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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1356

In re the Marriage of:
Julia Ellen Conlon, petitioner,
Respondent,

vs.

Gregory Dean Conlon,
Appellant.

Filed August 28, 2017
Affirmed
Johnson, Judge

Beltrami County District Court
File No. 04-FA-15-2233

Sara-Beth Swanson, Swanson Law Office, P.C., Grand Rapids, Minnesota (for respondent)

George L. Duranske, III, Duranske Law Firm, Bemidji, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Kalitowski, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

Julia Ellen Conlon and Gregory Dean Conlon were married for 31 years before their marriage was dissolved. On appeal, Gregory challenges the district court's division of

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

some of their assets and liabilities. We conclude that the district court did not err in its rulings and, therefore, affirm.

FACTS

Julia and Gregory were married in 1984. They have two adult children. They separated in January 2015, and Julia petitioned for a dissolution in July 2015.

Before trial, Julia and Gregory stipulated to the value and division of various non-household personal property. Their stipulation allocated items worth $23,400 to Gregory and items worth $5,700 to Julia. At the beginning of trial, they stipulated to the value and division of other forms of personal property. That stipulation allocated items worth $7,995 to Gregory and items worth $5,115 to Julia. The sole issue for trial was the division of the marital home and certain financial assets and liabilities. The case was tried over the course of three days in March and April 2016. Julia and Gregory were the only witnesses.

In July 2016, the district court issued its findings of fact, judgment, and decree. The district court found that the value of the marital home was $175,000 and awarded it to Gregory. The district court also awarded a retirement account valued at $6,041 to Gregory. And the district court assigned a $40,760 student-loan debt to Gregory. The district court awarded Julia three retirement accounts valued at $93,021 and assigned her $4,604 in student-loan debt and $9,652 in credit-card debt. Gregory appeals.

D E C I S I O N

Gregory argues that the district court erred in several findings of fact and in its ultimate division of marital property.

If parties to a dissolution case dispute the allocation of marital property, a 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 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. 1 (2016). The district court must make findings regarding the division of marital property, and the division must be "just and equitable." *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998) (citing Minn. Stat. § 518.58, subd. 1 (Supp. 1997)), *review denied* (Minn. Feb. 18, 1999). "An equitable division of marital property is not necessarily an equal division." *Id.* "[E]ach case is to be considered in light of its particular facts." *Lenzmeier v. Lenzmeier*, 304 Minn. 568, 571, 231 N.W.2d 71, 74 (1975). Accordingly, the district court has "broad discretion" in dividing property. *Crosby*, 587 N.W.2d at 296. This court applies a clear-error standard of review to a district court's findings of fact and an abuse-of-discretion standard of review to the ultimate decision. *Id.* In light of the abuse-of-discretion standard of review, we must affirm a district court's division of marital property if it has an acceptable basis in fact and law, even if we might have divided the property differently. *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

A.

Gregory first argues that the district court erred by not making express findings on some of the statutory factors. The applicable statute requires a district court to "base its

findings on all relevant factors." Minn. Stat. § 518.58, subd. 1. Gregory does not cite any caselaw for the proposition that a district court must make an express finding on each of the 16 factors in the statute, and we are unaware of any such caselaw. The district court actually made express findings on numerous factors, including the length of the marriage, the present employment of each party, their retirement savings, and the contributions of each spouse toward their marital property. Those findings indicate that the district court considered all the statutory factors that it deemed relevant. Thus, the district court did not err by not making express findings on additional statutory factors.

B.

Gregory next argues that the district court erred in its finding concerning the value of the marital home. Julia introduced evidence of an appraisal that was performed by a licensed real-estate appraiser. The appraiser valued the home at $175,000. Gregory testified that he disagreed with that appraisal and that, in his opinion, the home was worth "$155,000, $160,000." He testified that his opinion is based on his experience as a residential building contractor. The district court credited Julia's evidence and found the value of the home to be $175,000. The district court's finding is not clearly erroneous. It is based on Julia's evidence that a licensed real-estate appraiser believed the home to have a value of $175,000. The district court was not required to credit Gregory's testimony over that of a licensed real-estate appraiser. We will not second-guess a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Thus, the district court did not clearly err in its finding concerning the value of the marital home.

C.

Gregory next argues that the district court erred by finding that $40,760 of his student-loan debt is non-marital property.

