STATE OF MINNESOTA
IN COURT OF APPEALS
A11-338

In re the Marriage of:
Lisa Marie Kormanik, petitioner,
Respondent,

vs.

Todd Anthony Kormanik,
Appellant.

Filed December 12, 2011
Affirmed
Collins, Judge[*]

Washington County District Court
File No. 82-F6-07-006828

Gregory J. Holly, Anastasi & Associates, P.A., Stillwater, Minnesota (for respondent)

Sheridan Hawley, Jeffrey P. Hicken, Hicken, Scott, Howard & Anderson, P.A., Anoka, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Ross, Judge; and Collins, Judge.

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

COLLINS, Judge

This dissolution appeal is taken from the fifth amended judgment. That judgment (1) granted respondent-wife Lisa Kormanik's claimed nonmarital interest in a townhome

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

she purchased after the parties separated, (2) denied appellant-husband Todd Kormanik's claimed nonmarital interest in one of the parties' rental properties, (3) did not award spousal maintenance and did not reserve the possibility of awarding husband maintenance in the future, and (4) addressed other posttrial proceedings to amend and enforce the original judgment. Husband challenges the district court's nonmarital property decisions and its failure to reserve the ability to award him maintenance in the future, and asserts that he did not receive adequate notice of certain posttrial hearings. Because husband has not shown the district court's findings of fact to be clearly erroneous, or that its rulings are an abuse of its discretion, we affirm.

FACTS

The parties married in 1986. During the marriage, wife had several jobs and husband was self-employed, managing the parties' rental properties and carwashes. When the marriage was dissolved in December 2009, the parties owned four rental properties, including one property each on Grand Avenue and Van Buren Street in St. Paul. The Grand Avenue property was originally owned by husband's parents, who sold it to the parties in July 1997. The record includes a letter from husband's parents to husband making a gift of a $20,000 reduction in the purchase price of the property. The parties had previously managed the Grand Avenue property for husband's parents without compensation. The Van Buren property was purchased in 1989 in the name of husband and his father. Husband's father died in November 2006, but his name was not removed from the title to the property.

At the time of the dissolution, the parties also owned two commercial carwashes in St. Paul, one on West Seventh Street and the other on Energy Park Drive. Title to the Energy Park carwash was in a partnership between husband and his father. The partnership agreement stated that it would terminate on April 20, 2004, when husband was to pay his father $25,000, and husband's father would quitclaim his interest in the property to husband. Husband failed to pay his father, and his father did not deliver the quitclaim deed.

Wife and the parties' then-minor child moved out of the marital home in February 2006. Wife left most of her banking records at the home. In June 2006, wife's mother died and wife, an only child, received an inheritance. In August 2006, wife used at least part of her inheritance toward the $87,735 down payment on a townhome.

On October 1, 2007, wife petitioned to dissolve the parties' marriage. The ensuing proceedings were acrimonious, obtaining discovery from husband was difficult, and husband did not comply with temporary orders for support and maintenance.

Husband agreed to a February 4, 2008 court order stating that he would operate the parties' businesses properly and provide accountings of those operations, but his failure to do so resulted in a June 2009 district court order appointing two receivers to operate the businesses. By letter dated July 20, 2009, one receiver asked to be dismissed, alleging husband had engaged in abusive conduct.

Over the course of the proceedings, husband sometimes employed attorneys and sometimes represented himself. Following trial in August 2009, on December 22, 2009, the district court entered the dissolution judgment. Posttrial proceedings and efforts to

enforce the judgment, including contempt proceedings against husband, followed, producing multiple amended judgments. Because the district court judge originally assigned to the case retired at the end of 2010, a new judge was assigned for the proceedings starting in January 2011.

