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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0844**

In re the Marriage of:

Judy Ann Jacques, petitioner,  
Respondent,

vs.

Nicholas Melvin Jacques,  
Appellant.

**Filed December 16, 2019  
Affirmed  
Jesson, Judge**

Carver County District Court  
File No. 10-FA-17-341

James T. Williamson, Haugen Law Group, PLLC, Chaska, Minnesota (for respondent)

Roger E. Meyer, Mark E. Mullen, Jensen, Mullen, McSweeney, & Meyer, PLLP,  
Bloomington, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Smith,

John P., Judge.\*

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

## UNPUBLISHED OPINION

**JESSON**, Judge

After nearly 20 years, appellant Nicholas Melvin Jacques (husband) and respondent Judy Ann Jacques (wife) dissolved their marriage. Husband challenges the district court's decision awarding wife the parties' homestead and permanent spousal maintenance. Because we conclude that the district court did not abuse its discretion in either decision, we affirm.

### FACTS

Appellant Nicholas Melvin Jacques (husband) married respondent Judy Ann Jacques (wife) in 1997. During their marriage, wife worked as an accounts receivable specialist and did some private bookkeeping, and husband worked as a truck driver. The parties have four children together, including one minor child. Over the course of their roughly twenty-year marriage, husband and wife accumulated an estate valued at over \$1 million.

In September 2017, the parties separated, and wife filed a petition for dissolution.<sup>1</sup> Throughout the dissolution proceeding, husband did not comply with court orders, ultimately resulting in the district court finding him in contempt of court after he failed to appear at a scheduled hearing.<sup>2</sup> Additionally, during the dissolution proceeding, husband

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<sup>1</sup> At that time, wife had an order for protection (OFP) against husband.

<sup>2</sup> The district court issued a bench warrant, and police arrested husband. In order to ensure that husband followed district court orders and participated in the dissolution proceeding, the district court established conditions requiring husband's compliance in order to stay his incarceration.

withdrew roughly \$83,500 in cash from the parties' bank accounts and had cashier's checks issued to himself and his friends for hundreds of thousands of dollars. And husband repeatedly refused to disclose the location of these funds. Despite husband's noncooperation, the parties reached a stipulation awarding wife sole legal and physical custody of their minor child. But they were unable to reach an agreement on several other issues.

Because of this impasse, the district court held a one day trial in October 2018. Topics for resolution at trial included property division, wife's spousal-maintenance request, and husband's child-support obligation. At the trial, wife testified about her income and expenses, referencing exhibits submitted to the court. According to wife, because she was recently passed over for a promotion, she anticipated her income would be roughly the same for the foreseeable future. Wife then explained that she calculated her expenses by using QuickBooks and averaging her expenses for the past three years. Wife provided testimony about her monthly housing costs, her car payment, a listed monthly tax expense, car insurance, and medical debt expenses. Additionally, wife explained that she sought \$600 per month as permanent spousal maintenance from husband, in part to help offset the cost of obtaining her own medical and dental insurance.

Wife also testified about the homestead. According to wife, husband's mother deeded the land (upon which the homestead was later built) to husband. In 1994—before the parties were married—husband deeded the land to both himself and wife, and the parties obtained a mortgage and completed the process to build a home on the land. At this time, wife believed that the parties jointly owned the land and the homestead. Wife

explained that before the parties married, they split the mortgage equally and each paid about \$300 per month. That practice continued, wife asserted, once the parties got married until they paid off the mortgage in 2004. Through her testimony, wife contended that the homestead was marital property, but acknowledged that husband made a nonmarital claim to it.

