STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1058
A18-1065

In Re the Marriage of:

Donald M. Charlson, petitioner,
Respondent (A18-1058), Appellant (A18-1065),

vs.

Angela K. Charlson,
Appellant (A18-1058), Respondent (A18-1065).

Filed April 29, 2019
Affirmed
Rodenberg, Judge

Olmsted County District Court
File No. 55-FA-13-1830

Amber Lawrence, Dittrich & Lawrence, P.A., Rochester, Minnesota (for respondent-husband)

Shelly D. Rohr, Wolf, Rohr, Gemberling & Allen, P.A., St. Paul, Minnesota (for appellant-wife)

Considered and decided by Halbrooks, Presiding Judge; Rodenberg, Judge; and Smith, John, Judge.*

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

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

RODENBERG, Judge

Wife Angela Charlson appeals from a supplemental judgment and decree of dissolution, arguing that the district court erred in dividing the parties' property and abused its discretion by denying her requests for financial-receiver fees and conduct-based attorney fees. Husband Donald Charlson argues in his cross-appeal that the district court abused its discretion in the property division. We affirm.

FACTS

Husband and wife were married in South Dakota in 1993. The day before their marriage, they signed a premarital agreement (PMA).[1] Attached to the PMA were documents describing both parties' separate assets. Wife was then working in the restaurant-franchise industry and owned, among other businesses and assets, three South Dakota Taco John's franchises. Wife listed those businesses and other assets in the PMA. Husband had been working as a financial advisor at Edward Jones and identified "0 assets" in the PMA. The PMA included provisions relating to the parties' nonmarital property and how it would be treated in relation to their marital estate. It specifically provided that each party's separate property would remain the nonmarital property of that party in the event that the parties comingled marital and nonmarital funds. The PMA did not specify how

[1] Minnesota law refers to such agreements as antenuptial agreements. *See* Minn. Stat. § 519.11 (2018). Here, we refer to the agreement as a premarital agreement, consistent with South Dakota law.

property was to be divided upon dissolution. It provided that South Dakota law would govern its interpretation.

The parties lived in Rochester, Minnesota, during most of their marriage. Husband continued to work as a financial advisor at Edward Jones and was promoted to partner. Wife continued to work in the franchise industry. During the marriage, the parties invested in other businesses, including Massage Envy locations in Sioux Falls, South Dakota (SFME), and in Rogers, Minnesota (ME Rogers). SFME was incorporated in South Dakota in 2011. The parties owned and operated SFME together. Husband's daughter managed SFME. ME Rogers was incorporated in Minnesota in 2012 and was operated similarly to SFME. Both locations employed massage therapists and administrative staff to run the day-to-day operations of the franchises.

In March 2012, husband petitioned to dissolve the marriage in an action in Minnesota district court. Wife claimed that several assets were her nonmarital property, including SFME, ME Rogers, and various bank accounts. Wife sought to enforce the 1993 PMA, asserting that both parties were South Dakota residents when the agreement was created and that the agreement expressly provided that it was to be interpreted according to South Dakota law. Husband argued that the PMA no longer controlled disposition of the parties' assets because both had been residing in Rochester for over fifteen years.

The Minnesota district court bifurcated the case and granted the parties a dissolution of marriage in February 2015. It suspended the Minnesota proceedings so that the validity and enforceability of the PMA could be determined in separate court proceedings in South

Dakota. The parties stipulated to a valuation date, and the district court ordered that "[t]he valuation date for the parties' assets shall be December 31, 2013."

In August 2014, the South Dakota circuit court (circuit court) determined that the PMA was valid and enforceable and concluded that a tracing method be used to determine the parties' marital and nonmarital property. In 2015, that case proceeded to trial before the circuit court to determine which of the parties' assets were nonmarital property and which were marital property. The circuit court undertook only to adjudicate which property was marital and which property was nonmarital and made no attempt to divide property.

