STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1556

In re the Marriage of: Francis Stephen Gill, petitioner,
Respondent,

vs.

Gretchen Zwakman Gill,
Appellant.

Filed August 24, 2020
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-FA-14-5356

Karim El-Ghazzawy, El-Ghazzawy Law Offices, LLC, Minneapolis, Minnesota; and

Michael V. Ciresi, Michael A. Sacchet, Ciresi Conlin LLP, Minneapolis, Minnesota (for respondent)

Alan C. Eidsness, Lisa T. Spencer, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Cochran, Judge.

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

BRYAN, Judge

On appeal after remand to the district court by the Minnesota Supreme Court in this marital dissolution proceeding, appellant argues that the district court made the following

four errors: (1) the district court improperly divided a contingent asset to make up for respondent's inadequate income; (2) the district court improperly treated appellant differently than the other investors of the parent company of Talenti Gelato; (3) the district court improperly relied on *Janssen v. Janssen*, 331 N.W.2d 752, 756 (Minn. 1983)[1] to unequally divide the contingent asset; and (4) the district court violated the remand instructions because it unequally divided the contingent asset.

We affirm the district court. First, appellant mischaracterizes the district court's findings regarding division of the contingent asset as respondent's supplemental income. Second, the district court was not required to compare wife to the other investors. Third, the district court did not clearly err in its determination that husband's post-separation contribution enhanced the value of the contingent asset and did not abuse its discretion when it relied on a *Janssen*-type fraction to divide the contingent asset. Fourth, the district court did not violate the mandate of the Minnesota Supreme Court because the remand called for equitable division—not equal division—of the contingent asset.

FACTS

Respondent Francis Stephen Gill (husband) and appellant Gretchen Zwakman Gill (wife) were married in 1993. During the marriage, husband became Chief Executive Officer (CEO) of Talenti Gelato (Talenti) and created Wyndmere LLC (Wyndmere) as a

[1] In *Janssen*, the Minnesota Supreme Court recommended dividing the number of years that an asset was accumulating value during the marriage by the total number of years the asset was accumulating value to determine how much of an asset is marital and how much of it is nonmarital. *Id.* (citing *In re Marriage of Hunt*, 78 Ill.App.3d 653, 663, 34 Ill. Dec. 55, 63, 397 N.E.2d 511, 519 (Ill. 1979)). The district court used a similar fraction here to unequally divide the contingent marital asset at issue.

holding company for the parties' ownership interest in David Goliath Group (DGG), the parent company of Talenti.[2] In mid-2013, Unilever N.V. and Conopco Inc. (collectively, Unilever) began negotiations to acquire DGG and, in doing so, purchase Talenti. Negotiations occurred over the next year. Talenti management and ownership recognized both benefits and drawbacks to a sale in 2014, in what the district court termed a "timing dilemma." On one hand, finalizing the acquisition quickly would avoid the risk of raising antitrust issues. On the other hand, the belief that Talenti had the capacity for more years of strong sales growth meant that delaying acquisition would result in a higher sales price. After months of difficult, stop-and-start negotiations, Talenti and Unilever reached a handshake agreement for the sale of the company in June 2014 that included the potential for contingent payouts, in recognition of the possibility of future sales growth. The parties separated in June 2014. They lived in separate households from that point forward. Husband filed for divorce in August 2014. The district court determined that the valuation date was September 5, 2014.

On December 2, 2014, after the valuation date, Unilever and DGG signed the purchase agreement. Pursuant to the agreement, Unilever agreed to an aggregate maximum purchase price of $350 million, split between an initial payment of $180 million and two

[2] DGG was owned by the following other entities: Wyndmere, Fialko, LLC (owned by two brothers), Hochschuler, LLC (owned by a mother and her son), Majody Helms, LLC (owned by a single individual), and one other person, individually. At the time of the purchase agreement, Wyndmere and Fialko each held a 38.7043% ownership interest in DGG, Hochschuler held a 18.2914% interest, Majody held a 3.3% interest, and the remaining individual held a 1% interest. There is no evidence regarding whether any other litigation occurred in connection with the other owners of DGG.

