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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1371

In re the Marriage of: Barbara Ann Richie, petitioner,
Respondent,

vs.

Kenneth Eugene Richie, Sr.,
Appellant.

Filed July 15, 2013
Affirmed
Stoneburner, Judge

Wright County District Court
File No. 86FA103008

Susan J. Mundahl, Lucas J.M. Dawson, Mundahl Law, P.L.L.C., Maple Grove, Minnesota (for respondent)

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Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant husband challenges the district court's division of property in this dissolution action, arguing that the district court erred or abused its discretion by (1) finding that respondent wife adequately traced a nonmarital inheritance; (2) failing to consider the debt on the hobby farm a marital debt; (3) awarding property that husband

claims does not exist; and (4) failing to award him a larger share of martial property. We affirm.

FACTS

Appellant Kenneth Eugene Richie, Sr., (husband) was born in 1938, and respondent Barbara Ann Richie (wife) was born in 1939. They were married in June 1959 and lived in the same residence until they obtained separate residences in late August or early September 2010. There are four adult children of the marriage. None of the children have resided with the parties since 1992, after which the parties began to maintain separate living spaces in their home.

Wife has been a homemaker since the birth of their first child in September 1960. She was the primary caretaker of the children until they left home. Husband, who holds a Ph.D. in applied mathematics from the University of California, Berkeley, worked full time until his retirement in 1992, and part-time as a consultant for two years thereafter. During the marriage, husband had total control of all of the parties' finances. Husband typically placed all of the parties' money in accounts in his name. Since 1994, husband has spent approximately 20 hours per week managing the parties' investments. Wife petitioned for dissolution of the marriage in May 2010.

Wife's inheritance

In 2003, wife inherited $196,406.99 from her mother. Husband told wife that he would put her nonmarital inheritance in a "safe mutual fund" for her. He first deposited the funds, plus $5,300 from an unidentified source, in the parties' joint account, which had a previous balance of $10,639.78. Approximately seven days later, husband

transferred $190,000 of the funds from the joint account into three Vanguard investment accounts in the amounts of $80,000, $60,000, and $50,000, respectively. Two of the accounts were in wife's name and one was in husband's name. Husband acknowledges that these transfers were funded with wife's inheritance. The funds from two of those accounts were subsequently transferred to fund three additional investment accounts in husband's name.

Wife's expert witness, forensic accountant David Kiwus, testified that, based on financial records provided by husband, he traced the nonmarital portion of each of the three accounts and used a conservative calculation of the interest that could be attributed to these funds. Kiwus provided a detailed analysis of his calculations and, at the close of evidence, provided a supplemental report tracing the inheritance funds up to May 11, 2010, when wife petitioned for dissolution and two accounts were moved into an Edward Jones investment account. Kiwus testified that, as of that date, wife's nonmarital inheritance was valued at $256,583.

Rockford hobby farm

Less than a year before the dissolution petition was filed, husband bought a hobby farm in Rockford Township. The hobby farm had a 2011 tax-assessed value of $90,000. The land was purchased and a pole barn was built on the land with a $181,202 loan in husband's name from Bankwest. The loan is secured by pledged marital assets in one of the parties' Vanguard accounts. Wife was not aware of how the hobby farm purchase was financed. The district court awarded the hobby farm and the Vanguard account

pledged to secure the debt on the hobby farm to husband and assigned the debt for the purchase of the hobby farm solely to husband.

Gold coins

The parties agreed that each possessed a set of ten gold coins valued at between $10,000 and $12,000 per set. Husband testified that he received one shipment of gold coins in 2009, and wife testified that she intercepted a second shipment of coins. Wife also testified that in addition to the intercepted shipment, she recalled three other deliveries of similarly sized boxes. Wife produced invoices for four shipments of sets of gold coins. The district court found husband's testimony that there were only two shipments of gold-coin sets not credible; the district court awarded wife all of the gold coins admittedly possessed by the parties and awarded husband the 20 "missing" gold coins "upon their discovery."

