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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-420**

In re the Marriage of: Helen Catherine Giuliani, petitioner,
Respondent,

vs.

Dirk David Anderson,
Appellant.

**Filed October 31, 2011
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge**

Ramsey County District Court
File Nos. 62FA10184; 62FA092948

Nancy Z. Berg, Tara L. Smith, Walling, Berg & Debele, P.A., Minneapolis, Minnesota
(for respondent)

Dennis B. Johnson, Mylene A. Peterson, Elizabeth C. Henry, Chestnut Cambronne, P.A.,
Minneapolis, Minnesota (for appellant)

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the findings of fact, conclusions of law, and judgment in this
dissolution action, arguing that the wholesale adoption of respondent's proposed findings,
conclusions and judgment reflect the district court's failure to independently assess the

evidence, resulting in a manifest injustice to him.¹ Specifically, husband asserts that adoption of wife's parenting-time proposal resulted in rejection, without explanation, of the statutory rebuttable presumption that a parent is entitled to 25% of parenting time; and adoption of wife's property division proposal resulted in mischaracterization of property, unsupported division of non-marital property, and division of assets that no longer exist. Husband also challenges the inclusion of his bonus as income for the purpose of calculating child support because there is no evidence in the record that he will continue to receive a bonus. We affirm in part, reverse in part, and remand.

FACTS

Appellant Dirk David Anderson (husband) and respondent Helen Catherine Giuliani (wife) were married in January 1999. They have two daughters, ages ten and nine at the time of the dissolution trial. Wife is a licensed attorney who was working as a private investigator at the time of the marriage and was minimally employed outside of the home during the marriage. At the time of the marriage, husband was self-employed as a construction contractor. Husband is the sole owner of Woodworx MN, Inc. The record does not disclose when husband started this business or the purpose of the business. At the time of the dissolution, the business was no longer operating, and husband was employed full time at Wild Mountain. There is no evidence in the record about the value of the business, whether the business owns assets, or the value of any business assets. The record establishes that during the marriage, husband used business

¹ This matter was tried to a referee whose recommended facts and order were approved by the district court.

credit cards and the business bank account for personal and family expenses. Neither party sought spousal maintenance.

The parties agreed to joint legal custody of the children with sole physical custody awarded to wife, subject to husband's reasonable parenting time. A pre-trial order granted each party two weeks of uninterrupted parenting time in the summer on 30-days' notice to the other parent and granted husband bi-weekly parenting time of "at least 3 days including two overnights," his birthday, Father's Day, and alternating time on other recognized holidays, including three overnights on Memorial Day and Labor Day weekends and one overnight at Christmas.

Husband's \$773 per month child-support obligation was calculated based on a stipulation that wife is capable of earning \$1,883 per month and that husband's gross monthly income from Wild Mountain is \$3,333 plus a \$3,532.10 bonus he received in March 2010. Husband, who testified that he did not know if he would again receive a bonus, challenges the inclusion of his bonus in the determination of his income for child-support purposes.

The parties' debts exceed the value of their assets such that the property division by the district court was actually a division of debt. On appeal, husband does not challenge the district court's finding that wife's non-marital interest in the homestead exceeds the parties' equity in the homestead such that there is no marital equity to divide. But husband asserts that this finding should have resulted in omission of the homestead from the property-division equation. Instead, the district court adopted wife's calculation

of property division which inexplicably lists the \$16,824.67 shortfall in equity to cover wife's non-marital interest as a marital "debt" allocated to wife.

Husband challenges the inclusion of the proceeds from the sale of a 2002 Chevrolet Silverado pickup truck and a Honda dirt bike in the division of marital property. Both were sold during the marriage and the proceeds were applied to expenses and no longer existed at the time of the dissolution trial. Husband also objects to the district court's labeling of marital property as "his" or "hers," and the implicit finding that property owned by husband prior to the marriage is marital by its inclusion in the division of marital property.² Husband asserts that the \$15,540.42 "equalizer" payment he has been ordered to pay to wife is "arbitrary with no sources articulated in the findings whatsoever."

Husband also objects to: (1) the district court's finding that money given to wife by her father was a loan, not a gift, and inclusion of money given to wife for her attorney fees as marital debt; (2) characterization of husband's credit card debt as non-marital business debt because husband testified that the credit card debt incurred was for household expenses; (3) the district court's order that, in addition to an "equalizer" payment, husband must repay wife for one-half of what the district court characterized as husband's non-marital debts that were paid off with marital funds produced in refinancing the home during the marriage. Husband argues that the errors alleged in the

² Husband's allegations concerning his non-marital property are not well articulated on appeal, but the record shows that a "garage-size locker with tools," valued by wife and the district court at \$15,000 was acquired by father 15 years before the trial, which would have been before the marriage. The district court does not explain why this asset is marital property.

property characterization and division result from the district court's adoption of substantially all of wife's proposed findings and conclusions of law, constituting an abuse of discretion and resulting in a manifest injustice to husband.

The district court denied husband's motion for amended findings or a new trial, and this appeal followed.

