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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2310**

In re the Marriage of: Trudy Erlemeier, petitioner,
Respondent,

vs.

Steven Erlemeier,
Appellant.

**Filed July 8, 2013
Affirmed in part, reversed in part, and remanded
Stauber, Judge**

St. Louis County District Court
File No. 69DUFA071055

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respondent)

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Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this convoluted, extended and multiple-attorney marital-dissolution dispute,
appellant-husband argues that (1) the district court abused its discretion by reserving
jurisdiction over spousal maintenance where neither party required maintenance or

appeared to have a future need; (2) that the property division was inequitable where it is based, in part, on errors regarding husband's disposition of his retirement accounts and other assets, and on disparate treatment of husband and wife regarding their use of assets; and (3) that the district court failed to make adequate findings of fact to support its award of attorney fees to respondent-wife. Because we conclude the district court did not abuse its discretion by reserving maintenance, we affirm in part; however, because we conclude that the evidence did not support the district court's findings regarding the allocation of debt and assets, and the award of attorney fees, we reverse in part and remand.

FACTS

Trudy Erlemeier (wife) and Steven Erlemeier (husband) were married on February 14, 1999. At the time of the marriage wife was widowed, and had three children. Husband was previously married and divorced, and similarly had three children. Husband was employed as a neurologist, and wife as a nurse. When the parties married, husband sold his house and moved into wife's house. Significant improvements were made to wife's house. In 2002, wife left her employment to stay home and raise the six children.

The parties separated in October 2007, and in November 2007 wife petitioned for divorce. Around the same time, husband began working part-time, and wife took a part-time job as a nurse. By May 2008, wife was again working full-time as a nurse practitioner. In October 2008, husband lost his job following a mental-health crisis, and his medical license was suspended. Husband collected severance pay for a year, then began to receive unemployment benefits and drew money from his retirement accounts.

In 2009, the parties stopped making home-mortgage payments and foreclosure ensued.

A trial was ultimately held on February 23 and 24, 2011. The district court issued its judgment and decree on May 10, 2011. The district court awarded husband his individual property and most of the value of his retirement accounts, which by this time had been largely depleted. The district court also allocated the residual debt on homestead liens to husband. Wife was awarded the value of her retirement accounts, husband's certificate of deposit accounts, and was allocated her separate debts. The district court ordered husband to pay to wife an equity balancing payment of \$126,000. The district court found that neither party was dependent on the other, but reserved the issue of spousal maintenance.

In June, 2011, husband brought a post-trial motion seeking amended findings or a new trial, and requesting spousal maintenance. The district court denied husband's request, and ordered husband to pay \$750 to wife for her costs and attorney fees in responding to husband's motion.

Husband appealed.

D E C I S I O N

I. Spousal maintenance

Appellant-husband argues that the district court abused its discretion when it reserved jurisdiction on the issue of maintenance alleging that the court's findings indicate that maintenance was reserved for wife, not husband, yet the court did not find that wife would likely need maintenance in the future. But the court specifically found that: "Neither party is currently dependent on the other for spousal maintenance."

Interestingly, it was husband, not wife, who made a post-trial request for spousal maintenance. Husband contends that the district court's denial of his motion indicates it only reserved maintenance for wife. Husband further contends that reserving maintenance denies both parties the finality of judgment.

In a divorce proceeding, the district court may award spousal maintenance, "or it may reserve jurisdiction of the issue of maintenance for determination at a later date." Minn. Stat. § 518A.27, subd. 1 (2012). Where the district court does not initially award maintenance to either party, reservation of maintenance allows the court to later award maintenance should the parties' situation change. *See Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001); *Tomscak v. Tomscak*, 352 N.W.2d 464, 466 (Minn. App. 1984), *superseded on other grounds by* Minn. Stat. 518.145 (2012). Whether to reserve spousal maintenance is reviewed for abuse of discretion. *Prahl*, 627 N.W.2d at 703.

