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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-186**

In re the Marriage of:
Patrick Alan Sullivan, petitioner,
Appellant,

vs.

Deborah Kae Sullivan,
Respondent.

**Filed September 14, 2010
Reversed
Klaphake, Judge**

Otter Tail County District Court
File No. 56-FA-08-499

Timothy H. Dodd, Detroit Lakes, Minnesota (for appellant)

Charles A. Krekelberg, Jeffrey D. Skonseng, Krekelberg, Skonseng & Hastings, P.L.L.P.,
Pelican Rapids, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge;
and Schellhas, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this marital dissolution appeal, Patrick Sullivan claims that the district court abused its discretion by responding to respondent Deborah Sullivan's motion for a new trial or amended findings by sua sponte amending its original decree and granting

respondent a \$62,500 interest in nonmarital real property that had been awarded to appellant in the original decree. Because appellant had no opportunity to be heard on this issue and because there was not an adequate factual basis for the district court to find that respondent's resources or property were inadequate to support an unjust-hardship award, we reverse.

D E C I S I O N

The parties' dissolution judgment and decree was entered on June 10, 2009, when the parties had been married for ten years. Following issuance of the dissolution decree, respondent moved for amended findings or a new trial. In addition to asking for amended findings to conform with her original proposed findings of fact, respondent asked for the court to issue an order to (1) direct appellant to pay the value of a fishing boat that had been awarded to her but that she alleged he had destroyed, (2) include in the decree personal property that had been omitted, (3) award itemized personal property located in the homestead to her, (4) increase the court's determination on the value of a riding lawn mower/tractor, and (5) allow her to live in the homestead until she was paid an equalization payment and the property settlement. In connection with the motion, respondent submitted an affidavit to the court in which she stated that her health had deteriorated after trial, that she had "significant depression and emotional issues," that she became unemployed, and that she relied solely on her temporary maintenance award of \$300 per month for income.

After holding a hearing on the matter, the district court issued an amended decree on October 12, 2009, that modified the original decree, among other respects, by ordering

appellant to “pay \$62,500.00 to [r]espondent as and for her additional nonmarital distribution for the two story house property.”¹ In its attached memorandum of law, the court found that respondent’s “resources or property, including her portion of the marital property, are so inadequate as to work an unfair hardship.” Appellant then moved for amended findings or a new trial, asking for reinstatement of the court’s original decree or, alternatively, consideration of tax consequences to him regarding the property awards. The court construed the motion as a motion for reconsideration and denied it.

“A motion to amend findings must be based on the files, exhibits, and minutes of the court, not on evidence that is not a part of the record.” *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006); *see* Minn. R. Civ. P. 52.02 (permitting amendment of findings when based on “the files, exhibits, and minutes of the court”). On a motion for amended findings, the district court must base its decision on “the evidence as submitted during the trial of the case and may neither go outside the record, nor consider new evidence.” *Zander*, 720 N.W.2d at 364 (quotation omitted).²

¹ The primary assets of the marital estate consisted of three properties: the homestead, the “guest house,” and the “two story property.” The district court gave the properties a total net value of \$544,384.56, awarded \$282,000 of that amount to appellant as a nonmarital interest, and divided the remainder equally between the parties.

² A district court may consider new evidence on a motion for amended findings. *Chin v. Zoet*, 418 N.W.2d 191, 195 n.2 (Minn. App. 1988); Minn. R. Civ. P. 59.01 (permitting district court to take additional testimony on motion for new trial). Here, however, other than making a pro forma request for a new trial, alternatively to her request for amended findings, respondent did not establish a legal ground for seeking a new trial under Minn. R. Civ. P. 59.01, nor did the court apply this rationale as a basis for its decision to amend its original decree. Under these circumstances, we address respondent’s motion only as one for amended findings. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (requiring reviewing court to consider only issues “considered by the trial court in deciding the matter before it”).

Here, the district court's decision to amend the original decree relied in part on new evidence. According to respondent's post-decree affidavit, her health "deteriorated since the time of the trial"; she experienced "significant depression and emotional issues"; and she has "been unemployed since the time of the trial." This new evidence was not properly before the district court on respondent's motion for amended findings. For this reason, the district court's sua sponte decision to alter its original decree in response to respondent's motion for amended findings or a new trial was improper and must be reversed. See Minn. R. Civ. P. 52.02 (stating that motion for amended findings must be based on record evidence).

Further, we are not satisfied that respondent has shown the requisite unfair hardship to support an award of appellant's nonmarital property to her. A district court may grant a party up to one-half of the value of the other party's nonmarital assets if one party's resources or property, "including the spouse's portion of the marital property[,] . . . are so inadequate as to work an unfair hardship, considering all relevant circumstances . . ." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (ruling that nonmarital property awards are within the district court's discretion); see Minn. Stat. § 518.58, subd. 2 (2008) (permitting invasion of a spouse's nonmarital property award upon a finding of unfair hardship to the other spouse because of inadequacy of party's "resources or property"). "A very severe disparity between the parties is required to sustain a finding of unfair hardship necessary to apportion nonmarital property." *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990). The facts established at trial could not support a finding of unfair hardship because there

is no inadequacy of the marital estate or “severe disparity” between the parties with regard to the division of marital property. *See id.*, Minn. Stat. § 518.58, subd. 2. The district court valued the parties’ net marital interest in the three properties at over \$200,000, which the court equally divided between the parties, and the record does not otherwise show a disparity in the resources available to either party.

Appellant also raised the issue of potential tax consequences with regard to the forced sale of the two-story property necessitated by the district court’s amendment of its original decree that awarded respondent a portion of appellant’s nonmarital interest in that property. Although we note that tax consequences resulting from a forced sale of property necessitated by a district court’s property division should be considered by the court, because we are reversing the district court’s decision to award respondent a portion of appellant’s nonmarital property here, we need not address this issue further.

Reversed.