D E C I S I O N

I. Husband was accorded appropriate accommodation for his pro se status.

Husband, citing *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987), for the proposition that a "trial court has a duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party," asserts that he was not accorded such reasonable accommodation in this case, resulting in findings and an order "so biased in favor of [wife] that it is impossible to discern whether the trial court considered [husband]'s position at all." We disagree.

Because husband failed to submit a witness and exhibit list, he was precluded from presenting exhibits at trial. But husband was given considerable leeway to cross-examine wife's witnesses and to present his information through testimony. The record reflects the referee's courtesy and helpfulness in explaining the trial process to husband. There is no merit to husband's claim that he was not accorded reasonable accommodation for his pro se status.

II. Uncritical adoption of wife's substantive proposals for parenting time and property division resulted in findings inadequate for appellate review.

Both parties submitted post-trial written arguments, but only wife submitted formal proposed findings of fact, conclusions of law and judgment. Although wife's proposed findings of fact and conclusions of law were not adopted verbatim, the resulting judgment contains only two substantive changes to wife's proposal: (1) parenting time was ordered to conclude at 8:30 p.m. on some days rather than 8:00 p.m. as wife proposed and (2) husband's valuation of a 2003 trailer as \$5,000 was credited rather than wife's proposed \$15,000 valuation. A district court's verbatim adoption of a party's proposed findings and conclusions of law is not per se reversible error. *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Feb. 12, 1993). But wholesale adoption of one party's findings and conclusions raises the question of whether the trial court independently evaluated each party's testimony and evidence. *Id.* And the district court bears the ultimate responsibility to assure that findings and conclusions meet the standard necessary to enable meaningful review. *Id.* at 590 n.6.

A. Property division

Our painstaking review of this record leads us to agree with husband that the nearly wholesale adoption of wife's proposals demonstrates a lack of exercise of independent judgment by the fact-finder and results in findings inadequate to permit review of the parenting-time award and property division. References in the findings to an exhibit contained in wife's post-trial submission that was neither admitted into

evidence nor adopted and incorporated into the findings further complicates review.³

Additionally, descriptions of wife's relative's opinions about husband's spending habits are not findings, and, together with a finding about what caused the dissolution of marriage, have no place in a judgment under Minnesota's no-fault dissolution statute. *See* Minn. Stat. § 518.58, subd. 1 (2010) (requiring the district court to “make a just and equitable division of the marital property . . . without regard to marital misconduct . . .”).

The findings improperly assign ownership of marital property to husband or wife prior to division; include in the division of marital property items such as husband's storage locker and tools that, from the transcript, appear to have been acquired by husband before the marriage; and include in the division a Land Rover specifically found to have been a gift to husband. The judgment requires, without explanation, division of the proceeds of assets (a Silverado pickup truck and a Honda dirt bike) sold during the marriage despite evidence in the record that such proceeds were used in the usual course of business or for the necessities of life. *See* Minn. Stat. § 518.58, subd. 1a (2010) (permitting the district court to order compensation for assets transferred or disposed of during separation “[i]f the court finds that a party . . ., without consent of the other party, has . . . disposed of marital assets except in the usual course of business or for the necessities of life”).

Husband does not, on appeal, challenge the application of the *Schmitz* formula to calculate that wife has a 34% non-marital interest in the homestead or the finding that the

³ The findings frequently cite Trial Exhibit 29 but in some cases appear to actually refer to a “balance sheet” illustrating wife's proposed property division submitted as part of her closing argument.

parties have no equity in the homestead because wife's non-marital interest exceeds the parties' equity by \$16,824.67. But husband correctly asserts that these findings should have resulted in the homestead being omitted from the division of marital property and asserts that the district court erred in including the shortfall in equity to cover wife's non-marital interest as a "debt" assigned to wife which increases the amount he was ordered to pay wife to equalize the post-dissolution debt of each spouse. No finding or authority is cited in the judgment to support the inclusion of the deficit in wife's non-marital interest as a marital debt. Husband additionally challenges the award of \$18,270.38, in addition to the "equalizer" payment of \$15,540.42.⁴ Wife's post-trial brief suggests that repayment to wife of this amount, which she asserts is one-half of the proceeds from refinancing the homestead used to pay husband's business debts, is fair and authorized by Minn. Stat. § 518.58, subd. 2 (2010) (authorizing an award of up to one-half of either spouses "resources or property" including non-marital property to prevent unfair hardship). But the statute requires specific findings to support such a division.

The record is devoid of any evidence to support any marital or non-marital valuation of husband's corporation. Wife testified that husband did not use the business bank accounts and credit cards to pay household expenses, but used those accounts to buy tools for the business, but, at oral argument on appeal, wife argued that husband comingled business with household expenses such that it is not possible to determine the

⁴ The amount of the "equalizer" payment is directly affected by the inclusion of husband's non-marital property in his list of assets, the required division of non-existent assets, and the inclusion of wife's non-marital interest deficit as a "debt" he is responsible for on wife's balance sheet.

amount of business debt. Wife (and the findings) inconsistently characterize the business as wholly husband's non-marital property, the tools owned by husband (and presumably purchased for the business) as marital property, and all debt on the business credit cards as husband's non-marital debt. Neither the record nor the findings are adequate to permit appellate review of the characterization and allocation of business assets and debt. We note that if the business is a separate legal entity, (a) while the parties may have an interest in the business they likely lack an interest in the assets of that business (*see Blohm v. Kelly*, 765 N.W. 2d 147, 153 (Minn. App. 2009) (noting that corporate assets belong to the corporation, not its shareholders)); and (b) unless the business is made a party to the dissolution proceeding, the district court would lack jurisdiction over the nonparty business and could not address its assets (*see Danielson v. Danielson*, 721 N.W. 2d 335, 339 (Minn. App. 2006) (stating that, in a dissolution, a district court "lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights.")).