The January 2011 fifth amended judgment (a) awarded wife her townhome as her nonmarital property; (b) rejected husband's claimed nonmarital interest in the Grand Avenue rental property; (c) awarded wife the Van Buren rental property and directed her to sell it and divide the net proceeds equally between the parties; (d) awarded wife the Energy Park carwash; (e) awarded husband the other properties; and (f) did not award either party spousal maintenance and did not reserve maintenance for future consideration. Husband's appeal followed.

D E C I S I O N

I.

Husband challenges the district court's award to wife of her townhome as her nonmarital property, and its disallowance of husband's claimed $20,000 nonmarital interest in the Grand Avenue rental property. Appellate courts review de novo a district court's determination of whether property is marital or nonmarital but defer to a district court's underlying findings of fact unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). While property acquired during a marriage is presumed to be marital, Minn. Stat. § 518.003, subd. 3b (2010), a party to a dissolution can overcome this presumption by showing, by a preponderance of the evidence, that the property is nonmarital. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). "Nonmarital

property" includes property acquired by "gift, bequest, devise, or inheritance made by a third party to one but not the other spouse." Minn. Stat. § 518.003, subd. 3b(a).

A. Townhome

Wife's down payment on her townhome was $87,735. The district court noted that wife "inherited more than $83,124.36 from her mother[,]" and ruled that all of the equity in the townhome is wife's nonmarital property because she was the sole beneficiary of her mother's $150,000 estate. Husband acknowledges that wife received a $44,000 gift from her mother but asserts that wife did not document that the rest of the down payment came from her nonmarital property.

Documentation is not required to trace a nonmarital interest in an asset; a nonmarital interest in an asset may be established on the basis of credible testimony. *Danielson v. Danielson*, 392 N.W.2d 570, 572 (Minn. App. 1986); *see Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 697 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Wife testified that the source of the down payment over and above the $44,000 gift was her mother's estate. But she was unable to fully document the transactions because her bank statements were at the marital home and continued to be mailed there after she moved out, and husband failed to provide those statements to her.[1] The district court credited wife's testimony, finding: "Any gaps in [wife's] tracing were likely caused by [husband's] failure to timely produce bank records which were proven to be in his possession." This finding is consistent with caselaw providing that if a party in exclusive

[1] Wife also testified that mergers of the banks where the funds were kept precluded getting replacement copies of her records by the time of trial.

possession of evidence fails to produce that evidence, "an unfavorable inference may be drawn about that party[.]" *Butt v. Schmidt*, 747 N.W.2d 566, 576 (Minn. 2008). While husband challenges wife's explanation of why she was unable to document the purported transactions as lacking credibility, the district court concluded otherwise, and we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Husband asserts that wife's receipt of funds from her mother does not mean that those funds were necessarily applied to the purchase of the townhome. However, a party "seeking to trace an asset to a nonmarital source is not held to a 'strict tracing' standard, but need only show by a preponderance of the evidence that the asset was 'acquired in exchange for' nonmarital property." *Doering*, 385 N.W.2d at 390; *see Danielson*, 392 N.W.2d at 572 (same). And because the record includes both testimony by wife that the entire down payment originated with her mother and partial documentation supporting that testimony, we will not disturb the judgment on this issue.

Based on findings in the original judgment, husband argues that wife's down payment ($87,735) was approximately $4,600 greater than the amount ($83,124.36) the district court found to have come from wife's mother, and thus that he is entitled to at least half of that difference as a marital interest in the townhome. This appeal however, was taken from the fifth amended judgment. And even if we were to address husband's argument, we would reject it: the original judgment states that wife "inherited[[2]] *more*

[2] The district court apparently lumped gifts by wife's mother and the inheritance from wife's mother under the rubric of "inheritance." Nonmarital property includes property

than $83,142.36 from her mother." Therefore, it is not clear that any difference actually exists. Furthermore, each party received about $680,000 in cash and property, rendering a claimed $2,300 discrepancy in the property award de minimis, and not a basis of relief on appeal. *See Stark*, 787 N.W.2d at 694 n.1.