additional contingent payments. As described by the Minnesota Supreme Court, the two additional, "earn-out payments" would depend on the performance of Talenti during 2015 and 2016: "The agreement specified that the earn-out payments would be calculated according to a formula that was based on the amount by which annual sales exceeded an established 'floor' ($120 million in net sales), multiplied by a set multiplier (1.75), and subtracting certain variable costs." *Gill v. Gill*, 919 N.W.2d 297, 300 (Minn. 2018). Based on this formula, the earn-out payments could range from $0 (should Talenti fall short of the minimum sales thresholds altogether) up to $170 million (should Talenti meet or exceed the maximum performance benchmarks). Husband remained Talenti's CEO throughout 2015 and 2016 under a separate employment agreement.

Talenti exceeded certain growth measures specified in the purchase agreement and Unilever made earn-out payments on February 29, 2016, and February 28, 2017. The total amount of the earn-out payments was approximately $129 million. The parties jointly owned 80% of Wyndmere,[3] which held a 38.7043% ownership interest in DGG. The portion of earn-out payments owed to the parties was $39,999,063 ($25,902,135 for 2015 and $14,096,928 for 2016).

The district court initially determined that because the earn-out payments became final and binding after the September 5, 2014 valuation date, and because they resulted from husband's significant, post-marital labor, they constituted husband's nonmarital

[3] The remaining 20% passed to the parties' children through their trust funds.

property. Specifically, the district court credited testimony from husband and his business partner at Talenti regarding the importance of husband's work in 2015 and 2016:

> The earnout payments in 2016 and 2017 will only be paid if Talenti exceeds the $120 million level of the 2014 net sales in 2015 and exceeds the greater of the 2015 sales or $120 million in 2016. As Husband explained at trial: "On January 1, 2015, the clock was reset and we went back to zero and we started building the business. And for every dollar and net revenue that we generated between zero and $120 million, our return was zero." [Another trial witness] also testified: "Every calendar year we start at zero, and we don't make one dollar until we get above 120 million the first year."

The district court also credited trial evidence regarding the uncertainty Talenti faced in meeting the earn-out thresholds. The district court noted that most of Talenti's production occurred in one Georgia facility and accepted the explanation that production and sales could be "cripple[d]" by an allergy issue (such as the costly recall that occurred when a worker "inadvertently mix[ed] peanut butter cups into a batch of peanut-free flavor"), a pathogen issue (such as "the recent serious listeria at Blue Bell"), and by "a fire, natural disaster, or other incident." Based on the trial testimony, Talenti "would have to grow net sales at an annual rate of about 35 percent, when the industry average was around two percent." One witness also explained how difficult the task would be, given that in 2015 and 2016, Talenti would have to use Unilever's distribution channels and retailers. Husband also explained that to increase sales by the required amount, Talenti would have to negotiate with venders and retailers to make more shelf space available for more flavors and do so without disturbing Unilever's overall objective in obtaining shelf space for all of its brands. Husband further testified that aspects of the purchase agreement limited

Talenti's ability to adjust its budget to maximize short-term sales goals, such as "collars" or limits on marketing expenses. Based on this record, the district court initially held that the earn-out payments constituted nonmarital property.

The Minnesota Supreme Court reversed that decision, concluding that the earn-out payments were part of the purchase price and included in the purchase agreement: "The contract's plain language shows that the earn-out payments are part of the purchase price, not compensation for [husband]'s future work." *Gill*, 919 N.W.2d at 304-05. The supreme court then concluded the earn-out payments were marital property, to be divided as part of the parties' dissolution:

> Because Wyndmere received a contractual right to receive the earn-out payments from the pre-dissolution sale of a marital asset that was acquired before the valuation date, we conclude that the earn-out payments, as direct proceeds from the sale, are marital property subject to the court's valuation and equitable division.

Id. at 304.

