STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1395

In re the Marriage of: Donald Henry Off, petitioner,
Respondent,

vs.

Sandra Lee Off, n/k/a/ Sandra Lee Dodgson,
Appellant.

Filed July 20, 2020
Affirmed
Slieter, Judge

Otter Tail County District Court
File No. 56-FA-16-3469

Jon Jay Cline, Mary N. Kaasa, Cline Jensen P.A., Fergus Falls, Minnesota (for respondent)

Lindsay K. Forsgren, Krekelberg Law Firm, Pelican Rapids, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Slieter, Judge.

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

SLIETER, Judge

Appellant challenges the district court's designation of a line of credit balance due and two parcels of real property as marital property. Appellant argues that the district court abused its discretion in holding her responsible for one-half of the line of credit and erred in her nonmarital claim to the Fergus Falls, Minnesota and Mesa, Arizona houses. Because the record supports the district court's discretionary decision to designate the parties' line

of credit balance and the district court correctly concluded that the contested real estate properties are marital property, we affirm.

FACTS

Appellant Sandra Lee Dodgson and respondent Donald Henry Off married on September 22, 2007, and separated in April of 2016. When the parties met, Off was retired and Dodgson was a manager of a company that operated nationwide liquidation and promotional sale events for furniture companies. Off eventually joined the company and became an event manager and management consultant. In 2008, the parties began their own furniture liquidation and promotional sales company called Lincoln Management Group (LMG). They ultimately formed LMG as an LLC with equal ownership between Off and Dodgson. To purchase inventory for their first sale, Off borrowed $78,000 secured by a home equity line of credit by providing his lender a mortgage of his nonmarital home in Peoria, Illinois.

The line of credit is the first of three interests that are central to this appeal. The parties regularly drew money from the line of credit as an advance to pay the costs of LMG's projects. Once money was returned from the projects, the parties paid back the advanced money. The court valued the line of credit balance at $37,833.04.

The second contested issue involves a home in Fergus Falls. The parties purchased the property "for approximately $75,000." At the time of the purchase, the parties withdrew $74,000 from an LMG account. One half was used as a down payment on the Fergus Falls home and the other was deposited into Off's private bank account. The court valued the house at $92,000.

The final contested issue involves a home in Mesa, Arizona which the parties purchased in July 2010 from Dodgson's parents for "approximately $99,751." The parties used $50,000 from an LMG account as down payment and financed the balance secured by a home mortgage. Neither party made payments on the property after they separated, and Dodgson paid $6,838.95 to stop a foreclosure action. The court found the loan had a $26,463.23 balance.

The district court issued its order dissolving the parties' marriage and dividing the parties' assets and debts. The district court stated that "consideration of all relevant factors supports a substantially equal division of marital property and debt." The district court awarded Dodgson the Fergus Falls and Mesa, Arizona properties, directing that she had full responsibility for the ongoing mortgage, taxes, and utility payments. The district court also awarded Off his nonmarital Illinois residence, determined that he is responsible to pay the $37,833 line of credit loan, and ordered Dodgson pay him $140,000 which "roughly represents [Off's] portion of the equity from the Fergus Falls property and the Mesa property, and for payment of the one half of the [line of credit] loan." The district court denied Dodgson's motion for amended findings and motion for a new trial. Dodgson appeals.

D E C I S I O N

I. The district court correctly designated the parties' contested assets and debt as marital property. [1]

The district court has broad discretion in allocating marital property in marriage dissolution cases. *Crosby v. Crosby*, 587 N.W.2d 292, 296 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). "Debt is apportionable as part of the marital property settlement." *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). All property acquired by the parties to a dissolution is considered marital unless it was (1) acquired as a gift, (2) acquired before marriage, (3) "acquired in exchange for or is the increase of property described in" the other options, (4) acquired after the valuation date, or (5) "excluded by a valid antenuptial contract." Minn. Stat. § 518.003, subd. 3b (2018). Whether property is marital or nonmarital is a question of law that we review *de novo*, "but a reviewing court must defer to the trial court's underlying finding of facts." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). These findings will not be reversed unless clearly erroneous. *Id.* Findings are clearly erroneous if they are not

[1] In district court, the parties did not brief, and the district court understandably did not address, the implications of the facts that (a) LMG has a separate existence from the parties; and (b) LMG was not a party to the proceedings in that court. Similarly, these matters were not raised in, and LMG is not a party to, the proceedings in this court. *See Danielson v. Danielson*, 721 N.W.2d 335, 339 (Minn. App. 2006) ("[I]n a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights."); *see also Blohm v. Kelly*, 765 N.W.2d 147, 153 (Minn. App. 2009) ("Corporate assets do not belong to the stockholders, but to the corporation." (quotation omitted)). Therefore, we also do not address the implication of these facts. *See Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal).

supported by the record. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999).

