

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-160**

In re the Marriage of:
Tatyana Victorovna Avdeyeva, petitioner,
Respondent,

vs.

Sergey Sergeyevich Barabanov,
Appellant.

**Filed December 12, 2011
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-FA-09-1839

Esther M. Lerman, Mendota Heights, Minnesota (for respondent)

Sergey Sergeyevich Barabanov, St. Paul, Minnesota (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's dissolution judgment, arguing that the district court: (1) erred in determining marital property; (2) abused its discretion in dividing marital assets; (3) erred by imputing income in calculating child support; and (4) erred by failing to dismiss respondent's posttrial motion as untimely. We affirm.

DECISION

Marital Property

Appellant Sergey Sergeevich Barabanov asserts that the district court erred by classifying several assets as marital property in the dissolution of his marriage to respondent Tatyana Victorovna Avdeyeva. Nonmarital property includes property that was: (1) “acquired as a gift, bequest, devise or inheritance,” specifically to one party but not the other; (2) “acquired before the marriage”; (3) acquired in exchange for other nonmarital property; (4) acquired after the valuation date; or (5) excluded by an antenuptial agreement. Minn. Stat. § 518.003, subds. 3b(a)-(e) (2010). All property acquired by either party during the marriage is presumed to be marital property. *Id.* To overcome this presumption, a party must demonstrate that an asset is nonmarital property by a preponderance of the evidence. *Id.*; *Campion v. Campion*, 385 N.W.2d 1, 5 (Minn. App. 1986). Whether property is marital or nonmarital is a question of law, but this court defers to the district court’s findings of fact unless they are clearly erroneous. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997).

Tracing of Real Estate Assets

Appellant first challenges the district court’s determination that he failed to adequately trace a nonmarital interest in proceeds from the sale of real estate in Russia. Appellant asserts that the sale price of \$128,768 was received via fourteen international wire transfers. Appellant argues that these wire transfers were deposited into his individual checking account and then converted into certificates of deposit secured in the parties’ joint credit union account. Appellant claims that his individual checking account

was opened specifically for the purpose of depositing the proceeds from the sale of the Russian property and that no other funds have ever been deposited in this account. Thus, appellant contends that these assets are easily traceable to a nonmarital origin.

Appellant's argument is unconvincing. Nonmarital property maintains its nonmarital character if it is kept separate from marital property or, if commingled, it is readily traceable. *Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993); *see also Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997) ("Commingling of nonmarital and marital property is not fatal to a party's claim that property remained nonmarital."). There is no "strict" tracing requirement for nonmarital assets. *Carrick*, 560 N.W.2d at 413. But if a party cannot adequately trace an asset to a nonmarital source, the district court should characterize the property as marital. *Wopata*, 498 N.W.2d at 484.

Here, the evidence admitted at trial simply does not support appellant's contention that these funds are easily traceable. Copies of the wire transfers which were introduced as exhibits at trial show that appellant is listed as the recipient on each transfer. But the transfers are sent from numerous sources and the reason listed for all but one of the transfers is, "FOR CURRENT EXPENSES." Moreover, appellant fails to provide any evidence that these funds were deposited into his individual checking account, much less converted into the credit union certificates of deposit. The parties disputed the source of the transfers at trial, and the ambiguity in the source and use of the funds distinguishes this case from the tracing authority relied on by appellant. *See McIntosh v. McIntosh*, 740 N.W.2d 1, 7 (Minn. App. 2007) (noting that the parties agreed that funds were

traceable because the assets were the proceeds of the sale of husband's mother's house); *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 414 (Minn. App. 2000) (concluding that the district court did not err in treating proceeds from the sale of wife's premarital home as nonmarital assets, especially when the district court afforded the husband the same latitude in tracing undocumented premarital home interests), *review denied* (Minn. Oct. 25, 2000). The district court did not err by determining that appellant failed to meet his burden to demonstrate that these commingled funds are traceable to a nonmarital origin.

Post-separation Account

Additionally, appellant argues that the district court erred by failing to properly allocate an individual bank account as nonmarital property, asserting that he opened the account after the parties separated. Because the account was opened after the separation date, appellant claims that it cannot be considered marital property. But the question is not whether the account was opened after the parties' separation; it is whether the funds in the account came from a marital or nonmarital source. Here, appellant provided no evidence showing that the funds in the account came from a nonmarital source. Thus, because the funds were deposited in the account before the valuation date, they are presumptively marital. Appellant failed to rebut this presumption. Therefore, the district court did not err in treating these funds as marital.

Russian Apartment

Appellant also challenges the district court's determination that respondent's interest in a Russian apartment belonging to respondent and her parents is nonmarital property. Appellant argues that the apartment was never "awarded" to respondent's

family, as the district court found. Appellant claims that the apartment was privatized by the Russian government during the marriage and, therefore, constituted property acquired by a spouse during the marriage. Appellant argues that such property is marital.

The issue of Russian property privatization is clearly not contemplated by the Minnesota statutory scheme governing marital-property designations. But respondent convincingly analogizes the transaction to a “gift, bequest, devise or inheritance made by a third party to one but not to the other spouse,” which is nonmarital property. *See* Minn. Stat. § 518.003, subd. 3b(a). Respondent received an interest in the property along with her parents, and the Russian government did not award a similar interest to appellant despite his relation to respondent as her husband. The district court did not err in determining this interest to be nonmarital.

