SUMMARY
May 18, 2023

2023COA42

No. 21CA1317, *Marriage of Medeiros* — Family Law — Dissolution — Permanent Orders — Motion to Reopen Evidence — Changed Economic Circumstances

In this domestic relations case, husband appeals from permanent orders in which the district court dissolved the parties' marriage, divided the parties' property, and awarded wife maintenance. There was a lengthy delay between the permanent orders hearing and the district court issuing its order. This case raises the question of a district court's authority to reopen the evidence after the conclusion of a permanent orders hearing but before the court has issued permanent orders. Here, husband sought to reopen the evidence eight months after the permanent orders hearing but before the court had issued permanent orders or dissolved the parties' marriage. He did so on the basis that wife's

economic circumstances had substantially changed in the intervening eight months due to an inheritance (or expected inheritance) that hadn't been (and couldn't have been) anticipated at time of the permanent orders hearing. The court rejected husband's request to reopen on the grounds that it lacked the authority to do so.

A division of the court of appeals concludes that the district court erred when it concluded that it lacked the authority to reopen the evidence. In its opinion, the division sets forth factors that a district court should consider when resolving a party's motion to reopen evidence after the conclusion of a permanent orders hearing but before the court has issued permanent orders. The division also concludes that the district court properly characterized and valued certain marital property but erred in its determination of maintenance. Thus, the division affirms the judgment in part, reverses the judgment in part, and remands the case for further proceedings.

COLORADO COURT OF APPEALS **2023COA42**

Court of Appeals No. 21CA1317
Jefferson County District Court No. 19DR30644
Honorable Tamara S. Russell, Judge

In re the Marriage of

Kirsten Medeiros, n/k/a Kirsten Scheig,

Appellee,

and

Matthew Douglas Medeiros,

Appellant.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division II
Opinion by JUDGE WELLING
Furman and Freyre, JJ., concur

Announced May 18, 2023

Caplan and Earnest, LLC, Craig A. Weinberg, Boulder, Colorado, for Appellee

Aitken Law, LLC, Sharlene J. Aitken, Denver, Colorado, for Appellant

¶ 1 Matthew Douglas Medeiros (husband) appeals the district court's judgment dissolving his marriage with Kirsten Scheig, formerly known as Kirsten Medeiros (wife).

¶ 2 This case raises the question of a district court's authority to reopen the evidence after the conclusion of a permanent orders hearing but before the court has issued permanent orders. Husband sought to reopen the evidence eight months after the permanent orders hearing but before the court had issued permanent orders or dissolved the parties' marriage. He did so on the basis that wife's economic circumstances had substantially changed in the intervening eight months due to an inheritance (or expected inheritance) that hadn't been (and couldn't have been) anticipated at the time of the permanent orders hearing. The court rejected husband's request to reopen on the grounds that it lacked the authority to do so. We conclude that this was error.

¶ 3 Husband also challenges the district court's characterization and valuation of certain marital property, as well as its award of maintenance to wife. We conclude that the district court properly characterized and valued the property but erred in its determination of maintenance. Accordingly, we affirm the judgment

in part, reverse the judgment in part, and remand the case for further proceedings.

I. Background

¶ 4 In 2019, wife petitioned the district court to dissolve the parties' twenty-five-year marriage.

¶ 5 The district court held a two-day permanent orders hearing on June 30 and July 1, 2020. At the hearing, the parties vigorously contested the characterization, valuation, and division of property, as well as wife's request for maintenance and her request for an award of attorney fees under section 14-10-119, C.R.S. 2022. Following the close of evidence, the court took the case under advisement and informed the parties that, given the extensive evidence and the numerous upcoming trials on the court's docket, it would be "a long time" before the court would enter a final order.

¶ 6 In March 2021, before the court issued its final orders dissolving the marriage, husband filed a motion to reopen the evidence. As discussed in more detail below, he asserted that, in February 2021 (seven months after the permanent orders hearing), wife's father had died, and husband alleged that wife was an heir to her father's estate and was entitled to a substantial inheritance. In

the motion to reopen, husband requested that the court direct wife to provide additional information on her inheritance and hold a hearing to consider the evidence of wife's changed economic circumstances. Concluding that it lacked the authority to reopen the evidence, the court denied husband's motion.

