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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1648**

In re the Marriage of:
Fadumo Salad, petitioner,
Respondent,

vs.

Hassan Hassan,
Appellant.

**Filed August 27, 2018
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-FA-16-1995

Fadumo Salad, Minneapolis, Minnesota (pro se respondent)

Andrew Tyler, Tyler Law Office LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Peterson, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this marital-dissolution action, appellant-husband argues that the district court (1) incorrectly identified the extent and value of marital assets; (2) abused its discretion in dividing marital assets; and (3) erred by including \$633 per month in potential rental income in husband's income for purposes of calculating child support. We affirm.

FACTS

Appellant-husband Hassan Hassan and respondent-wife Fadumo Salad participated in a cultural and religious marriage ceremony in Minnesota in 2007. A formal legal marriage ceremony occurred in March 2013. The parties have four minor children. Wife began this dissolution action in March 2016. The parties stipulated to custody and parenting time, and the remaining issues were tried to the court.

In 2009, a house was purchased in husband's name alone for \$119,000, and the parties lived in the house from the spring of 2010 until the spring of 2012. Husband testified that he paid \$22,000 of his own money to renovate the house, but he did not provide any documentary evidence substantiating his claim. Husband testified that wife did not contribute any money toward purchasing or renovating the house.

Wife testified that both parties contributed money and labor to the renovations. Wife testified, "All the money we had together, we had about \$20,000. All that money we had went to the house and the – our renovation." Wife testified that the main reason the parties moved out of the house and into an apartment was because husband said that they could rent out the house for more money than they would pay in rent, which would enable them to pay off the mortgage.

When the parties moved out of the house, husband's sister moved into the house and took over the mortgage and homeowner's insurance payments at an estimated monthly cost of \$980. The sister moved out in 2014, and husband's cousin began renting the house from husband for \$1,300 per month. In May 2016, when that cousin moved out and another cousin moved in, husband stopped charging rent. Husband testified that although he could

rent out the house for \$1,300 a month, he was not doing so because he planned to begin living there again in eight months.

On February 28, 2015, a money market savings account (MMS) in husband's name had a balance of \$62,000. On May 31, 2016, the MMS had a balance of \$90. Husband testified that in his native country of Somalia, family members and colleagues pool their money into savings accounts, an arrangement under which each person contributes a set amount of money per specified time period. At trial, husband estimated that the balance of the MMS in May 2016 was \$4,000. According to husband's estimate on which his trial testimony was based, \$58,000 was withdrawn from the MMS between February 28, 2015, and May 2016. Husband testified that he was the manager of the MMS, that only \$16,000 in the account belonged to him, and that \$42,000 of the amount withdrawn belonged to other members of the pool. There were no written agreements showing other people's contributions to or distributions from the account. During his testimony about other people's interests in the account, husband became confused and gave conflicting answers about how the money was distributed and used.

Wife testified that the \$62,000 in the MMS was money that the parties saved after buying the house and before separating. Wife testified that both parties contributed what they could, although husband contributed more because his income was higher. Wife was not aware of any loans to or investments in the account by husband's family members or other people.

Husband has an account with the Public Employees Retirement Association (PERA). A PERA estimated marriage-dissolution report states that the present value of the marital portion of husband's benefit is \$3,352.33. The report explains:

The projected present value estimates answer the question, "What's my future retirement benefit worth today?" Or, stated another way, "How much money would I need to invest today to earn the estimated Single—Life monthly benefit listed above in the future?" The net present value estimates are calculated using the funding assumptions. They do not represent the balance in your account and are not payable to you in a lump sum.

Husband testified that he could rent out the house for \$1,300 a month. The monthly mortgage payment for the house was \$667. The district court included \$633 (\$1,300 - \$667) in husband's income for child-support purposes.

On appeal, husband challenges the district court's rejection of his claim to a nonmarital interest in the house, the division of the MMS and PERA accounts, and the determination of his income for child-support purposes.

DECISION

I.

"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.* (quotation omitted). "We defer to the [district]

court's findings of fact and will not set them aside unless they are clearly erroneous." *Id.* (quotation omitted).

Real Property

Marital property is defined as any real or personal property acquired by the parties during the marriage and before the valuation date. Minn. Stat. § 518.003, subd. 3b (2016). Property is presumed to be marital if it is acquired during the marriage and before the valuation date. *Id.* Nonmarital property includes real or personal property obtained prior to the marriage. *Id.* "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." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997).

The *Schmitz* formula provides that "[t]he present value of a party's nonmarital interest in a marital homestead is calculated by dividing the party's equity in the property at the time of purchase by the value of the property at the time of purchase and then multiplying by the value of the property at the time of dissolution. . . ." *Kerr v. Kerr*, 770 N.W.2d 567, 570 (Minn. App. 2009); *see Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981). But "the increase in the value of nonmarital property attributable to the efforts of one or both spouses during their marriage, like the increase resulting from the application of marital funds, is marital property." *Nardini v. Nardini*, 414 N.W.2d 184, 192 (Minn. 1987). A "spouse claiming that property is nonmarital must prove the necessary underlying facts by a preponderance of the evidence." *Johnson v. Johnson*, 388 N.W.2d 47, 49 (Minn. App. 1986).