Reservation of maintenance may be appropriate where both parties are currently able to support themselves, but where a condition may require support in the future. *See id.* at 703-04 (concluding spouse was capable of self-support, but remanding for the district court to consider reservation of maintenance due to spouse's hepatitis-C diagnosis); *Wopata v. Wopata*, 498 N.W.2d 478, 485-86 (Minn. App. 1993) (upholding maintenance reservation where husband was, at dissolution, financially self-sufficient but heart problems made future self-sufficiency uncertain); *Tomscak*, 352 N.W.2d at 466 (requiring district court to amend decree to include reservation of jurisdiction on maintenance issue where spouse's cancer could recur and make maintenance necessary). In its denial of husband's post-trial request for maintenance, the district court made no

specific findings. The failure to make specific findings on the record is not, by itself, an abuse of discretion. *See Prahl*, 627 N.W.2d at 703. However, the better practice is to make findings demonstrating the need to reserve spousal maintenance. On this voluminous record there is, at best, uncertainty whether maintenance will be needed in the future, given husband's past mental health issues and evidence that wife also has medical issues. Therefore, we affirm the reservation of spousal maintenance.

II. Asset allocation

Husband also argues that the district court abused its discretion by allocating various assets and liabilities in a manner he asserts is inequitable. Upon divorce, the district court “shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of property.” Minn. Stat. § 518.58, subd. 1 (2012). The district court must consider “all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party.” *Id.* “District courts have broad discretion over the division of marital property and appellate courts will not alter a district court’s property division absent a clear abuse of discretion or an erroneous application of the law.” *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005) (citation omitted). A district court abuses its discretion by dividing property if it resolves the matter in a manner “that is against logic and the facts on record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (citation omitted).

Husband argues that he should not have been charged with depleting his retirement accounts because the accounts were in part depleted by market forces. The district court charged husband with receiving \$220,000 from his two retirement accounts, and awarded the remaining \$42,000 to wife. Husband had an SMDC/M&I retirement account that was valued as of the date of separation at \$255,000. The district court found that husband's premarital interest in this account was \$54,000, leaving a marital portion valued at \$201,000. But, by the time of trial, this account balance was only \$12,000. The district court credited husband with receiving the difference between the value of the marital portion of the account at the time of separation and the remaining balance in the account, or \$189,000. Husband argues that this is inequitable because he only withdrew \$187,760, while the account lost \$55,466 due to market losses. Indeed, husband's account statements show that between 2007 and 2009 the account lost \$55,466.

Husband also had a retirement account at Ameriprise. At the date of separation, the account had a value of \$168,000 and the district court found that husband had a premarital interest in the account in the amount of \$50,000. The district court found that husband depleted the account down to about \$30,000, and awarded wife the remaining balance. After subtracting out husband's premarital interest, the district court concluded that husband spent \$88,000 in marital assets. Husband admits that he withdrew \$127,300 from the Ameriprise account; however, it is not clear how husband arrived at this figure. The account statements show that the account was depleted by husband's withdrawals, not by market forces, and that his withdrawals amounted to about \$133,833. Fifty seven thousand dollars of the withdrawals were earlier authorized by the court following the

July 30, 2009 hearing. In any event, husband argues that the district court should have subtracted his non-marital interest from these withdrawals and concluded that he only spent retirement assets totaling \$154,059.

But husband's calculations subtract his nonmarital share from what he *spent* not what was in the accounts at the time the court valued them. In the district court's calculations, it took the full value of the accounts at the time of separation, less husband's nonmarital interest, and credited husband with the difference between the marital value in the accounts and what was left after husband spent down the accounts. We agree with the district court's calculations. However, the evidence also shows that the SMDC/M&I account was depleted in part by market forces. The district court did not make any findings regarding the market loss to this account in the amount of \$55,466. Where an asset undergoes a substantial change in value between the date of valuation and the final distribution, the court may revalue the asset to effect an equitable distribution. Minn Stat. § 518.58, subd. 1. Given the lack of findings, we reverse and remand for the district court to consider the market-force depletion of husband's retirement accounts.