In the South Dakota proceedings, wife argued that, regardless of any comingling of her separate assets with the parties' marital assets, the PMA mandated that her separate property remain separate. Husband argued that once funds were placed into marital accounts, the once-separate funds became marital property, and purchases made with those funds were marital property. Both parties presented extensive testimony and documentary evidence from financial experts concerning the value of their business interests and the tracing of wife's separate property. Financial experts purported to apply the provisions of the PMA to opine whether particular assets were marital or nonmarital. The experts calculated the nonmarital and marital interests in various assets using a percentage and a dollar value of the assets. Concerning SFME and ME Rogers, the parties agreed before the circuit court to use the valuation date to which they had agreed in the Minnesota proceedings. The circuit court did not separately value those assets.

The circuit court adopted wife's expert's methodology and concluded that the parties' 25% interest in ME Rogers was a combination of wife's separate property and marital property.[2] Based on the December 2013 stipulated valuation date, the parties' 25% interest was valued at $40,000. The circuit court adopted the "methodology and tracing analysis" of wife's expert concerning those interests in ME Rogers, and concluded wife's nonmarital interest had a value of $7,670 as of December 2013 (19.2% of $40,000). The remaining marital property interest in ME Rogers was therefore valued at $32,330 as of December 2013 (80.8% of $40,000).

The same four shareholders who owned ME Rogers also owned SFME. The parties owned a 75% interest in SFME, and husband was designated as the franchise owner so that he could receive a $6,000 veteran's discount on the franchise fee. Husband's three friends each held an 8.33% interest. The circuit court applied the parties' stipulated valuation of their 75% interest in SFME of $1,220,000. Through the use of the expert tracing testimony and the use of a marital-loan concept, the circuit court determined that the parties used a portion of wife's separate property to acquire SFME by way of wife's separate funds that were placed into a joint account close in time to the acquisition of SFME. Based on her contributions, the circuit court determined that wife owns an 83.9% nonmarital interest in the parties' 75% share of SFME. Applying that percentage interest to the stipulated value, wife's nonmarital interest as of December 2013 was determined to be $1,023,967. The parties' remaining 16.1% interest in SFME was determined to be marital property.

[2] The remaining 75% interest in ME Rogers was owned by three of husband's friends.

The circuit court also determined that husband's Edward Jones 401(k) and profit-sharing plans were marital property. Because husband had listed his assets as "0" on the PMA disclosure and had not presented evidence that the property was nonmarital, the circuit court found the entirety of both plans to be marital.

Husband appealed the circuit court's decision to the South Dakota Supreme Court. *See Charlson v. Charlson*, 892 N.W.2d 903, 904 (S.D. 2017). Husband argued that the circuit court erred when it concluded that the PMA contemplated use of the tracing and marital-loan methodologies to determine the parties' separate property interests. *Id*. at 907. Husband did not challenge the circuit court's factual findings, its list of assets to be valued, or the values placed on those assets. He likewise did not dispute the details of wife's expert's tracing report in relation to particular assets. *Id*. The South Dakota Supreme Court affirmed the circuit court, concluding that the PMA contemplated that the parties might comingle their assets and that the circuit court properly used the tracing and marital-loan methodologies. *Id*. at 910-12.

Following the conclusion of the South Dakota proceedings, the Minnesota district court was left to equitably divide the parties' property. Husband requested to change the stipulated valuation date, but the district court denied that request.

At trial in Minnesota, both parties testified about their involvement in and contributions to SFME and ME Rogers. By the time of trial, ME Rogers had been sold and SFME's profitability had significantly declined. During the South Dakota proceedings, the parties had been receiving distributions of $24,000 per month from SFME, but SFME was no longer making distributions by the time of trial in Minnesota.

