STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1609

In re the Marriage of:

Deborah Jane Burkhardt-Cotter, petitioner,
Appellant,

vs.

Shane Jary Cotter, Sr.,
Respondent.

Filed July 15, 2008
Affirmed
Shumaker, Judge

Hennepin County District Court
File No. 27-FA-000300101

Kathryn A. Graves, Katz, Manka, Teplinsky, Due & Sobol, Ltd., 225 South Sixth Street, Suite 4150, Minneapolis, MN 55402 (for appellant)

Mark A. Carter, Carter Legal Services, P.A., 810 First Street South, Suite 100, Hopkins, MN 55343 (for respondent)

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

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

SHUMAKER, Judge

On appeal in this property-division dispute, appellant-wife argues that the district court erred by awarding her the insurance proceeds from damage to the marital homestead and treating those proceeds as one of wife's assets, when the court did not treat the insurance proceeds from damage to respondent-husband's house as one of his assets; that the district court's findings regarding the debt owed by wife's sister are inherently inconsistent and thus clearly erroneous; and that the district court abused its discretion by designating $1,200 from a trust account and $15,000 in insurance proceeds as wife's assets. Because the district court's findings of fact support the conclusions of law, we affirm.

FACTS

Wife and husband married in 1969. In February 2005, wife commenced marital-dissolution proceedings.

The parties stipulated to the value and division of some marital assets. At the dissolution trial, the district court heard evidence regarding remaining property disputes, including the value and distribution of homeowners' insurance proceeds that wife received to repair the marital homestead after separation and a $45,000 debt owed to the parties by wife's sister, Diane Ketz.

In May 2007, the district court issued its findings of fact, conclusions of law, order for judgment and judgment and decree. To its dissolution decree, the court attached a "chart of assets"—that is, a marital balance sheet summarizing the property division and

the parties' assets. Two of the chart's items relevant to this appeal include the remainder of a $235,000 advance from wife's trust in the amount of $1,200, and the first payment of insurance proceeds in the amount of $15,000. Both of these items are identified as wife's assets. The court also designated $33,000 in homeowners' insurance proceeds as one of wife's assets for property-division purposes. And instead of dividing the $45,000 debt owed by Ketz between husband and wife, the court listed the value of this debt as one of wife's assets.

Both parties moved for amended findings, but their motions were denied. Wife's appeal followed.

D E C I S I O N

"Upon a dissolution of a marriage, . . . the [district] court shall make a just and equitable division of the marital property of the parties." Minn. Stat. § 518.58, subd. 1 (2006). "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). Appellate courts "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).

Wife has failed to provide this court with a transcript, and we cannot fully evaluate her arguments as a result. "An appellant has the burden to provide an adequate record." *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). When the

appellant does not provide this court with a transcript of the district court proceedings, the scope of appellate review is limited to determining whether the district court's factual findings support its conclusions of law. *Duluth Herald & News Trib. v. Plymouth Optical Co.*, 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970); *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002).

The district court awarded wife the marital homestead and homeowners' insurance proceeds deposited in a Wells Fargo savings account. On appeal, wife challenges the district court's decision to treat the homeowners' insurance proceeds related to damage to the marital homestead as one of her assets.

Before trial, the parties agreed that wife would be awarded the marital homestead, but the parties disputed the homestead's value and submitted separate appraisals of the homestead. The district court found wife's "appraisal [of the marital homestead] to be the most credible and the best indication of the current fair market value of the property," noting that the homestead had "significant mold issues," having "suffered water damage in January 2005, following the parties' separation." Although mold remediation had been completed, the water damage had not been repaired at the time of trial and the homestead's driveway also needed repairs.

As part of its findings, the district court accepted wife's testimony indicating that she received approximately $33,200 in homeowners' insurance proceeds to pay for repairs to the marital homestead, that she placed those funds in a Wells Fargo savings account in her name, and that she had not yet spent those funds. Accordingly, the district

court awarded wife the Wells Fargo savings account funds, so that she would "have the use of the funds needed to make the repairs" to the marital homestead.

Because the district court's valuation of the homestead recognized its damaged condition and did not include the value of future repairs and because the district court awarded wife the insurance proceeds in the Wells Fargo savings account so she could make these repairs, the court did not err by designating the marital homestead and the homeowners' insurance proceeds in the Wells Fargo savings account as separate assets.

Wife further argues that it was unfair for the court to list her insurance proceeds as an asset when the court did not include as one of husband's assets the insurance proceeds that he received, after the parties separated, for hail damage to his house. In support of her argument, wife directs us to the district court's finding that husband purchased a homestead in Big Lake after the parties separated; that the house was damaged by hail in 2006; that husband received an insurance check (in an unidentified amount) for the damage; that husband "used the check to repair the damage done to the home"; and that the parties agreed that the marital equity in the property was $40,500.

The district court found that husband used the check to repair the damage done to the house. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (noting that the district court is in the best position to judge the credibility of the witnesses and make determinations in the face of conflicting testimony and must be given due deference). And there is no transcript available that would allow this court to determine whether the record supports this finding. *See Bormann*, 644 N.W.2d at 481 (limiting appellate review to determining if the factual findings support the conclusions of law in cases where

appellant does not provide a transcript); *see also Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964) (requiring the record to be "sufficient to show the alleged errors and all matters necessary for consideration of the questions presented"). We conclude that the district court's conclusions are supported by its findings and that the district court did not abuse its discretion by awarding wife the homeowners' insurance proceeds from damage to the marital homestead and treating these proceeds as one of wife's assets.