¶ 7 In May 2021, about three weeks after denying husband's motion to reopen, the district court issued a decree dissolving the marriage and entered permanent orders. The court divided the parties' marital estate by allocating each party net equity worth over $1 million. In doing so, the court awarded husband his ownership interest in Institute for Wealth Management Holdings, Inc. (IWH) — a financial investment services company he operated and in which he owned an interest. It valued his interest in IWH at $1,451,500. The court also found that husband had been involved in a car accident a few months before wife filed the dissolution petition. It determined that, although husband hadn't yet filed a personal injury lawsuit, any judgment or settlement from this potential claim was marital property, and it awarded wife 25% of any recovery husband eventually received.

¶ 8 Moving to maintenance, the district court found that wife's income as a real estate agent had recently decreased but that her earning ability had rebounded. The court found that wife could earn a "gross income" of $100,000 per year (or $8,333 per month). It then deducted her business expenses and attributed to her an income of $5,333 per month for the purpose of maintenance. The court found that husband had an income of $19,538 per month, and it ordered him to pay wife maintenance in the amount of $4,200 per month for fifteen years.

¶ 9 The court also denied wife's request for attorney fees under section 14-10-119.

II. Motion to Reopen the Evidence

¶ 10 Husband contends that the district court erred by denying his motion to reopen the evidence to consider a change in wife's economic circumstances, which occurred after the permanent orders hearing but before the court issued the decree and final orders. We agree that the district court erred.

A. Additional Facts

¶ 11 In husband's motion to reopen, he contended that wife was an heir to her recently deceased father's estate and stated that, while

wife had failed to disclose to him any details of her anticipated inheritance, he believed wife's interest in her father's estate "is substantial, and may exceed the net value of the marital estate," which had been valued at over $2 million. Husband acknowledged that wife's inheritance was her separate property but argued that her right to a substantial inheritance was a relevant "economic circumstance" that would have a material effect on the court's yet to be decided final orders on property division, maintenance, and attorney fees. He asked the court to order additional disclosures and accept additional evidence on wife's inheritance and to consider this economic change and its impact on the issues pending before the court.

¶ 12 In response, wife acknowledged that her father had died and didn't dispute husband's allegation that she was entitled to receive an inheritance. However, she urged the court to deny the motion, arguing that there had been no actual change to her economic circumstances because, at the time of husband's motion, she hadn't yet received any inheritance. She further argued that, when considering her economic circumstances, the court must focus on her circumstances as of the date of the permanent orders hearing.

¶ 13 The district court denied the motion to reopen the evidence. The court noted that property division, maintenance, and attorney fees are intertwined and that property issues are generally determined at the time of the hearing. The court stated that neither party gave it "any authority that allows the trial court to reopen a case that is not final in order to consider new evidence of changed circumstances, even though the changed circumstances (the inheritance) would have been relevant at the permanent orders hearing." It also noted that reopening the evidence "would open the door to any number of changes that would have to be considered while the court was drafting its order and start a never[-]ending chain of events."

¶ 14 The district court later divided the marital estate and awarded wife maintenance based on the evidence from the permanent orders hearing without reference to wife's inheritance.

B. Discussion

¶ 15 In a dissolution of marriage proceeding, the court must equitably divide the parties' marital property, and it may award maintenance or attorney fees. *See* § 14-10-113(1), C.R.S. 2022; § 14-10-114(2), C.R.S. 2022; § 14-10-119. To determine these

issues, the court considers, as relevant here, each party's economic circumstances and resources. § 14-10-113(1)(c); § 14-10-114(3)(a)(I)(C), (3)(c)(I)-(II); § 14-10-119. When the court has not yet entered a decree dissolving the marriage, it conducts its assessment of the parties' economic circumstances as of the date of the hearing at which the last evidence was presented to the court on the matter. *See* § 14-10-113(1)(c), (5); *In re Marriage of de Koning*, 2016 CO 2, ¶¶ 21, 28; *In re Marriage of Wells*, 850 P.2d 694, 696-97 (Colo. 1993); *In re Marriage of Femmer*, 39 Colo. App. 277, 279, 568 P.2d 81, 83 (1977).

¶ 16 The district court concluded that it lacked the legal authority to reopen the evidence after the completion of the permanent orders hearing. We disagree and conclude that the district court did have the inherent power, in the exercise of its discretion, to reopen the evidence. While neither party presented the court with legal authority directly addressing the specific situation here, "[i]t is always within the discretion of the [district] court to permit the reopening of a case for the purpose of allowing additional evidence." *Plummer v. Struby-Estabrooke Mercantile Co.*, 23 Colo. 190, 194, 47 P. 294, 295 (1896); *accord People v. Hall*, 2021 CO 71M, ¶¶ 16, 24;

see also In re Marriage of McSoud, 131 P.3d 1208, 1222 (Colo. App. 2006) ("A trial court may in its discretion permit a party who has rested to reopen a case for the purpose of presenting further evidence."); *Carter v. Carter*, 201 N.E.3d 230, 237-38 (Ind. Ct. App. 2022) (affirming a court's ruling reopening the evidence after the permanent orders hearing).

