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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1333

In the Marriage of: Debra Lynn Ober, petitioner,
Respondent,

vs.

Randall Lane Ober,
Appellant.

Filed December 16, 2019
Affirmed
Reyes, Judge

McLeod County District Court
File No. 43-FA-16-1659

Troy A. Scotting, Law Offices of Troy A. Scotting, Hutchinson, Minnesota (for respondent)

Robert A. Manson, Robert A. Manson, P.A., White Bear Lake, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

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

REYES, Judge

Appellant-husband challenges a marriage-dissolution judgment, arguing that the district court (1) abused its discretion by imposing discovery sanctions that prohibited him from introducing exhibits and calling witnesses at trial; (2) clearly erred in its valuation of

the parties' marital assets; (3) abused its discretion in dividing marital property; and (4) failed to address his claimed nonmarital interest in certain property. We affirm.

FACTS

Appellant-husband Randall Lane Ober and respondent-wife Debra Lynn Ober married in 1993 and commenced this dissolution action in 2016. Husband proceeded pro se from March 2017 until his posttrial submissions. The parties own a homestead in Glencoe that they purchased in 2004. They owned a farm in Green Isle, on which they had kept cattle and on which their lender foreclosed just prior to the dissolution proceedings. A neighbor bought the Green Isle farm following foreclosure, and husband lived there from April 2017 through trial. Wife filed for bankruptcy in 2016.

Before trial, wife filed three discovery motions. Husband did not respond to any of them. He also did not comply with a December 2017 district court order that compelled him to respond to wife's prior discovery requests by January 22, 2018, and that warned he could face sanctions for failing to comply. The order further directed the parties to complete all other discovery three weeks before trial and file witness lists, exhibit lists, and copies of exhibits no later than two weeks before trial, which would have been April 3, 2018. Father did not comply with this order. On April 5, 2018, the district court issued sanctions preventing husband from introducing exhibits or calling witnesses, aside from himself, at trial. Husband did not then challenge these sanctions.

Husband, wife, and a custody evaluator testified at the court trial. Husband and wife primarily disputed the possession and valuation of certain cattle, the value of the homestead and how the parties purchased it, and whether the parties still owned a variety of other

assets. Husband also testified about potential malpractice and lender-liability claims that arose from the parties' dealings during marriage. The district court awarded the cattle to husband, the homestead to wife, and placed a value on husband's potential liability claims. Husband appeals.

D E C I S I O N

Husband did not file a motion for a new trial on any of the issues he raises on appeal. When no motion for a new trial is made challenging "issues arising during the course of trial," the scope of review on appeal is limited to substantive legal issues properly raised before the district court and whether its conclusions of law are supported by findings of fact and those findings of fact are supported by evidence. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2003). The supreme court recently held that this rule does not apply to challenges to pretrial orders on motions in limine, as the parties provide briefing and the district court may consider the motion before issuing its order. *County. of Hennepin v. Bhakta*, 922 N.W.2d 194, 199 (Minn. 2019). We review each of husband's claims in turn.

I. The district court did not abuse its discretion by prohibiting husband from calling witnesses and introducing exhibits at trial.

Husband claims that the district court abused its discretion by imposing discovery sanctions in a pretrial order that prohibited him from calling witnesses or introducing exhibits at trial. We are not persuaded.

As an initial matter, this challenge is not to a "substantive legal issue[] properly raised before the district court." *See Alpha Real Estate*, 664 N.W.2d at 310. The supreme

court in *Bhakta* ruled only that challenges to pretrial motions in limine need not be raised in a motion for a new trial, 922 N.W.2d at 199, and neither this court nor the supreme court has yet decided whether its underlying reasoning applies to other types of pretrial orders. Assuming without deciding that *Bhakta* allows father to challenge this pretrial order, for which wife provided briefing and which the district court issued nearly two weeks before trial, his claim fails.

We review discovery orders for a clear abuse of discretion. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). If a party fails to obey an order to provide discovery, the district court may issue an order prohibiting that party from introducing designated matters in evidence, among other just orders. Minn. R. Civ. P. 37.02(b). This court uses five factors to evaluate whether a district court abused its discretion in ordering discovery sanctions: (1) if the district court set a specific date by which the parties were required to comply with discovery; (2) if the district court warned of potential sanctions for noncompliance; (3) if the sanctioned party had a pattern of noncompliance with discovery or if it was isolated; (4) if the sanctioned party willfully and without justification failed to comply; and (5) if the moving party showed prejudice due to the noncompliance. *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 923 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010). We consider each factor in turn.