Husband also argues that the district court clearly erred when it double-charged him for assets that were withdrawn from his retirement account and were deposited into a Wells Fargo PMA account. The district court found that the parties had funds in a Wells Fargo PMA account in the amount of \$45,000 at the time of separation and that husband depleted this account. The district court charged husband with receiving these marital funds. However, husband asserts that the funds in the account were drawn on his Ameriprise retirement account as a loan. The Ameriprise account statements show a loan

taken in the amount of \$46,300. To support his argument, husband cited his affidavit in which he proposed to take out a \$50,000 loan to pay the parties' expenses. However, there is no evidence in the record tracing the Ameriprise loan to the Wells Fargo PMA account, other than husband's statement that he deposited the loan funds in the PMA account. Indeed, as wife pointed out in her brief, husband's tendency to deplete accounts by writing checks to himself or by using cashier's checks made it difficult to discern where the money had went.¹ The district court found that husband depleted this account, apparently disbelieving any argument that the funds were already counted in his Ameriprise account. We defer to the district court's credibility determinations. *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). Because there is insufficient evidence supporting husband's argument that these funds were double-counted, the district court did not clearly err by crediting husband with receiving the \$45,000 from the Wells Fargo PMA account.

III. Shared advantage account

Husband also argues that the district court clearly erred when it credited him with receiving \$13,000 from a Shared Advantage account because this account never had that amount of money in it. Husband contends that there is a Share Advantage Credit Union account that contained about \$1,500 which was used to pay vehicle loans. However, husband admits that there is a Wells Fargo PMA account #3292 that had nearly \$13,000

¹ Wife's affidavit claims that her forensic accountant likened husband's money management style to that of Denny Hecker, the millionaire car dealer who famously hid money from creditors and is now in prison for fraud. About husband's accounts, wife's forensic accountant testified that "certain accounts had no details, they were just listed as 'check' without payee or description," and therefore money was impossible to trace.

in it at the time of separation. But, husband contends this account was used to pay the parties' necessary expenses, and therefore was erroneously credited to him for having depleted that account.

If a spouse dissipates an asset during the pendency of a divorce, that spouse can be credited with receiving the entire value of the asset. Minn. Stat. § 518.58, subd. 1a (2012). However, if the asset is used "in the usual course of business or for the necessities of life," the asset is not dissipated. *Id.* Nevertheless, if a spouse exercised dominion and control over an account, and due to the spouse's own poor bookkeeping the expenditures from the account are untraceable, that spouse can still be credited with having received the funds in the account even if the district court did not find that the spouse "dissipated" them. *Fick v. Fick*, 375 N.W.2d 870, 874 (Minn. App. 1985). Here, the district court found that husband "depleted" the account, but not that he "dissipated" it. And, as previously explained, husband's bookkeeping made it impossible even for a forensic accountant to conclude how the money was spent, or that it was spent on the parties' necessities. Statements from the Wells Fargo PMA Account #3292 show numerous withdrawals as merely "check." In just one month, husband wrote a total of \$3,982.96 in checks out of the account. Other items drawn on the account are for fast-food restaurants and department store purchases. On this evidence, we cannot conclude that the district court clearly erred in rejecting husband's assertion that he used this account solely for the necessary expenditures of both parties. Therefore it was not clearly erroneous to charge husband with the receipt of funds from this account.

Husband further argues that the district court clearly erred when it charged him with receiving funds from his Unum insurance settlement payment because the funds were used “to cover his needs and those of his minor child.” According to husband’s testimony, he received \$75,000 in an insurance settlement from Unum. After attorney fees, husband testified he received a check in the amount of \$56,500. Husband further testified that he cashed the check, believing it to be his money and that he did not have to disclose anything about it. Husband took all the money either in cash or cashier’s checks, making the funds untraceable. Again, on this evidence we cannot conclude that the district court clearly erred in rejecting husband’s assertion that he used this money to pay for the parties’ support needs. Therefore the district court did not err when it imputed receipt of these funds to husband.

Husband next argues that the court erred when it credited wife with assuming \$165,000 in US Bank loans when she actually took out only \$143,000. Husband concedes that wife took out a US Bank loan for \$83,000 in April of 2008. However, he disagrees with the court that she also took out a US Bank loan for \$57,000. Indeed, wife’s testimony supports husband’s position because she stated that she used the proceeds from the \$83,000 loan to pay off a \$57,000 credit card balance. But, wife also took out two additional US Bank loans for \$30,000 each, amounting to total US Bank loans in the amount of \$143,000. Because wife’s testimony and the evidence in the record supports the conclusion that wife had \$143,000 in US Bank loans, we conclude that the district court clearly erred when it found that she had \$165,000 in US Bank loans.