¶ 17 Therefore, even though the scheduled permanent orders hearing had long ago concluded, nothing prevented the court from acting within its discretion and reopening the evidence to allow the parties to present evidence of wife's allegedly changed circumstances when "the ends of justice [could] be advanced." *Plummer*, 23 Colo. at 194, 47 P. at 295; *accord Hall*, ¶ 24; *see also Femmer*, 39 Colo. App. at 279, 568 P.2d at 83; *In re B.S.O.*, 740 S.E.2d 483, 484 (N.C. Ct. App. 2013) (acknowledging a court's discretion to reopen the evidence weeks after the original hearing). Indeed, allowing the court to do so under the appropriate circumstances furthers the policy underlying the Colorado Uniform Dissolution of Marriage Act by promoting the amicable settlement of disputes and avoiding the associated burden of subsequent litigation. *See* § 14-10-102(2)(a), C.R.S. 2022; *see also Wells*, 850

P.2d at 697-98 ("Courts sitting in equity are not required to ignore the adverse circumstances of the parties lawfully before them[,] and . . . the General Assembly intended to promote the equitable distribution of property among the parties by addressing and providing for the parties' present and continuing needs . . . .").

¶ 18 When concluding that it lacked the authority to reopen the evidence, the district court appeared to take guidance from our supreme court's opinion in *de Koning*. We, however, don't agree that *de Koning* supports the conclusion that the district court lacked the legal authority to reopen the evidence. In *de Koning*, the supreme court discussed when to consider a party's economic circumstances for purposes of deciding attorney fees under section 14-10-119 when the district court delayed its ruling on that issue but had issued the decree and permanent orders on property division and maintenance. *de Koning*, ¶¶ 1-4, 33. The supreme court highlighted the interrelationship of the district court's decisions on property division, maintenance, and attorney fees, and held that, because the district court determined property division and maintenance based on the parties' economic circumstances at the time of the hearing on disposition of property, its determination

of attorney fees must also be based on the parties' economic circumstances at the time of the hearing. *Id.* at ¶¶ 19-23, 28, 33.

¶ 19 Importantly though, in *de Koning*, the district court had issued the decree and permanent orders on property division and maintenance shortly after the hearing. *Id.* at ¶¶ 1, 8, 9 (the hearing was in March and the court issued the permanent orders in April). As the supreme court recognized, by issuing the decree, the district court ended the parties' marriage, and there was no reason to further consider their economic lives as intertwined. *Id.* at ¶ 29. Thus, the consideration of their economic circumstances must focus on the date of the hearing. *Id.*; *see also* § 14-10-113(5).

¶ 20 But here, when husband sought to present evidence of wife's changed economic circumstances, the district court had not yet issued the decree or permanent orders. In other words, the parties were still married. And because of this, the court was empowered to act within its discretion to hear additional evidence on the parties' economic lives at a subsequent hearing. *See Plummer*, 23 Colo. at 194, 47 P. at 295; *Femmer*, 39 Colo. App. at 279, 568 P.2d at 83; *cf. In re Marriage of Huff*, 834 P.2d 244, 254-55 (Colo. 1992)

(holding that, before a decree, property the spouses acquired after their separation was still marital property).

¶ 21 We therefore agree with husband that the district court erred by concluding that it had no legal authority to reopen the evidence. *See DeBella v. People*, 233 P.3d 664, 667 (Colo. 2010) (stating that a court's failure to exercise its discretion is tantamount to an abuse of discretion); *S. Cross Ranches, LLC v. JBC Agric. Mgmt., LLC*, 2019 COA 58, ¶ 48 (same). While we may disregard a court's error when it doesn't affect a party's substantial rights, we can't conclude that the court's error was harmless, as husband made an adequate offer of proof concerning wife's alleged changed economic circumstances and explained how that new evidence could impact the court's resolution of the then-pending permanent orders. *See* C.A.R. 35(c); *cf. Justi v. RHO Condo. Ass'n*, 277 P.3d 847, 849-51 (Colo. App. 2011) (holding that, even if the court erred by refusing to reopen the evidence in response to a motion for directed verdict, the error was harmless because the party failed to offer any evidence to cure the deficiencies in his case).