During all of this, ME Rogers was sold. The district court determined that, because the sale of ME Rogers resulted in husband receiving $13,441.74[3]—a significantly lower amount than the 2013 valuation—it was neither just nor equitable to award wife $23,834.83 for her nonmarital interest plus her one-half marital interest in the 25% share of ME Rogers. The district court determined that the parties should each receive a percentage of the net sale proceeds from ME Rogers based on the South Dakota court's determination of their respective interests in ME Rogers. As a result, wife's 19.2% nonmarital-property interest in the net sale proceeds amounted to $2,580.81, and husband would be credited with receiving $10,860.93 against his share of the marital estate.

In the Minnesota trial, wife requested that the district court award SFME to husband, despite her earlier position in the South Dakota courts that SFME was her separate property. Wife asked the district court to award her 83.9% of SFME's cash value according to the December 2013 valuation date, which would equate to husband paying her $1,023,967 for her separate property interest and $98,016.50 for her one-half interest in the marital portion of the asset. Husband requested that SFME be awarded to wife and that she pay him for his marital share of it, $98,016.50.

Because neither party wanted SFME, the district court ordered that the parties' 75% interest in SFME be sold and that, after all costs associated with the sale were paid from sale proceeds, wife should receive 83.9% of the remaining proceeds, representing her

[3] Husband received the sale proceeds because he was the designated franchise owner, but the parties agree that those proceeds included wife's interest.

nonmarital percentage interest as determined by the South Dakota courts. The district court ordered that the remaining proceeds be divided equally between the parties.

The district court divided the remaining property. It divided the marital portion of husband's Edward Jones 401(k) account, subject to market gains and losses from the valuation date to the date of division. Wife was to pay husband an equalization payment in the amount of $40,233.85 within 90 days of the district court's order, subject to a four-percent interest rate. The district court denied both parties' requests for financial-receiver fees.[4] During the Minnesota proceedings, husband had incurred $293,297.72 in attorney's fees and wife had incurred $442,409.33 in attorney fees. The district court denied wife's request for conduct-based attorney fees.

Both husband and wife made post-trial motions, and the district court issued an order amending several findings of fact. It denied the parties' motions for a new trial.

This appeal followed.

D E C I S I O N

I. The district court did not err in its application of the South Dakota courts' decisions concerning wife's nonmarital property and it did not abuse its discretion by equitably dividing the parties' interests in SFME and ME Rogers.

Wife challenges several aspects of the district court's property division. She argues that the district court erred by failing to give full faith and credit to the decision of the South Dakota courts, made inconsistent findings of fact and conclusions of law, improperly

[4] Concerning the financial-receiver fees, husband requested reimbursement of $2,500 and wife requested reimbursement of $49,114.

changed the valuation date and thereby denied her due process of law, and failed to preserve her nonmarital property interests as determined in South Dakota.

We first address wife's argument that the district court did not give full faith and credit to the South Dakota judgment because the district court awarded her a percentage interest in SFME and ME Rogers, instead of a cash payment from husband using the December 2013 stipulated valuation. Wife argues that the determination of the cash value of SFME and ME Rogers are fixed by reason of res judicata, because the values were adjudicated by the South Dakota circuit court.

Wife's argument is misplaced. The South Dakota circuit court did not purport to divide the parties' assets. Its role was to "determine whether the assets and debts of the parties are separate property, marital property, or a combination of both separate and marital property." The circuit court was not "deciding what [was] an 'equitable' division of the parties' debts and assets." That task was left for the Minnesota district court. And the district court applied the determination of the South Dakota courts.

In a marital-dissolution action, the district court has broad discretion in valuing and dividing property, and its determinations will not be overturned except for abuse of discretion. *Antone v. Antone*, 645 N.W2d 96, 100 (Minn. 2002). A district court abuses its discretion by making findings unsupported by the evidence, misapplying the law, or reaching a clearly erroneous conclusion that is contrary to logic and the facts on record. *Johnson v. Johnson*, 902 N.W.2d 79, 84 (Minn. App. 2017). If the district court's division of property has an acceptable basis in fact and principle, a reviewing court must affirm even if it might have taken a different approach. *Servin v. Servin*, 345 N.W.2d 754, 758

(Minn. 1984). "Upon a dissolution of a marriage, . . . the 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." Minn. Stat. § 518.58, subd. 1 (2018).