First, the district court provided a specific date, January 22, 2018, by which husband had to respond to wife's discovery requests, as well as a specific date, two weeks before trial, by which both parties had to file witness and exhibit lists. Second, the district court issued clear warnings of potential sanctions. In its December 29, 2017 order, it stated, "[i]n

the event that there is a lack of cooperation in complying with the terms of this Order, sanctions may be considered." It also specified that if either party did not file its witness or exhibit lists, the unnamed witnesses or undisclosed documents may be excluded at trial. Third, husband exhibited a pattern of noncompliance. He did not respond to any of wife's three formal discovery requests, he did not comply with the district court's order that he provide the overdue discovery by January 22, 2018, and he did not file witness lists, exhibit lists, or copies of exhibits two weeks before trial.

Fourth, we consider whether husband failed to comply willfully or without justification. The district court did not make an explicit finding on this issue. Husband proceeded pro se throughout most of the district court proceedings. While a court may make some procedural accommodations for pro se litigants, it generally holds them to the same standards as lawyers. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (citations omitted). At trial, husband testified that he had been served with the discovery requests and provided everything he had to wife's first attorney in January 2017. But wife served the first formal discovery request on August 28, 2017, after the April 13, 2017 substitution of wife's counsel. If husband did provide documents to wife's first attorney, they were not responsive to wife's later discovery request, or to the district court's December 2017 order requesting lists of expected witnesses and exhibits. Husband also stated at trial that he did not respond to the discovery requests because he thought not responding meant he did not agree. In addition, husband did not appear at the April 5, 2018 motion hearing at which the district court imposed sanctions on him. Husband had asked to participate by phone and sent a fax that morning stating that he was sick, but the district

court called him three times for the 3:00 p.m. hearing, and he did not answer. These facts support a finding that husband lacked justification for his nearly eight-month period of noncompliance, even as a pro se litigant.

Finally, husband's noncompliance prejudiced wife due to the additional attorney fees and costs she incurred from repeated discovery filings. The district court noted that, as of the day of the trial, husband failed to provide any discovery responses to wife. Based on these factors, the district court did not abuse its discretion by imposing sanctions on husband for his noncompliance with discovery orders.

II. The district court did not clearly err in its valuation of the parties' marital assets.

Husband argues that the district court erred in its valuation of cattle, the homestead, several items awarded to wife at zero value, and malpractice and lender-liability claims husband might pursue. We disagree.

A district court's valuation of property is a finding of fact, which we review for clear error. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (citation omitted). We give great deference to district court findings that are based on witness credibility. *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

A. Valuation of cattle

Husband argues that the district court erred in finding that the parties still owned cattle and in its valuation of the cattle. The district court awarded 20 head of cattle to husband at a total value of $76,566.

Wife valued the cattle at $76,566. She based her valuation on the average value of high-end cattle in the depreciation schedule the parties used in their last joint taxes filed in 2015. The depreciation schedule for the 2014 farm assets listed 41 cattle at a total value of $107,079. Wife testified that, as of October 2015, husband still possessed 20 head of cattle, including the most valuable cattle. Wife's testimony supports the district court's finding. Husband's own testimony that many of the cows would then be 11 years old and his example of an 11-year-old cow selling for $4,400, which would lead to a value of $88,000 for all 20 cattle, also supports the district court's valuation.

Husband argues that the district court erred by not crediting his testimony that other people possessed or owned the cattle and by incorrectly valuing them. But these are credibility determinations on which we defer to the district court. *See Alam*, 764 N.W.2d at 89. Taking the record as a whole, we conclude that the district court did not clearly err in finding that the parties still owned the cattle or in its valuation of the cattle.

B. Valuation of homestead

Husband argues that wife provided multiple estimates of the value of the parties' homestead and that the district court erred in not explaining why it chose the value it did. A district court need not be exact in its valuation of assets. *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) (citing *Hertz v. Hertz*, 229 N.W.2d 42, 44 (1975)). "[I]t is only necessary that the value arrived at lies within a reasonable range of figures." *Id.*

Wife provided estimates from two realtors from the prior year, one for $315,000 and another for $368,000. She also provided the property-tax statements for 2016 and 2017 for the homestead, which estimated the home's market value at $263,400 and $277,770,

respectively. Husband valued the home at $334,750 in his counterpetition to wife's petition for dissolution, but he provided no evidence of the home's value at trial. The district court valued the homestead at $263,400, based on the 2016 tax-assessment statement. While the district court valued the homestead at the low range of the values the parties provided, the value is within a reasonable range of figures and is based on a property-tax assessment. The district court therefore did not clearly err in its valuation of the homestead.