Having determined that the district court erroneously characterized the earn-out payments as husband's nonmarital property, the supreme court remanded the case to the district court, directing the district court to consider the proportional division. *Id.* at 306-07. Citing to *Janssen* and the property division statute, the supreme court stated that the district court should have determined the "appropriate percentage" of earn-out payments that would be allocated to each party. *Id.* The supreme court concluded its opinion by mandating that the district court divide the contingent asset equitably: "On remand, the

district court must (1) value any earn-out payments received by Wyndmere and (2) equitably divide any earn-out payments received."

After remand, husband requested to reopen the record to present additional evidence of facts that occurred after the trial relating to the earn-out payments. The district court denied the request to present additional witness testimony, but allowed the parties to make written submissions. The district court amended the previous findings and entered the final amended judgment on September 9, 2019. The district court also amended its findings to include new factual findings based on the previously closed trial record, emphasizing the importance of husband's contribution in 2015 and 2016:

> The testimony made clear that Husband's efforts were absolutely critical to helping the company continue to grow and to successfully transition to Unilever. Husband was assisted by the Talenti team, but there is no real question about Husband's indispensable leadership role. Had Husband not stayed with the company, or simply gone through the motions until his employment agreement terminated, the earnouts would not have been achieved.
>
> . . . .
>
> The entire prospect of hitting the earnout targets is contingent on Husband's continued significant post-marital efforts.
>
> The testimony from all of the Talenti team management credibly demonstrated that Husband was the key, integral person to Talenti continuing to grow.

The district court analyzed the applicable factors from Minnesota Statutes, section 518.58, subdivision 1 (2018). The district court gave "meaningful weight" to the fact that husband "put in the considerable efforts, post-separation and divorce, that [were] necessary

to lead Talenti in actually 'earning' the earnouts, and thereby growing the value of the ownership interest." The district court found that the other section 518.58, subdivision 1, factors were "effectively neutral between the parties." Neither party was previously married, there were no differences in their liabilities or "station." However, the district court acknowledged that husband is five years older than wife and he suffers from psoriatic arthritis, kidney stones, and chronic high cholesterol. The district court found that husband's employability was restricted by a noncompete provision as part of his employment agreement with Unilever.

Acknowledging the supreme court's reference to *Janssen*, the district court used a fraction to measure the primary statutory factor at issue. The district court found that the relevant time period for dividing the earn-out payments started in 2008, when husband first acquired an ownership interest in Talenti. Therefore, the district court found that the length of the 2015 earn-out period was eight years (2008-2015) and used a denominator of eight. Similarly, the district court used a denominator of nine for the 2016 payment. Because the parties lived together for seven of those years, the district court used a numerator of seven. The district court described its award in both fraction and percentage form, awarding wife one-half of 7/8 of the 2015 payment (43.75%) and one-half of 7/9 of the 2016 payment (38.85%). The district court stated:

> These adjustments reflect that the right of the marital asset to receive earnouts accrued during the marriage and work made during the marriage to put Talenti in that position, with the fact that Husband provided the significant post-marital contribution to grow the sales of the asset to make the 2015 and 2016 earnouts a reality, at a time in which the parties'

> relationship was over and no longer capable of receiving contributions from Wife.

The district court determined that using this fraction to divide marital property effectively measured the parties' contributions during the marriage and after their separation. Ultimately, the district court concluded that using this method of measuring the parties' contributions yielded an equitable division of the earn-out payments and the overall marital estate. This appeal followed.

D E C I S I O N

We conclude that the district court considered the necessary statutory factors and accepted wife's marital contribution to the value of Talenti prior to the parties' separation. Contrary to wife's arguments, the district court did not convert the earn-out payments to income, was not required to compare wife to the other investors of DGG, did not create a nonmarital interest in the earn-out payments, and did not violate the Minnesota Supreme Court's instructions on remand.

I. Mischaracterization of Property Division Decision

Wife argues that the district court erred in dividing the earn-out payments because it treated the earn-out payments as husband's supplemental income. We disagree with this characterization of the district court's decision.

