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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-220**

In re the Marriage of:
Lori L. Luginbill, petitioner,
Respondent,

vs.

Brent S. Luginbill,
Appellant.

**Filed July 25, 2011
Affirmed
Collins, Judge***

Anoka County District Court
File No. 02-FA-07-1219

Elizabeth A. Schading, Barna Guzy & Steffen, Ltd., Minneapolis, Minnesota (for
respondent)

John G. Westrick, Westrick & McDowall-Nix, P.L.L.P., St. Paul, Minnesota (for
appellant)

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

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges the judgment entered in this marital-dissolution matter, arguing that the district court (1) erred in treating disability-insurance funds as marital property, (2) abused its discretion in distributing marital property, and (3) abused its discretion in failing to grant his posttrial motion to consider new evidence. We affirm.

DECISION

1. Disability-insurance funds

In August 2007, respondent Lori Luginbill petitioned for dissolution of her 23-year marriage to appellant Brent Luginbill. During much of the marriage, appellant worked as a chiropractor at a clinic that the parties owned and where respondent also worked. In 2004, appellant was injured and deemed disabled for purposes of continuing to provide chiropractic services. Appellant is the owner of a disability-insurance policy, paid for through the parties' clinic, that provides appellant monthly payments of \$4,293 until he reaches the age of 65, obtains work that eliminates the need for payment, dies, or is no longer disabled.

Appellant argues that the district court erred in treating the disability-insurance funds as marital property instead of income. The determination of whether disability-insurance funds are income or marital property is a question of law, subject to de novo review. *Swanson v. Swanson*, 583 N.W.2d 15, 17 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998). Minnesota courts have “consistently treated disability benefits as marital property.” *Walswick-Boutwell v. Boutwell*, 663 N.W.2d 20, 22 (Minn. App.

2003), *review denied* (Minn. Aug. 19, 2003); *see also Swanson*, 583 N.W.2d at 18 (stating that a “spouse’s right to receive a disability annuity can be construed as a marital asset to be divided”); *Watson v. Watson*, 379 N.W.2d 588, 591 (Minn. App. 1985) (stating that district court erred in failing to categorize disability annuity as marital property); *VanderLeest v. VanderLeest*, 352 N.W.2d 54, 57 (Minn. App. 1984) (stating that husband’s receipt of a disability annuity was construed as a marital asset in part because the annuity resulted from years of working during the marriage).

Appellant argues that because this is a private insurance policy meant to compensate him for his inability to earn an income it should be treated as income. We disagree. “‘Marital property’ [is] property, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them.” Minn. Stat. § 518.003, subd. 3b (2010). Caselaw informs us that the “right to receive a disability annuity can be construed as a marital asset to be divided.” *VanderLeest*, 352 N.W.2d at 57; *see also Watson*, 379 N.W.2d at 591 (stating that monthly payments that husband receives from a disability annuity were marital property). We conclude that it was appropriate to treat the disability-insurance funds as a marital asset because the policy was purchased with marital property and appellant became injured during the marriage and received the disability-insurance funds substituted for earned income during the marriage. We see no error in the district court’s classification of the disability-insurance funds as marital property.

The district court has broad discretion in the division of marital property. *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied*

(Minn. Oct. 25, 2000). On appeal, we will “affirm the [district] court’s division of property if it had an acceptable basis in fact and principle even though this court may have taken a different approach.” *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984) (citations omitted). The district court concluded that the disability-insurance funds were marital property and awarded 35% of the monthly payments to respondent and 65% to appellant for as long as payments continue. This division was based, in part, on the fact that appellant will no longer receive payments if he secures economically beneficial employment, which he had thus far been unable to find. On the other hand, respondent is free to pursue gainful employment without concern regarding reduction or discontinuation of the disability-insurance payments. This division is equitable and implemented within the district court’s discretion.

2. Property division

Appellant next challenges several of the district court’s property-division awards. The district court has broad discretion in the division of marital property. *Chamberlain*, 615 N.W.2d at 412. With certain exceptions, “marital property” includes property acquired during the marriage. Minn. Stat. § 518.003, subd. 3b. Whether property is marital or nonmarital is a question of law, but we defer to the district court’s findings of fact unless they are clearly erroneous. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). The party claiming a nonmarital interest in property must prove the necessary facts by a preponderance of the evidence. *Campion v. Campion*, 385 N.W.2d 1, 5 (Minn. App. 1986).

a. Longaberger Baskets

Appellant argues that the district court abused its discretion in awarding him half of the nearly 900 collectable baskets that respondent acquired during the marriage while employed by the Longaberger company. Based on the projected resale prices, the district court estimated the baskets' worth at \$25,000 and ordered an equal division of the baskets. The district court treated the baskets as personal property acquired during the marriage, which because no statutory exception to the definition of "marital property" applies, makes them marital property. *See* Minn. Stat. § 518.003, subd. 3b. The district court did not treat the baskets as debt, as appellant suggests by contending that the district court "saddled" him with a \$12,500 debt. Rather, the district court considered them financially beneficial. Thus, the district court did not abuse its discretion in equally dividing the saleable Longaberger baskets.

b. Student loan

Appellant next argues that the district court abused its discretion in holding him solely responsible for a debt incurred for the parties' child's higher education; a student loan that appellant co-signed.