Wife's assertion that the asset values are fixed because of the doctrine of res judicata and that she is entitled to a cash payment equivalent to the stipulated December 2013 values of SFME and ME Rogers also fails. Those values were agreed to by the parties. The South Dakota courts determined wife's percentage interest in SFME and ME Rogers, and it then applied the percentages so determined to the parties' stipulated values. By the time of the Minnesota trial, the values of these entities had changed dramatically. The district court properly construed the South Dakota decisions and awarded wife her nonmarital property by way of a percentage interest. The value and disposition of that property was not finally determined in South Dakota.[5]

[5] It is not clear to us that the Minnesota district court was bound to divide the parties' marital assets in strict compliance with the values to which the parties stipulated. First, "[i]f there is a substantial change in the value of [a marital] asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution." Minn. Stat. § 518.58, subd. 1. The record supports a finding that there was a "substantial change" in the values of the franchises. Second, it is undisputed that persons other than the parties to this dissolution proceeding had ownership interest in the franchises. It is unclear what effect dividing the parties' franchise interests at their stipulated but stale values would have had on the interests of the nonparties. *See Danielson v. Danielson*, 721 N.W.2d 335, 339 (Minn. App. 2006) (recognizing that "in a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights"); *Fraser v. Fraser*, 642 N.W.2d 34, 38 (Minn. App. 2002) (noting that statutory authority providing for division of marital property in a marriage dissolution action "does not authorize the district court to adjudicate the interests of third parties").

The district court, construing the South Dakota circuit court's decision, divided the parties' 25% interest in ME Rogers, consisting of both marital and nonmarital property. The district court determined that it was "obligated to divide the parties' business interest in ME Rogers in a just and equitable fashion while also applying the South Dakota Circuit Court decision." The circuit court trial was held in April 2015. ME Rogers was sold in 2016. The net sale proceeds for ME Rogers amounted to approximately $53,766.96. Each shareholder received an initial payment of $12,500 from the sale and an additional $941.74 after the sale. Because the sale resulted in the parties receiving approximately $27,500 less than the 2013 valuation, the district court determined that it would be inequitable to divide the property according to the previous valuation. The district court, relying on the percentage interests determined by the South Dakota courts, determined that wife had a 19.2% nonmarital interest in ME Rogers, with a separate cash value of $7,699.65.

The district court concluded that it "would not be just or equitable to award [wife] $23,834.83 for her nonmarital interest and one-half marital interest in [the parties'] 25% share of ME Rogers when the fair market value of the ME Rogers franchise resulted in [husband] receiving only $13,441.74." Husband was awarded $10,860.93 against his share of the marital estate and wife's 19.2% interest in the net sale proceeds amounted to $2,580.821. The district court determined that husband owed wife the value of her nonmarital interest and her one-half interest in the marital portion of the net sale proceeds, accounted for in the final adjustment of the division of assets. The district court's award to wife of a percentage interest in the actual sale proceeds of the sale of ME Rogers was within the district court's discretion.

Similarly, the district court, construing the South Dakota decision, determined that the parties' 75% interest in SFME was a combination of their marital and nonmarital property. The district court concluded that, because neither party wanted SFME at the stipulated December 2013 value, the most-equitable disposition of SFME would be to sell it and divide the net sale proceeds based on the percentage interests determined in South Dakota.

The stipulated December 2013 value of SFME was approximately $1.2 million. At trial, the district court was presented with evidence that SFME was no longer a profitable business, and the previous monthly distributions of $24,000 had ceased. A Massage Envy regional director testified at trial that a large reduction in Massage Envy members resulted in a substantial drop in revenue from membership dues. He further testified that the opening of a second Massage Envy location in Sioux Falls also contributed to SFME's decreased business. The district court also heard testimony from husband and the regional director that, over time, it had become difficult for SFME to obtain qualified massage therapists.