C. Assets with zero value

Husband argues that the district court erred in placing zero value on certain items awarded to wife. The district court based these zero values on extensive testimony from husband about property he had left on the Green Isle farm after foreclosure, causing it to be surrendered to the lenders. The district court reasoned that awarding much of this property to wife at zero value would be appropriate, as it then would be for wife to acquire the property from the lenders, if possible.

Husband testified that the parties either forfeited in foreclosure or otherwise no longer had numerous marital assets.[1] For example, wife valued a skid steer at $30,000. Husband valued it at only $13,000 to $14,000. More importantly, he testified that the lender who foreclosed on the Green Isle farm had possession of it. Husband's testimony directly supports the district court's decision to place no value on items left on the foreclosed-upon property.

[1] These include a lawnmower, pressure washer, weed wackers, rubber barn mats, a snowmobile trailer, stock trailer, skid steer, truck, generator welder, six milker units, semen tanks, skid bale-tine attachment, flatbed trailer, utility trailer, water heater, two feed carts, a straw chopper, two couches, and a kitchen island and granite countertop.

D. Allocation of prospective claims of $1,000,000

Husband does not dispute the value placed on the prospective claims. Rather, he contends that the district court improperly placed any value on them, as Minnesota cases have cautioned against basing property divisions on speculative future events. But the cases he cites in support do not hold that contingent or speculative interests may never be valued. *See Nolan v. Nolan*, 354 N.W.2d 509, 513-14 (Minn. App. 1984) (concluding district court's division of marital estate equitable when it did not "mathematically factor" speculative liability on personal note into division, because liability was already "inextricably tied to the speculative, and income-generating, character, of the assets awarded to appellant"). Moreover, the supreme court has concluded in attorney contingency-fee cases that fees for work done during a marriage for cases that have yet to be resolved are not too speculative to be property subject to valuation and division, even though "the attorney is not assured of earning anything for efforts expended." *Stageberg v. Stageberg*, 695 N.W.2d 609, 616 (Minn. App. 2005), *review denied* (Minn. July 19, 2005).

Here, while husband is not assured of recovering anything for his prospective claims, the claims would compensate husband and wife for lender and attorney negligence of which they both bore the impact during marriage. We conclude that the district court did not clearly err in placing a value on the prospective malpractice and lender-liability claims.

III. The district court did not abuse its discretion in its division of husband and wife's marital assets.

Husband argues that the district court clearly erred in both its division and valuation of marital assets and that it did not explain how his prospective liability claim affected the division, thereby abusing its discretion.[2] Husband appears to argue that this court cannot even review the district court's division of assets because it was based on insufficient findings of fact.[3] We disagree.

The district court has broad discretion in its division of marital property. *Gill v. Gill*, 919 N.W.2d 297, 301–02 (Minn. 2018). A district court abuses its discretion if the division is "against logic and the facts on record." *Foster v. Foster*, 802 N.W.2d 755, 757 (Minn. App. 2011) (quotation omitted). Even if we might have taken a different approach, we will affirm the division if it had an "acceptable basis in fact and principle." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court must divide marital assets equitably. Minn. Stat. § 518.58 (2018). But an equitable division need not be equal. *See Ruzic v. Ruzic*, 281 N.W.2d 502, 505 (Minn. 1979). A district court may consider a variety of factors in dividing property equitably, "such as the length of the marriage, sources of

[2] Nothing in the record indicates that husband raised the issue of improper division to the district court.

[3] The district court stated that it had difficulty determining the "actual value" of the *personal* property in this case. It stated that it nonetheless deemed the "overall real and personal property and debt division . . . equitable." Husband argues that the court's uncertainty means it lacked a sufficient basis on which to divide the property. But difficulty in assessing a value does not mean that the final values are not reasonably supported by the record. Further, the district court did not refer to difficulty valuing real property, legal claims, or debts or refer broadly to all property. This statement from the district court does not undermine its findings.

income, and the contribution of each party in the preservation of the marital property." *Sirek v. Sirek*, 693 N.W.2d 896, 899 (Minn. App. 2005); *see* Minn. Stat. § 518.58, subd. 1 (2018) (listing factors to be considered).