IV. Social Security funds

Husband also argues that the district court erred when it concluded that wife was entitled to use the funds from her US Bank loans to pay her son \$15,000 as compensation for spending social security checks she received for his benefit on account of the death of his father. Wife testified that she believed her son was owed this payment because husband insisted on depositing the social security checks into his investment accounts. The district court found that, “[a]lthough [wife] believes the money should have been saved and given to the children, she used the benefit checks for household expenses prior to the marriage. Therefore, it was not unreasonable to invest those funds in a marital asset.” Because we agree with the district court’s characterization of the social security payments as a marital asset, we likewise conclude that wife’s \$15,000 payment to her son was a marital asset, and that the district court erred by not crediting wife with receiving this asset.

V. Homestead debt

Husband next argues that it was inequitable to allocate the residual homestead debt to husband when wife resided in the homestead for 15 months without making mortgage or home-equity-loan payments. Husband contends that wife should have paid the homestead-related debts out of “her loan proceeds or her own substantial income.” In making an equitable distribution of marital property, the district court need not make a mathematically equal distribution. *Johns v. Johns*, 354 N.W.2d 564, 566 (Minn. App. 1984). The court need only consider the relevant statutory factors, including “the contribution of each in the acquisition, preservation, depreciation or appreciation in the

amount or value of the marital property.” Minn. Stat. § 518.58, subd. 1. The district court found that wife made “reasonable efforts at remaining current with the payments on the homestead’s encumbrances” and at keeping the homestead out of foreclosure. The court went on to state that “[a]lthough these efforts proved futile in the end, the Court cannot say that they were unreasonable, particularly in light of her pre-marital interest in the home and the fact that she would have incurred living expenses at any rate.”

Moreover, the court found that husband controlled the finances and did not share information with wife, that husband greatly depleted his accounts, and that he failed to comply with court orders to only withdraw certain amounts from his accounts during the pendency of the divorce and failed to provide a court-ordered accounting. One spouse’s failure to fully and candidly disclose his assets justifies that spouse receiving a smaller portion of marital assets. *Letsch v. Letsch*, 409 N.W.2d 239, 243 (Minn. App. 1987). Therefore, it was not clearly erroneous for the district court to conclude that husband should assume the residual, post-foreclosure, homestead debts.

VI. Attorney fees

Finally, husband argues that the district court clearly erred when it awarded attorney fees to wife following husband’s post-trial motions because the district court made no findings supporting its award of attorney fees to wife. Wife argues that, based on the record as a whole, the attorney fee award was clearly conduct-based and justifiable.

Attorney fee awards are governed by Minn. Stat. § 518.14, subd. 1 (2012), which provides that the district court must award attorney fees if it is necessary to enable a party

to go forward with the litigation, and that a district court may award attorney fees against a party who “unreasonably contributes to the length or expense of the proceeding.” The district court must make sufficient findings to show that an award of attorney fees is supported by the appropriate law and facts in the record. *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001); *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). Specifically, the district court must “indicate to what extent the award was based on need or conduct or both.” *Geske*, 624 N.W.2d at 816. For a need-based award, the district court need not make specific findings on the statutory factors if there is sufficient evidence in the entire record to support the court’s award. *Id.* at 817. But for a conduct-based award, the district court should “identify what conduct by [the litigant] justified the award of conduct-based attorney fees or whether that conduct occurred during the litigation process.” *Id.* at 819.

We conclude that the district court made insufficient findings to support awarding attorney fees to wife. Looking at the record as a whole, there are insufficient facts from which to conclude that an award of attorney fees was necessary for wife to continue the litigation. In addition, the district court did not make the necessary findings to support wife’s assertion that the award was conduct-based because husband “unreasonably contribut[ed] to the length or expense of the proceeding” when his motion and supporting affidavit were “long and rambling,” “nebulous,” and the requested relief “lack[ed] specificity.” Given the depleted financial state of both parties, the excessive delays

involved in the case, and the lack of need-based findings, neither party is deserving of an award of attorney fees. Therefore, we reverse the district court's award of attorney fees.

Affirmed in part, reversed in part, and remanded.