Husband also testified about his income, expenses, and his nonmarital claim to the homestead. He described his income as a truck driver and attempted to explain his monthly expenses, though his testimony was unclear regarding certain expenses.<sup>3</sup> Regarding the homestead, husband agreed that his mother deeded the land to him because he helped her with property upkeep. Then, in case anything happened to him, husband deeded the land to both himself and wife. And husband agreed that the parties then obtained a mortgage for the homestead. But husband's testimony differed from wife's because, according to him, he used money he earned before the marriage to pay off the mortgage after the parties married. Husband, describing wife as "nothing but a renter," asked the court to award him the homestead and estimated that his nonmarital interest in the property was around \$250,000-\$260,000. But husband did not provide documentary evidence to support his valuation of his claimed nonmarital interest in the homestead. And throughout husband's testimony, the district court—noting the importance of the proceeding and attempting to

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<sup>3</sup> Husband also submitted a document detailing his estimated monthly expenses.

fairly elicit information from both parties—repeatedly insisted that husband answer the question being asked and refrain from talking over counsel.<sup>4</sup>

Following the trial, the district court issued a judgment and decree dissolving the parties' marriage. The district court found that wife's monthly income was \$4,304 and her reasonable monthly expenses were \$5,329. After considering statutorily required factors, the district court found wife in need of spousal maintenance and awarded her \$600 per month in permanent spousal maintenance. With regard to the homestead—which both husband and wife sought—the district court concluded that husband did “not [meet] his burden to establish a nonmarital claim in the homestead.” In doing so, the district court noted it did not find husband's testimony credible. As a result, the district court awarded the homestead to wife, where she intended to continue living with the minor child. Once all property was divided, husband and wife each received 50% of the value of the property classified as marital property. Husband appeals.

## **D E C I S I O N**

Husband challenges the judgment and decree on two grounds. First, husband contends that the district court erroneously failed to find that he had a nonmarital interest in the homestead and incorrectly awarded the entire property to wife. Second, husband argues that the district court abused its discretion by awarding wife permanent spousal maintenance. We review each argument in turn.

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<sup>4</sup> Throughout his testimony, husband made several somewhat surprising claims, including that he stashed roughly \$60,000—from the parties' accounts—in a tree and required \$100 a day to meet his grocery needs.

**I. The district court did not err by denying husband’s nonmarital claim to the homestead and awarding the homestead to wife.**

Husband draws our attention to two alleged errors in the district court’s treatment of the homestead. First, husband argues that the district court erred by failing to credit him for his claimed nonmarital interest in the homestead. Next, husband posits that the district court should not have awarded wife the homestead.

*Husband’s Claimed Nonmarital Interest in the Homestead*

In a marriage-dissolution proceeding, the district court must divide marital property in a “just and equitable” manner. Minn. Stat. § 518.58, subd. 1 (2018). Marital property is real or personal property acquired during the parties’ marriage. Minn. Stat. § 518.003, subd. 3b (2018). And “[a]ll property acquired by either spouse” during the marriage “is presumed to be marital property.” *Id.* But property acquired by either spouse before the marriage is classified as nonmarital property. Minn. Stat. § 518.003, subd. 3b(b). “Whether property is marital or nonmarital is a question of law,” which this court considers *de novo*. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). But in evaluating whether property is marital or nonmarital, reviewing courts defer to the district court’s factual findings and do not set aside those findings unless they are clearly erroneous. *Id.*

Here, the district court found that husband obtained the land on which the homestead was built from his mother before the marriage. Further, the district court noted that both parties submitted a deed from January 1994 showing that husband transferred ownership of the property from himself to both husband and wife. But the court concluded that husband “provided no other evidence or testimony as to why he should be awarded the

home or in support of his alleged nonmarital interest.” Husband’s testimony was “sparse, lack[ing] focus and . . . largely unrelated to the factors necessary to meet his burden to prove his nonmarital claim,” according to the district court, which did not find it credible. As such, the court did not credit husband for his alleged nonmarital claim in the homestead.<sup>5</sup>

We agree with the district court. Other than his own testimony about the value of the land—which the district court did not credit—the only evidence husband provided regarding the value of his claimed nonmarital interest was a construction loan document from 1994 listing the lot value at \$30,000. But this 25-year-old document does not account for the change in value in the land and the homestead that occurred during the parties’