Wife testified that she no longer wanted the SFME location and that she wanted SFME to be awarded to husband in the property division. Wife testified that she no longer had control over the SFME location and that an amended buy-sell agreement would restrict transferring husband's interest to her. Husband likewise did not want SFME at the earlier-stipulated December 2013 valuation, and asked that it be awarded to wife.

The district court recognized as dispositive the South Dakota courts' determination of the parties' percentage ownership of marital and nonmarital property based on the PMA

and gave that determination the full faith and credit to which it was entitled. Neither party wanted SFME at the earlier-stipulated value. The inequity inherent in treating that as the value of SFME for property-division purposes was recognized by the parties' mutual desire to weaponize the asset as something to be awarded to the other at that value. Against this backdrop, the district court acted within its discretion in declining to award SFME to either party at that value.

Wife also argues that she was denied due process of law because the district court allowed S.H., the Massage Envy regional director, to testify at trial. Wife argues that she was prejudiced because husband engaged in a "trial by ambush tactic" when this testimony was admitted at trial. Wife argues that the district court improperly used this testimony to make findings concerning a decline in the value of SFME. We review the district court's evidentiary rulings at trial for abuse of discretion. *City of Moorhead v. Red River Valley Coop. Power Ass'n*, 830 N.W.2d 32, 39 (Minn. 2013). And we discern no abuse of the district court's discretion in this circumstance. The parties' trial positions concerning SFME make evident that its real value had changed from the earlier stipulation. The complained-of trial testimony was relevant to explain that change in value.

Wife moved post-trial to amend the district court's findings of fact and conclusions of law, and order for judgment and judgement and decree, or in the alterative for a new trial. Wife submitted an over-72-page post-trial motion to support her argument that she was denied due process. Wife was given a full and fair opportunity to be heard on her argument. *See Haefele v. Haefele*, 621 N.W.2d 758, 764 (Minn. App. 2001) (stating that due process requires that a hearing be fair, practicable, and reasonable), *review denied*

(Minn. Feb. 21, 2001). The district court ruled the testimony of S.H. to be relevant and admissible. On this record, we see no denial of wife's due-process rights.

II. The district court acted within its discretion when it denied both parties' requests for an award of conduct-based attorney fees and wife's request for financial-receiver fees.

Wife challenges the district court's denial of conduct-based attorney fees.

"A refusal to award attorney fees will not be reversed absent a clear abuse of discretion." *Kitchar v. Kitchar*, 553 N.W.2d 97, 104 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). Conduct-based attorney fees may be imposed "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2018). Conduct-based fees may be based on the impact that a party's behavior has on the costs of the litigation regardless of the relative financial resources of the parties. *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). "While bad faith could unnecessarily increase the length or expense of a proceeding, it is *not* required for an award of conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1." *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001). The requesting party bears the burden of establishing that the other party's conduct unreasonably contributed to the length or expense of the proceeding. *Id*. at 818.

The district court denied both parties' requests for conduct-based attorney fees based upon its determination that, "from the Court's perspective, each party has, mostly, presented colorable legal arguments on difficult issues. In reviewing the record and proceedings herein, the Court finds that both parties' actions have unnecessarily contributed to the length and expense of the dissolution proceeding." The district court

explained that "[t]hroughout this litigation, each party has complained that the other party has unnecessarily contributed to the cost of the proceedings, has violated court orders, and/or has been non-cooperative and obstinate."