Wife is correct that the district court commented on husband's post-divorce income. The district court observed that "[h]usband's employment salary is not the equivalent of the value of his employment services to Unilever." We cannot agree, however, with wife's conclusion that this statement shows that the district court "awarded [husband] an

additional $4,682,739 as 'compensation,' beyond the salary and benefits that [husband] negotiated for himself for two years of employment with Unilever." Contrary to wife's characterization, the district court did not base its property division decision on this observation. It did not make any findings that classified or treated the division of the earn-out payments as additional income, and it did not make any conclusions that awarded husband a larger portion of the earn-out payments to make up for or supplement his income. Instead, the district court analyzed applicable statutory factors, as further discussed below. *See* Minn. Stat. § 518.58, subd. 1. We find no support for the conclusion that the district court improperly treated the earn-out payments as husband's additional income rather than the parties' marital property.

II. Comparison between Wife and Other Investors of DGG

Wife's second argument is titled "[Wife] is No Different Than All Other DGG '*Persons*.'" Under this heading, wife argues that the district court treated her differently than the other DGG investors. We disagree that the district court erred in its treatment of wife for two reasons. First, wife cites to no binding authority requiring or suggesting that the district court consider how other earn-out payments were distributed to nonparties.[4]

[4] Wife is correct to note that the Minnesota Supreme Court made a comparison between wife and other DGG investors:

> Thus, under the purchase agreement *every* person with a financial interest in [DGG] shared in the payments. The contract's plain language shows that the earn-out payments are part of the purchase price, not compensation for [husband]'s future work. A contrary holding would mean, perversely, that [wife] would be the *only* person with an interest in [DGG] who would not share in the earn-out payments.

The determination of how much of the earn-out payments other individuals received has no impact on the division of the parties' earn-out payments, and wife's argument here is merely derivative of her equity argument, which is discussed below. Second, wife's argument assumes an absence of actual and possible litigation regarding the earn-out payments distributed to the other entities that held ownership interests in DGG (and to the owners of those entities). There is no evidence regarding whether any of the other individuals ultimately receiving earn-out payments—the two brothers who owned Fialko, the mother and son who owned Hochschuler, the individual who owned Majody Helms, and the other individual interest holder—also have spouses with marital interests in their earn-out payments. Furthermore, the earn-out payments to these investors could also become the subject of litigation in trust, probate, or corporate cases. For these reasons, we conclude that the district court had no obligation to compare wife to the other investors of DGG when dividing the earn-out payments as a marital asset.

III. Use of a *Janssen*-type Fraction to Unequally Divide Marital Property

Wife's primary argument on appeal is that the district court erred in using a *Janssen*-type fraction to unequally divide the marital property. We disagree with wife's interpretation of *Janssen*. In addition, we conclude that the district court did not clearly err when it found that husband contributed to the growth in value of the earn-out payments.

Gill, 919 N.W.2d at 305 (footnote omitted). Contrary to wife's interpretation of this statement, however, the supreme court did not mandate equal division of the earn-out payments, require the district court to treat all investors equally, or bind the district court's analysis in some other way. Instead, the observation merely expressed the proposition that one party's efforts cannot make a marital asset lose its marital character.

Finally, we conclude that the district court did not abuse its discretion when it used a fraction like the one suggested in *Janssen* to measure the parties' contributions and allocate the earn-out payments.

A. Use of *Janssen* to Divide Marital Property

Wife first argues that, as a matter of law, the parties' post-separation contributions can only be considered when determining how much of an asset is marital and how much of an asset is nonmarital. By using a fraction like the one in *Janssen*, wife claims that the district court improperly considered husband's post-separation contribution and created a nonmarital property interest in the earn-out payments. We decline to adopt wife's interpretation of *Janssen* in this case.

