STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0500

In re the Marriage of:
Nancy J. Martini, petitioner,
Appellant,

vs.

James B. Martini,
Respondent.

Filed December 15, 2014
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-FA-12-821

Richard S. Eskola, Columbia Heights, Minnesota (for appellant)

James B. Martini, Anoka, Minnesota (pro se respondent)

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges a dissolution judgment, arguing that the district court abused its discretion by (1) denying her temporary maintenance, (2) denying her attorney fees,

(3) declining to order husband to secure her release from liability on a mortgage on husband's home, and (4) declining to award her a portion of husband's nonmarital property. Wife also argues that the district court erred in calculating reimbursements between the parties and determining the marital equity in husband's home. We affirm.

FACTS

Appellant Nancy Martini and respondent James Martini were married on June 6, 2009. Wife moved into husband's premarital home and sold her own home at a loss shortly thereafter. In April 2010, husband refinanced the second mortgage on his home with a new lender, and wife signed the promissory note for the loan. The parties separated on September 3, 2010, but wife kept husband on her health insurance.

Wife filed for divorce in April 2012. She sought spousal maintenance; a portion of the marital value of husband's home; half of the property-tax refunds for husband's home for 2009 through 2012; a refund for medical-insurance premiums she paid for husband's benefit; and a portion of husband's nonmarital property on the grounds that husband coerced her to sell her premarital home and she now is left with insufficient financial resources. Wife also argued that she should be relieved of responsibility for the second mortgage, and sought attorney fees. After a two-day trial, the district court dissolved the parties' marriage and largely denied wife's financial requests. Wife moved for amended findings or a new trial, which the district court denied. Wife appeals.

D E C I S I O N

I. The district court did not abuse its discretion in determining spousal maintenance, property division, and attorney fees.

A district court has broad discretion in a dissolution proceeding to determine spousal maintenance, divide the parties' property and debts, and award attorney fees. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982) (maintenance); *Reynolds v. Reynolds*, 498 N.W.2d 266, 270 (Minn. App. 1993) (property division); *Berenberg v. Berenberg*, 474 N.W.2d 843, 846, 848-49 (Minn. App. 1991) (debt division and attorney fees), *review denied* (Minn. Nov. 13, 1991). We view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). We will affirm the district court's decision if it has "an acceptable basis in fact and principle, even though we might have taken a different approach." *See Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Spousal maintenance

A district court may award spousal maintenance if it finds, among other things, that the spouse seeking maintenance lacks the property to provide for that party's own reasonable needs or is unable to obtain adequate support through appropriate employment. Minn. Stat. § 518.552, subd. 1 (2012). But a maintenance award depends on "all relevant factors," not merely the recipient's need. *See id.*, subd. 2 (2012). "No single factor is dispositive, and the district court must weigh the facts of each case to

determine whether maintenance is appropriate." *Kampf v. Kampf*, 732 N.W.2d 630, 634 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007).

The district court found that wife needs spousal maintenance because she has a monthly budget shortfall of $1,261. But the district court also found that husband does not have the means to pay maintenance because he also has a monthly shortfall in excess of $1,000, and therefore declined to award maintenance. Wife argues that the district court abused its discretion because (1) she "experienced a severe hardship due to this marriage" and (2) the district court clearly erred by finding that husband lacks the means to pay maintenance. We disagree.

First, wife's hardship argument is misplaced. Wife claims hardship because husband "forced" her to sell her premarital home at a loss during the marriage, which leaves her without sufficient independent financial resources. But "marital misconduct" is not a proper basis for awarding maintenance. *See* Minn. Stat. § 518.552, subd. 2. And while wife's undisputedly insufficient financial resources weigh in favor of a maintenance award, that factor is not dispositive. *See Kampf*, 732 N.W.2d at 634. A district court may award maintenance that results in a budgetary shortfall for one or both parties, *see, e.g.*, *Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) (upholding spousal maintenance award that resulted in shortfall for husband), but it is not required to do so. And it is well within a district court's discretion to deny maintenance when the spouse from whom maintenance is sought already experiences a substantial monthly shortfall. *See* Minn. Stat. § 518.552, subd. 2(g) (requiring consideration of "the ability of

the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance"). Such is the case here.