Contributions of parties to marital estate

The district court valued the parties' marital estate at the time of trial at $2,661,148. Husband asserts that the district court's division of marital property and debt resulted in a net award to him that is $545,000 less than the net award to wife. Husband argues that this result is an abuse of discretion. Husband concedes that wife's homemaking contributions equaled his financial contributions until the youngest child left home for college in 1992, but he asserts that after 1992 his financial contributions continued while wife's "marital contributions were minimal or ceased altogether." Husband asserts that the growth in the parties' investments from approximately $874,803 in 1992 to $3,425,974 in September 2011 is largely "a direct result of [husband's]

focused efforts and expertise in growing the investments." Husband asserts that fairness and the totality of the circumstances justify an award to him of more than one-half of the marital estate, citing *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005), for the proposition that an equitable division of marital property is not necessarily an equal division.

Post-trial motions and appeal

Both parties moved for amended findings of fact and conclusions of law and appellant moved, in the alternative, for a new trial. The district court granted some amendments proposed by each party and denied appellant's motion for a new trial. This appeal followed in which appellant challenges portions of the resulting amended judgment and seeks a remand with instructions for the district court to (1) consider wife's inheritance and the debt on the hobby farm as marital property and debt respectively; (2) grant each party one set of ten gold coins; and (3) redistribute marital property in light of the disproportionate contributions to the martial estate from 1992 to 2011.

D E C I S I O N

I. Determination of nonmarital property

A. Standard of review

"Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court's underlying findings of fact. . . . [I]f [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings." *Olsen v. Olsen*, 562 N.W.2d 797,

800 (Minn. 1997) (quotation and citation omitted); *see also Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003) ("Determining whether property is marital or nonmarital . . . is an issue over which [appellate courts] exercise independent review, though deference is given to the district court's findings of fact."). "When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). "When marital and nonmarital assets have been commingled, the party asserting the nonmarital claim must adequately trace the nonmarital funds in order to establish their nonmarital character. Whether a nonmarital interest has been traced is also a question of fact." *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009) (citation omitted).

B. Wife's inheritance funds

1. Tracing the nonmarital inheritance funds

The parties do not dispute that wife's inheritance was a nonmarital asset when it was received. But husband argues that the district court erred by finding that wife met her preponderance-of-the-evidence burden of tracing the nonmarital inheritance funds. Husband's challenge to wife's tracing evidence is based on what he claims is a two-year gap in the financial records underlying her expert's tracing analysis: 2004 and 2005 statements from the original three Vanguard investment accounts were not admitted into evidence.[1] Husband argues that Kiwus's testimony "was insufficient to trace [wife's]

[1] Wife points out that husband provided the documents that comprised a stipulated exhibit, did not, at trial, mention the absence of statements for two years from the exhibit,

nonmarital inheritance from December 31, 2003 to the next closest Vanguard statement from January 1, 2006." But Kiwus testified regarding the movement of the inheritance money between 2003 and 2010 and testified that he "reviewed a number of Vanguard statements, . . . those with [wife's] name and with [husband's] name from 2003, roughly, through the present." And Kiwus provided the district court with a detailed breakdown of the various accounts and money movements during that time period.

"For nonmarital property to maintain its nonmarital status, it must either be kept separate from marital property or, if commingled with marital property, be readily traceable." *Olsen*, 562 N.W.2d at 800. "Simply routing the funds through a joint account does not transform non-marital property into marital property." *Nash v. Nash*, 388 N.W.2d 777, 781 (Minn. App. 1986) (quotation omitted), *review denied* (Minn. Aug. 20, 1986). "[T]racing property to its nonmarital source does not require intricate detail." *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 697 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

Wife needed only to "show by a preponderance of the evidence that the asset was acquired in exchange for nonmarital property." *Doering v. Doering*, 385 N.W.2d 387, 390 (Minn. App. 1986) (quotation omitted). In this case, the "assets" in question were the Vanguard accounts and their earnings. Whether wife sufficiently traced the nonmarital inheritance was a question of fact for the district court, *Kerr*, 770 N.W.2d at 571, and the district court is in the best position to weigh the credibility of witnesses, *In*

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and did not establish that Kiwus relied only on statements in the stipulated exhibits in forming his opinion.

re Marriage of Goldman, 748 N.W.2d 279, 284 (Minn. 2008). The district court found Kiwus's testimony regarding his tracing methods, as well as the report he submitted to the district court tracing the inherited funds from 2003 to 2010, credible. There is nothing in the record to give this court a "definite and firm conviction that a mistake has been made" that would make the district court's finding clear error. *Olsen*, 562 N.W.2d at 800. The district court did not err by finding that wife sufficiently traced the nonmarital inheritance.

