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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1022**

In re the Marriage of:  
Maureen Elizabeth Allan, petitioner,  
Respondent,

vs.

Bradley Dean Allan,  
Appellant.

**Filed March 26, 2012  
Affirmed  
Hudson, Judge**

Washington County District Court  
File No. 82-FA-09-2451

John A. Warchol, Warchol Meyer, PLLC, Minneapolis, Minnesota (for respondent)

Beau D. McGraw, McGraw Law Firm, P.A., Oakdale, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Hudson, Judge; and Huspeni,  
Judge.\*

**UNPUBLISHED OPINION**

**HUDSON, Judge**

Appellant husband argues that the district court abused its discretion by denying  
his motion for a continuance of the parties' dissolution trial, by failing to grant him

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

maintenance, by making clearly erroneous findings relating to the marital/nonmarital character of the parties' property, and by declining to grant him a portion of respondent wife's nonmarital property. We affirm.

## **FACTS**

The district court dissolved the marriage of appellant Bradley Dean Allan (husband) and respondent Maureen Elizabeth Allan (wife) by judgment in 2011 after a 16-year marriage. Throughout their marriage, the parties received substantial income from rent and real-estate partnership interests derived from wife's parents, and later, from wife's father's estate. For the first two years of the marriage, the parties jointly owned a small publishing company but it remained unprofitable and ceased doing business. At the time of dissolution, wife worked part-time as a psychic medium, and husband worked part-time as a tennis coach.

Following a temporary hearing in September 2009, the district court granted husband temporary maintenance and child support, along with need-based attorney fees of \$25,500, which the district court stated was intended partially to secure the services of a business evaluator to identify marital assets and evaluate wife's non-marital claims. The district court dissolved the parties' marriage by stipulated judgment and ordered joint legal and physical custody of their 11- and 14-year-old children. But the district court held a trial on issues of property division, child support, and husband's maintenance request.

The day of trial, husband appeared without counsel. Husband's attorney had withdrawn from representation four months before trial. Husband requested a

continuance based on his inability to obtain counsel who would represent him without charge. He argued that he was at a disadvantage without an attorney and stated that he was entitled to protection under the Americans with Disabilities Act (ADA), based on his medical condition of epilepsy. The district court stated that during the two-year pendency of the action, husband had not previously claimed that the ADA applied to him, which husband confirmed. Husband did not previously dispute that he had not suffered a seizure in eight years and was under no physicians' limitations based on his epilepsy. The district court denied the motion for a continuance, and husband appeared pro se at trial.

Thomas Harjes, a certified public accountant, testified as wife's expert witness regarding the valuation and nonmarital tracing of business interests wife had received from her parents, namely: fractional interests in ten limited partnerships, two partnerships, one limited liability partnership, and one subchapter S corporation inherited from her father's estate; and one limited liability partnership gifted by her mother. To determine the marital and nonmarital components of these interests, Harjes first examined K-1 tax schedules, which showed wife's ownership in the form of capital accounts, with income and distributions. If a distribution was made from reported income, he assigned it as marital property. If a distribution exceeded reported income, based on a refinancing of the underlying property held by the entity, he treated it as a distribution of principal and assigned it as nonmarital property.

Harjes performed a tracing analysis of wife's nonmarital interests to the acquisition of (1) the parties' homestead and (2) an investment account with Farnham

Street Capital, an investment partnership unrelated to wife's family business. He used the *Schmitz* method to determine the proportionate value of marital and nonmarital interests in the parties' homestead, which the parties built in 2000. He assigned as nonmarital an initial down payment of \$360,000, based on wife's representation and her receipt of a cash distribution from her father's estate in that year. He assigned as marital the initial mortgage debt and cash due at closing. He assigned two mortgage-reduction payments from 2001 and 2003 as partly marital and partly nonmarital, based on their origin from the partly marital and partly nonmarital distributions received from partnership properties in each of those years. He similarly traced home improvements in 2004 to a distribution from a refinancing of another partnership property. He then added back the current value of those improvements in marital and nonmarital proportions to the value of the homestead. Based on these calculations, Harjes apportioned the parties' equity in the homestead as approximately 70% nonmarital and 30% marital.