¶ 22 However, we don't suggest that a court must always reopen the evidence after the permanent orders hearing based on any

allegations of changed economic circumstances. Rather, the court must exercise its discretion to decide whether reopening the evidence is appropriate and necessary to advance justice and facilitate the court's determination on the merits. *See Plummer*, 23 Colo. at 194, 47 P. at 295; *see also Williams v. Foster Frosty Foods, Inc.*, 497 P.2d 339, 340 (Colo. App. 1972) (not published pursuant to C.A.R. 35(f)). To guide the district court when deciding this issue, it should consider the following factors:

- the adequacy of the moving party's offer of proof, including what evidence the party seeks to present and its relevance to the pending issues, *see Justi*, 277 P.3d at 850; *cf. In re Marriage of Durie*, 2020 CO 7, ¶ 28 (cautioning against vague or speculative assertions);
- the substantiality of the proffered changed economic circumstances and its materiality to the resolution of the permanent orders, *cf.* C.R.C.P. 16.2(e)(10); C.R.C.P. 59(d)(4);
- the length of the court's delay in issuing permanent orders and the amount of time that has passed since the court received evidence on the parties' economic

circumstances, *cf.* § 13-5-135, C.R.S. 2022 (directing the court to determine every matter within ninety days);

- the extent to which the evidence reveals a new, unanticipated change to either party's economic circumstances that couldn't have been presented at the time of the permanent orders hearing, *see McSoud*, 131 P.3d at 1222;
- the moving party's ability to learn of and obtain relevant evidence of the changed circumstance and whether the nonmoving party was forthcoming with disclosure of the relevant information, *cf.* C.R.C.P. 16.2(e)(1), (10);
- the extent to which the motion is presented in good faith to facilitate the court's decision on the merits of the case and not for purposes of delay, harassment, or gamesmanship; and
- any prejudice that would be suffered by the nonmoving party due to reopening the evidence and delaying the resolution of the proceeding, *see Justi*, 277 P.3d at 850.

¶ 23 It is within the court's discretion to weigh these and any other factors it deems relevant to reach its determination as to whether to

reopen the evidence. *See Hall*, ¶¶ 16, 24; *see also Plummer*, 23 Colo. at 194, 47 P. at 295.

¶ 24 Because the district court didn't exercise its discretion, we reverse the judgment and remand the case for the court to reconsider husband's motion to reopen the evidence, applying the factors set forth above. In doing so, the court must make express findings sufficient to explain the basis for its determination and the circumstances that it found relevant in reaching that decision. *Cf. In re Marriage of Gibbs*, 2019 COA 104, ¶ 9; *In re Marriage of Powell*, 220 P.3d 952, 959 (Colo. App. 2009).

¶ 25 If, after conducting this analysis, the district court grants husband's motion to reopen, the court must direct the parties to make updated disclosures, *see* C.R.C.P. 16.2(e)(1), (4), and allow them to present additional evidence on their present economic circumstances, *see Wells*, 850 P.2d at 696-97 (providing that a court considers the parties' economic circumstances at the time of the remand hearing); *In re Marriage of Evans*, 2021 COA 141, ¶ 53. Because the only basis for reopening the evidence advanced in husband's motion was wife's anticipated inheritance, the court may not recharacterize or revalue the marital property or debts

accounted for in the existing property division;[1] but it may reallocate the marital estate in light of the new evidence, if any, on the parties' current economic circumstances, as well as the relevant evidence from the previous permanent orders hearing. *Wells*, 850 P.2d at 697 n.6; *Evans*, ¶ 52; *In re Marriage of Joel*, 2012 COA 128, ¶ 28. The court also must redetermine maintenance and wife's request for attorney fees based on its new property division, if any, and the parties' economic circumstances at the time of the hearing on remand. *See In re Marriage of Kann*, 2017 COA 94, ¶¶ 79-80,

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[1] This limitation is based on the specific circumstances of this case — namely, in his motion to reopen, the only changed circumstance that husband identified was the death of wife's father and the attendant impact that an anticipated inheritance would have on wife's economic circumstances. In that motion, husband didn't raise any other issues associated with the court's delay in issuing its permanent orders, such as any change to the marital assets or debts, nor did he request to present evidence on any changes to the marital estate's value that arose after the permanent orders hearing. And as discussed in Part III below, we reject husband's challenges to the court's valuation and characterization of the parties' assets and debts. Thus, even if on remand the court grants husband's motion to reopen, there is no basis for the court to recharacterize or revalue the marital property or debts accounted for in the existing property division. This isn't to say that a substantial change in asset values couldn't ever be a basis for reopening evidence; it just isn't a basis here.

