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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-687**

In re the Marriage of:
Brenda Faye Kelly, petitioner,
Respondent,

vs.

James Edward Lewandowski,
Appellant.

**Filed July 13, 2010
Affirmed
Johnson, Judge**

Mille Lacs County District Court
File No. 48-FA-07-311

Kay R. Snyder, Jeddelloh & Snyder, P.A., St. Cloud, Minnesota (for respondent)

Mark D. Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Brenda Faye Kelly and James Edward Lewandowski were married for 34 years before their marriage was dissolved. On appeal, Lewandowski challenges the district court's division of marital property. We conclude that the district court did not err in its

findings of fact concerning the value of real property owned by the parties and did not err in ordering an equalization payment. Therefore, we affirm.

FACTS

Kelly and Lewandowski were married in 1973. Kelly petitioned the district court for dissolution of the marriage in January 2007. The district court granted the petition in November 2008.

During their marriage, the parties owned four parcels of real property in Mille Lacs County. At trial, the parties disputed the value of each parcel. The parcels and the parties' evidence concerning their values are as follows:

	Kelly:	Lewandowski:
1. Homestead with 1-acre parcel	\$270,000	\$330,000
2. 51-acre parcel	\$140,000	\$160,000
3. 110-acre parcel	\$297,000	\$220,000
4. 76-acre parcel	\$160,000	\$90,000

With respect to each of the four parcels, the district court made findings concerning values that matched the evidence Kelly introduced. The district court awarded the first and second parcels to Kelly and the third and fourth parcels to Lewandowski.

Based on its findings of value for each parcel, and based on the district court's findings with respect to other assets, the total value of the property awarded to Kelly (\$616,590) was \$33,437 more than the total value of the property awarded to Lewandowski (\$583,153). To reduce the difference in total value, the district court ordered a \$15,000 equalization payment from Kelly to Lewandowski. Thus, after the

equalization payment, the district court's division of marital property provided Kelly with only \$3,437 more in value than Lewandowski. The district court explained that it ordered an equalization payment of \$15,000, instead of \$16,719 (which would have achieved mathematical equality), because the parties had spent approximately \$70,000 of marital funds to pay the fees and costs necessary to defend Lewandowski against criminal charges that arose prior to the dissolution of the marriage.¹ Lewandowski appeals.

D E C I S I O N

A. Valuation of Real Property

Lewandowski argues that the district court erred in its findings of fact concerning the values of the four parcels of real property in the marital estate. We apply a clearly erroneous standard of review to a district court's finding of fact concerning the value of a marital asset. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

Lewandowski's evidence of the values of the four parcels consists solely of his own testimony. In contrast, Kelly's evidence of the values of the four parcels consists of the testimony of two expert witnesses. Marty Ringham testified about the value of the first parcel, the marital homestead, which includes a barn and riding stable. Ringham is a real estate agent and broker. He testified that he has significant experience estimating the value of real property for buyers, sellers, appraisers, and lenders. He also testified that he has worked in the real estate field in the Mille Lacs County area for ten years. His

¹A jury found Lewandowski guilty of the charged offenses, but this court reversed the convictions and remanded for a new trial. *See State v. Lewandowski*, No. A06-537, 2007 WL 1470127 (Minn. App. May 22, 2007). Lewandowski later pleaded guilty, and he presently is in the custody of the commissioner of corrections.

written report of the first parcel's attributes is detailed, and his testimony further explained his reasons for valuing the property as he did. Paul Blondell testified about the values of the other three parcels. He testified that he has been a certified appraiser for 10 years, that he works in the Mille Lacs County area, and that he performs approximately 400 to 500 appraisals per year. He considered comparable properties to assist in his determination of the estimated values of the three parcels.

The district court's discussion and findings concerning the values of the four parcels occupied nine pages of its written order. The district court resolved the discrepancies between the parties' evidence by reasoning, in part, as follows:

The Court does not find that [Lewandowski's] testimony is credible. [Lewandowski] testified that he knew the value of real estate having bought and sold properties in Mille Lacs County. However, his experience in buying and selling property is limited to selling two properties and buying six. Both real estate experts have had lengthy careers in the valuation of real estate and the Court finds their testimony to be more credible than that of [Lewandowski].