Second, we are not persuaded by wife's argument that husband can afford to pay maintenance by drawing upon his nonmarital assets. Unlike Minn. Stat. § 518.58, subd. 2 (2012), which expressly permits a district court to award nonmarital assets as part of the property division in unfair-hardship circumstances, the spousal-maintenance statute defines maintenance as "payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2012); *see also Angell v. Angell*, 791 N.W.2d 530, 539 (Minn. 2010) (distinguishing between maintenance award and award of nonmarital property). Requiring maintenance to be paid from the proceeds of liquidated property would not be a payment from the obligator's "future income or earnings." *See Lee v. Lee*, 775 N.W.2d 631, 640 (Minn. 2009) (declining to consider pension income spouse received in property award as income for spousal-maintenance purposes). Even if nonmarital assets were relevant to a maintenance award, the record indicates that the assets wife targets (husband's home and collector vehicles) are relatively illiquid and would have to be refinanced or sold to satisfy wife's request. A district court has discretion to treat illiquid assets differently from liquid assets or income in considering a maintenance request. *Cf. Bury v. Bury*, 416 N.W.2d 133, 138 (Minn. App. 1987) (explaining that a party seeking maintenance should not be required to "place herself at risk by liquidating her assets to meet her expenses").

Finally, the record also supports, and wife does not challenge, the district court's findings as to other relevant factors weighing against a maintenance award. In particular,

the district court found that the parties' marriage was brief, and wife did not forego any employment opportunities but had the same job before and during the marriage and after the separation. *See* Minn. Stat. § 518.552, subd. 2 (requiring consideration of the duration of the marriage and whether spouse seeking maintenance forwent employment opportunities). On this record, we conclude that the district court did not abuse its discretion by denying maintenance.

Second mortgage

The district court awarded husband his premarital home and ordered him to be "solely responsible for the first and second mortgages, taxes, upkeep and maintenance on the property" and to hold wife harmless for those obligations. Wife argues that the district court abused its discretion by not ordering husband to refinance or pay off the second mortgage to secure her release from liability on the debt. We disagree. Wife identifies no authority to support such an order, and does not articulate why the disposition the district court ordered is insufficient to protect her interests. The district court heard testimony from both parties on wife's expressed concern that husband will deliberately default on the mortgage solely to damage her credit rating, implicitly rejecting wife's argument. Because granting wife's requested relief would impose a significant burden on husband that is not commensurate with any benefit wife has demonstrated, we conclude the district court did not abuse its discretion by declining to order husband to pay off or refinance the second mortgage.

"Unfair hardship" apportionment

A district court may award up to half of one spouse's nonmarital property if it determines that the other spouse's "resources or property . . . are so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2. But the district court's discretion is narrower than in the marital-property-division context. *Stageberg v. Stageberg*, 695 N.W.2d 609, 618 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). The district court must first consider "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, and opportunity for future acquisition of capital assets and income of each party" and then make express findings to support the award. Minn. Stat. § 518.58, subd. 2. Nonmarital property should be awarded only in an "unusual case." *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990).

The district court made several findings in support of its decision not to apportion any of husband's nonmarital property to wife:

> Wife claims hardship because she sold her nonmarital home for a loss ten weeks after the parties' marriage. Wife claims Husband coerced her into selling her nonmarital home in a down housing market, causing her to lose her investment in the home. The Court will not inquire into these transactions. Both parties are presumed to contribute to the preservation and acquisition of marital property during the marriage. Although it is unfortunate that Wife made the decision to sell her home after the parties' marriage, the Court will not reimburse her for that decision by invading Husband's marital equity in the home.

The district court also noted that the marriage was brief and that wife continues to be employed at the same job she had when the marriage began. And its findings indicate that wife's investment assets substantially exceed those of husband, though the record does not reflect a complete financial picture because wife did not respond to discovery requests regarding her debts and "did not provide some information as to her bank accounts."

