Appellant argues that the district court abused its discretion by distributing $50,000 more of the parties' assets to respondent in lieu of maintenance and also ordering appellant to pay spousal maintenance in the amount of $1,200 per month until appellant paid respondent her share of the property division. We disagree.

"A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). We will affirm the district court's property division if it has "an acceptable basis in fact and principle," even if we might have taken a different approach. *Id*. We also review a district court's spousal-maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id*. at 202 and n.3.

"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).

Minn. Stat. § 518.58, subd. 1 (2008), provides that the district court "shall make a just and equitable division of the marital property of the parties without regard to marital misconduct" and after making relevant findings. "An equitable division of marital property, however, is not necessarily an equal division." *Reynolds v. Reynolds*, 498 N.W.2d 266, 270 (Minn. App. 1993). In making its findings, the district court may consider the "length of the marriage, . . . 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." Minn. Stat. § 518.58, subd. 1. In *Reynolds*, we held that it was not error to award the wife a disproportionately larger share of the parties' marital assets because "were it not for [the husband]'s 'sporadic employment history and historically low earnings from employment,' [the wife] would receive greater child support and spousal maintenance." 498 N.W.2d at 270. We reasoned that because the husband earned significantly more than the wife, the district court's property division was not an abuse of discretion. *Id.*

A district court may properly consider a spousal-maintenance award in dividing marital property. *Ruzic v. Ruzic*, 281 N.W.2d 502, 505 (Minn. 1979). A district court may award spousal maintenance if it determines that the spouse seeking maintenance lacks sufficient property to provide for reasonable needs or is unable to provide adequate self-support. Minn. Stat. § 518.552, subd. 1(a), (b) (2008). In determining the amount and duration of a spousal-maintenance award, the district court considers, among others,

the following factors: (1) the financial resources of the party seeking maintenance and the party's ability to meet needs independently; (2) the duration of the marriage and for a homemaker, the length of absence from employment; (3) the ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance; and (4) the contribution of each party in the acquisition and preservation of marital property and the contribution of a spouse as a homemaker or in furtherance of the other spouse's employment. Minn. Stat. § 518.552, subd. 2 (2008). The essential consideration is the financial needs of the spouse requesting maintenance and the spouse's ability to meet those needs balanced against the financial condition of the spouse paying the maintenance. *Novick v. Novick*, 366 N.W.2d 330, 334 (Minn. App. 1985).

Here, after dividing the parties' property, the district court "shifted $50,000 of [appellant]'s assets to [respondent]," so that respondent "would no longer need spousal maintenance." In addition, the district court ordered appellant to pay monthly spousal-maintenance payments of $1,200 until appellant paid respondent her share of the property division.

The record indicates that the district court's property division was equitable in light of the parties' circumstances. Respondent was 65 years old, had no education after high school, and had never earned more than $17,000 annually, usually earning significantly less. *See* Minn. Stat. § 518.58, subd. 1 (listing age, occupation, amount and sources of income, and employability as factors the district court may consider in dividing marital property). In contrast, appellant's earnings were significantly greater.

Appellant averaged $5,283 in gross income per month, and his union membership provided him with significant prospects of future income. *See* Minn. Stat. § 518.58, subd. 1 (listing occupation, vocational skills, and income as factors). Most significantly, the district court considered respondent's need for spousal maintenance, indicating that the disproportionate property award was in lieu of maintenance. *See Ruzic*, 281 N.W.2d at 505 (stating that the district court may consider spousal maintenance in crafting a property division).

The district court's finding that respondent needed spousal maintenance and that appellant was able to pay it is supported by the record. The parties had been married for over 26 years, and for a significant part of the marriage, respondent was the primary caregiver for the parties' children and helped out with the farm work. *See* Minn. Stat. § 518.552, subd. 2 (stating that the duration of the marriage and contribution of a spouse as a homemaker and to the acquisition of marital property are factors the district court may consider in awarding spousal maintenance). And the record indicates that when child-support payments ended in June 2009, respondent would have a monthly shortfall of $1,306, whereas appellant's gross income, minus personal expenses, would be $3,426.

