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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1476

In re the Marriage of:

Glenn Alan LaTour, petitioner,
Appellant,

vs.

Nancy Jean LaTour,
Respondent.

Filed September 11, 2017
Affirmed
Schellhas, Judge

St. Louis County District Court
File No. 69DU-FA-15-295

Bill L. Thompson, Law Office of Bill L. Thompson, Duluth, Minnesota (for appellant)

John H. Bray, Maki & Overom, Ltd., Duluth, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

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

SCHELLHAS, Judge

Appellant challenges a marriage-dissolution judgment, arguing that the district court inequitably divided the parties' assets and debts. We affirm.

FACTS

Appellant Glen LaTour (husband) and respondent Nancy LaTour (wife) married in 2004 and separated in 2015. Husband subsequently petitioned for marriage dissolution. The parties resolved a number of dissolution issues through a mediated settlement agreement and tried the issues of property valuation and allocation, debt allocation, and taxes. Husband appeals from the district court's dissolution judgment.

D E C I S I O N

The district court found husband's monthly gross employment income to be $5,889 and his reasonable monthly living expenses to be $2,045, exclusive of his debt service. The court found that wife's gross monthly employment income was $2,892 and her reasonable monthly living expenses to be $3,130, exclusive of debt service.

Debt allocation

Husband states in his brief that "one of the biggest issues of contention [at trial] was debt allocation." The court allocated to husband the following secured and unsecured debts: Duluth Teachers Credit Union Loan for the 2008 Mercury Milan/2000 Ford F-350 ($5,913); Duluth Teachers Credit Union Loan for the 2000 Ford F-350/Fischer XtremeV Snowplow ($4,338); Duluth Teachers Credit Union Loan for the 2014 Polaris 570 ATV and the 2014 Polaris 850X ATV ($16,164); Hermantown Federal Credit Union personal loan, incurred by husband after parties' separation ($4,682); Hermantown Federal Credit Union American Express credit card, incurred by husband after parties' separation ($3,671); and Superior Choice Credit Union credit card ($2,033). The court allocated to

wife the following secured and unsecured debts: Superior Choice Credit Union homestead mortgage debt ($188,589); Sears credit card ($1,734); Lowe's credit card ($1,150).

Husband argues that the district court abused its discretion by allocating the Superior Choice credit-card debt of $2,033 to him. The court found that allocating the debt to husband was "fair and equitable" because wife made payments on the debt during the parties' separation, both parties benefited from wife's debt reduction, husband was in a better financial position to repay the debt, and wife lacked the financial means to pay the debt.

"The [district] court is accorded broad discretion in the division of debt; on review, the [district] court's decision 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). Our review of the record and the district court's careful and thorough findings of fact and conclusions of law leads us to conclude that the district court did not abuse its discretion in allocating the parties' debt among them.

Wife's nonmarital interest in homestead

Husband argues that the district court erroneously calculated the value of wife's nonmarital interest in the homestead. Property acquired before marriage is nonmarital property. *See* Minn. Stat. § 518.003, subd. 3b (2016) (stating that, with certain exceptions, marital property includes all property acquired by either spouse during their marriage and before the valuation date).

"Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court's underlying findings of fact. . . . [I]f [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (quotation and citation omitted); *see Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008) (stating that "[appellate courts] independently review the issue of whether property is marital or nonmarital, giving deference to the district court's findings of fact"). A district court's valuation of an item of property is a finding of fact, and it will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). To maintain its nonmarital character, nonmarital property must "either be kept separate from marital property or, if commingled with marital property, be readily traceable." *Olsen*, 562 N.W.2d at 800.

The district court found that the total value of the land on which the parties built their home was wife's nonmarital property because wife's parents conveyed the land solely to her prior to the parties' marriage and free of any encumbrances. After the parties married, they built a house on the land by obtaining a loan secured by the home and land. At the time of the parties' dissolution, the mortgage had a balance of $188,589.10. At the time of the parties' separation, the appraised value of the land was $55,000 and the appraised value of the house and land combined was $225,000. The court found the value of wife's nonmarital interest in the homestead to be equal to the value of the land alone,

$55,000, and found the appraised value of the marital portion of the homestead to be $170,000, calculated as the total value minus the land value ($225,000-$55,000).

The district court then concluded that because of the mortgage balance, the parties had no marital equity in the homestead to divide. Although the court acknowledged husband's claim to the homestead on the basis that the home "was constructed and paid for, at least in part, with marital funds and labor," the court found that the homestead had a negative equity of $18,589. We conclude that the district court did not err in its analysis.

Although husband did not make this argument to the district court, he argues on appeal that the district court should have employed the *Schmitz* formula articulated in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981), to calculate the value of wife's nonmarital interest. The *Schmitz* formula is used "to determine marital and nonmarital interests in property acquired before the marriage." *Antone v. Antone*, 645 N.W.2d 96, 102 (Minn. 2002) (citations omitted). In *Antone*, the supreme court explained the *Schmitz* formula as follows:

> For property acquired before the marriage, the formula uses the time of the marriage instead of the time of the purchase. Thus, the present value of a nonmarital interest in property acquired before the marriage is the proportion the net equity at the time of the marriage bore to the value of the property at the time of the marriage multiplied by the value of the property at the time of separation. The remainder of equity increase is characterized as marital property.