"A spouse is not liable to a creditor for any debts of the other spouse. . . . Notwithstanding [that fact,] . . . in a [marriage-dissolution] proceeding under chapter 518 the court may apportion such debt between the spouses." Minn. Stat. § 519.05(a) (2010). Thus, respondent would not be liable for appellant's debt unless the district court apportioned some or all of that debt to respondent.

The parties' elder child was emancipated during the dissolution proceedings. The parties had disagreed regarding where their child should attend college. Respondent wanted the child to attend an affordable college and informed appellant that she would not co-sign a loan for tuition at an expensive school. In August 2007, appellant co-signed for a student loan over respondent's objection. The district court determined that appellant was solely responsible for the student-loan debt in the event the parties' child defaulted. Appellant took this liability on himself, knowing that respondent was not willing to share the liability. Therefore, the district court acted within its discretion in determining that appellant was solely responsible for any contingent liability on the student loan.

c. Homestead

Appellant next argues that the district court abused its discretion in considering the potential increase in the value of the parties' homestead in awarding respondent a greater share of marital property. The law does not require a precisely equal division of property, but rather only a "just and equitable one." Minn. Stat. § 518.58, subd. 1 (2010); *see also Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998) ("An equitable division of marital property is not necessarily an equal division."), *review denied* (Minn. Feb. 18, 1999).

The district court found that the parties purchased their home in 1992 for \$200,000. The property was encumbered by two mortgages, one with a balance of \$268,620 and the second with a \$68,753 balance. Respondent preferred to sell the property, but appellant disagreed and continued to reside there. Based on home values in

the area and the economic climate, the district court valued the home at \$305,000. Because respondent did not contest appellant's desire to remain in the home, the district court awarded the homestead to appellant. The district court then awarded respondent "\$4,242 more in marital property than [appellant]" because appellant was awarded 65% of the disability-insurance funds and the homestead, which the court found "currently has negative equity [but] if appellant can maintain payments and make improvements there is a potential that the asset's value will increase." We conclude that this division was equitable and within the district court's discretion, based on the district court's reliance on appellant's award of 65% of the disability-insurance funds as well as the potential for increase in the value of the homestead.

d. Respondent's income

Appellant also argues that the district court abused its discretion in considering respondent's employment status in dividing property. During the proceedings, respondent was employed full-time. But two days after the hearing concluded, respondent became involuntarily unemployed. Appellant merely states: "There is no question that the [district] court took [respondent's job loss] into consideration in making the property award. . . . This was error."

Issues not briefed on appeal are deemed waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). And an assignment of error based on a "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted). Appellant provides neither legal argument nor authority supporting

his claim that the district court cannot consider the fact that respondent lost her employment very shortly after the trial. Therefore, we deem this issue waived.

3. Posttrial motion

Appellant argues that the district court abused its discretion when it denied his request for a new trial based on new evidence. Appellant claims that he was entitled to a new trial because the district court relied on respondent's lost employment in making its property division, but respondent subsequently obtained new employment, which should have been taken into consideration. The district court's decision not to reopen the judgment and decree will not be disturbed absent an abuse of discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989).

Here, the trial occurred on March 23, 2009. Two days later, respondent learned that she would soon be unemployed. Before closing the trial record, the district court had allowed the parties until April 20 to present proposed findings and final arguments. Appellant was aware that respondent lost her job prior to the district court making a final determination. Thus, the district court was within its discretion in denying appellant's request to reopen the judgment and decree because respondent's employment status was known prior to posttrial motions.

Appellant also argues that the district court should have reopened the judgment and decree in order to receive evidence and to consider respondent's newly obtained employment. But the district court was within its discretion in denying appellant's request for several reasons. First, the district court considered respondent's previous employment income in making the marital-property division. We have already

determined that the property division was equitable even if not equal. Respondent was awarded more marital property because appellant received a greater portion—65/35—of the disability-insurance funds. Respondent was awarded approximately \$4,200 more in marital property to better balance this distribution, and it is unlikely that consideration of newly obtained employment would make that additional award so disproportionate as to render it inequitable. Finally, neither party was awarded maintenance. Because the parties are maintaining their own needs, a consideration of respondent's income in this regard is irrelevant; thus, we see no abuse of discretion on the part of the district court here.

Affirmed.