Moreover, the district court made thorough findings of fact to support awarding respondent a disproportionate amount of marital property in lieu of spousal maintenance. Appellant failed to voluntarily pay child support or spousal maintenance throughout the course of the proceedings. Furthermore, the nature of appellant's employment made it difficult for county social services to keep track of appellant's current employer. And

appellant failed to comply with the district court's orders to provide current, accurate employment information to the county or to respondent.

Appellant argues that the district court erred by awarding respondent a disproportionate share of the marital property while also ordering spousal-maintenance payments until respondent received her share. We disagree. Respondent needed the support payments and appellant had the ability to pay them. *See Novick*, 366 N.W.2d at 334 (stating that the essential consideration is the payee's need for maintenance balanced against the payor's ability to pay). The district court anticipated that appellant may need to refinance or sell the Harvey properties to pay respondent her share of the property division, and because this may take some time, respondent required maintenance payments to support herself. Appellant cites no authority for the argument that the district court cannot structure a spousal-maintenance award in this manner, and the district court's thorough findings support such an award. *See Peterson v. Peterson*, 308 Minn. 365, 368, 242 N.W.2d 103, 106 (1976) (stating that the district court has broad discretion with respect to fashioning spousal-maintenance awards and dividing marital property).

Lastly, appellant argues that the spousal-maintenance award was not justified because he is currently unemployed. But the district court took appellant's occasional periods of unemployment into account in its findings regarding appellant's income. The district court found that appellant, a union carpenter, worked most of the year for multiple employers, but occasionally received unemployment benefits between jobs. The district court itemized appellant's gross earnings by employer for 2006 and 2007, and determined

appellant's gross monthly income for 2006, 2007, and 2008. The district court's findings regarding appellant's income are supported by appellant's testimony at trial, and are not clearly erroneous.

In conclusion, the district court did not abuse its discretion in awarding respondent a disproportionate share of the marital property in lieu of maintenance and awarding maintenance payments pending respondent's receipt of her property award.

III.

Appellant argues that the district court unfairly punished appellant by awarding respondent attorney fees, and that respondent's attorney fees were unnecessarily high. We disagree.

Minn. Stat. § 518.14, subd. 1 (2008), provides that the district court shall award attorney fees if the fees are necessary to allow a party to continue an action brought in good faith, the party from whom fees are sought has the means to pay the fees, and the party seeking fees cannot pay the fees. We review an award of attorney fees for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

Section 518.14, subdivision 1, further provides that the district court has the authority to award additional attorney fees against a party "who unreasonably contributes to the length or expense of the proceeding." Conduct-based attorney fee awards are also discretionary with the district court. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

The district court ordered appellant to pay a total of $11,300 of respondent's attorney fees, comprised of the following: $1,800 ordered pursuant to respondent's first

motion to compel discovery; $1,100 ordered pursuant to respondent's second motion to compel discovery; $400 as stipulated by the parties for preparation of qualified domestic relations orders; and an additional $8,000. The district court found that (1) appellant earns significantly more income than respondent; (2) respondent does not have the means to pay her full attorney fees; (3) appellant's failure to comply with discovery prolonged the proceeding; (4) appellant's conduct constituted bad faith; and (5) appellant received thousands of dollars since separation for which appellant failed to account.

Although the district court did not specify what part of the attorney fees award was need-based and what part was conduct-based, the district court's extensive findings support the award based on respondent's need and appellant's ability to pay, as well as appellant's bad-faith conduct. Significantly, the record contains numerous examples of appellant's disregard for the district court's orders and interference with respondent's efforts to collect child support, maintenance, and property. In conclusion, the district court did not abuse its discretion in awarding attorney fees in the amount of $11,300 to respondent.

Affirmed.