STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1936

In re the Marriage of:
Curtis Glenn Marks, petitioner,
Respondent,

vs.

Stacy Rene Marks,
Appellant.

Filed April 8, 2019
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-FA-14-2355

Alan C. Eidsness, Jaime Driggs, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent)

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Kathleen M. Newman, Kathleen M. Newman + Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Jesson, Judge.

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

ROSS, Judge

The district court dissolved the 24-year marriage of Stacy and Curtis Marks, dividing the marital property and reserving the issue of spousal maintenance. Both appeal

the judgment and decree. Stacy argues that the district court erred by reserving her request for spousal maintenance, by failing to calculate the property division based on Curtis's alleged dissipation of marital assets, and by denying her an ownership interest in a business awarded to Curtis. Curtis argues that the district court erred by failing to calculate the property division based on Stacy's alleged excessive spending. Because the record supports the district court's findings of fact on each of these issues, and because neither party shows that the district court's decisions reflect an abuse of its discretion, we affirm.

FACTS

Stacy and Curtis Marks married in 1993. Stacy served as homemaker and primary caregiver for the parties' five children. Curtis is a successful entrepreneur who developed interests in multiple businesses. When the parties wed, Curtis owned 100% of Verifications Inc., which by late 2001 began generating annual distributions of up to $45 million. In 2004 Curtis bought a majority interest in SJV & Associates LLC. He retained the services of the prior owner to manage SJV and granted him a 5% interest. Curtis is chairman of the SJV board, but he has never been employed by SJV and is not one of its central executives. Curtis's business activities supported a very high standard of living for the family, including first-class international vacations, multi-million-dollar homes in Minnesota and Florida, and expensive vehicles.

In 2003 Curtis created the Curtis G. Marks Revocable Trust. In 2007 the parties experienced marital troubles and Curtis consulted several family attorneys, but he did not file for dissolution.

Curtis saw business difficulties beginning in 2008. Verifications began to decline and his extant telemarketing business, which had produced about $1 million annually, ended after a lawsuit. Marriage difficulties arose again in 2010, prompting Curtis to consult with family attorneys a second time. Again he did not seek a divorce.

In 2011 Curtis established HR Global Investments LLC as a holding company. He concluded that it was inevitable that he would sell Verifications and he created a trust for each of the parties' children, funding each trust with interests in HR Global and Verifications. Stacy was unaware he created the trusts.

In April 2013 Curtis formed a new business, Click Boarding LLC. He sold his interest in Verifications. In connection with the sale, a third party ended up with Verifications' background-checking services, Click Boarding ended up with what had been Verifications' onboarding services, and the children's trusts were paid for their interests in Verifications and received interests in Click Boarding. During the sale of Verifications, Curtis informed Stacy about the children's trusts.

The parties separated in early 2014 and Curtis petitioned to dissolve the marriage. Curtis transferred small, partial ownership interests in Click Boarding and HR Global to Chad Wormsbecker, a Click Boarding officer.

On the 2015 valuation date for the parties' assets, the Curtis G. Marks Revocable Trust owned a 90.11% interest in Click Boarding and a 93.1% interest in the holding company HR Global. HR Global in turn owned an 83.42% interest in SJV. A key fact issue in the dissolution was the valuation of the companies, and each party employed financial experts to provide opinions on this and other financial matters.

The parties tried the dissolution case by consent before a special consensual magistrate. Stacy sought permanent maintenance, argued that the assets transferred to the children's trusts should be treated as marital assets, and sought an ownership interest in Click Boarding. Curtis argued that Stacy had spent significantly more from the marital estate than he did during the proceedings and that the property division should be adjusted accordingly. Although Curtis owned Verifications before the marriage, he did not claim it as nonmarital property. He testified that he takes no salary from SJV or Click Boarding, but that he does take about $107,000 a month in distributions. He said that taking the sum in the form of a salary "wouldn't make good business sense."

The magistrate found Stacy and her experts less credible than Curtis and his experts on some issues, and on other issues not credible at all. After a lengthy and detailed analysis, the magistrate recommended that each party be awarded just over $11.7 million in assets. The district court rejected the parties' post-trial motions and adopted the magistrate's recommendation, including her decision to reserve for a later proceeding the issue of spousal maintenance because of deficiencies in the factual record bearing on income and expenses.

Both parties appeal.

D E C I S I O N

Stacy raises three issues on appeal. She argues first that the district court erroneously reserved her request for spousal maintenance. She argues second that the district court's property division erroneously failed to account for Curtis's alleged dissipation of marital assets. She argues third that the district court erroneously denied her an ownership interest

in Click Boarding. Curtis raises one issue on appeal, arguing that the district court erroneously failed to factor into the property division Stacy's alleged excessive spending during the dissolution proceeding. None of the parties' arguments convinces us to reverse.