Lewandowski contends that the district court erroneously credited the testimony of Kelly's experts over his own testimony. Lewandowski is not a real estate professional, but he claims expertise on the basis of his prior experience in real estate and his observations of real estate transactions. He contends that his "extensive knowledge of the value of the property of the parties" and his "personal knowledge" of the properties should have caused the district court to adopt his estimated values over those of Kelly's experts, who were not as familiar with the properties.

Lewandowski's contention is, in essence, an attack on the district court's credibility determinations. If a district court's findings rely on credibility determinations, this court must defer to those determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). This principle applies to expert witnesses as well as lay witnesses. With either type of evidence, "the trier of fact must decide who is right, and the decision will not be overturned on appeal." *Ferguson v. Ferguson*, 357 N.W.2d 104, 107 (Minn. App. 1984). The principle also applies to findings about the values of real property. *See Smith v. Smith*, 410 N.W.2d 334, 336 (Minn. App. 1987) (affirming district court's reliance on appraisal using "traditional approach" instead of contrary appraisal), *review denied* (Minn. Sept. 30, 1987); *Ferguson*, 357 N.W.2d at 107 (noting that "the valuation chosen by the trial court was reasonable in that it was based on credible estimates made by competent witnesses including [wife] and her expert").

Thus, the district court did not clearly err in its findings concerning the values of the four parcels of real property in the marital estate.

B. Equalization Payment

Lewandowski also argues that the district court erred in ordering an equalization payment of \$15,000 (rather than \$16,719) because the district court erroneously treated the expenses of his criminal defense, which were incurred while the parties were still married, as a nonmarital expenditure.

The district court addressed the criminal-defense expenses in two of its findings. First, the district court referred to those expenses when stating that "approximately \$70,000 worth of marital assets were utilized solely for [Lewandowski's] benefit."

Second, the district court referred to the criminal-defense expenses when it explained that it “must make an equitable, not mathematically equal, property division”:

[S]ignificant marital assets were used solely for the benefit of [Lewandowski]. Further, [Kelly] testified that she was demoted from charge nurse to floor nurse because of the negative publicity surrounding [Lewandowski’s] criminal charges. This has caused her to earn less income and have to work more hours to maintain her level of income. This is another factor the Court has considered in making a slightly less than mathematically equal property division.

In response, Kelly argues that the district court did not treat the criminal-defense expenses as a nonmarital debt because the expenses already had been paid in full. Rather, Kelly argues that the district court simply noted that the expenses were for Lewandowski’s personal benefit and relied on that fact to justify the slight difference of \$3,437 in the total values of the divided asserts of the marital estate.

We agree with Kelly’s characterization of the district court’s reasoning. The district court simply considered the costs and benefits of the criminal-defense expenses as one relevant factor when deciding that an equalization payment from Kelly to Lewandowski of \$15,000, rather than \$16,719, was equitable despite the lack of mathematical equality. A district court has discretion to consider “all relevant factors” when dividing property. *See* Minn. Stat. § 518.58, subd. 1 (2008). Furthermore, the “division of marital property need not be mathematically equal but need only be just and equitable.” *Swanson v. Swanson*, 583 N.W.2d 15, 18 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998). Thus, the district court did not abuse its discretion by considering

the unequal benefits of the parties' criminal-defense expenses when determining the appropriate equalization payment.

At oral argument, Lewandowski raised the issue whether the district court erred by awarding \$750 in attorney fees to Kelly after Lewandowski moved for amended findings of fact. Lewandowski's brief mentions this issue only in passing in its final sentence, and it cites no legal authority to support that conclusory statement. If an issue is not adequately briefed, it is forfeited. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). We decline to consider whether the district court erred by awarding attorney fees to Kelly because the issue was not adequately briefed.

Affirmed.