B. Grand Avenue Property

Husband argues that the district court should have recognized his claimed $20,000 nonmarital interest in the Grand Avenue rental property because it recognized wife's claimed nonmarital interest in her townhome. But husband cites no authority for the notion that symmetry is a consideration in addressing competing claims of nonmarital interests, and it is contrary to caselaw and statute. *See Antone*, 645 N.W.2d at 101-05 (addressing alleged nonmarital interests in multiple assets on an asset-by-asset basis); *cf.* Minn. Stat. § 518.003, subd. 3b (defining marital and nonmarital property in a manner that assumes distinction between marital and nonmarital property will be made on an asset-by-asset or interest-by-interest basis).

We also reject husband's argument that his claim of a nonmarital interest should have been accepted because he documented the alleged gift with a letter from his parents. A factfinder is not required to accept even "uncontradicted testimony," if the surrounding circumstances provide reasonable cause to doubt its credibility. *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987); *see Costello v. Johnson*, 265 Minn. 204, 211, 121

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acquired by "gift, bequest, devise, or inheritance." Minn. Stat. § 518.003, subd. 3b. It is undisputed that wife was the sole beneficiary of her mother's estate. Therefore, we ignore any error in the district court's characterization of both gifts and amounts received from the mother's estate as "inheritance". *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

N.W.2d 70, 76 (1963) (making a similar statement regarding expert testimony). Unlike testimony, the letter was not made under oath. The district court acknowledged that husband produced the letter, but found its credibility "suspect" in light of husband's significant delay in asserting a nonmarital interest in the Grand Avenue property. We defer to a district court's determination of credibility. *See DeRosier v. Util. Sys. of Am.*, 780 N.W.2d 1, 5 (Minn. App. 2010) (stating that appellate courts defer to a district court's credibility determinations and evaluation of written statements).

The district court noted that husband failed to assert a nonmarital interest in the Grand Avenue property in his interrogatory answers. Husband explains that when he made those answers he lacked counsel. But a party's pro se status does not entitle him to seek relief on a claim that could have been, but was not, made: "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Husband also argues that the district court's reliance on his delay in asserting a nonmarital interest in the Grand Avenue property is inconsistent with the district court's "intervention" at trial in August 2009. There, when husband stated that he did not claim a nonmarital interest in the property, his attorney interjected that husband did claim a nonmarital interest. The trial judge merely gave assurance that he would not rely on husband's disavowal as conclusive, because husband was not an attorney and may not have understood the difference between marital and nonmarital property. Husband's

argument on this point assumes that his parents' gift letter unambiguously shows the gift was intended to be for him alone. The letter, signed by husband's parents, opens "Dear Todd," and states that it "will serve as your notice and written evidence of the fact that we are this date making a gift to you in the sum of $20,000.00. This amount will be taken from the balance you owe us on the contract for deed for [1704 Grand Avenue]." But that property was sold to *both* parties, and the gift reduced the amount owed on *their* contract, so it is reasonable to read the letter as making a gift to both parties. The letter is at least ambiguous as to whom the gift was made. *See Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn. 1990) (stating that a document is ambiguous if it could reasonably have multiple meanings).

If a document is ambiguous, determining its meaning is a fact question. *Empire State Bank v. Devereaux*, 402 N.W.2d 584, 587 (Minn. App. 1987). Here, at trial, just before husband disavowed a nonmarital interest in the property, his counsel asked whether the gift letter reflected a gift to him alone or to both parties. Husband responded that "[i]t was shared by both of us." Husband's mother testified at trial, but did not address to whom the gift was made. *See Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009) (stating that "[i]n determining whether a gift is made to one spouse to the exclusion of the other, the most important factor is the donor's intent" (citing *Olsen*, 562 N.W.2d at 800)). Further, the district court observed that "[t]he parties also managed this property for many years without other compensation," indicating that it believed that the gifted reduction of the sale price could have been intended as remuneration to the parties for their uncompensated management of the property. On this record, husband has not

shown that the district court clearly erred in rejecting his revised reading of the gift letter. *See Nolden v. Nolden*, 448 N.W.2d 892, 893-94 (Minn. App. 1989) (reviewing a finding of a donor's intent for clear error).