Notwithstanding the problems created by the adoption of the majority of wife's proposed findings, from our painstaking review of the record, we conclude that evidence supports the district court's findings regarding the value of the parties' assets, including the homestead, and calculation of wife's non-marital interest in the homestead, (which husband has not challenged on appeal), and the finding that money given to wife by her father was a loan, not a gift. But the record supports husband's allegation that a portion of father's loan was for wife's attorney fees in the dissolution and is erroneously included in the balance sheet as a marital debt. *See Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn.

App. 1984) (stating that “[a]ttorney’s fees for the dissolution are not part of the marital estate [and] should not therefore be considered [in the division of property].”).

The remaining property division findings and conclusions of law are reversed, and we remand for reconsideration and additional findings that support the characterization of property as marital or non-marital, and an equitable division of property. On remand, the district court shall consider the record as a whole and provide findings of fact supported by the record, conclusions of law supported by law, and a division of property without regard to marital fault. The district court may, in its discretion, reopen the record for additional evidence necessary to make adequate findings.

B. Parenting time

Because the statutory presumption that each parent is entitled to 25% of parenting time was not addressed at trial and there are no findings to explain why the presumption does not apply in this case to support an award of only 13.7% of the parenting time to husband, we cannot adequately review whether the award of parenting time was an abuse of discretion. We reverse the parenting time award and remand for reconsideration and findings that reflect consideration of Minn. Stat. § 518. 175, subd. 1(e).

III. Inclusion of husband’s bonus in gross-monthly income is not supported by findings.

Absent any findings regarding the inclusion of husband’s bonus in the calculation of his gross-monthly income, we are unable to adequately review whether the district court abused its discretion. From our review of the record, there does not appear to be any evidence that the bonus presents a “periodic” rather than a one-time payment. *See*

Minn. Stat. § 518A. 29(a)(2010) (providing that “gross income includes any form of periodic payment to an individual . . .”). We therefore reverse the inclusion of the bonus and remand for reconsideration and findings that support exclusion or inclusion of the bonus in husband’s income for purposes of establishing his on-going child-support obligation.

A. Directions on remand

Among other changes the district court may choose to make on remand, the district court shall:

- (1) Remove from the findings all gratuitous references to fault of either party in connection with the dissolution;
- (2) Consider the presumption contained in Minn. Stat. § 518.175, subd. 1(e) (2010) that each parent is entitled to at least 25% of parenting time, and if less than 25% of parenting time is awarded, make findings explaining why the presumption does not apply in this case;
- (3) Make specific findings, supported by evidence and authority, about what property or portion of property (and debt) is marital and non-marital, or, in the case of property of a corporation, including debts, “extramarital” property not subject to division in this action;
- (4) Provide findings and authority for requiring husband to reimburse wife for any expenditures made during the marriage;
- (5) Make findings, as required by Minn. Stat. § 518.58, subd. 2 (2010)⁵ for any allocation of non-marital property to the other party;

⁵ Minn. Stat. § 518.58, subd. 2, provides that “[i]f the court finds that either spouse’s resources or property . . . are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may . . . apportion up to one-half of the” other spouse’s non-marital property, but requires that such apportionment be supported by findings. Here, the district court divided all of the parties’ property (marital and non-marital) as shown on wife’s post-trial “balance sheet” and included an equalizer payment such that each party was to come away from this deficit marriage with equal amounts of debt. The district court did not explain why this equal division of debt resulted in an injustice that

- (6) Remove from the division of marital property the proceeds from property that was sold during the marriage and used to pay expenses, absent findings that the proceeds were not used in the ordinary course of business or for the necessities of life;
- (7) Remove from the division of marital property a “debt” representing the shortfall in equity in the homestead to cover wife’s non-marital interest, or support the inclusion with findings and authority;
- (8) Remove from the division of marital property the Land Rover that was found to be gifted to husband and the garage-size locker with tools that husband testified he acquired before the marriage, or support the division with findings that these items are marital property or findings that support an award of non-marital property to the other spouse;
- (9) Properly identify any exhibit used to illustrate the property division and explain with findings the calculation of any “equalizer” payment.

Affirmed in part, reversed in part, and remanded.

required husband, who has only debt, to repay wife for marital funds used in the marriage with the consent of both parties to cover his alleged non-marital debts. The district court also ignored wife’s testimony that if she used any of her non-marital funds to pay husband’s non-marital debts, she did so without his knowledge or consent, which she acknowledged he would not have given.