2. Valuation of the nonmarital inheritance

As an alternative to his challenge to wife's tracing of the nonmarital inheritance, husband argues that "the inheritance issue should be remanded to allow for an accurate division of the marital and nonmarital portions of the parties' comingled funds using a *Schmitz v. Schmitz*[, 309 N.W.2d 748, 750 (Minn. 1981)] analysis." His argument is based on the fact that the joint bank account into which he initially deposited wife's nonmarital inheritance already had a balance of $10,639.78, and the inheritance check was deposited with an additional $5,300 from an undefined source.

But husband withdrew less than the full amount of wife's inheritance from the joint account approximately one week after depositing the inheritance check and transferred the withdrawn funds to three Vanguard accounts. Husband told wife that he would put her inheritance into a "safe mutual fund," and he admitted that the funds transferred to the Vanguard accounts were wife's inherited funds. We find no merit in husband's assertion on appeal that the *Schmitz* formula applies to the facts of this case.

The district court's valuation of an item of property is a finding of fact, and its determination will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001); *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975). In this case, the record as a whole demonstrates that the nonmarital inheritance deposited into the joint checking account stayed there briefly but was quickly transferred into three separate Vanguard accounts. Because the nonmarital asset can be traced through the joint checking account, the district court did not err by concluding that wife is entitled to the full amount and earnings from the $190,000 transferred from the joint checking account in September 2003. *See Nash*, 388 N.W.2d at 781 (routing the funds through a joint account does not transform non-marital property into marital property).

II. Division of the marital property

A. Standard of review

"A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. [An appellate court] will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted); *see also Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009) (stating that a district court has "broad discretion regarding the division of property" and that its division of property "will only be reversed on appeal if the [district] court abused its discretion"). A district court abuses its discretion in 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).

B. Rockford hobby farm

Husband argues that the district court abused its discretion when it made him solely liable for the debt created by the purchase of the hobby farm. He claims that the district court "intended that [the hobby farm and the net value of the pledged account] should have resulted in a net positive figure of $193,740 for [husband] ($90,000 hobby farm (+) $103,740 account net value = $193,740)" but instead the district court's balance sheet

> award[s] [husband] the entire BankWest pledge account worth $282,416 and finally obligates [husband] to pay the $181,866 BankWest pledge associated to the Rockford hobby farm. . . . [and that] [t]hese three assignments result in [husband] being awarded a net positive figure of $100,550 ($0 hobby farm (+) $282,416 BankWest account (-) $181,866 hobby farm pledge = $100,550).

The district court found that the debt on the Rockford hobby farm "is secured by pledged joint marital assets in one of the Vanguard accounts" and that wife "credibly testified that she was unaware of the nature of the financing tied to the hobby farm [husband] purchased for his use and his dogs for the animals' exercise and the pole barn built upon the land." Minn. Stat. § 518.58, subd. 1 (2012), requires that a district court 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 the property. The [district] court shall base its findings on 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. The [district] court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.

Minn. Stat. § 518.58, subd. 1a (2012), goes on to state that

> [i]f the [district] court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred.

There is no requirement that the district court divide all assets and liabilities equally, just that the division is just and equitable. *Gummow v. Gummow*, 356 N.W.2d 426, 429 (Minn. App. 1984). The district court's findings regarding the acquisition and financing of the Rockford hobby farm demonstrate that it intended to award husband the Rockford hobby farm as well as the full value of the pledged asset and the full liability for the pledged amount. Husband's claim that the district court intended something different is not supported by the record and does not show that the district court abused its discretion by making him solely responsible for the debt associated with the hobby farm.