85; *In re Marriage of Morton*, 2016 COA 1, ¶¶ 32-34; *see also de Koning*, ¶ 26.

¶ 26 On the other hand, if after reconsidering the issue, the district court denies husband's motion to reopen, it shall make findings regarding its decision not to reopen and then it may re-enter its permanent orders concerning the division of the marital estate. (If, on remand, the court does re-enter its permanent orders, it should clarify its findings on the total value of the marital estate and the values it allocated to each party, as there is some minor inconsistency in values between the narrative portion of the court's order and the spreadsheet it incorporated into its order.) The court shall then reconsider maintenance and attorney fees in accordance with Part IV below.

III. Property Division

¶ 27 Next, we address, and reject, husband's arguments challenging the court's characterization and valuation of certain marital property and debts in its division of the marital estate.

A. Standard of Review

¶ 28 The court has great latitude to equitably divide the marital estate based on the facts and circumstances of the case, and we

won't disturb its decision absent a showing of an abuse of discretion. *In re Marriage of Balanson*, 25 P.3d 28, 35 (Colo. 2001). A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or a misapplication of the law. *In re Marriage of Bergeson-Flanders*, 2022 COA 18, ¶ 10. We review de novo the court's application of the law. *In re Marriage of Corak*, 2014 COA 147, ¶ 10.

B. Effects of the Delayed Permanent Orders Ruling

¶ 29 Husband contends that the "district court erred in its valuation and determination of the division" of the marital estate because the delayed entry of permanent orders resulted in changes to the value of certain assets and debts. We aren't persuaded.

¶ 30 In its permanent orders, the court allocated to wife a 401(k) account worth $135,000 and the parties' home with net equity of $997,000. The court also equally divided a TD Ameritrade account worth $60,000 and a $48,000 marital debt.

¶ 31 On appeal, husband points out that, during the ten-month delay in the court's ruling, the value of the 401(k) account had increased by approximately $30,000, the net value of the home had increased due to his continuing payments toward the mortgage, the

marital debt had been reduced by at least $8,000 from his continuing payments, and the TD Ameritrade account had decreased in value by over $40,000.

¶ 32 As discussed at length in Part II.B above, the district court must value marital property as of the date of the hearing when that hearing occurs before the entry of the dissolution decree. § 14-10-113(5); *accord In re Marriage of Finer*, 920 P.2d 325, 331 (Colo. App. 1996) (noting that this statutory directive is "mandatory"). And husband doesn't dispute that the court's value findings for these assets and debts are consistent with their values at the time of the permanent orders hearing. Nor does he contend that he included these alleged changes in valuation in his motion to reopen. Thus, we discern no error in the court's valuations for these assets and debts.

¶ 33 Moreover, it appears from the record that the district court considered the effect of its delayed ruling when it divided the marital estate. In its permanent orders, the court acknowledged that, during the pendency of the dissolution proceeding, husband had been paying a majority of the marital debts, which included the home mortgage and the $48,000 marital debt, and it noted that it

had reduced the amount of husband's equalization payment to $100,000 (compared to $180,000 as requested by wife) to account for his continued payments.

¶ 34 In a postjudgment order, the court further addressed the changes to the TD Ameritrade account, the marital debt, and the 401(k) account. It noted that husband claimed that the TD Ameritrade account had decreased due to his use of these funds to pay marital debts and expenses. The court explained, however, that it had already considered his obligation to make these payments when determining its permanent orders and that he shouldn't be given credit for these payments a second time by forgiving the money he had taken out of the account. As for the marital debt, the court credited husband with his payment toward that debt, reducing his obligation to pay the remaining liability. And the court determined that, because it was required to value the 401(k) account as of the date of the hearing, this asset was effectively transferred to wife on that date, allocating to her the appreciated value.

¶ 35 While husband disagrees with the court's rulings, they are supported by the record and adhere to the statutory directive

requiring the court to determine the value of the marital estate as of the date of the permanent orders hearing. *See* § 14-10-113(5). And the court acted within its discretion when considering the effects of its delayed ruling when adjusting the amount of his equalization payment. *See In re Marriage of Hunt*, 909 P.2d 525, 538 (Colo. 1995) (providing that we must not disturb the delicate balance achieved by the district court's division of marital property unless there has been a clear abuse of discretion).