Harjes also examined K-1 statements from the Farnham Street Capital account. He testified that, based on wife's representation, she deposited \$200,000 of funds from partnership distributions to that account in 2002 and \$225,925 in 2005. He assigned the interest and dividend income generated by and remaining in that account as marital, but minimally reduced wife's nonmarital interest based on realized or unrealized capital gains and losses. In 2009, wife withdrew a total of \$747,294, liquidating the account. Harjes opined that, at the time of liquidation, the account contained 75.1% nonmarital property and 24.9% marital property.

Wife's brother, who is the property manager of several of the family's real-estate partnerships, testified that each sibling received distributions from their father's estate in the three-to-four-million-dollar range. He testified that wife periodically attends board meetings but does not effectively have voting control over any of the entities. He testified that wife received a partnership distribution of more than \$700,000 with the 2003 refinancing of one partnership property and additional distributions from refinancing of other partnerships in 2001 and 2004.

Wife also testified that, apart from signing documents for refinancing of the partnerships, she provided no other services to the partnerships. She testified that when she graduated from college, she moved to a condominium in Coon Rapids owned by her father, for which she paid him in installments, and he forgave part of the debt. She testified that when the condominium sold for about \$100,000, she used most of the money to purchase the parties' homestead. She testified that she paid for the remainder of the lot and the building of the parties' homestead with funds from her father's estate, and she used funds received from the refinancing of two real-estate partnerships to pay off the homestead mortgage and make home improvements. She indicated that the money deposited to the Farnham Street Capital account also came from her father's inheritance.

Husband briefly cross-examined Harjes on the appraised value of the homestead improvements, but did not challenge the method of valuation or the assignment of marital and nonmarital interests in the business entities, the homestead, or the Farnham Street Capital account. On cross-examination, husband testified that wife generally handled the

family finances during their marriage. He acknowledged that the money to purchase the homestead came primarily from wife's inheritance, although he supervised construction of the home, and stated that he did not know the origin of the funds used to pay off the mortgage or deposited in the Farnham Street Capital account.

Husband testified that in 2009, he earned about \$9,500 for designing a logo for a school district, and in 2010, he earned about \$4,000 as a high school tennis coach and \$750 to \$1,000 per month teaching private tennis lessons. He testified that he expects his income from that occupation to grow and that he recently applied for jobs as a tennis-company representative. He testified that his epilepsy did not preclude any of his daily activities. He indicated that the parties were able to stop working because of the gifts from wife's family, that he worked hard to co-parent the children, and that he believed he deserved a standard of living equal to wife's.

Wife's vocational expert (VE) testified that, based on husband's testing, health status, and work history, husband was capable of full-time work. The VE testified that husband had a community-college degree and was one course short of a bachelor's degree in criminal justice. The VE opined that, based on husband's qualifications, he would be able to earn approximately \$45,000 per year in a career of sales representative, advertising sales, security supervisor, or security-equipment sales. The VE testified that husband's prospects for additional employment in coaching were "possible," but "speculative."

The district court found wife's nonmarital interest in the homestead to be \$569,903.85, approximately 64.9%, and the parties' marital interest in the homestead to

be \$308,907.15, approximately 35.1%. The district court modified Harjes' assessment of the marital/nonmarital character of the homestead, finding that, apart from wife's nonmarital checks of approximately \$280,000 to purchase the homestead, the balance of the purchase price came from the sale of the Coon Rapids condominium, which the court found to be 50% marital, based on the use of marital funds to pay off one-half of the condominium debt. The district court also found that, as of the property valuation date, 75% of the proceeds from the Farnham Street Capital account were wife's nonmarital property, and 25% of the proceeds were marital property. The district court granted 67% of the marital property to husband, based on the parties' 16-year marriage, their ages, wife's substantial amount of nonmarital property and substantial monthly income, and husband's comparatively minor income and nominal assets. The district court found that husband's epilepsy did not prevent him from performing daily activities, that he was voluntarily underemployed as a tennis coach, and that he was capable of earning approximately \$45,000 in fields other than coaching. The district court determined that based on his voluntary underemployment, his earning capability, his failure to substantiate his actual income, and his grant of marital property, he was not in need of temporary or permanent maintenance. Husband appeals.