I

Stacy argues that the district court should have granted, rather than reserved, her request for permanent spousal maintenance. A district court "has broad discretion in deciding whether to award maintenance," *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997), as well as in determining the amount and duration of any maintenance awarded, *Gales v. Gales*, 553 N.W.2d 416, 423 (Minn. 1996). "Whether to reserve jurisdiction over the issue of maintenance is [also] within the district court's discretion." *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). We review the district court's maintenance decision for a clear abuse of discretion. *Dobrin,* 569 N.W.2d at 202 & n.3.

Stacy argues that she needs maintenance and that the district court had a duty to award it. The spouse seeking maintenance must demonstrate her need for it. *Id.* at 202. The district court "may" award maintenance based on need if it finds that the party seeking it lacks sufficient property or is otherwise unable to be self-supporting. Minn. Stat. § 518.552, subd. 1 (2018). The district court may also reserve jurisdiction on the issue and determine it later. Minn. Stat. § 518A.27, subd. 1 (2018).

The district court acted within its discretion by deciding not to award maintenance but to reserve jurisdiction to decide the issue later. The district court found that Stacy did not demonstrate her need for maintenance, in part because it found that her expert grossly overstated her monthly budget for expenses. Stacy's expert opined that Stacy's reasonable

monthly expenses are $70,866. The expert developed this budget from the parties' bank and credit card statements from 2012 to 2014. The district court found that the 2014 records did not reflect the marital standard of living and that the expert's report lacked essential information. The district court credited $31,206 of Stacy's claimed monthly expenses.

Stacy contests the district court's decision to exclude certain expenses from her budget. A district court's assessment of a party's reasonable expenses is a factual finding, *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989), which we will not set aside absent clear error, Minn. R. Civ. P. 52.01. We see no clear error in the district court's exclusions from Stacy's budget for the following reasons.

Stacy argues that the district court should not have excluded her claimed $14,158 expense for a Florida house. The parties owned a house in Florida for much of the later part of their marriage, and they did not agree to sell it until March 2016, after they had been litigating their dissolution for almost two years. The district court found that Stacy failed to present credible evidence of the expense for a Florida house consistent with the marital standard of living. We generally defer to the district court's credibility determinations, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988), and the district court's credibility determination is well supported. Since 2007 the parties have lived full-time in Minnesota, Curtis had been asking Stacy to agree to sell the Florida home since 2010, between 2012 and 2014 the parties "visited Florida only one to two weeks per year," and at least $2,950 of Stacy's claimed expenses for a house in Florida were either not actually monthly expenses for the current house or were not reflected in the budget expert's assessment of the parties' actual expenditures. The district court was in the difficult position of having

identified an expense for which it lacked credible evidence of a supported amount. The district court finessed the dilemma by reserving maintenance so that Stacy can address "[t]he actual marital standard of living expense for maintaining the home in Florida, and whether such expense will be reasonable for [Stacy] post-decree." On this record, the district court's treatment of the claimed expenses for the Florida home sits well within its broad discretion.

Stacy argues that the district court should not have excluded from her monthly expenses the cost of a Florida country-club membership. The district court rejected the expense, noting that Stacy "plans to reside [in Florida] for only a portion of the year," that "the parties have not belonged to the [club in question] since 2009," and that "memberships in both Florida and Minnesota golf clubs simultaneously w[ere] not part of the marital standard of living." Stacy asserts that the marital standard of living included four country-club memberships and that she is therefore entitled to a club membership in Florida in addition to her club membership in Minnesota. But a party's reasonable expenses are determined by the circumstances and living standards at the time of the divorce. *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009). Because Stacy does not dispute the finding that the parties have not had a club membership in a Florida club since 2009, the district court did not abuse its discretion by excluding the claimed expense.

Stacy argues that the district court should not have excluded $4,000 of her $6,000 claimed monthly travel and vacation expenses. The district court limited Stacy's travel and vacation budget to $2,000 because the additional $4,000 she claimed for vacations was not included in her expert's report. Stacy argues that the district court's finding ignores her

expert's assertion that some vacation expenses were paid through business accounts. But the district court found that the expert was not a credible witness on this point, and it supported the finding by noting that the expert lacked sufficient information to know whether a business account actually paid for any vacation expenses and, if so, which account made the payments. Again, we are in no position on appeal to substitute our own credibility assessment for the district court's. *See Sefkow*, 427 N.W.2d at 210. Stacy has not shown that the district court clearly erred by excluding her claimed additional $4,000 in monthly travel and vacation expenses.