¶ 36 Husband also argues that the court's ten-month delay in entering permanent orders violated section 13-5-135. This statute demands that the court determine every matter within ninety days. *Id.* While the court's judgment was outside this deadline, by statute, husband's sole remedy was filing a complaint to withhold the judge's salary. *Id.*; § 13-5-136(1), C.R.S. 2022. Nothing in the record shows that he pursued that relief.

¶ 37 The district court therefore didn't abuse its discretion.

C. IWH's Value

¶ 38 Husband contends that the district court improperly valued his ownership interest in IWH at $1,451,500. We disagree.

1. Additional Facts

¶ 39 In 2016, as part of a merger, husband helped form IWH, and, as a result of that merger, he received a 28% ownership interest in the company.

¶ 40 Wife hired an expert to value husband's ownership interest. The expert testified that, at the time of the merger, IWH reported that the company had over $3 million assigned as goodwill. The expert included this value of goodwill when it opined that IWH's total value was approximately $2.8 million. The expert also explained that IWH owed husband accrued deferred compensation totaling over $1 million. Wife's expert then opined that the value of husband's interest in IWH was worth $1,825,000 if the company paid him his accrued deferred compensation or $1,078,000 if it didn't. The district court found wife's expert credible and used the midpoint of the expert's two values, determining that husband's interest in IWH was worth $1,451,500.

2. Discussion

¶ 41 When dividing marital assets, the court may select the valuation of one party over that of the other party or make its own valuation, and its decision will be affirmed if the value is reasonable

in light of the evidence as a whole. *In re Marriage of Krejci*, 2013 COA 6, ¶ 23. The value of goodwill has long been accepted as an attribute of a business relevant to determining its value. *Huff*, 834 P.2d at 256 n.14; *In re Marriage of Keyser*, 820 P.2d 1194, 1196 (Colo. App. 1991).

¶ 42 Husband argues that the court improperly relied on wife's expert's opinion because the expert didn't use a current value of goodwill but instead relied on a value of goodwill determined four years before the hearing. *See* § 14-10-113(5). The expert, however, acknowledged that, although the company initially assigned a value of $3 million for goodwill, this value was "still a good asset of the business." He explained that the company's reported goodwill represented "the value of stickiness to the company," which he described as the value related to retaining the company's clientele, and that since 2016, the company had continued to retain this goodwill. He further testified that, although he didn't independently calculate a value of goodwill, the company's determination was "relatively contemporaneous" to his valuation and that he perceived no reason to discount that goodwill based on the company's performance. As well, the expert testified that IWH consistently

reported this value of goodwill on its annual financial statements since the merger, indicating that the company also believed $3 million was still an accurate value of goodwill.

¶ 43 Thus, contrary to husband's contention, the expert didn't use an outdated value of goodwill; instead, he opined that the present value of the company's goodwill remained at $3 million. In accepting the expert's opinions on the business value, the district court acted within its discretion in determining the value of husband's interest in IWH as of the date of the hearing. *See id.*

¶ 44 Still, husband argues it was improper to include any value for goodwill because a revenue ruling from the Internal Revenue Service, on which wife's expert relied to value the company, states that the existence of goodwill rests on the company having net earnings, and it was undisputed that IWH wasn't earning a profit. Rev. Rul. 59-60, 1959-1 C.B. 237. However, as the district court noted, the revenue ruling doesn't end there. The ruling further states that a goodwill value also may be supported by such factors as prestige and renown of the business, trade or brand name, and a record of successful operations in a particular locality. *Id.* And wife's expert testified that IWH had a value of goodwill related to its

ability to retain its clientele. As well, the expert testified that, even if the company wasn't earning a profit, "it ha[d] earning capacity" and was "taking steps to get to profitability," all of which, he opined, supported a value of goodwill.

¶ 45 Husband further suggests that wife's expert double counted the company's goodwill when it determined IWH's value. But the expert expressly refuted that accusation, explaining that, given the nature of IWH's business, the valuation methods he used to determine the base value of the company accounted for goodwill that was independent of the $3 million he included to represent the "stickiness" of the company. The court found wife's expert to be credible. And given this record support, we may not disturb that determination. *See Krejci*, ¶ 23; *accord Keyser*, 820 P.2d at 1196.