## **DECISION**

### **I**

Husband argues that the district court abused its discretion by denying his motion for a continuance to obtain counsel after his previous attorney withdrew from the case for nonpayment of fees. We review the district court's denial of a motion for a continuance

for an abuse of discretion. *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). “The test is whether a denial prejudices the outcome of the trial.” *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993), *review denied* (Minn. Jan. 20, 1994). A showing of good cause is required to grant a continuance in a family court proceeding, Minn. R. Gen. Pract. 302.02, and “[w]ithdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.” Minn. R. Gen. Pract. 105. If a party does not retain representation after having a reasonable amount of time to do so, that party must proceed pro se. *Chahla*, 507 N.W.2d at 32.

Husband argues that, with counsel, he would have been able to present evidence that wife’s rental income had paid down the mortgages on several of the partnership properties, which would have demonstrated an additional marital interest in those properties. But absent more than husband’s mere assertion, husband’s ability to present such evidence is speculative. Although the district court granted husband temporary need-based attorney fees, in part to retain a business evaluator to assess this issue, no such evaluator testified at trial. It is unclear from the record whether husband needed additional funds to retain such an expert, but it is clear that he did not request additional attorney fees or seek an earlier continuance. We agree with the district court that husband’s argument of prejudice based on his inability to afford counsel, asserted for the first time on the day of trial, did not provide good cause to grant a continuance.

Husband also cites his medical condition as a basis for continuance. Although a party’s medical incapacity ordinarily provides grounds for a continuance, the district



court may make its own observations in assessing whether a party is able to proceed to trial. *Id.*, 507 N.W.2d at 32. The district court noted, and husband confirmed, that although the action had been pending for nearly two years, husband had not previously asserted that he had epilepsy or made a claim that the ADA would apply to his case. Under these circumstances, the district court did not abuse its discretion by denying husband's motion for a continuance based on husband's medical condition.

## II

Because husband did not move for a new trial or amended findings, this court's review is limited to substantive legal issues properly raised in district court and determinations of whether the evidence supports the district court's findings of fact and whether those findings support the conclusions of law. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2010) (stating that new-trial motion is not a prerequisite to appellate review of substantive legal issues properly raised in district court); *Erickson v. Erickson*, 434 N.W.2d 284, 286 (Minn. App. 1989) (stating that absent motion for new trial, appellate courts may review whether evidence supports findings of fact and whether findings support conclusions of law and judgment).

Husband argues that the district court abused its discretion by failing to grant him maintenance, either for a specific period of time or permanent maintenance. This court reviews a district court's maintenance award for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion if it sets a maintenance award without findings of fact supported by the record or if it

improperly applies the law. *Id.* We rely on the district court's findings of fact unless they are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); Minn. R. Civ. P. 52.01. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

A district court may grant maintenance if the party seeking maintenance lacks sufficient property to provide for his or her reasonable needs or is unable to provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2010). The district court must consider all relevant factors, including the maintenance recipient's ability to meet needs independently, the time necessary for that person to acquire education or training to secure appropriate employment, and the probability of that person's ability to become fully or partially self-supporting. *Id.*, subd. 2 (2010). The district court balances the recipient's financial needs and ability to meet those needs against the maintenance obligor's financial condition. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39–40 (Minn. 1982). The maintenance statute implicitly places the burden on the party seeking maintenance to demonstrate need. *Dobrin*, 569 N.W.2d at 202.

Husband maintains that the district court's findings relating to his ability for self-support are clearly erroneous because the district court improperly credited the testimony of the VE, who failed to evaluate his ability to earn income from his chosen career as a tennis coach, did not take account of his prolonged absence from the workforce, and failed to consider whether his epilepsy affected his capability for employment. We disagree. We initially note that this court defers to the district court's credibility

determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Further, the district court did not clearly err by crediting the VE's opinion that husband was qualified for several different jobs, any of which would produce an income of approximately \$45,000, and that coaching tennis was unlikely to produce a similar income. The VE's opinion that husband's epilepsy would not affect his employment is consistent with husband's acknowledgement that he has not had a seizure since 2002. Finally, the VE testified that even in a challenging economic environment, husband could be expected to find work in the occupations noted within a year.