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<sup>5</sup> Although we agree with the district court’s ultimately equal property division, we note that it was error for the district court to conclude that husband did not have a nonmarital interest in the homestead. The district court found that, before the marriage, husband both obtained the land and deeded it to himself and wife. Property acquired before a marriage is generally the nonmarital property of the person(s) who acquire that property. *See* Minn. Stat. § 518.003, subd. 3b(b). On this record, however, the district court’s error in failing to recognize *both* parties’ nonmarital interests in the homestead is harmless. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error). Specifically, wife’s testimony was that, before the marriage, the parties equally contributed to the costs and payments associated with the property. Further, neither husband nor wife otherwise established the *value* of their individual nonmarital interest. Therefore, the record indicates that the parties’ nonmarital interests were equal. And because the parties’ nonmarital interests were equal, and the district court equally divided what it (incorrectly) identified as the marital estate, there is no net difference in the division of the property arising from the district court’s failure to recognize the parties’ nonmarital interests in the homestead. On this particular set of circumstances, we affirm the district court’s property division. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a district court’s decision will not be reversed if it reaches the right result for the wrong reason); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for a *de minimis*, technical error).

marriage. *See Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009) (stating that “[w]hen marital and nonmarital assets have been commingled, the party asserting the nonmarital claim must adequately trace the nonmarital funds in order to establish their nonmarital character”). Because husband did not establish its value, we conclude that the district court did not err by failing to credit him for his alleged nonmarital interest in the homestead.

*Award of the Homestead to Wife*

Husband also challenges the district court’s decision to award the homestead to wife. A district court has broad discretion to evaluate and divide property in a marital dissolution, and we do not overturn a district court’s decision absent an abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Here, in awarding the homestead to wife, the district court noted that wife lives there with the parties’ minor child. Further, the district court credited wife’s testimony that she had looked into alternative housing but would be unable to keep the minor child in the same school district without taking on a significant mortgage and her testimony that the minor child would be upset if she were forced to move from the homestead. We agree with the district court’s conclusion that awarding mother the homestead serves the minor child’s best interests. It was not an abuse of discretion for the district court to award wife the homestead. *See Schuck v. Schuck*, 390 N.W.2d 2, 4 (Minn. App. 1986) (stating that “when a decision reflects consideration of the minor children’s ages and circumstances” including their best interests, “it will be upheld as a proper exercise of the trial court’s discretion”).



**II. The district court did not abuse its discretion by awarding wife permanent spousal maintenance.**

Husband also contends that the district court abused its discretion by awarding wife permanent spousal maintenance. Specifically, husband argues that several of wife's expenses were unreasonable and not supported by the record. We examine a district court's award of spousal maintenance for an abuse of discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). And, unless they are clearly erroneous, we uphold findings of fact concerning spousal maintenance. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

A court may award spousal maintenance if it finds that the maintenance-seeking spouse either:

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2018); *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989)

(stating that an award of spousal maintenance requires a showing of need). And the statute outlines several factors that a court must consider before awarding maintenance, including financial resources of the party, time necessary to acquire education or skills for employment, the standard of living during the marriage, the duration of the marriage, loss

of income and employment opportunities forgone by the spouse, the age and physical and emotional condition of the spouse, the spouse's ability to pay maintenance, and each party's contribution to the marital property. Minn. Stat. § 518.552, subd. 2(a)-(h) (2018). If consideration of these factors warrants the conclusion that a spouse is in need of maintenance, then the district court may order a temporary or permanent spousal maintenance award. *Id.*, subd. 2 (2018).

Here, the district court found that wife's income is \$4,304 per month, and her expenses totaled \$5,329 each month. The district court determined that wife's testimony was credible, and concluded that her claimed expenses were reasonable. Further, the district court found husband's income to be \$7,001 per month and his expenses to be \$3,528 each month. After considering each of the factors provided in the statute, the district court concluded that wife demonstrated she needed maintenance and that husband had the ability to pay. As a result, the district court awarded wife \$600 each month in permanent spousal maintenance.

Upon review of the record, we are satisfied that the district court's findings are not clearly erroneous. The record supports the district court's findings that wife testified credibly about her income and expenses and submitted a monthly expense tracker. Further, the district court spent four pages in its order evaluating each statutory factor before concluding that wife needed spousal maintenance. Because we are satisfied that the district court correctly applied the law and because weighing evidence and determining credibility are "within the province of the fact-finder," we discern no abuse of discretion in the district

court's decision to award wife spousal maintenance. *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009).

