STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1526

In re the Marriage of:
Kristy Ann Ryan, petitioner,
Appellant,

vs.

Jeffrey Alan Ryan,
Respondent.

Filed September 9, 2019
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Scott County District Court
File No. 70-FA-17-8410

Mark A. Olson, Olson Law Office, Burnsville, Minnesota (for appellant)

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Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

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

BJORKMAN, Judge

In this marital-dissolution appeal, father challenges the district court's physical-custody and parenting-time decisions, and wife challenges the property division. Because the district court erred in applying the marital-property presumption and in determining

marital and nonmarital property, we reverse and remand the property division. But we otherwise affirm.

FACTS

The ten-year marriage of appellant-mother Kristy Ann Ryan and respondent-father Jeffrey Alan Ryan was dissolved in 2018. The parties have one minor child born in 2010; the child is on the autism spectrum and has special needs. The parties stipulated to joint legal custody, and the district court granted sole physical custody of the child to mother after applying the statutory best-interests factors. Father was granted parenting time with the child before and after school and on alternate weekends, and during weekdays and alternate weekends in the summer. The parties waived maintenance, and the district court ordered father to pay child support.

At the time of the dissolution, the parties' assets included their Prior Lake home, which mother owned before the marriage. The home has a stipulated value of $280,000 and was subject to a $77,900 mortgage. They also owned a cabin purchased during the marriage with a $193,000 appraised value. During the marriage, father received funds from various sources related to several work-related injuries,[1] including (1) a 2013 net workers' compensation settlement of $87,000, (2) lump-sum Social Security disability income (SSDI) payments of $63,681.90 for himself and $35,976 for the child for the period from

[1] Father was injured six times before the marriage and once during the marriage. His injuries occurred in 1992 (neck and head), 1994 (finger), 1996 (low back), 2004 (knee), 2005 (shoulder), 2006 (low back), and 2011 (neck, shoulders, low back, and hip). He was deemed permanently disabled in 2011.

2012 to 2015, and (3) $55,040 in long-term disability benefits from his employer's private insurer. In 2016, father cashed out his $150,517 401k plan.

The district court awarded father the cabin and mother the home, subject to father's 23% interest to be paid when the child finishes high school. The district court ordered mother to pay 44% and father to pay 56% of the home mortgage, representing their respective personal uses of the mortgage proceeds. The district court treated all of father's SSDI, workers' compensation, and insurance payments as nonmarital property, but awarded mother a $5,000 interest in father's 401k funds. In a posttrial order, the district court awarded mother a 5% marital interest in the SSDI payments.

Mother appealed the property division, asserting that father failed to satisfy his burden of proof on his nonmarital claims and the district court made erroneous factual findings. Father appealed the physical-custody award, parenting time, and deferral of mother's payment for his nonmarital interest in the home until the child graduates from high school.

D E C I S I O N

I. The district court did not abuse its discretion by granting sole physical custody of the child to mother.

Our "review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Kremer v. Kremer*, 827 N.W.2d 454, 457 (Minn. App. 2013) (alteration in original) (quotation omitted), *review denied* (Minn. Apr. 16, 2013). We view the record "in the light most favorable to the district court's findings," affirming findings of fact

unless they are clearly erroneous, and deferring to the district court's credibility determinations. *Id*. at 457-58.

In deciding custody of a child, district courts must focus on the child's best interests and consider 12 statutory factors. Minn. Stat. § 518.17, subd. 1(a) (2018). No single best-interests factor is determinative; courts "must weigh all statutory factors in the balance." *Lemcke v. Lemcke*, 623 N.W.2d 916, 920 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

It is undisputed that the district court considered all of the statutory best-interests factors. But father argues that the court clearly erred by finding that five of the factors favor mother. We disagree. Our careful review of the record reveals evidentiary support for the challenged findings as follows:

A. Effect of the proposed arrangements on the child's needs and development

The parties' testimony supports the district court's finding that they are both involved in raising the child. And the district court credited mother's testimony that she has been the child's sole advocate at school regarding his special needs, and has arranged his social activities. The parties agreed mother would remain in the family home, which the district court properly found to be "the only home [the child] has known."