Husband also argues that, even if the district court correctly determined his income, he should have been granted maintenance because he did not receive an award of income-producing property and because his reasonable monthly expenses exceed his income by nearly \$1,500 per month, although wife's monthly income exceeds her reasonable monthly expenses by \$4,600 per month. The district court found that husband did not submit recent evidence of his monthly expenses but merely testified that he wished to maintain his current lifestyle, and that in its temporary order, the district court had found husband's reasonable monthly expenses to be \$5,224 out of a submitted budget of \$6,153, which included child-related expenses. The district court found wife's reasonable monthly expenses to be \$8,100.

Husband does not dispute that he failed to provide the court with an updated figure for his reasonable monthly expenses, and he did not testify that those expenses had changed since the temporary hearing. Under these circumstances, we conclude that the district court appropriately adopted its previous findings as to husband's reasonable

monthly expenses and did not clearly err by rejecting husband's assertion that he had increased monthly expenses. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that a party who does not submit evidence to allow district court to fully address question may not complain that court failed to rule in that party's favor), *review denied* (Minn. Nov. 25, 2003).

Husband has the burden to demonstrate a need for maintenance. *Dobrin*, 569 N.W.2d at 202. His assertion of a difference between his monthly income and reasonable monthly expenses relies in part on his argument that he was not granted income-producing property in the dissolution. But he may convert his marital property award of approximately \$330,000 to income-producing property to assist him in meeting his reasonable monthly expenses. *See* Minn. Stat. § 518.552, subd. 2(a) (stating marital property apportioned to a party seeking maintenance as relevant factor in determining the financial resources of that party). And based on the parties' joint physical custodial agreement, he also received basic support of \$1,105 per month, a portion of which may also be used for his monthly expenses associated with the parties' children. *See id.* (stating that portion of support award included for party who is custodian of minor child is relevant factor in determining maintenance). We conclude that the district court did not abuse its discretion by declining to award husband maintenance.

### III

Husband challenges the district court's determination of the marital and nonmarital classification of the homestead and the proceeds of the Farnham Street Capital account. Appellate courts "independently review the issue of whether property is marital

or nonmarital, giving deference to the district court’s findings of fact.” *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008).

“Marital property” means property, real or personal, . . . acquired by the parties . . . to a dissolution . . . at any time during the existence of the marriage relation between them. . . . All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property. . . . The presumption of marital property is overcome by a showing that the property is nonmarital property.

Minn. Stat. § 518.003, subd. 3b (2010). “Nonmarital property means property real or personal, acquired by either spouse, . . . , which . . . (b) is acquired before the marriage; [or] (c) is acquired in exchange for or is the increase in value of” nonmarital property. *Id.* A party seeking to overcome the marital-property presumption has the burden to establish the property’s nonmarital character by a preponderance of the evidence. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997).

To retain its nonmarital character, nonmarital property must be kept separate from marital property; or if it is commingled with marital property, it must be readily traceable to an identifiable nonmarital asset. *Id.*; *Robert v. Zygmunt*, 652 N.W.2d 537, 541 (Minn. App. 2002), *review denied* (Minn. Dec. 30, 2002). “[T]racing property to its nonmarital source does not require intricate detail.” *Risk ex rel. v. Miller v. State*, 787 N.W.2d 690, 697 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Nov. 16, 2010); *see also Nash v. Nash*, 388 N.W.2d 774, 781 (Minn. App. 1986) (stating that “[t]racing does not require a party to produce the serial numbers of the dollar bills used”), *review denied*

(Minn. Aug. 20, 1986). Whether a nonmarital interest has been traced presents a question of fact. *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009).

Husband maintains that because wife deposited both the marital and nonmarital funds received from her family business partnerships in a money-market account, she failed to meet her burden of showing that the homestead and the Farnham Street Capital account were acquired partially with nonmarital funds. But “[s]imply routing . . . funds through a joint account does not transform nonmarital property into marital property.” *Nash*, 388 N.W.2d at 781 (quotation omitted). Wife testified that she received distributions from her father’s estate, which she placed in a bank account in her name. She produced a December 1999 Marquette Bank statement indicating that she transferred \$200,000 from her bank account to the parties’ joint account and that, on the same day, she wrote a check for the same amount to the homebuilder, drawn on that account. The bank statement also shows that about ten days later, she transferred \$305,000 from her bank account to the joint account, and about two months later, she wrote another check to the homebuilder from the joint account for \$81,000. Wife also provided her Firststar Bank statement showing that in September 2001, a year in which she received proceeds from the sale of one of the business interests, she deposited \$325,000 into that account. The record shows that within about two weeks, she transferred \$245,000 from that account to pay down the homestead mortgage. The record additionally shows that in 2003, when another of the partnerships was refinanced and wife received approximately \$710,000, the second paydown of the mortgage occurred.