Id. The court also explained, "Application of the *Schmitz* formula to property acquired before the marriage is consistent with section 518.54, subd. 5" because "[t]he formula recognizes that the net equity at the time of the marriage is nonmarital property because it

was acquired before the marriage." *Id.* (quotation omitted). Under the *Schmitz* formula, "the increase in value of the property acquired before the marriage . . . is nonmarital property. *Id.* at 103.

Just as husband did not demonstrate to the district court the effect of employing the *Schmitz* formula to the facts in this case, he has not made such a demonstration to this court. We will not employ the *Schmitz* formula for the first time on appeal, and we conclude that husband has forfeited the argument by failing to make it in the district court. *See Toth v. Arason*, 722 N.W.2d 437, 443 (Minn. 2006) (stating that "a reviewing court generally may consider only those issues that the record shows were presented to and considered by the [district] court" (quotation omitted)).

Division of marital assets

"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.'" *Id.* (quoting *Antone*, 645 N.W.2d at 100). "We defer to the [district] court's findings of fact and will not set them aside unless they are clearly erroneous." *Id.* A district court abuses its discretion in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Husband argues that the district court abused its discretion by inequitably dividing the marital estate thereby entitling him to a reversal of the property division or at least a remand for further findings. "The district court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property." *Sirek*, 693 N.W.2d at 899 (quotations omitted). "When dividing marital property, the district court may consider many factors, such as the length of the marriage, sources of income, and the contribution of each party in the preservation of the marital property." *Id.* "[W]hile the district court must make a just and equitable division of the marital property, an equitable division of marital property is not necessarily an equal division." *Id.* at 900 (quotations omitted).

Husband's arguments are based on the faulty premise that a district court must divide marital property *equally* in order for the division to be equitable. We conclude that husband's inequitable-property-division arguments fail because they are based upon the erroneous assumption that an equitable division must be an equal division.

Division of pension and retirement accounts

The dissolution judgment awarded wife two retirement accounts with an aggregate marital value of $25,733.25, and awarded husband two retirement accounts: a Roth IRA with a value of $11,488.72, and his interest in the Western Lake Superior Piping Industry Pension Fund. But husband did not provide the district court with any evidence of the marital value of his pension interest, and the court listed its value as "UNKNOWN." Apparently, based on this division of retirement assets, husband asserts that the court abused its discretion in dividing the retirement assets because the court awarded "more

than double the value of the retirement account assets to [wife]." Pension division is generally discretionary with the district court. *Faus v. Faus*, 319 N.W.2d 408, 413 (Minn. 1982); *Johnson v. Johnson*, 627 N.W.2d 359, 362 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). We reject husband's argument for three reasons.

First, the district court noted that husband "testified and submitted evidence at trial that while he has a pension fund he has not yet 'vested' and will not vest for approximately two more years." As a result, the court concluded that it could not assign a value to husband's pension-fund interest. Division of unvested, unmetered pensions is addressed in *Janssen v. Janssen*, 331 N.W.2d 752 (Minn. 1983), and its progeny. Because husband makes no *Janssen* argument on appeal, and apparently made no *Janssen*-based argument to the district court, the point is not properly before us, and we decline to address it. *See Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 728 (Minn. 2005) (stating that, generally, appellate courts "decline to review" questions "neither timely presented before the district court nor adequately briefed on appeal").

Second, even if the question was properly before this court, husband's argument that the court inequitably divided the retirement assets seems to assume that the value of his pension interest is zero. But the record contains no evidence that the value of the pension interest is in fact zero, husband provides no legal authority requiring the district court to assume that his pension interest has zero value, and we are aware of no such authority.

Third, even if the pension awarded to husband turns out to have zero value, husband has not shown, or attempted to show, that the resulting property division would necessarily

be inequitable. As noted above, a property division need not be equal to be equitable. *Sirek*, 693 N.W.2d at 900.

Income Taxes

Husband also argues that the district court inequitably divided the marital estate because wife "filed individual taxes for 2014 and 2015" so that she had extra cash and "pocketed these marital monies, and never shared them with" husband. The court denied husband's request that wife be ordered to join with husband to amend the parties' 2014 tax returns on the basis that doing so was not fair or equitable "in light of the lack of financial support from [husband] to [wife] for a period of ten months and [wife]'s good faith efforts to engage with [husband] regarding the issue." The court found that one of the reasons that wife did not file a joint return with husband is because husband refused to cooperate with wife in doing so. The court concluded that because husband paid nothing to wife for the support of their minor child for almost a year, wife should receive the 2014 tax return proceeds. Husband's argument that the court's decision was unfair and inequitable is without merit.

As to the year 2015, the district court ordered the parties to file joint returns and share equally in any refund or deficiency if they had not already filed their returns for 2015. The court noted that it did not have information about whether the parties had already filed their returns individually. Husband now claims that wife pocketed the refund from the 2015 return without sharing any of it with him. But insufficiency in the record before us on this issue prevents our review.

Affirmed.