B. The child's special mental-health and educational needs

The district court found mother "better able and more inclined" to assist the child in school and socialization. This finding is supported by mother's testimony about bringing

the child to socialization therapy, assisting him with homework, and helping him learn computer skills.

C. History and nature of the parents' provision of care for the child

Consistent with the parties' testimony, the district court found that both parents contribute to the child's care, but "[i]n terms of day to day care for the child[—]meals, baths, homework[—][m]other is more involved than [f]ather," who primarily interacts with the child in "leisure time." The district court found that mother prepares meals for the child, bathes the child, and spends the evenings with the child. And mother testified that she has been primarily responsible for taking the child to therapy, religious activities, and Boy Scouts.

D. Willingness of the parties to provide ongoing care for the child

The district court credited mother's testimony that she has been willing and able to provide for the child's ongoing care and father's testimony that he is willing to do so. Mother's testimony is supported by her past actions; father's testimony is more aspirational. Prior to trial, father told mother he planned to move to Florida for six months out of the year. On the first day of trial, he informed her that he had changed his mind, and he testified that he planned to live close to the child's school. But he also testified to spending a significant amount of the summer at the cabin. According to mother, father gave her "different answers" every time they discussed where he planned to live.

E. Changes to home, school, and community

In weighing this factor in mother's favor, the district court again noted that the home has been the only place the child has ever lived and that the parties agreed it should be

awarded to mother. The evidence supports the district court's finding that "[t]he child's community is centered around the home, friends, school, church, and Boy Scouts."

Overall, the evidence as to each of the five challenged factors supports the district court's findings and ultimate decision to place the child in mother's sole physical custody. Father's arguments are largely based on his testimony, which the district court weighed against mother's testimony and other evidence in reaching its custody decision. And the court chose to give greater weight to mother's testimony. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (rejecting best-interests argument proffered by spouse in custody dispute, recognizing that it is not the role of an appellate court to reconcile conflicting evidence).

II. The district court did not abuse its discretion in determining parenting time.

Father asserts that the district court erred by awarding him less than the 25% a parent is presumed to be entitled to under Minn. Stat. § 518.175, subd. 1(g) (2018) (providing for the "rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child"). He argues that his allotment of overnights—two per two-week period—is neither adequate nor in the child's best interests. The purpose of parenting time is to "enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2018).

Although father requested 75% of the parenting time, he did not invoke the 25% presumption or cite Minn. Stat. § 518.175, subd. 1(g), even in connection with the posttrial motions. Because father did not argue the statutory presumption in the district court, this

issue is forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts consider only those issues presented to and considered by the district court); *Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010) (requiring "district court[] to demonstrate an awareness and application of the 25% presumption *when the issue is appropriately raised* and the court awards less than 25% parenting time" (emphasis added)).

As to father's other challenges to the adequacy and logistics of the parenting-time arrangement, we are satisfied that the evidence supports the district court's findings. The number of parenting-time transitions reflect, in part, mother's need to work and father's availability to care for the child before and after school. Father argues that he was awarded only 14% of the parenting time based on overnights. Minn. Stat. § 518.175, subd. 1(g), permits parenting time to be determined "by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight." Using this calculation, father has more than 14% of the parenting time. In sum, the district court's supported findings on the child's needs and the care mother provides, support its best-interests determination. *See Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984) ("It is well established that the ultimate question in all disputes over [parenting time] is what is in the best interest[s] of the child."), *review denied* (Minn. June 12, 1984).

III. The district court abused its discretion in dividing the parties' property.

Minnesota law requires a "just and equitable" division of marital property. Minn. Stat. § 518.58, subd. 1 (2018). A district court has broad discretion to divide marital

property, which this court will not reverse "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). Marital property includes "property, real or personal, . . . acquired by the parties . . . during the existence of the marriage." Minn. Stat. § 518.003, subd. 3b (2018). Property acquired during a marriage is presumed to be marital property. *Id.* Nonmarital property includes real or personal property acquired before the marriage, or property that a spouse "acquire[s] as a gift, bequest, devise or inheritance." *Id.*, subd. 3b(a), (b).