Division of Assets

Appellant also challenges the district court’s division of assets. “A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for [an] abuse of discretion.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). This court 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).

Bank Accounts

Appellant first argues that the district court abused its discretion by ordering him to pay respondent \$38,182 as an equalization payment after the parties’ numerous bank accounts were divided. Appellant claims that the cash equalization is based on incorrect

account balances. Accordingly, appellant asserts that the payment is unjust and inequitable.

While the district court could have been more detailed in its handling of the bank accounts, we review the decision for an abuse of discretion. *See id.* The district court did not find the precise values of the bank accounts, opting instead to reference the account balances advanced by the parties. Although not entirely clear, it appears that the district court adopted the financials posited by appellant. The various bank accounts totaled \$80,395, entitling each party to \$40,197.50. The district court awarded respondent her individual checking account worth \$3,100 and awarded appellant the remainder of the bank accounts. Based on this division, appellant should have owed respondent an equalization payment of \$37,097.50, slightly less than the \$38,812 ordered by the district court. 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). Although the district court did not articulate findings itemizing the accounts awarded to each party, the equalization payment is fair and equitable as a whole.

Appellant next argues that the district court’s equalization payment fails to take into account the parties’ income-tax debt. But respondent remains liable for one-half of the parties’ tax liabilities based on the clear language of the judgment and decree and the district court’s posttrial order. Appellant’s argument is misplaced.

Appellant also argues that the district court abused its discretion by using June 30, 2009, as the valuation date instead of November 18, 2009, the date of the pretrial hearing. As the district court noted, however, the parties agreed at trial to use June 30 as the valuation date. Appellant's current argument is without merit. *See* Minn. Stat. § 518.58, subd. 1 (stating that the valuation date is the day of the initially scheduled prehearing settlement conference "unless a different date is agreed upon by the parties"). The district court did not abuse its discretion in dividing the bank accounts.

Vehicles

Appellant also argues that the district court abused its discretion in valuing and awarding the parties' vehicles. The district court did not expressly determine the value of each vehicle; instead, the district court ordered respondent to pay appellant \$3,350 to offset the difference in value between the vehicles awarded to each party. Appellant asserts that the equalization payment for the vehicles should have been greater. Appellant claims that the Blue Book value of respondent's vehicle exceeded \$10,000 when appropriately accounting for the mileage on the vehicle. Conversely, appellant contends that the damages to his vehicle devalued it to \$450.

But appellant fails to point to anything in the record which would conclusively demonstrate that the district court used the wrong mileage when valuing respondent's vehicle or otherwise overvalued his vehicle. Without concrete evidence to the contrary, the vehicle valuation cannot be considered an abuse of discretion, especially given the proximity of the values presumably used by the district court in comparison to the figures

presently advanced by appellant. The district court did not abuse its discretion in this respect.

Jewelry

Appellant claims that the district court abused its discretion by failing to consider and account for respondent's jewelry when calculating the equalization award. But appellant failed to present this argument to the district court. Accordingly, appellant is precluded from arguing this issue for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Imputed Income

Appellant also challenges the amount that the district court imputed to him as income for the purposes of calculating child support for the parties' minor child. The determination of a support obligor's income for child support purposes is a finding of fact which will not be set aside unless clearly erroneous. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002). A district court's determination is not considered to be clearly erroneous if it is supported by a reasonable and acceptable basis in fact and principle. *DuBois v. DuBois*, 335 N.W.2d 503, 507 (Minn. 1983). We view the record in the light most favorable to the district court's findings. *Lossing v. Lossing*, 403 N.W.2d 688, 690 (Minn. App. 1987). We also defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Appellant contends that the district court clearly erred in imputing his income. Appellant argues that he supplied financial information at various other stages of the proceedings, including within his proposed findings and conclusions of law submitted

after trial. Appellant further asserts that, because he was appearing pro se at trial, the district court had a duty to ensure fairness to him as a pro se litigant.

But the district court's duty to extend leniency to a pro se party exists only when it does not prejudice the opposition. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). Here, allowing appellant to assert his income in proposed findings and conclusions without allowing respondent an opportunity for cross-examination would have been prejudicial. Accordingly, the district court owed appellant no lenience: if appellant was truly concerned about his correct income being used for child support, he should have presented this evidence at trial and subjected himself to cross-examination. Moreover, the district court's imputation of income was based on appellant's tax returns from the previous year, and the district court imputed the exact salary that appellant had earned the previous year. The district court did not clearly err in imputing income to appellant for the purposes of calculating child support.

Timeliness

Appellant also argues that the district court erred by failing to dismiss respondent's posttrial motion as untimely. Appellant points out that the judgment and decree was issued by the district court on September 2, 2010, and asserts that respondent filed her posttrial motion on November 5, after the expiration of the 30-day period to bring posttrial motions. Under Minn. R. Civ. P. 59.03, "[a] notice of motion for a new trial shall be served within 30 days after a general verdict or service of notice by a party of the filing of the decision or order." Here, the matter was tried to the court, not a jury, and thus there was no general verdict. And neither party served a copy of the judgment

and decree on the other. Accordingly, the 30-day deadline of rule 59.03 was never triggered. *See Rieman v. Joubert*, 376 N.W.2d 681, 684 (Minn. 1985) (noting that a literal reading of rule 59.03 requires actual service of an order to start the finite period in which a party may move for posttrial relief). The district court did not err in denying appellant's request to dismiss respondent's posttrial motion as untimely.

Affirmed.