A. Outstanding Line of Credit

Dodgson argues that the district court abused its discretion by holding her responsible for one-half of the line of credit despite purported evidence that Off dissipated assets in violation of Minn. Stat. § 518.58, subd. 1a (2018). She claims that Off misused marital funds he had received and which were intended to be applied to the line of credit. The district court concluded that the evidence Dodgson provided to support her claim "was vague, at best, and not conclusive of the funds being used for either marital or non-marital purposes."

Section 518.58, subdivision 1a, refers to a party who "has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets." Minn. Stat. § 518.58, subd. 1a. The record does not support Dodgson's argument that Off violated this statute.

The district court found that both parties stopped making payments on the line of credit by early 2014, two years before the parties separated. The court found no evidence suggesting that the parties were "in contemplation of commencing" a dissolution at that time. Dodgson also argues that Off concealed the money. However, the district court found that Dodgson knew about the balance because she filed the party's taxes and did so in 2014, the first year that no payments were made to the line of credit. Dodgson has not shown how this finding was clearly erroneous and has not met her burden in showing how

the district court abused its discretion in concluding Off did not violate Minn. Stat. § 518.58, subd. 1a.

B. Fergus Falls Property

Dodgson next argues that the district court erred in ruling that the Fergus Falls home was marital property. Dodgson claims that the evidence demonstrated the parties agreed to an allocation of $74,000 from their business account during the marriage, and she used her one-half to purchase the home. Therefore, she argues, the district court should have considered "at least" the $37,000 she used for down payment as nonmarital property.

The district court found that the parties did not reach an agreement regarding ownership of the Fergus Falls home. We defer to these findings of facts. *Olsen*, 562 N.W.2d at 800. The district court correctly concluded that the Fergus Falls home is marital property.

C. Mesa Property

Dodgson argues that the district court erred in ruling that the Mesa home was marital property because her parents gifted it to her. Her support for this argument from the district court's record is that her parents (1) wanted to thank her for going "above and beyond," (2) left the home fully furnished, (3) sold the property at a significant discount, and (4) were adamant that she be the family member to purchase the property. Alternatively, she argues that the current award results in her unfair hardship.

The district court found that the parties purchased the Mesa property from Dodgson's parents during their marriage. All real property purchased during the marriage is considered marital property unless, among other things, it "is acquired as a gift, bequest,

devise or inheritance made by a third party to one but not the other spouse." Minn. Stat. § 518.003, subd. 3b. The intent of the donor is the most important factor in determining whether a gift is marital or nonmarital. *Olsen*, 562 N.W.2d at 800. Intent is a question of fact that is determined by looking at all the circumstances. *Id*.

Even if property is initially considered nonmarital, "it must either be kept separate from marital property or, if commingled with marital property, be readily traceable." Id. "To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Id*.

Dodgson's arguments as to why the district court erred are based solely upon trial testimony which has been weighed by the district court. For example, Dodgson argues that she "and her adult daughter testified convincingly and credibly about the intent of [Dodgson's] mother, including specific details such as where they were at the time the conversations took place." The parties also testified that Off was not particularly close to Dodgson's parents. The district court weighed the evidence and concluded that Dodgson did not overcome the presumption that gifts received during marriage are marital. On appeal, she asks us to reweigh the evidence presented to the district court, but that would infringe on the province of the district court. *See Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002) (ruling that the court of appeals erred because it "weighed the evidence as a trier of fact instead of analyzing the issue properly under the supported by substantial evidence standard of review").

Finally, Dodgson argues that the court should consider the Mesa property as her nonmarital property because she would suffer an unfair hardship if it were not. If the

district court finds that the division of marital property is "so inadequate as to work an unfair hardship," it may "apportion up to one half of the property excluded" as nonmarital. Minn. Stat. § 518.58, subd. 2 (2018). The district court did not make a finding on this issue because Dodgson is raising it for the first time on appeal. Appellate courts generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Therefore, we decline to consider this argument.

Affirmed.