A party claiming property is nonmarital "must produce demonstrable proof to overcome the marital property presumption." *Erdahl v. Erdahl*, 384 N.W.2d 566, 568 (Minn. App. 1986); *see also Kottke v. Kottke*, 353 N.W.2d 633, 636 (Minn. App. 1984) (stating that the standard of proof is a preponderance of the evidence), *review denied* (Minn. Dec. 20, 1984). Whether property is marital or nonmarital is a legal question, which we review de novo. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). "But we defer to the district court's underlying findings of fact and do not set the findings aside unless they are clearly erroneous." *Id.*

Mother challenges three aspects of the property division, asserting that the district court erroneously classified some property or improperly calculated father's nonmarital interest in property, including (1) portions of the SSDI, workers' compensation, and disability insurance payments, (2) the 401k plan, and (3) the home. Her arguments have merit, and we address each in turn.

To the extent father's SSDI, workers' compensation, and disability insurance payments reimbursed his wage loss during the marriage, they are part of the marital estate

and must be divided equitably. *See Walswick-Boutwell v. Boutwell*, 663 N.W.2d 20, 22 (Minn. App. 2003) ("This court has consistently treated disability benefits as marital property."), *review denied* (Minn. Aug. 19, 2003); *Hafner v. Hafner*, 406 N.W.2d 590, 593 (Minn. App. 1987) (referring to wage loss as marital and compensation for loss of good health as nonmarital). By contrast, compensation for personal injuries is nonmarital in nature because it represents "injuries personal to a spouse." *Ward v. Ward*, 453 N.W.2d 729, 732 (Minn. App. 1990) (designating as nonmarital spouse's workers' compensation recovery for "[p]ain and suffering, disability, and loss of the ability to lead a normal healthy life"), *review denied* (Minn. June 6, 1990).

The district court treated the SSDI payments as 95% nonmarital, despite the fact that they represented wage loss father incurred during the marriage. In the dissolution judgment, the district court noted that father had not signed a release that categorized the payments as relating to wage loss or personal injuries, making it "impossible to know whether and in what amount these sums represent wage loss." And in its posttrial order, the district court stated that "there is no evidence . . . suggesting that SSDI is meant to replace lost wages only." These statements suggest legal error or insufficient evidence. Likewise, father offered no evidence concerning the nature of the workers' compensation and insurance disability benefits he received during the marriage. Accordingly, there is no record support for characterizing any portion of those proceeds as nonmarital.

There is a similar lack of record support for the district court's treatment of father's 401k proceeds. Father cashed out his plan for $150,517 in January 2016. Mother testified that the account was worth $120,000 at the time of the marriage. Father testified that the

account was worth $144,478, but his supporting documentation was from July 2010—two years after the marriage. Acknowledging that the parties' evidence left it unable to "determine precise amounts," the district court awarded mother a $5,000 interest for the "modest increase" in the plan between 2008 and 2016. This conclusion is not supported by the evidence and ignores the statutory presumption that this is marital property. And because father used some of the funds to acquire the cabin, vehicles, and other property, the district court's error in designating these assets as nonmarital affects other aspects of the property division.

Perhaps the most evident errors are those associated with the parties' home. Mother purchased the home in 2004 for $237,653, investing $147,653 of her own funds. The parties offered no evidence as to the home's value at the time of the marriage, but the parties stipulated that the home was worth $280,000 at the time of the dissolution. Despite the dearth of evidence to support a finding on the increase in the home's value during the marriage, the district court made marital and nonmarital awards that equaled $328,000,[2] which exceed the home's stipulated value. Mother also points out that the district court did not apply the formula for apportioning marital and nonmarital interests in the homestead property set forth in *Schmitz v. Schmitz*, 309 N.W.2d 748, 749-50 (Minn. 1981). But the court cannot be faulted for failing to apply this formula when the parties did not submit the requisite evidence to support its application. *See Eisenschenk v. Eisenschenk*,

[2] The district court found mother's nonmarital interest in the home to be $218,400, father's nonmarital interest to be $20,000, and their marital interest to be $89,600. The sum of these figures is $328,000.

668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.").

While we acknowledge the challenge the district court faced in identifying and equitably dividing the parties' marital property, on this record, a remand is necessary on all aspects of the property division. On remand, the parties should submit the evidence needed to determine the marital and nonmarital interests in all of the parties' property.

Affirmed in part, reversed in part, and remanded.