Wife testified that she opened the Farnham Street Capital account, which was opened in October 2002 with an initial investment of \$200,000, because she wished to obtain a high rate of return for distributions from her father's estate. Wife produced a US Bank statement showing a deposit of \$217,485 on October 1, 2002, and a withdrawal of \$200,000 two days later, consistent with the opening of the Farnham Street Capital account. The second contribution of \$225,925 to the Farnham Street Capital account occurred in 2005, the year after wife received a distribution of about \$200,000 from a partnership in which she inherited an interest. Wife provided documentary evidence that she withdrew a total of approximately \$747,000 from that account in 2009, liquidating the account. She testified that she deposited those funds into her Spire money-market account and provided a statement showing a March 2010 balance of \$285,489 in that money-market account. Although this evidence does not directly link the Farnham withdrawal and the balance in wife's money-market account, the district court reasonably credited wife's proof on this issue. *See Kerr*, 770 N.W.2d at 570 (stating that "[a] nonmarital interest in property may be established on the basis of credible testimony"); *Vangsness*, 607 N.W.2d at 472 (stating that this court defers to district court's credibility determinations). We conclude, based on this record, that the district court did not clearly err in its findings relating to tracing of wife's nonmarital interests in the homestead and the proceeds from the Farnham Capital account. In addition, we note that the district court did not adopt the complete analysis of wife's expert on tracing of nonmarital funds to the homestead, showing that the district court exercised its independent judgment. *Cf. Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992) (cautioning that "wholesale

adoption of one party's findings and conclusions raises the question of whether the [district] court independently evaluated each party's testimony and evidence"), *review denied* (Minn. Feb. 12, 1993).

Husband argues that, in making findings on wife's nonmarital interest in the homestead, the district court failed to credit him for his work in supervising construction of the home. He also maintains that the district court's determination that most of the parties' assets were primarily acquired with nonmarital funds unfairly assumes that marital property was expended for living expenses, which deprives him of an equitable property distribution. But we conclude that the district court's assignment of approximately 35% of the homestead as marital property adequately reflects the value of husband's marital contribution in supervising its construction. *See Baker*, 753 N.W.2d at 649 (stating that this court gives deference to district court's findings of fact). And in view of the parties' work history and minimal marital savings or retirement accounts, the district court did not clearly err by finding that a substantial proportion of their assets were derived from nonmarital property.

Finally, husband argues that the district court abused its discretion by failing to equitably divide a portion of wife's nonmarital property. A district court may award a spouse up to one-half of the other party's nonmarital property "[i]f the court finds that either spouse's resources or property, including the spouse's portion of the marital property . . . are so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2 (2010). Although the district court has broad discretion in awarding nonmarital



property, a “very severe disparity between the parties is required to sustain a finding of unfair hardship.” *Reynolds v. Reynolds*, 498 N.W.2d 266, 270–71 (Minn. App. 1993).

Husband maintains that, because the parties jointly decided to leave employment and rely on income from wife’s inherited partnerships, it works an unfair hardship on him not to invade wife’s nonmarital property. We disagree. The district court equitably awarded husband approximately two-thirds of the parties’ marital property, based on the length of their marriage, wife’s substantial nonmarital property and income, and husband’s comparatively minor income and assets. During the marriage, husband acquired additional postsecondary education, which qualifies him for employment in several occupations. And husband may use the proceeds of his marital property award to produce additional income or acquire a residence. We conclude that these circumstances do not provide the “severe disparity . . . required to sustain a finding of unfair hardship,” *id.*, and the district court did not abuse its discretion by declining to invade wife’s nonmarital property.

**Affirmed.**