Here, the district court awarded 58% of the identified marital assets to wife and 42% to husband. For wife, this included $14,760 in personal property, the homestead, valued at $106,704.95, her 40l(k), valued at $43,556.21, and various debts, for a total award of approximately $161,700. For husband, this included $108,241 in personal property and his Thrivent Insurance policy, valued at $7,873.66, for a total award of approximately $116,100. The district court also awarded each party all items of personal property in their possession, if not included in the list attached to the order. Notably, the district court did not state that it included the value of the prospective malpractice and lender-liability claims in its division.

In support of his position that this court must remand for more specific findings on his prospective claims, husband cites *Rogers v. Rogers*, 296 N.W.2d 849 (Minn. 1980), *Roberson v. Roberson*, 206 N.W.2d 347 (Minn. 1973), and *Balogh v. Balogh*, 356 N.W.2d 307 (Minn. App. 1984), *review denied* (Minn. Jan. 31, 1986). These cases are distinguishable, as they involved situations in which the district court's valuations were not supported by sufficient facts to allow appellate review.[4]

[4] *See Rogers*, 296 N.W.2d at 853–54 (remanding for more specific findings when district court's valuation of business interest may have been based on impermissibly calculated appraisals, but court provided no explanation of how it reached value); *Balogh*, 356 N.W.2d at 313-14 (remanding for more specific findings when district court's value appeared to be "purely arbitrary," given the substantial range between parties' estimates, but no explanation provided); *Roberson*, 206 N.W.2d at 348 (remanding when district court

Here, as we concluded above, the district court properly placed a value on husband's prospective claims based on husband's testimony. Likewise, the value of other assets was clearly based on testimony and exhibits in the record. While the district court's division is not exactly equal, it need not be to be equitable. *Ruzic*, 281 N.W.2d at 505. The division had an acceptable basis in fact and principle, and we therefore conclude that the district court did not abuse its discretion in its division of the parties' marital assets.

IV. The district court properly declined to address husband's claimed nonmarital interest in certain property.

Husband contends that the remaining equity in the marital homestead is his nonmarital property, because he and wife purchased the property predominantly with an inheritance that was his nonmarital property. We see no error in the district court's decision.

The classification of property as marital or nonmarital is a question of law that we review de novo. *Gill*, 919 N.W.2d at 301 (citations omitted). We review the underlying facts for clear error. *Fitzgerald*, 629 N.W.2d at 119. Courts presume that property acquired by either spouse during a marriage and before asset valuation is marital property. Minn. Stat. § 518.003, subd. 3b (2018). A party can overcome this presumption by showing the property is nonmarital. *Id.* The party claiming that property is nonmarital bears the burden of proof by a preponderance of the evidence. *Crosby v. Crosby*, 587 N.W.2d 292, 296 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). Life-insurance policies that

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placed value on business, but neither party testified to nor offered any evidence of business's value).

name only one party as the beneficiary are nonmarital property of that party. *Angell v. Angell*, 777 N.W.2d 32, 33, 37 (Minn. App. 2009), *aff'd*, 791 N.W.2d 530 (Minn. 2010).

Husband argues that the parties put down $100,000 on the homestead from the proceeds of his mother's life-insurance policy and the proceeds of the sale of a prior house. He claims he has a nonmarital interest in these funds. At trial, wife indicated that the money for the purchase of their second home, in 2004, came from the sale of their prior home and from husband's mother's life-insurance policy. She estimated that the total down payment might have been $100,000. She further testified that the parties used marital funds to pay the premiums on the mother's life-insurance policy. Husband did not deny this in his testimony, and he did not testify that the insurance policy named him as the only beneficiary.

When a party provides insufficient evidence to calculate a claimed nonmarital interest in a homestead, the district court does not err in finding no nonmarital interest. *Fitzgerald*, 629 N.W.2d at 119-20. Here, husband failed to carry his burden of proof, and he did not present sufficient evidence to allow the district court to consider his nonmarital-asset claim. We therefore conclude that the district court did not err in not addressing husband's nonmarital claim.

Affirmed.