¶ 46 Nor do we agree with husband that the district court erred by not indicating the percentage of husband's ownership interest in IWH. While the court didn't make an express finding of his ownership percentage, the court accepted the business valuation completed by wife's expert. And the expert repeatedly testified that he had calculated the value of this marital asset based on husband having a 28% ownership interest in IWH. The court therefore

implicitly determined that husband held a 28% interest in the company. *See In re Marriage of Nelson*, 2012 COA 205, ¶ 41 (recognizing that a court's findings may be implicit in its ruling). Any misstatement by wife's expert concerning husband's ownership interest presented in the expert's earlier report, which husband points out suggested a higher ownership percentage, was clarified by the expert in his testimony and in an updated report.

¶ 47 The district court thus weighed the conflicting evidence and determined with record support that the value of husband's ownership interest in IWH was $1,451,500. Accordingly, we discern no basis for reversal.

D. Husband's Potential Personal Injury Claim

¶ 48 Shortly before the parties separated, husband sustained a concussion and closed-head brain injury in a car accident. In considering husband's potential personal injury claim, the court found that this claim was marital property, and it awarded wife 25% of the net recovery, if any, husband received. Husband argues that the court erred by not determining what portion of husband's potential claim was his separate property and by giving wife 25% of his potential recovery. We disagree.

¶ 49 When dividing the marital estate, the district court determines whether an asset is marital and subject to division or separate and shielded from division. *Corak*, ¶ 9; *see* § 14-10-113(1). All property acquired during the marriage is presumed marital unless it fits into one of the exceptions set out in section 14-10-113(2). § 14-10-113(3).

¶ 50 An unliquidated personal injury claim that arises during the marriage therefore is properly classified as marital property unless a party establishes that the claim fits within any of the statutory exceptions to marital property. *See In re Marriage of Fields*, 779 P.2d 1371, 1373-74 (Colo. App. 1989); *see also In re Marriage of Fjeldheim*, 676 P.2d 1234, 1236 (Colo. App. 1983) (determining that a personal injury settlement offer, including recovery for pain and suffering, constitutes marital property when the accident that precipitated the settlement occurred during the marriage). *Fields* recognized the difficulty a court may have in valuing and dividing an unliquidated personal injury claim but concluded that the uncertainty encountered in valuing the claim didn't require its classification as separate property. 779 P.2d at 1373. To determine an equitable division of any future benefits, *Fields* directs

the court to consider the actual effect that the personal injury had on the marital estate, such as lost income, medical expenses, and inability to meet marital obligations. *Id.* at 1373-74.

¶ 51 Husband argues that the court erred by not determining that a portion of his potential personal injury claim was his separate property. He explains that any compensation he receives for the loss of his future earnings should constitute his separate property because he will accrue it after the dissolution of the marriage. *See In re Marriage of Smith*, 817 P.2d 641, 644 (Colo. App. 1991) (concluding that when a portion of an unliquidated workers' compensation award compensates a spouse for post-dissolution loss of earning capacity, that portion isn't marital property even when the compensable injury occurred during the marriage). Even if we assume, without deciding, that such compensation in a personal injury settlement or judgment (or any portion of it) constitutes separate property, we discern no error.

¶ 52 The burden to rebut the statutory presumption that all property acquired during the marriage constitutes marital property rests on the party seeking to have the property declared separate. *See In re Marriage of Vittetoe*, 2016 COA 71, ¶ 18. Therefore, it was

husband's burden to demonstrate what portion, if any, of the potential personal injury claim was his separate property. *See id.* But the court determined, albeit implicitly, that husband didn't overcome the statutory presumption. *See Nelson*, ¶ 41.

¶ 53 The record supports that determination. While husband argued that any damages accruing after the dissolution constituted his separate property, he directs us to no evidence from the hearing showing the amount of any damages he could expect to incur after the dissolution or what particular portion of any recovery from the potential lawsuit was his separate property. He merely noted a potential award for lost future wages due to impaired cognitive abilities. But even then, he also testified that he hadn't sustained any loss of income as a result of the accident, which tended to conflict with a claim that his future income had been affected.

¶ 54 Given the minimal and conflicting evidence supporting husband's separate property argument, we discern no error in the court's determination that the potential personal injury claim was marital property subject to the court's division. *See People in Interest of A.M. v. T.M.*, 2021 CO 14, ¶ 15 ("The credibility of the witnesses; the sufficiency, probative value, and weight of the

evidence; and the inferences and conclusions to be drawn from the evidence are within the discretion of the trial court.").