In essence, the district court determined that wife's financial circumstances are unfortunate, but not so unfair as to warrant awarding her husband's nonmarital assets. We discern no abuse of discretion.

Attorney fees

A district court "shall" award need-based attorney fees if it finds that (1) the fees are necessary for a good-faith assertion of the recipient's rights and "will not contribute unnecessarily to the length and expense of the proceeding," (2) the payor has the means to pay the fees, and (3) the recipient lacks the means to pay the fees. Minn. Stat. § 518.14, subd. 1 (2012).

The district court found that wife is not able to pay her attorney fees, but that husband "cannot afford to contribute to Wife's attorney fees, given his monthly shortfall." Wife challenges this finding, again pointing to husband's nonmarital assets as a payment source. Nonmarital property may be considered in determining ability to pay attorney fees. *See Berenberg*, 474 N.W.2d at 849 (noting payor's $1.3 million in nonmarital property in support of trial and appellate attorney-fee awards). But a district court may deny need-based attorney fees where, as here, the party from whom fees are

sought lacks sufficient income or other liquid means to pay them. *Cf. Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (observing that attorney-fee award was "well within" the district court's discretion when party seeking fees could pay fees only by liquidating assets, which would be "not equitable because respondent uses the assets to make a living"), *review denied* (Minn. Feb. 18, 1999). Moreover, invading husband's nonmarital assets requires wife to show "unfair hardship," as we discussed above. On this record, we conclude the district court did not abuse its discretion by denying wife attorney fees.

II. The district court did not commit reversible error in declining to order reimbursement between the parties.

The district court found that husband is indebted to wife for post-separation medical-insurance costs she incurred for his benefit and a portion of the property-tax refunds he received during the marriage. But the court determined these payments were offset by amounts wife withdrew from the parties' credit line. We address each of the district court's calculations in turn.

Medical-insurance costs

Wife argues that the district court clearly erred in calculating the additional costs she incurred in providing husband medical insurance. We agree.

The district court awarded wife reimbursement of $1,457 for paying husband's medical insurance premiums in 2013 but declined to order reimbursement for premiums paid in 2011 and 2012, finding that wife was already covering her children and "there was no extra charge" to include husband on her medical insurance as part of the family

plan. This finding is contrary to the record regarding the cost of medical insurance through wife's employment.

The evidence indicates that in 2011 wife paid $147.82 per pay period to include husband and her children on her medical insurance under an "employee+family" plan. But she had an "employee+children" option that would have cost $91.61 per pay period. Similarly, in 2012 wife paid $156.16 for "employee+family" coverage but could have paid $99.31 per pay period for the "employee+children" option.[1] Over the 26 bi-weekly pay periods of those years, wife spent $2,939.56 to include husband on her medical insurance; she spent a total of $4,396.56 over the three years in question. Accordingly, we conclude the district court clearly erred by finding that husband owes wife $1,457 for medical-insurance costs. But as discussed below, we determine that the error does not ultimately make a difference.

Property-tax refund

The district court awarded wife half of the property-tax refunds for husband's home for 2010 and 2011. Wife argues that the district court abused its discretion by denying her request for half of the 2009 and 2012 refunds. Wife did not assert this challenge in her posttrial motion. Nor has she demonstrated its merit on appeal.

Wife claims entitlement to half of the refunds for all four years in which the parties were legally married because she "was contributing toward payment of" the taxes.

[1] The record contains conflicting evidence as to whether wife's medical insurance coverage for 2012 was "employee+family" or "employee+spouse," but the district court found that she "elected family coverage for 2011 and 2012," and the documentation from wife's employer supports that finding.

But the district court expressly found that wife ceased to contribute toward the mortgage payments after the parties separated in September 2010, and nothing in the record indicates that she otherwise contributed toward the tax payments. We discern no prejudicial error in the district court's determination that wife is entitled to $1,809 of the property tax refunds.[2]

No reimbursement award

Ultimately, the district court declined to order husband to reimburse wife for the above sums because wife owes husband $5,000 for funds she withdrew from the second mortgage line of credit.[3] The district court reasoned that "it is fair and equitable that these amounts offset and neither party reimburse the other for these amounts." Despite its miscalculation as to medical-insurance costs, the district court's decision is sound.