We interpret the meaning and applicability of *Janssen* de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011) ("The interpretation of . . . case law is . . . reviewed de novo."); *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). In *Janssen*, the Minnesota Supreme Court held that a portion of nonvested, unmatured pension benefits was marital property, even though the receipt and value of such benefits depended on post-marital labor and the benefits were not received until after the dissolution. *Janssen*, 331 N.W.2d at 754-55; *see also Gill*, 919 N.W.2d at 300 (summarizing the holding in *Janssen*). Specifically, the supreme court concluded that because the employed spouse acquired the right to receive pension benefits during the marriage, part of the pension was a martial asset. *Janssen*, 331 N.W.2d at 756. When, as in *Janssen*, one party also has a nonmarital interest in the asset, the supreme court suggested that district courts follow the guidance of the Illinois Supreme Court to

determine the marital and nonmarital values of the contingent asset: "The marital interest in each payment will be a fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which benefits were being accumulated, the denominator being the total number of years (or months) during which benefits were accumulated prior to when paid." *Id.* at 756 (quoting *Hunt*, 397 N.E.2d at 519)).

Since that time, when a contingent asset contains both marital and nonmarital property and some part of its value derives from post-dissolution efforts of one party, district courts apply a *Janssen*-type fraction to determine the value of the marital and nonmarital portions of the contingent asset. *Stageberg v. Stageberg*, 695 N.W.2d 609, 614-15 (Minn. App. 2005) (concluding that portion of contingent legal fee payments not yet received were marital), *review denied* (Minn. July 19, 2005); *Salstrom v. Salstrom*, 404 N.W.2d 848, 850-51 (Minn. App. 1987) (concluding that portion of incentive stock options were marital); *VanderLeest v. VanderLeest*, 352 N.W.2d 54, 57-58 (Minn. App. 1984) (concluding that portion of disability annuity benefits were marital); *Marshall v. Marshall*, 350 N.W.2d 463, 466 (Minn. App. 1984) (concluding that portion of deferred compensation benefits were marital).

In this case, the Minnesota Supreme Court determined that the parties acquired the right to receive the earn-out payments during the marriage. *Gill*, 919 N.W.2d at 303. Because the entirety of the earn-out payments were marital, the supreme court remanded the case and directed the district court to "equitably divide any earn-out payments received." *Id.* at 308. The supreme court also quoted and cited *Janssen*, including when assigning error:

> Here, the district court should have, as part of the judgment and decree, determined the "appropriate percentage" of earn-out payments that would be allocated to [husband] and [wife] "only if and when such payments are paid" to Wyndmere. *Janssen*, 331 N.W.2d at 756 (citing *In re Marriage of Hunt*, 78 Ill.App.3d 653, 34 Ill. Dec. 55, 397 N.E.2d 511, 519 (1979)). The exact value of the earn-out payments would then be determined by the terms of the purchase agreement after the end of each earn-out period.

Gill, 919 N.W.2d at 306.

The district court followed the approach from *Janssen* and found that husband first acquired an ownership interest in Talenti in 2008, that the marriage endured for seven years after that date, and that the parties lived apart after their separation in June 2014.[5] Therefore, the district court awarded wife one-half of 7/8 of the 2015 earn-out payment (43.75%) and one-half of 7/9 of the 2016 earn-out payment (38.85%).

Wife argues that by applying *Janssen* to divide marital property, the district court considered husband's post-separation contribution and created a nonmarital interest in the earn-out payments. We are not persuaded for three reasons. First, wife does not cite any legal authority limiting the application of *Janssen* to identifying nonmarital property or precluding consideration of the parties' post-contribution efforts. We disagree with wife that the act of using a fraction such as the one in *Janssen* creates a nonmarital interest in a contingent asset.

Second, wife's interpretation conflicts with both the plain language of section 518.58 and with caselaw requiring consideration of the parties' post-separation

[5] The parties do not contest these findings.

contributions. Section 518.58 requires district courts to consider the contributions of both parties to maintain or preserve marital property:

> The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife.

Minn. Stat. § 518.58, subd. 1. Importantly, the statute distinguishes between living together and living apart for purposes of applying the presumption of equal contribution, which only applies "while [the parties] were living together as husband and wife." *Id.* The statute makes no other distinction between a party's pre- and post-separation[6] contribution. In that way, the statute requires consideration of all efforts, regardless of whether they occurred pre- or post-separation.