Husband does not challenge his ability to pay spousal maintenance, but instead argues that several of wife's expenses are unreasonable. Specifically, husband identifies the following expenses as unreasonable: \$900 home equity loan payment, \$625 automobile expense, \$175 monthly for car insurance, and \$125 for medical expenses. Further, husband contends that the district court failed to consider his child-support payment and that wife no longer has a monthly tax-preparation expense. We address each expense below.

*\$900 Payment for Home Equity Loan*

According to husband, the \$900 monthly expense for the home equity loan is unreasonable because it was not an actual expense (i.e. the amount due) and because wife received other assets in the dissolution she could have used to pay the loan. But wife testified that her \$900 expense stemmed from the amount necessary to repay the loan by its due date. Wife acknowledged that she recently had only been paying the interest due—in part because of her attorney fees—but that she had sometimes made \$900 payments during the marriage. The district court credited this testimony, and we defer to the district court's credibility determinations. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Accordingly, nothing in the record suggests that it was clearly erroneous to find this expense reasonable.

*\$625 Automobile Expense and \$175 Automobile Insurance*

Husband also argues that wife's \$625 monthly expense for her vehicle is unreasonable because it exceeds the couple's standard of living during their marriage and

because there is no documentary evidence regarding wife's new car loan in the record. Wife testified that, through a six-year loan, she obtained a new vehicle because her old automobile was not reliable and was constantly overheating. The district court found wife's car payment reasonable under the circumstances, referencing the fact that her old vehicle no longer worked and that she obtained favorable financing. Similarly, husband asserts wife's alleged \$175 monthly expense for automobile insurance is unreasonable because most of that is likely attributable to her new vehicle. But in her testimony, wife explained that the insurance payment is for three vehicles. And again, the district court determined that this expense was reasonable. Because the district court's findings are based on wife's credible testimony, they are not clearly erroneous.<sup>6</sup>

*Failure to Consider Monthly Child Support*

In addition to his arguments about the reasonableness of wife's expenses, husband contends that the district court erroneously failed to consider his monthly child support payment of \$818 when evaluating wife's income and expenses. Husband draws our attention to Minnesota Statutes section 518.552, subdivision 2(a), which provides that one factor the district court should consider is "the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party *includes a sum for that party as custodian.*" (Emphasis added.) But we read that statutory provision as requiring the court to consider child-support payments only to the extent that

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<sup>6</sup> Husband also asserts that because wife was awarded three other vehicles, she should have used one of those. But wife testified that at least two of those vehicle were used by the parties' adult children, and that she intended to give one vehicle to the minor child who would be learning to drive soon.

the child-support award exceeds the needs of the child and explicitly provides assistance for the *parent*. Here, husband has not shown that his child-support payment exceeds the amount required to pay for the needs of the minor child. And because husband failed to demonstrate that any of the child-support award was in excess of the child's needs, we conclude it was not an abuse of discretion for the district court to decline to consider husband's child-support payment in its maintenance calculation.

*\$210 Tax-Preparation Expense and \$125 Medical Expense*

Finally, we note that the district court erroneously included two expenses when calculating spousal maintenance. First, both parties acknowledge that wife no longer has a \$210 monthly tax-preparation expense. Second, husband correctly contends that a \$125 medical expense for an adult child's therapy was improperly included in wife's expenses. *See Reif v. Reif*, 410 N.W.2d 414, 416 (Minn. App. 1987) (stating that a parent's contributions to an adult child cannot be considered when determining an appropriate amount of maintenance). But even subtracting both amounts from wife's monthly expenses, wife's monthly income (\$4,304) is still less than her monthly expenses (\$4,994). Further, even including the \$600 monthly spousal maintenance, wife's income (\$4,904) does not exceed her monthly expenses. As such, we conclude that the inclusion of these expenses is a *de minimis* error not warranting reversal of the spousal-maintenance award. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (declining to remand on the basis of a technical, *de minimis* error).

In sum, because husband failed to establish the value of his claimed nonmarital interest in the home, it was not an abuse of discretion for the district court to fail to credit

husband for his alleged nonmarital interest or to award the homestead to wife. Additionally, despite a de minimis error calculating wife's monthly expenses, the district court did not abuse its discretion by awarding wife spousal maintenance.

**Affirmed.**