¶ 55 Because the district court may simply reissue its judgment dividing this marital asset on remand, we also consider husband's argument that the court erred by awarding wife 25% of his potential claim. In light of the evidence and argument presented at the hearing, we aren't persuaded that the district court's award to wife was arbitrary or speculative. Husband highlights that the accident had little impact on the marital estate and the court found as much, which he argues undercuts the court's determination to allocate to wife 25% of any future recovery. But the court's recognition of a *minimal impact* doesn't mean, as husband suggests, that the accident had *no impact* on the marital estate. Indeed, the record reveals that, after the accident, husband expended marital funds in response to the effects of the accident, and wife took him to several of his appointments. *See Fields*, 779 P.2d at 1374.

¶ 56 Based on the record, we aren't persuaded that the district court abused its discretion by awarding wife 25% of any recovery husband may receive in the future from the personal injury settlement, which was a portion that fell between the parties'

competing requests (wife requested half of any award and husband requested that she receive nothing). *See id.* at 1373-74; *see also Hunt*, 909 P.2d at 538.

IV. Maintenance

¶ 57 Husband next contends that the district court's maintenance award must be reversed because the court improperly determined that wife's income was $5,333 per month. We agree. Therefore, regardless of how the district court rules on the motion to reopen, we remand this issue to the court for reconsideration of its maintenance award.

¶ 58 We review a court's maintenance award for an abuse of discretion. *In re Marriage of Tooker*, 2019 COA 83, ¶ 12. We defer to the court's factual findings if they have record support. *In re Marriage of Connerton*, 260 P.3d 62, 65 (Colo. App. 2010). But we review de novo whether the court correctly applied the law. *Tooker*, ¶ 12.

¶ 59 When considering maintenance, a court must determine the parties' incomes. *Id.* at ¶ 13; *see also* § 14-10-114(3)(a)(I)(A). This determination is based on the parties' actual gross income, or if a

party is underemployed, that party's potential income. § 14-10-114(8)(a)(II), (c)(IV).

¶ 60 Wife was self-employed as a real estate agent. The district court found that, although wife recently had experienced a decrease in her income, she could earn a "gross income" of at least $100,000 per year (or $8,333 per month). The court then excluded wife's reasonable business expenses of $3,000 per month, determining that her income was $5,333 per month.

¶ 61 Under the maintenance statute, "gross income" for a self-employed party is defined as the party's gross receipts minus his or her ordinary and necessary business expenses. § 14-10-114(8)(c)(III)(A), (B). The district court expressly found that wife's "gross income" was $8,333 per month and, by definition, that finding accounted for her reasonable business expenses. *See id.* But the court went on to deduct another $3,000 per month from wife's gross income, improperly accounting for her business expenses twice.

¶ 62 Thus, the court erred by finding that wife's income was $5,333 per month, and we must, therefore, reverse its maintenance award. As mentioned above, the court must redetermine maintenance

regardless of its ruling on remand concerning husband's motion to reopen. The court must reconsider maintenance based on the property division (either the original property division or the property division entered on remand) and the parties' present economic circumstances. *See Kann*, ¶¶ 79, 85; *Morton*, ¶¶ 32, 34. Because a determination of attorney fees must be reviewed in light of the parties' financial resources after any maintenance award, the court must also reconsider its determination on attorney fees. *See Kann*, ¶¶ 80, 85; *Morton*, ¶¶ 32-34.

V. Disposition

¶ 63 The judgment is affirmed in part and reversed in part, and the case is remanded for further proceedings. On remand, the district court shall first consider husband's motion to reopen in light of the guidance provided by this opinion, making findings in connection with its disposition of the motion.

¶ 64 If the court grants husband's motion, it shall direct the parties to make updated disclosures and allow them to present additional evidence on their present economic circumstances. Based on the new evidence, if any, on the parties' current economic circumstances, as well as the relevant evidence from the previous

permanent orders hearing, the court may then reallocate the marital estate. The court also must redetermine maintenance and wife's request for attorney fees based on its new property division, if any, and the parties' economic circumstances at the time of the hearing on remand.

¶ 65 If, on the other hand, the district court denies husband's motion to reopen, it shall make findings regarding its decision not to reopen and then it may re-enter its permanent orders concerning the division of the marital estate. (If, on remand, the court does re-enter its permanent orders, it should clarify its findings on the total value of the marital estate and the values it allocated to each party, as there is some minor inconsistency in values between the narrative portion of the court's order and the spreadsheet it incorporated into its order.) The court shall then reconsider maintenance and attorney fees in accordance with Part IV of this opinion.

¶ 66 Those portions of the judgment not challenged on appeal remain undisturbed.

JUDGE FURMAN and JUDGE FREYRE concur.