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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1980**

In re the Marriage of:
Mary Clare Murphy, petitioner,
Appellant,

vs.

Jack Frederick Murphy,
Respondent.

**Filed October 14, 2008
Affirmed
Halbrooks, Judge**

Anoka County District Court
File No. 02-FX-05-011641

Susan M. Lach, Messerli & Kramer, P.A., 1800 Fifth Street Towers, 150 South 5th Street, Minneapolis, MN 55402 (for appellant)

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Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant argues that the district court abused its discretion by failing to make findings to support what she characterizes as an unequal property division in the judgment and decree.¹ We affirm.

FACTS

Appellant Mary Clare Murphy and respondent Jack Frederick Murphy were married for approximately 31 years; their marriage was dissolved by the district court's judgment and decree on March 19, 2007. The district court found that the fair-market value of the homestead was approximately \$225,000, encumbered by a mortgage of approximately \$114,000. As a result, the district court found that the equity in the parties' homestead was approximately \$110,000.

Prior to the dissolution, appellant expressed her desire to sell the marital homestead and testified that she believed that it would sell in a reasonable amount of time. Because she claimed and assumed sole and exclusive use of the homestead as of October 29, 2005, appellant sought the tax benefits and credit for money she paid to maintain the homestead from that time forward. Respondent testified that the home had sentimental value to him, but that he did not think that he had the ability to "buy out" appellant's interest in the home.

¹ The district court order also concerns other aspects of the parties' marital dissolution that are irrelevant to the issues raised in this appeal and are therefore not addressed.

In the dissolution judgment, the district court ordered that appellant have exclusive use and occupancy of the marital homestead and required her to pay all future expenses related to the home. Respondent was given until May 14, 2007, to arrange refinancing to purchase the marital homestead, subject to a lien in favor of appellant in the amount of \$55,000 payable no later than May 14, 2007. The district court further ordered that, if respondent was able to secure refinancing, appellant was to surrender all control of the homestead and transfer her interest to respondent upon receipt of the \$55,000. If respondent was unable to secure refinancing by May 14, the parties were ordered to sell the marital homestead at fair-market value. The district court stated:

In the event [r]espondent does not exercise his right of first option to buy the parties' homestead as outlined above by the end of the day on May 14, 2007, the homestead shall then be immediately placed on the market for sale at fair market value, unless otherwise agreed upon by both parties. . . .

. . . [T]he proceeds shall be distributed by first paying off all expenses incident to the sale of the homestead. Expenses incident to the sale include normal expenses such as realtor fees, etc. It shall *not* include costs of updating or repairing the homestead. After the expenses incident to the sale have been paid from the proceeds, [r]espondent shall be entitled to receive \$55,000 as and for his share of the equity in the homestead and the balance of the proceeds, if any, is awarded to [appellant].

Respondent was ultimately unable to arrange refinancing to purchase the home, and appellant moved for amendment of the judgment and decree. In support of her motion, appellant submitted a seller's estimated expense worksheet from Edina Realty that indicated that if the home sold for \$225,000, the net proceeds would be \$90,138.50 after paying the associated sale costs. Appellant asserted that, once respondent is paid

\$55,000, she would receive only \$35,138.50. Following a hearing, the district court amended its findings regarding the homestead but denied appellant's motion to distribute the sale proceeds differently. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by awarding respondent \$55,000 of the net proceeds from the sale of the marital homestead regardless of the amount the homestead is sold for. "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). "We will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

"Upon a dissolution of a marriage," a district court is required to "make a just and equitable division of the marital property of the parties . . . after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2006). This division of property is based 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." *Id.*

The district court made findings concerning the marital homestead as required by Minn. Stat. § 518.58, subd. 1. It found the fair market value of the home was "approximately \$225,000.00" and found that the parties had equity in the home totaling

approximately \$110,000. Neither party disputes these figures, and the Edina Realty seller's worksheet provided by appellant uses the \$225,000 value as the basis for its calculations. But appellant argues that the district court contradicted itself by seemingly ordering that each party would receive \$55,000 in proceeds upon sale of the home, yet allowing her proceeds to be increased or decreased depending on the actual net sale proceeds. Appellant specifically directs our attention to a footnote in the dissolution judgment that she claims suggests that her share is presumably \$55,000, subject to a decrease if she fails to maintain the quality of the marital homestead.

But in reviewing the district court's order, we find no such confusion, and the amended order issued following appellant's motion makes it clear that the district court intended that appellant's share of the proceeds be variable while ensuring that respondent receive exactly \$55,000. In the initial dissolution judgment, the district court stated that respondent "shall be entitled to receive \$55,000 as and for his share of the equity in the homestead and the balance of the proceeds, *if any*, is awarded to [appellant]." (Emphasis added.) The footnote contained in the dissolution judgment only illustrates that appellant's share of the proceeds is flexible and does not presume that she will receive any defined amount.

The district court readdressed this issue in response to appellant's motion for amended findings and made no change to the distribution of proceeds. In reviewing appellant's motion to amend the dissolution judgment, the district court had the benefit of appellant's Edina Realty estimated expense worksheet and was well aware of the variable

nature of the amount that appellant could receive from the net proceeds of the sale of the marital homestead.

Appellant asserts that the district court's division of the net proceeds is unjust and inequitable in violation of Minn. Stat. § 518.58, subd. 1. Addressing the statutory requirements for division of marital assets, the district court concluded that "the division of the proceeds of the homestead by the means stated . . . is a reasonable, fair, and equitable division of the parties' equity in the homestead." The district court's findings that appellant "grosses approximately \$31,000 more per year than [r]espondent" and had the benefit of use of the homestead while respondent had to "incur the costs of housing elsewhere" address the statutory factors required for a proper division of marital assets under Minn. Stat. § 518.58, subd. 1. While appellant asserts that her share of the net proceeds will be less than respondent's if the house sells for \$225,000, a distribution of marital property does not have to be mathematically equal to be equitable and just, as required by section 518.58, subdivision 1. *Johns v. Johns*, 354 N.W.2d 564, 566 (Minn. App. 1984). The district court twice considered the discrepancy in the parties' incomes, appellant's tax benefits, respondent's costs, and his lower earning capacity in accordance with Minn. Stat. § 518.58, subd. 1. On this record, we conclude that the district court acted within its discretion.

Affirmed.