II.

Husband challenges the district court's refusal to reserve the authority to award him maintenance in the future. Whether to reserve maintenance is discretionary with the district court. *Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001); *see* Minn. Stat. §§ 518A.27, subd. 1 (2010) (stating that the district court "may reserve jurisdiction of the issue of maintenance for determination at a later date"), 645.44, subd. 15 (2010 (stating that "'[m]ay' is permissive"). A recipient must demonstrate a need for maintenance. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). Need is generally calculated as the extent to which a party's reasonable monthly expenses at the marital standard of living exceed the party's income and ability to meet those expenses. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000).

A. Failure to Compare Income and Expenses

The district court found husband's reasonable monthly expenses to be $3,500, but did not specifically identify his income, stating that "[b]ased on [husband's] concealment of records, non-deposit of cash proceeds, and use of cash, [husband's] actual gross income is imprecise." Therefore, in its maintenance analysis for husband, the district court did not specifically compare husband's current or expected future income and his expenses. We reject husband's argument that this failure to compare his income and expenses renders the failure to reserve maintenance erroneous. A party cannot complain

about a district court's failure to rule in his favor when that party's failure to provide the court with the evidence necessary to fully address the question is the cause. *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003); *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987). In this case, the district court was unable to compare husband's income and expenses because husband failed to produce the relevant information.

B. Property Division

Husband asserts that his ability to support himself is compromised by deterioration of the properties attributable to the receivers, and the district court's award to wife of the Energy Park carwash and the Grand Avenue rental property. But it is not clear that any significant deterioration of the properties is the fault of the receivers. The district court found that (1) during the marriage, the parties failed to "fund growth or properly maintain the structures[,]" (2) the cash flow from the properties was "abnormally high," and (3) the condition of the properties "requires substantial investment in improvements," so that "the actual net income for profit from these properties is uncertain for both parties." The district court found the poor condition of the properties to be attributable to a lack of upkeep during the marriage, not actions of the receivers.

Nor is it clear that the property division reduced husband's ability to support himself in a manner entitling him to a reservation of maintenance. The district court stated that "it is necessary to award [wife] two of the income-producing properties so that she can receive income necessary to meet her reasonable needs with zero reliance on [husband]." This suggests that wife lacks the ability to pay maintenance to husband.

This inference is consistent with the district court's findings that wife's pre-tax monthly income from employment is $3,833, while her reasonable monthly expenses are $3,700, indicating that wife has a limited after-tax ability to pay maintenance. Attributing to wife a lack of ability to pay maintenance also is consistent with the finding that the condition of the properties as awarded to the parties renders the ability of those properties to produce income "uncertain."

Husband makes the related argument that his ability to support himself will be reduced because he previously derived income from all six of the parties' properties, but will have three after the dissolution. This argument ignores the district court's finding that "[n]either party will be able to maintain the standard of living they enjoyed during the marriage," and the required sale and division of the proceeds of the unencumbered Van Buren property, worth $230,000. Division of those proceeds will provide husband the wherewithal to invest or apply funds to deferred maintenance on the income-producing properties awarded to him, enhancing their ability to produce income.

C. Wife's Income

In an apparent attempt to show that wife can pay maintenance, husband suggests that the district court should have imputed income to her for the award to her of the Energy Park carwash. The district court functionally rejected this idea, noting that in prior versions of the judgment it "mistakenly imputed" income to wife from the Energy Park carwash and the Grand Avenue property, even though she was not, in fact, receiving income from either of them, and therefore needed maintenance. Thus, it is the award of those properties to wife that eliminated her need for maintenance.