C. Gold coins

Husband also challenges the district court's determination that he ordered and received 40 gold coins and its division of 40 coins between the parties. He argues that the district court "repeatedly heard that [husband] ordered and received only 20 gold coins and that [wife] had never seen more than 20 gold coins." Husband concludes by stating that "nothing but speculation supports the existence of 40 gold coins, and speculation is not enough to uphold the [district] court's division of gold coins."

The district court made the following findings regarding the gold coins:

> 43. [Wife] and [husband] agree that each has [ten] gold coins in their possession with approximate value of [ten] gold coins between $10,000 [and] $12,000. At trial [wife] produced invoices for four (4) shipments of [ten] gold coins each. . . . [Wife] recalled that in 2010 there were deliveries of boxes coming to their home that she never opened. But, an invoice of one of the boxes stated the value of the box contents around $10,000. She did not open the box but believed the contents were later placed in a safe deposit box at a local bank. When asked about the four (4) shipments of gold coins, [husband] testified that he does not recall ever receiving two of the gold shipments.
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> 44. The Court does not find [husband] credible regarding the four shipments and accounting of the gold coins. As noted above, during the trial, [husband] demonstrated that he was financially astute and careful in all of his financial dealings but was purposefully vague when it was not to his benefit concerning transactions related to the parties' assets. This courts finds . . . [husband's] statements regarding the two missing shipments to not be credible and finds that there were four shipments of [ten] gold coins bought by [husband] and [that] four shipments of [ten] gold coins are a marital asset.

Wife testified that she opened one box that "looked like other boxes [she] had seen come to the house . . . that [husband] had told [her] were plumbing supplies" and discovered

ten gold coins in the box. She further testified that she put them in a safety deposit box. Finally, wife testified about the four invoices admitted as Exhibit 30.

Husband testified that he received only one shipment of ten gold coins, but he heard wife testify that she intercepted a second shipment. He testified that he did not know whether he had the invoices for the gold coins in a file at home and that "the only time that [he had] seen [Exhibit 30]" was at trial. He further testified that there is $20,000 in missing gold coins, but that he never asked or confronted wife about the missing coins.

The district court is in the best position to weigh the credibility of witnesses. *Goldman*, 748 N.W.2d at 284; *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And "[w]hen evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which [this court] accord[s] great deference on appeal." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). This court will not overturn a district court's division of property "if it had an acceptable basis in fact and principle." *Antone*, 645 N.W.2d at 100. Because the district court found husband's credibility lacking on the issue of the gold coins and because the facts in the record support the district court's conclusion that there are an additional 20 gold coins that are not in wife's possession, it is not "against logic and the facts on record" for the district court to have awarded wife the twenty gold coins that husband acknowledges exist and to award husband the 20 "missing" gold coins when they are found. *See Rutten*, 347 N.W.2d at 50.

D. Parties' post-1992 contributions to marital estate

Husband also argues that due to the parties' "vastly unequal financial contributions from 1992 to September 2011," the district court's failure to award him more than one-half of the martial assets constitutes an abuse of discretion. But "[a] party who contributed less financially during marriage may be entitled to more than his or her exact monetary contribution at dissolution and is entitled to have the other statutory factors such as needs, employability, and estate taken into consideration." *Gummow*, 356 N.W.2d at 429.

Husband argues that *Gummow* "protect[s] [wife's] homemaking contributions only until the parties lived apart in the same house and their children left the home in 1992." We disagree. The district court found that "[a]fter the last child left the parties' home, [wife] continued to take care of the home by cooking, cleaning and providing general upkeep of the parties' home. She also assisted [husband] with his recovery after he had heart surgery . . . in 2000 or 2001." The district court stated that it was making "an equitable division . . . of the assets in light of the parties['] term of their marriage, age and health, contribution to the marriage, full and fair disclosure of the assets and debts and the relative marital debt incurred during the parties' marriage." And the district court reduced wife's "equitable share of the marital estate" by the amount of funds she had removed from a joint account at the beginning of the dissolution and by the greater value of the personal property she received. Although the district court could have exercised its

broad discretion in the equitable division of martial property in a different manner, we cannot conclude that the division made constitutes an abuse of that broad discretion.

Affirmed.