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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1580

In re the Marriage of:

Patricia Kay Hassig, petitioner,
Respondent,

vs.

Dwain Kenneth Hassig,
Appellant.

Filed September 19, 2011
Affirmed in part, reversed in part, and remanded
Kalitowski, Judge

Winona County District Court
File No. 85-FA-08-979

Steven C. Youngquist, Youngquist Law Office, Rochester, Minnesota (for respondent)

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Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Stauber, Judge.

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

KALITOWSKI, Judge

In this marital-dissolution appeal, appellant Dwain Kenneth Hassig challenges (1) the district court's determination that the parties' farmland is marital property; (2) the district court's award of temporary spousal maintenance to respondent Patricia Kay

Hassig and the court's calculation of respondent's income for purposes of child support; (3) the district court's failure to order retroactive child support; and (4) the district court's award of conduct-based attorney fees to respondent. We affirm in part, reverse in part, and remand.

D E C I S I O N

I.

Appellant argues that the district court erred in determining that the family farmland is marital property. We disagree. Whether property is marital or nonmarital is a question of law, subject to de novo review. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). We review the findings supporting the characterization of property for clear error. *Burns v. Burns*, 466 N.W.2d 421, 423 (Minn. App. 1991).

Real property acquired by the parties at any time during the existence of the marriage is presumed to be marital property unless a party can show by a preponderance of the evidence that the property is nonmarital. Minn. Stat. § 518.003, subd. 3b (2010); *see also Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 696 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Nonmarital property

> means property real or personal, acquired by either spouse before, during or after the existence of their marriage, which (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse; (b) is acquired before the marriage; (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e); (d) is acquired by a spouse after the valuation date; or (e) is excluded by a valid antenuptial contract.

Minn. Stat. § 518.003, subd. 3b.

Appellant's extended family originally owned five tracts of farmland (Parcels A through E) in Winona and Wabasha Counties. Because by 1997 the five parcels had been placed in both appellant's and respondent's names, all five parcels are presumptively marital property. But appellant argues that he has nonmarital interests in the farmland. He contends that a 1978 transaction involving Parcels A, B, and C, a 1995 transaction involving Parcel D, and a 1996 transaction involving Parcel E created a nonmarital "gift component" in each property because he acquired the parcels from his family for prices lower than the fair market value. He argues that the difference between the fair market value of the parcels and the price actually paid constitutes a nonmarital gift. Appellant argues that when his nonmarital interests in the parcels are subtracted out, the value of the marital farmland is $435,312 rather than the $2.6 million appraisal value.

But the district court stated that it did not believe appellant's testimony about the fair market value of the parcels at the time they were conveyed by his parents and aunt, nor his argument that he never intended respondent to have an interest in the farm business. This court defers to such credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). Furthermore, the evidence—including appellant's own testimony that the purpose of a 1997 quitclaim deed was to keep all the farmland together for respondent and their children—supports the district court's finding that the parties acquired the farmland for their family unit: appellant, respondent, and their five children. The district court therefore did not err by concluding that appellant failed to overcome the presumption that the farmland is marital property. Because we conclude that the district court appropriately determined that the farmland is marital

property, we decline to address appellant's assertions regarding the value of a nonmarital interest in the property under *Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981), or that the appreciation of the property was passive under *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 853-54 (Minn. 2003).

II.

Appellant argues that the district court erred by ordering him to pay $1,500 a month in temporary spousal maintenance after the November 2009 judgment and decree because the district court gave respondent 49% of the parties' income-producing farmland. The district court may award spousal maintenance to a spouse who "lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage." Minn. Stat. § 518.552, subd. 1(a). We 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).

The district court conditioned the end of appellant's temporary-maintenance obligation on appellant's compliance with the judgment and decree including conveying respondent's share of the farmland to her. The district court explained that respondent does not need permanent spousal maintenance after she receives income-producing farmland through the judgment and decree but that temporary maintenance from appellant would provide for respondent's reasonable needs until appellant completed the conveyance. We conclude that the district court did not abuse its discretion by

conditioning the termination of the temporary obligation on respondent receiving the farmland that would then provide for her reasonable needs.