The district court was familiar with the parties and their continuing conflict, carefully dealt with the parties' aggressive litigation tactics, and was in the best position to evaluate the extent to which each party's conduct unreasonably contributed to the time and expense of the proceeding. *See 650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 494 (Minn. App. 2016) ("Because the district court is the most familiar with all aspects of the action from its inception through post trial motions, it is in the best position to evaluate the reasonableness of requested attorney fees." (quotation omitted)), *review denied* (Minn. Nov. 23, 2016). The district court made adequate findings and concluded that, while both parties had presented colorable legal arguments, each had contributed to the costs of litigation. Its denial of attorney's fees was within its discretion.

Wife also argues that she is entitled to an award of financial-receiver fees that the parties shared during the protracted litigation. Wife argues that the receiver was only necessary because husband failed to follow a temporary order and was diverting funds into his own accounts which resulted in the receiver having to perform a "true-up" of the accounting to ensure that all funds were properly accounted for.

We review a district court's determination of whether to award receiver's fees for an abuse of discretion. *Ronay v. Ronay*, 369 N.W.2d 6, 12 (Minn. App. 1985). The district court concluded that "[b]oth parties bear some responsibility for unduly increasing the work required of, and therefore the fees charged by [the financial receiver]" and that "his

fees will continue to be paid out of the [parties' joint bank] account." The district court ultimately determined that it was "fair and equitable that parties will be equally responsible for [the financial receiver's] fees." As with the attorney-fee issue, the district court was in a better position than we are to evaluate who should bear the costs of the financial receiver. The district court's findings are supported by the record, and the district court acted within its discretion when it denied wife's request for an award of financial-receiver fees.

III. The district court acted within its discretion when it awarded wife the post-2013 gains and losses on the funds in husband's 401(k).

Husband argues in his cross appeal that, because the circuit court did not award gains or losses on the pretax accounts, the district court erred when it awarded wife a percentage share of his 401(k), including gains and losses after the valuation date.

The Edward Jones 401(k) account was marital property. A district court is afforded broad discretion in effectuating a division of marital property. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We must affirm a district court's decision concerning the division of marital property so long as it has an "acceptable basis in fact and principle." *Bollenbach v. Bollenbach*, 175 N.W.2d 148, 154 (Minn. 1970).

The district court awarded husband the funds remaining in his 401(k) plan after transferring wife $405,502.29, adjusted for market gains or losses from December 31, 2013, to the date of distribution. The 401(k) plan was the only pretax account that was divided between the parties.

At trial, the district court heard testimony that expert witness J.L. had tried to equalize the pretax retirement accounts because they were going "to have a future tax

liability associated with them, so in order to neutralize that impact on the parties, we typically would allocate those assets equally if possible." J.L. further explained that a transfer to wife, by way of a Qualified Domestic Relations Order, of a portion of the 401(k) would equalize the pretax retirement assets at the date of valuation. The district court, attempting to equalize the property division, reasoned that "it is fair and equitable to equally divide the marital portion of the above-mentioned pre-tax retirement accounts, subject to market gains/losses from the valuation date to the date of division, so that both parties will equally bear the tax consequences of these accounts." This was within the district court's discretion in effectuating a fair division of the marital estate.

After seven years of trials and appeals in two states, this complex marital-dissolution action has generated tens of thousands of pages of testimony, exhibits, and reports, more than three-quarters of a million dollars of attorney's fees, large expert-witness and receiver costs, and hundreds of pages of court decisions. In those seven years, the values of many of the parties' assets have changed, including a substantial decrease in the value of the once-million-dollar-plus SFME, which decrease the district court found was not exclusively the fault of either party. Other assets have increased in value during the course of this protracted litigation. Presented with this complex situation, and required to resolve it fairly and equitably, the district court made findings that the record supports and a disposition within its discretion. The question before us is not whether that disposition is perfect. The question on appeal is whether the district court reversibly erred. It did not. Instead, it carefully evaluated the evidence, faithfully applied the determination of the

South Dakota courts concerning the PMA, and arrived at a resolution of the complex issues that falls squarely within its discretion.

Affirmed.