Stacy contests the district court's reduction of her claimed monthly alcohol expense from $600 to $100. Stacy's expert included a $620 figure as Stacy's half of the $14,885.27 the parties spent on alcohol in 2014. The district court rejected both the $600 and $620 figures because no evidence indicated that the expert did anything but take the yearly amount and divide it by two. The parties were separated for most of 2014, so that year's amount is not a reliable source of evidence for the marital standard of living. The district court therefore concluded that Stacy failed to produce sufficient evidence to support her claimed expense for alcohol. Stacy does not identify evidence from which we must reverse the district court's decision to reduce her $600 claim or from which we must reject the $100 determination.

Stacy argues that the district court should have found that she demonstrated her need for maintenance based on her inability to meet her monthly expenses. The district court decided that it could not accurately determine Stacy's ability to meet her expenses because she failed to present evidence about the amount of investment income she would receive

from her share of the marital estate. Stacy admits that income generated by her property award "is to be included in calculating her need for maintenance." *See Curtis v. Curtis*, 887 N.W.2d 249, 253 (Minn. 2016). On appeal, she asserts that the district court should have used the 3.65% interest rate suggested by one of her experts to determine her investment income. The argument does not persuade us to reverse.

Stacy's expert proposed 3.65% as the appropriate interest rate for addressing "equity risk premiums" used in *business valuations*. Stacy does not present a compelling argument that the district court improperly refused to use that interest rate to calculate her ability to support herself from her property award. And while Stacy received an immediate award of over $3 million in "investment funds," another $8.1 million of her award is deferred with a 6% interest rate, subject to offsets and Curtis's right to accelerate payment. The record is unclear about the interaction between Stacy's deferred property award, the amount and date of the offsets, and the likelihood of prepayment. The ambiguities resulting from these factors accentuate Stacy's failure to prove she is unable to meet her expenses. The doubt as to how much of Stacy's property award she will receive at any point prevented the district court from determining the principal to which the unclear interest rate would be applied. And the estimates Stacy offered at trial about earnings from her property settlement did not reflect the actual property division. We are satisfied that the district court's decision neither to grant nor deny spousal maintenance, but to reserve the issue for future financial data, reflects its reasoned refusal not to speculate about Stacy's ability to meet her expenses.

II

Stacy next argues that the district court erred when it found that Curtis did not dissipate marital assets. We review the district court's factual findings for clear error. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Stacy contends that Curtis breached his fiduciary duty by dissipating marital assets anticipating their divorce. When a dissolution is pending, married parties owe each other a fiduciary duty with respect to the marital assets. Minn. Stat. § 518.58, subd. 1a (2018). If the district court finds that a spouse "transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life," it "shall" place both spouses in the position they would have been in but for the improper disposition of the assets. *Id.* A party claiming a breach has the burden of proving it. *Id.* Stacy argues that Curtis violated his fiduciary duty when he transferred interests in Click Boarding and HR Global to Wormsbecker and transferred interests in Verifications and HR Global to the children's trusts.

Stacy argues that the transfer to Wormsbecker was improper because it was not in "the usual course of business." She highlights that Click Boarding had a "Unit Option Plan" that Curtis could have used to convey an ownership interest to Wormsbecker, but he instead conveyed the interest directly. The district court rejected this argument, finding that Curtis made the transfer to ensure that Wormsbecker continued his employment with the company. Neither statute nor caselaw defines "the usual course of business" for application of Minnesota Statutes, section 518.58, subdivision 1a. But one purpose of Click Boarding's "Unit Option Plan" is to distribute ownership interests in Click Boarding, and it is

undisputed that businesses commonly distribute ownership interests to desired employees as a normal part of their operations. Stacy does not challenge the finding that Wormsbecker is a valuable employee, and the district court noted that Curtis could have accomplished essentially the same result using the "Unit Option Plan." We lack the evidentiary basis to say that the district court clearly erred by finding that Curtis did not violate his fiduciary duty to Stacy by transferring the interest to Wormsbecker in the manner that he chose. The district court's analysis of the transfer to Wormsbecker of an interest in HR Global is the same as its analysis of the transfer of the Click Boarding interests, and we affirm its finding on that interest for the same reasons.

Regarding Curtis's transfers to the children's trusts, Stacy asserts that Curtis violated his fiduciary duty because the transfers were done in secret. That Curtis made the transfers without informing Stacy does not in itself demonstrate a breach of a fiduciary duty. The duty imposed by section 518.58 applies to transfers made during or in contemplation of dissolution. The trusts were created and funded before the dissolution proceeding began, and the district court found that the link between Curtis's initial consultations with family and trust attorneys and his 2014 dissolution petition was too thin to find that Curtis created the trusts in contemplation of the divorce. The district court rested this finding on the magistrate's crediting of Curtis's key denials: that he created the trusts in contemplation of dissolution; that he discussed the trusts with the family lawyers he interviewed; and that he discussed dissolution with the trust lawyers he hired. Given this credibility determination, we have no ground to reverse the finding that Curtis did not breach his fiduciary duty.