The district court found it fair and equitable to disregard what it determined to be a net $1,700 debt from wife to husband. Correcting the district court's calculations according to our analysis above results in a net $1,200 debt from husband to wife—an even smaller debt than that which the district court contemplated. The district court's decision plainly prioritizes finality over precise financial equality. On this record, we conclude that decision was well within the district court's discretion, and unlikely to

[2] We observe that to the extent that the district court awarded wife a portion of the property-tax refunds based on her contribution toward those taxes, it overcompensated her. Had it awarded wife half of the refunds for 2009 and 2010—the only years in which wife contributed to the taxes—it would have awarded her only $1,609.

[3] Wife withdrew the funds in September 2010, and husband remains liable for the $5,000. Wife argued to the district court that she should not be required to reimburse husband for this sum and, instead, it should be treated as temporary maintenance. She does not appear to continue that argument on appeal.

change on remand. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimus error in child support); *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (applying *Wibbens* in the context of a property distribution). Accordingly, we affirm the district court's decision declining to order reimbursement between the parties.

III. The district court properly determined the marital equity in husband's home.

We review de novo whether property is marital or nonmarital, but defer to the district court's findings of fact. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). We review whether a nonmarital interest has been traced as a question of fact. *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009).

To determine the present value of a nonmarital interest in property that was acquired before the marriage and in which there is also a marital interest, a court must determine the proportion the net equity bore to the value of the property at the time of the marriage. *Antone*, 645 N.W.2d at 102. That premarital-equity proportion is then multiplied by "the value of the property at the time of separation." *Id.* (quotation omitted). "The remainder of equity increase is characterized as marital property." *Id.* (quotation omitted).

The district court applied the *Antone* analysis, first determining that husband had a 30 percent net equity in the home at the time of the marriage—$91,030 in equity after subtracting the balance on the first mortgage ($187,241) and second mortgage ($24,729) from the $303,000 value. The district court then found that the value of the home at the time of trial (the value that both parties used in their calculations) was $289,500, and 30

percent of that is $86,850. Accordingly, husband had an $86,850 nonmarital interest in the home. Wife does not dispute any of these findings.

The district court further found that the balance on the first and second mortgages at the time of separation, when wife stopped contributing, was $182,085 and $20,983, respectively. By subtracting those balances from the $289,500 value, the district court determined that there was $86,433 available equity at the time of trial. Because husband's nonmarital interest was greater than the equity in the home, the district court concluded there was no marital equity in the home.

Wife argues that there is marital equity in the home because she contributed to the mortgage payments during the marriage. We are not persuaded. Equity depends not only on payment toward mortgage balances but also on fluctuations in the market value of the home. *See Antone*, 645 N.W.2d at 103-04 (noting both factors, and finding error in determination of equity based solely on change in mortgage balances). Payment on a mortgage obligation during the marriage—a marital investment—does not necessarily build equity in the home if market forces cause the home to depreciate in value. *See id.* at 103.

Moreover, the calculations that wife endorses do not bear scrutiny. Wife asserts that there was $113,500 equity in the home at the time of trial—the remainder after subtracting from $289,500 the $5,000 she withdrew from the second mortgage line of credit in September 2010 and the $171,000 balance on the first mortgage as of March 2013. These calculations fail to accurately account for the full balance of more than

$24,000 remaining on the second mortgage in spring 2013.[4] But more important, to the extent wife implicitly challenges the district court's use of the mortgage balances from September 2010, rather than March 2013, wife fails to account for the fact that any reduction in the mortgage balances during that time frame is attributable exclusively to husband. It was well within the district court's discretion to calculate the equity in the home based on the balances on the mortgages as of the time of the separation.

Affirmed.

[4] In her reply brief, wife argues that the second mortgage should not be counted against the marital equity because it is a nonmarital debt. This argument is inconsistent with the general concept of equity as discussed in *Antone*, and it essentially restates the issue of whether husband should be required to refinance or pay off the second mortgage, rather than simply assuming the entire debt as the district court ordered.