D. Husband's Health

Analogizing this case to cases involving potential maintenance recipients with medical conditions that could worsen and generate a future need for maintenance, husband cites his history of unskilled labor, his age (53), and his "high blood pressure, high cholesterol, and a 30-year pack-a-day smoking habit[,]" arguing that a reservation of maintenance was required. At trial, husband admitted that he had not been to a doctor in 2009, and the three cases he cites are distinguishable because the medical conditions involved therein were significantly more serious than his. *See Prahl v. Prahl*, 627 N.W.2d 698, 703-04 (Minn. App. 2001) (remanding for the district court to address whether to reserve maintenance where potential recipient had Hepatitis C and cirrhosis of the liver, and conditions could worsen if not responsive to medication); *Wopata v. Wopata*, 498 N.W.2d 478, 485 (Minn. App. 1993) (affirming reservation of maintenance where potential recipient had suffered two heart attacks in 10 years); *Van De Loo v. Van De Loo*, 346 N.W.2d 173, 178 (Minn. App. 1984) (affirming reservation of maintenance where potential recipient had undergone "major surgery," had cancer then in remission, and future medical needs that "could be substantial").

III.

Finally, husband complains that he was not given adequate notice of posttrial hearings occurring on December 17 and 27, 2010. Because husband does not identify any error or prejudice arising from the allegedly defective notice impacting the current judgment, his arguments on this point do not merit relief. *See* Minn. R. Civ. P. 61 (stating that harmless error is to be ignored); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*,

306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that, absent prejudice, error is not ground for reversal). Nonetheless, we will briefly address his arguments.

A district court may shorten otherwise applicable time limits "for good cause shown." Minn. R. Gen. Pract. 302.03. The existence of good cause is reviewed for an abuse of the district court's discretion. *See Thompson v. Thompson*, 739 N.W.2d 424, 431-32 (Minn. App. 2007); *In re Estate of Kotowski*, 704 N.W.2d 522, 531 (Minn. App. 2005) (same), *review denied* (Minn. Dec. 21, 2005). For reasons we need not detail, the posttrial proceedings were convoluted. In those proceedings, the district court found good cause to shorten the notice period for the December 17, 2010 hearing, and we note that the district court found the relief sought at the hearing was consistent with the record, that husband's attorney was formally notified of the necessity of the hearing almost a week before the hearing, and that this occurred before the attorney filed his withdrawal from the case. Husband has not shown that the district court abused its discretion by shortening the notice period for the December 17, 2010 hearing.

Husband's violation of prior orders regarding the transfer of assets caused the limited-time notice of the December 27, 2010 hearing. His conduct prompted a December 23, 2010 order freezing his funds and setting an "emergency hearing" for December 27. Husband was notified of that hearing in a December 24 voicemail from wife's attorney, which husband acknowledged later that day. At the hearing, husband asked whether he should have counsel and stated that he needed funds to retain counsel. The full notice time would have been detrimental to husband in that access to his funds, and thus his ability to retain counsel, would have been further delayed. Husband has not

shown that the district court abused its discretion by compressing the notice period for the December 27, 2010 hearing.[3]

In summary, we affirm the district court's determinations that wife's townhome is her nonmarital property and that husband did not show a nonmarital interest in the Grand Avenue rental property, as well as the district court's refusal to reserve the possibility of awarding husband spousal maintenance in the future. We also conclude that the district court did not abuse its discretion in shortening the notice periods for the hearings occurring on December 17 and 27, 2010, and reject husband's allegation of "serious question" about whether he received a fair trial.

Affirmed.

[3] Referring to matters extraneous to this dissolution but involving one of the district court judges who heard this case, husband asserts that there are "serious questions" about whether he received a fair trial. If husband is asserting that the judge failed to properly attend to this case because of such other proceedings, we reject his argument. Husband does not allege any specific prejudice arising from the pendency of any other proceedings. Minn. R. Civ. P. 61; *Midway Ctr. Assocs.*, 306 Minn. at 356, 237 N.W.2d at 78. Nor will we assume district court error. *See Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999).