III

Both parties challenge the division of marital property. The district court has broad discretion to divide property equitably, and we will not reverse its property distribution absent a clear abuse of discretion. *Miller v. Miller*, 352 N.W.2d 738, 741–42 (Minn. 1984).

Stacy challenges the district court's failure to award her an ownership interest in Click Boarding, asserting specifically that marital assets had been invested in Click Boarding without a corresponding increase in Click Boarding's valuation. She argues that not awarding her an interest in Click Boarding therefore unfairly precludes her from realizing any future increase in value arising from that investment. This argument necessarily challenges the valuation of Curtis's interest in Click Boarding, but Stacy offers no argument challenging the valuation, and we generally do not address issues inadequately briefed. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed question). We observe that the district court's amended judgment spends 14 pages analyzing the value of Curtis's interest in Click Boarding and that the court found that Curtis's evidence on valuation was credible, while Stacy's was not. But without briefing adequate for us to address the underlying issue, we simply decline to address valuation here.

We reject Stacy's argument that the district court should have awarded her an interest in Click Boarding. The district court predicted that shared ownership of the business in the face of the parties' acrimonious relationship "would foment into additional litigation." Stacy does not challenge the multiple findings of the parties' inability to cooperate. We have accepted the district court's valuation of Curtis's interest in Click

Boarding as part of the division of the marital estate, and the valuation rests in part on future income generation from Curtis's involvement. Stacy's attempt to receive an ownership interest in the business in addition to the property division therefore would improperly confer a windfall to her from the value generated by Curtis's post-marital efforts in the business. Value arising from a party's post-marital effort is not marital property subject to division in a dissolution. *See* Minn. Stat. § 518.003, subd. 3b (2018) (defining marital property). There are three ways to divide an interest in a business: dividing in kind; selling the interest and dividing its proceeds; and awarding the interest to one spouse with an offsetting award of other marital property to the other spouse. *Nardini v. Nardini*, 414 N.W.2d 184, 188–89 (Minn. 1987). Division in kind "is an unlikely choice if the corporation is closely held." *Id.* at 188. Click Boarding is closely held. And while the "[s]ale or liquidation of a family-owned business may be appropriate if, for example, the parties are at or near retirement age or the dissolution of the marriage may adversely affect the business," *id.*, neither of these circumstances is present here. The third method, "which is in essence a forced sale by one spouse to the other in which the court sets the selling price and the terms of payment, has the greatest potential for error and unfairness." *Id.* at 188–89. Stacy was paid for her share of Click Boarding in the cash property settlement, and Curtis must secure that payment by pledging to Stacy "his interest in HR Global." Stacy has not shown that the district court abused its discretion in its treatment of Click Boarding.

Curtis argues that the district court failed to account for Stacy's alleged overspending, which he says skewed the distribution of marital assets, making it unequal.

An equal division is often, but not always, the most equitable approach. The statute directing district courts in the division of marital property requires the court to "make a just and equitable division of the marital property," not necessarily an equal division. Minn. Stat. § 518.58, subd. 1. Curtis relies on a quote from *Miller*, 352 N.W.2d at 742, where the supreme court said that "equal division" of the parties' wealth is appropriate in the dissolution of a long-term marriage. But *Miller* itself refers to the district court's "broad discretion in dividing marital property," 352 N.W.2d at 741, and it acknowledges the primacy of equity in the division. There would be no need for discretion in the district court's property division, let alone broad discretion, if the statute required equal division. Supreme court cases since *Miller* refer to the statutory requirement of an equitable division of marital property, *see, e.g.*, *Lee*, 775 N.W.2d at 636, and we are unaware of any case in which the supreme court has cited *Miller* as requiring an equal division.

This is a close issue. But although Stacy seems clearly to have outspent Curtis during the pendency of the case and Curtis makes a reasoned argument that offsetting the difference in the property division would have been fair, we will not substitute our judgment for the district court's as to whether adjusting the property division accordingly is necessary for an equitable result. We add that this case included many fluid components and that, while Curtis alleges that Stacy made $1.6 million in excessive spending, the district court described Curtis's transfer of $2.1 million of marital assets into the children's trusts without Stacy's knowledge as "deeply disturb[ing]." We cannot say that the district court's decision not to make any adjustment for Stacy's alleged overspending constitutes

an abuse of discretion given the range of what might be considered equitable under the circumstances.

Affirmed.