Wife next challenges the district court's findings regarding a $45,000 debt owed by wife's sister and two horses that she gave wife to satisfy the debt, arguing that they are inherently inconsistent and thus clearly erroneous. She suggests that, given their inherent inconsistency, appellate review of the findings is appropriate, despite her failure to provide this court with a transcript.

"Debts, like assets, are apportionable, and each division of property is considered in the light of the particular facts of that case." *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 414 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). Apportionment of marital debt is within the district court's discretion. *O'Donnell v. O'Donnell*, 412 N.W.2d 394, 396 (Minn. App. 1987). And a district court's division of debt "must be affirmed if it has an acceptable basis in fact and principle, even though this court may have taken a different approach." *Bliss v. Bliss*, 493 N.W.2d 583, 587 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993).

The parties agreed that each was responsible for debt incurred in his or her name. Wife lent $45,000 to Ketz during the marriage. In its finding addressing the parties'

various debts, the district court found that Ketz gave two horses to wife in satisfaction of the $45,000 debt and that the horses' value was sufficient to satisfy the debt. The finding noted that wife had decided to return one horse and explained that wife's refusal of payment of part of the loan did not obligate husband to take on that debt.

Wife argues this finding is inherently inconsistent with the district court's finding addressing the value of wife's business, which owned numerous horses. As part of its valuation of that business, the district court's finding notes that two horses owned by Ketz were being pastured at the marital residence when the horses from wife's business were appraised; that husband "claimed that Ms. Ketz had given the horses to [wife] as satisfaction of an outstanding debt owed to the parties of $45,000"; that wife denied owning the horses; and that the registration papers indicated they were owned by Ketz. Although the district court accepted wife's explanation, it refused to reach a finding regarding the value of the horses for the purposes of the valuation of wife's business because the appraisal of wife's business did not include the value of these horses.

Contrary to wife's assertion, these findings are not inconsistent. One finding addresses the value of wife's business and explicitly declines to include the horses from Ketz in that valuation. The other finding, meanwhile, addresses the debts of the parties and explains that the debt owed by Ketz was satisfied by the receipt of the two horses. The district court found that the value of these two horses was sufficient to satisfy the debt, the amount of which the parties agreed was $45,000.

Wife further contends that Ketz's $45,000 debt should be divided between the parties. But the district court found that the debt was satisfied by the receipt of the two

horses and that wife's decision to return one of the horses should not obligate husband to take on part of the debt. In light of this finding, wife has failed to explain why dividing the debt between her and husband would be equitable. *See* Minn. Stat. § 518.58, subd. 1 (requiring "a just and equitable division"); *Justis v. Justis*, 384 N.W.2d 885, 888 (Minn. App. 1986) ("[P]roperty division need not be mathematically equal to be just and equitable."), *review denied* (Minn. May 29, 1986).

Wife's remaining arguments challenge the district court's decision to include two assets in the chart of assets. The first amount is $1,200 from wife's trust account, listed as the "remainder of a $235,000 advance," as one of wife's assets. Other than its inclusion in the chart, the dissolution decree does not explain this $1,200 asset. According to exhibits in the record, the balance of the trust in wife's name was $1,357.42 as of June 2005.

Wife argues that inclusion of this asset is flawed because "[i]t is undisputed there were no funds left in the trust established solely in the Wife's name . . . by November 30, 2005, the valuation date agreed upon" in the parties' stipulation. Although the parties' stipulation provides November 30, 2005, as the valuation date for one trust, namely the Shane J. Cotter, Sr. Trust, the stipulation does not identify a valuation date for wife's separate trust or even mention it. And the stipulation's language does not indicate that the valuation date assigned to the Shane J. Cotter, Sr. Trust was meant to apply more broadly.

Since the parties did not agree on a valuation date for wife's trust, the valuation date is dictated by statute. Minnesota law directs the district court to use "the day of the

initially scheduled prehearing settlement conference" as the date for valuation, "unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable." Minn. Stat. § 518.58, subd. 1.

The district court's initial case management order identifies the valuation date dictated by statute as August 23, 2005. The most recent document identifying the trust's value is apparently the statement from June 2005, indicating the value was $1,357.42. Since the appropriate valuation date for wife's trust is August 23, 2005, the district court did not err by assigning the trust a value of $1,200 and including it amongst wife's assets. *See Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (explaining that a district court's valuation of property is a finding of fact and "shall not be set aside unless clearly erroneous on the record as a whole"); *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) ("Exactitude is not required of the [district] court in the valuation of assets in a dissolution proceeding; it is only necessary that the value arrived at lies within a reasonable range of figures.").

Lastly, wife argues that the district court erred by including a $15,000 insurance payment to wife amongst her assets. The chart of assets identifies $15,000 as "[i]nsurance claim proceeds—first payment." Other than its inclusion in the chart, the dissolution decree does not appear to specifically address this $15,000.

Husband asserts that this $15,000 was related to the first insurance payment for mold damage to the marital homestead. Wife, on the other hand, contends that, even if $15,000 was related to an insurance payment for mold repairs, the payment should not be included as one of her assets because the payment was used to remediate the mold

damage to the marital homestead and the remediation was completed when the marital homestead was appraised.

Wife has not provided this court with a transcript so that we might fully evaluate the record and her claims and more specifically identify the source or nature of the $15,000. Thus, our review is limited to determining whether the district court's findings support the conclusions of law. *Bormann*, 644 N.W.2d at 481. Wife has not shown how the findings fail in this regard. We conclude, based on our review of the dissolution decree (including the chart of assets), that the district court's finding that wife's assets include the $15,000 insurance payment supports its conclusions of law regarding the property division.

Affirmed.