But the district court also conditioned appellant's temporary spousal-maintenance obligation on appellant's payment of $32,000 for property equalization and $10,000 for her attorney fees. We conclude that the district court erred in conditioning appellant's temporary spousal-maintenance obligation on these payments. Because the district court awarded income-producing property to respondent, these payments are unrelated to providing for respondent's reasonable needs. *See Novick v. Novick*, 366 N.W.2d 330, 334 (Minn. App. 1985) (stating that the essential consideration in awarding and calculating spousal maintenance 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). And although appellant conceded at oral argument that he has not yet paid the $32,000 equalization or $10,000 in attorney fees, there are other ways to enforce these payments. As the district court noted in the judgment and decree, these amounts may become liens against the farmland awarded to appellant. Therefore, we reverse the part of the district court's judgment that conditioned appellant's temporary spousal-maintenance obligation on payment of the $32,000 equalization and $10,000 attorney fees.

Appellant also conceded at oral argument that he has failed to make any temporary spousal-maintenance payments to respondent. It is unclear from the record whether or when appellant either conveyed income-producing property to respondent or gave respondent rental income from the property pending appeal. Therefore, we remand to the

district court to determine at what point respondent no longer needed temporary spousal maintenance because she was receiving income from the farmland and to adjust the arrearages owed by appellant accordingly.

Child Support

The district court ordered respondent to pay child support to appellant for the parties' minor child, who turned 18 years old during the pendency of this appeal. In calculating respondent's income for purposes of child support, the district court did not include the $1,500 temporary maintenance that appellant was ordered to pay to respondent. At the time of the judgment and decree, this was not error because the district court also ordered appellant to transfer respondent's share of the income-producing farmland within 90 days of the judgment and decree, at which point appellant's temporary spousal-maintenance obligation would have ceased. But the record indicates that appellant did not transfer the property within 90 days as ordered. And therefore he has accrued arrearages from the time of the November 2009 judgment and decree until the point when respondent began receiving sufficient income from the farmland. On remand, when calculating appellant's spousal-maintenance arrearages, the district court should take into account respondent's child-support obligations based on this additional income and adjust the amount appellant owes accordingly. *See* Minn. Stat. § 518A.20 (2010) (defining gross income for purposes of calculating child support to include spousal maintenance received by a party).

III.

Appellant also contends that the district court erroneously failed to make respondent's child-support obligation retroactive to the commencement of the dissolution action, as appellant had requested in a motion served on May 29, 2008. *See* Minn. Stat. § 518A.39, subd. 2(e) (2010) ("A modification of support . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion . . . ."). The district court has broad discretion to determine the retroactivity of child support. *Guyer v. Guyer*, 587 N.W.2d 856, 859 (Minn. App. 1999). After a hearing in June 2008, the district court granted appellant temporary sole physical custody of the parties' minor children and the issue of child support was reserved. Appellant retained possession of the parties' homestead and all income-producing farmland prior to trial. After trial, the district court awarded respondent 49% of the income-producing farmland, and ordered her to make child-support payments in the amount of $171 a month. On this record, we conclude that the district court did not abuse its discretion in ordering respondent to begin making child-support payments "on the first day of the month immediately following entry" of the judgment and decree. *See* Minn. Stat. § 518A.38, subd. 1 (2010) (requiring court to order child support that is "just and proper" for the maintenance of any minor children).

IV.

Appellant challenges the district court's award of conduct-based attorney fees to respondent. A district court may award, "in its discretion, additional fees, costs, and

disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2010). We review an award of conduct-based attorney fees for abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

The district court made specific and thorough findings that appellant had, on several occasions, unreasonably contributed to the length or expense of the dissolution proceeding. For example, appellant (1) failed to provide a detailed accounting of all personal property sold during the dissolution, including several items of farm equipment; (2) made no good-faith attempt to negotiate and resolve the distribution of the parties' horses; (3) refused to allow respondent to enter the homestead to retrieve personal property; and (4) failed to timely pay respondent the ordered personal-property equalization amount. *See Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001) (stating that the district court must identify the specific conduct underlying a conduct-based fee award).

Appellant does not assign error to the district court's findings. Rather, he argues that the district court abused its discretion in awarding conduct-based attorney fees because the district court also made findings that (1) both parties were responsible for adding to the cost of dissolution "as it relates to their conduct regarding the horses" and (2) "there was credible testimony that [respondent]'s behavior during some of the property exchanges was *far* less than exemplary." But appellant cites no legal authority to support the argument that a party cannot receive an award of conduct-based attorney fees if her own conduct is less than exemplary.

We conclude that the record supports the district court's findings that appellant's conduct contributed to the length or expense of this dissolution. And although respondent may also have contributed to the length or expense of the dissolution, the district court was familiar with the whole record and did not abuse its discretion by determining that appellant's blatant disregard of court orders and other instances of bad faith justify a $10,000 award.

Affirmed in part, reversed in part, and remanded.