The parties' house was purchased in husband's name before the parties' marriage, but wife testified that the parties bought the house together and that both parties contributed to the renovations. In declining to award husband a nonmarital interest in the house, the district court noted the parties' conflicting testimony about the assets used to buy it and husband's failure to "submit into evidence any documents showing the value of the house and the mortgage balance at the time of the parties' legal marriage." Although husband presented evidence that he owned the house before the parties' marriage, he failed to produce evidence to prove the underlying facts necessary to determine the value of his claimed nonmarital interest. The district court, therefore, did not err in declining to award husband a nonmarital interest in the house.

MMS

If the district court finds that one party has disposed of marital assets without the consent of the other party, except in the usual course of business or for the necessities of life, during the pendency of a dissolution or separation, the district court shall compensate the other party for the transfer or disposal. Minn. Stat. § 518.58, subd. 1a (2016); *see Bollenbach v. Bollenbach*, 285 Minn. 418, 428, 175 N.W.2d 148, 155 (1970) ("A party to a marriage subject to severance in divorce proceedings cannot be permitted to subvert the orderly processes of the courts by concealing, dissipating, or misusing his assets in anticipation of divorce so as to reduce the property available for division . . .").

The district court rejected husband's claim that the MMS was a pooled account. The court explained:

66. At trial, [wife] submitted into evidence a statement from Wells Fargo showing that as of February 28, 2015, [husband's] MMS account had a balance of \$62,000.00. The statement was admitted into evidence as Exhibit 16. Regarding this account, [wife] testified that both parties contributed to this account throughout their marriage, and that the amount represents their joint savings. During [husband's] testimony, he admitted that as of February 2015, his MMS account held a balance of \$62,000.00. When asked to explain the account's substantial decline between February 2015 and spring of 2016, [husband] stated that approximately \$42,000.00 out of \$62,000.00 did not belong to him, but belonged to various members of his family and friends, who withdrew their shares during the aforementioned time period. When asked to elaborate on the identity of these family members and friends, and how much each person held as his or her share, [husband] struggled to provide an accurate answer. [Husband] also claimed that he gave \$13,000.00 to [wife] out of this account. [Husband] did not offer into evidence any bank statements or documents showing these alleged transactions, and [wife] denied receiving any sum out of this account after their separation.

The district court's division of the MMS was based on its credibility determination with respect to the parties' conflicting testimony about the source of funds for the account and what happened to the money in it. We defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

PERA

Retirement benefits are usually divided using one of two methods. *DuBois v. DuBois*, 335 N.W.2d 503, 505 (Minn. 1983). Under the "present cash value" method, the value of the pension for property-division purposes is set at its "present value," which discounts an award to be received in the future to that amount which, if presently received, could be invested in order to yield the future sum. *Johnson v. Johnson*, 627 N.W.2d 359,

362 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Under the “reserved jurisdiction” method, the district court reserves jurisdiction over the division of the pension until the employee’s retirement and divides the actual monetary benefit at that time. *DuBois*, 335 N.W.2d at 505. This method requires a “determination of a fixed percentage for the non-employee spouse of any future payments the employee receives under the plan.” *Taylor v. Taylor*, 329 N.W.2d 795, 799 (Minn. 1983). It “should be used where present value determinations are unacceptably speculative or there are not enough assets to equitably require that benefits due in the future be split presently.” *Id.*

Husband argues that the district court erred in not awarding wife the present value of her interest in his PERA account. The district court awarded wife a percentage of husband’s retirement benefit because it found that husband failed to provide accurate proof of the account’s present value. The court explained:

Although [husband] argues that the marital portion actually amounts to \$3,353.33, the Report notes this figure as “present value,” which does not “represent the balance in [husband’s] account and are not payable to [him] in lump sum.” The Report also includes a disclaimer that “the benefit information and/or amounts presented on this report are estimates only.” Based on the single document provided by the parties regarding [husband’s] PERA account, it is difficult for the Court to determine the exact amount to which [wife] is entitled. Accordingly, the Court finds that [wife] is entitled to 50% of the marital portion of [husband’s] PERA account, and directs the parties to determine [wife’s] share by applying the following formula: length of [husband’s] marital pension service x .50 of his benefit/length of [husband’s] total pension service.

The formula that the district court directed to be used to divide the pension results in wife receiving one half of the value of the benefits husband earned during the marriage and was

not an abuse of discretion given the lack of evidence necessary to accurately determine the account's present value.

II.

“[G]ross income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income, . . . and potential income” Minn. Stat. § 518A.29(a) (2016). Whether a source of funds is considered to be income for child-support purposes is a legal question reviewed de novo. *Hubbard Cty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 227 (Minn. App. 2007).

Wife's testimony that the main reason the parties moved out of the house was to earn rental income supports the district court's decision to include potential rental income in husband's income for child-support purposes. And the evidence supports the district court's finding that the house could be rented for \$1,300 a month, resulting in \$633 in potential rental income. The district court did not err in including that amount in husband's income for child-support purposes.

Affirmed.