All property acquired during a marriage is presumed to be marital property. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). "To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Id.* The district court found that Gregory borrowed approximately $60,600 in student loans between 2006 and 2012, when he went to school for a nursing degree. The district court found that only $15,238 of the loan proceeds were applied directly to tuition payments. The district court found that Gregory deposited the remainder of the loan proceeds into a bank account controlled by him and that there was "[n]o evidence . . . as to how these funds were used other than [Gregory]'s claim the amounts were used for household expenses." The district court found that Julia did not sign any loan agreements but that her father co-signed one loan, which has an outstanding balance of approximately $4,604 and was assigned to Julia. The district court also found that Gregory's nursing degree "has not benefitted [Julia] and will only benefit [Gregory] in the future." After subtracting the amount that went directly to tuition and the amount guaranteed by Julia's father, the district court found that the remaining $40,760 in student-loan debt was non-marital property and that Gregory would be solely responsible for it.

On appeal, Gregory contends that the district court erred on the ground that the loan proceeds that were not applied directly to tuition were applied to household expenses for the benefit of both parties. Gregory so testified, but Julia testified to the contrary.

Gregory's testimony is rather vague, and he did not introduce any documentary evidence to corroborate his testimony. Both parties testified that they had two joint bank accounts, that Gregory actually controlled and exercised access to only one of the accounts, and that Julia actually controlled and exercised access to the other account. Julia testified that Gregory deposited the loan proceeds into the joint account that he controlled. She testified that Gregory "was a very private person" and that he "ke[pt] his money . . . separate from the household or my money." She testified further that, while Gregory attended nursing school, she paid all ordinary household expenses out of the joint bank account that she controlled, including expenses for automobiles, life insurance, internet, and their children's needs. It is apparent that the district court credited Julia's testimony over Gregory's testimony on this issue. We must defer to that credibility determination. *See Sefkow*, 427 N.W.2d at 210; *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

In addition, both parties testified that Gregory may benefit from loan-forgiveness programs because he works in public health in an under-served area. Gregory testified that he qualified for and had applied to a loan-forgiveness program through the department of health that offers as much as $5,000 in loan forgiveness per year, up to a total amount of $20,000. Julia testified that she had looked into other loan-forgiveness programs, including a federal program that would relieve Gregory of his loan balance if he made qualifying monthly payments for ten years and maintained employment in the public sector. The district court found that Gregory "qualifies for loan reduction based on his employment." We surmise that neither party would benefit from a loan-forgiveness program if the debt had been assigned to Julia.

Thus, the district court did not err by finding that $40,760 of his student-loan debt is non-marital property.

D.

Gregory argues that the district court erred by finding that he is capable of supporting himself. The district court's finding is based on Gregory's own testimony:

> Q: One of the things that I asked you previously is whether you waived the claim for spousal maintenance. Do you recall that?
>
> A: Yes.
>
> Q: And you did agree to waive that, correct?
>
> A: Yes.
>
> Q: And that's based on the fact that you can support yourself with your employment as an RN?
>
> A: Yes.

Thus, the district court did not err by finding that Gregory is capable of supporting himself.

E.

Gregory last argues that the district court erred in its division of the parties' property. It is unclear whether Gregory argues that the district court erred in its division solely because its findings are erroneous, as discussed above, or whether he argues in the alternative that the property division is inequitable even with the facts found by the district court. To the extent that he makes an alternative argument, his argument is not persuasive because the district court's division of marital property resulted in approximately equal

awards to each party. To be specific, Julia received the following marital assets and liabilities:

Assets:		
Julia's retirement accounts:	$93,021	
Non-household property (stipulated):	$5,700	
Household goods (stipulated):	$5,115	
Total:		$103,836
Liabilities:		
VISA card balance:	$9,652	
SELF student loan:	$4,604	
Total:		$14,256
Net amount:		$89,580

Meanwhile, Gregory received the following marital assets and liabilities:

Assets:		
Homestead	$175,000	
Non-household property (stipulated):	$23,400	
Household goods (stipulated):	$7,995	
Gregory's retirement account:	$6,041	
Total:		$212,436
Liabilities:		
Mortgage debt:	$122,200	
Total:		$122,200
Net amount:		$90,236

This table illustrates that the district court divided marital property almost equally, with Gregory receiving slightly more than Julia. We are mindful that an equal division is not synonymous with an equitable division. *See Crosby*, 587 N.W.2d at 297. Nonetheless, Gregory has not demonstrated that, in light of the facts and circumstances of this case, a just and equitable division requires that he receive a larger share of the parties' net assets. *See id.* (concluding that appellant who received more than respondent in property division

lacked “reasonable grounds” to challenge division). Thus, the district court did not abuse its discretion in its division of marital property.

Affirmed.