Our case law applying section 518.58 also shows that district courts must consider contributions to the acquisition, preservation, depreciation and appreciation in value of all marital property, including post-separation contributions to the value of contingent marital property. *See, e.g.*, *Gummow v. Gummow*, 375 N.W.2d 30, 36 (Minn. 1985) (affirming a division of a contingent marital asset based on husband's post-separation contribution to increase the value of a contingent marital asset); *Batsell v. Batsell*, 410 N.W.2d 14, 17 (Minn. App. 1987) (reversing district court's equal real property division because in the 21

[6] The pertinent date for "marital property" is usually the valuation date, *see* Minn. Stat. § 518.003, subd. 3b (2018), but for purposes of this discussion, we refer to the date of separation because the presumption of equal contribution ends upon separation. Minn. Stat. § 518.58, subd. 1.

years that passed from separation until the district court's decision, husband made nearly all of the efforts to maintain the home), *review denied* (Minn. Sept. 30, 1987); *Letsch v. Letsch*, 409 N.W.2d 239, 243 (Minn. App. 1987) (affirming unequal division of property because wife unilaterally expended funds to preserve the homestead by making insurance, tax, and mortgage payments after separation).

The statute also contemplates substantial changes in value between the valuation date and the date of distribution of marital property. It expressly permits district courts to unequally divide such marital property: "If there is a substantial change in value of an 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; *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005) (reversing and remanding division of marital property with specific instructions that the district court "may consider factors such as appellant's contribution to the preservation of the [property]" and to adjust the marital property division to account for a substantial change in value of the property); *In re Bender*, 671 N.W.2d 602, 606 (Minn. App. 2003) (affirming district court's adjustment to parties' stipulated division of property to account for $31,331 decrease in value of an account awarded to husband). Wife's interpretation of *Janssen* as precluding consideration of post-separation efforts when dividing marital property would also conflict with this statutory provision.

Finally, in remanding the case to the district court, the supreme court anticipated that the district court would consider husband's post-separation contribution to the value of the earn-out payments when dividing those payments on remand:

> To be sure, the district court's factual findings suggest that [husband]'s post-dissolution efforts affected whether the future payments would be made and the amount of the payments. But as we discussed above, the issue here is whether the right to those payments was received during the marriage, *see* Minn. Stat. § 518.003, subd. 3b, and it was. That the size of those payments might be influenced by Stephen's post-dissolution efforts does not convert the right to receive those payments into nonmarital property.
>
> To the extent that the district court may consider one spouse's efforts and control over a marital asset, it considers these facts when equitably *dividing* the marital assets, not when *classifying* particular property as marital or nonmarital. *See* Minn. Stat. § 518.58, subd. 1.

Gill, 919 N.W.2d at 307.

Given the language of section 518.58, the caselaw relating to this section, and the supreme court's analysis in this case, we decline to hold that as a matter of law, district courts commit error when using a fraction like the one suggested in *Janssen* to divide contingent marital assets or when considering the parties' post-separation contributions. Similarly, we decline to hold that using such a fraction creates a nonmarital interest in the property at issue.

B. Division of the Earn-Out Payments

Wife argues that the only equitable division of the earn-out payments is an equal division of the earn-out payments. Because the district court did not clearly err in its determination that husband's post-separation contribution enhanced the value of the earn-out payments and because the district court did not abuse its discretion in unequally dividing the earn-out payments, we affirm the district court's property division.

"Equitable, not equal, division of marital property is required." *Stassen v. Stassen*, 351 N.W.2d 20, 23 (Minn. App. 1984); *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). Because wife necessarily contests the district court's factual findings regarding the contributions of the parties as well as the ultimate division of property based on these facts, our review encompasses both factual determinations and application of law. We review the factual determinations at issue for clear error. "This court will set aside a district court's valuation of asset only if the valuation is clearly erroneous." *Stageberg*, 695 N.W.2d at 619; *see also* Minn. R. Civ. P. 52.01. "[I]f we are 'left with the definite and firm conviction that a mistake has been made,' we may find the trial court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (quoting *In re Trust Known as Great N. Iron Ore Props.*, 243 N.W.2d 302, 305 (Minn. 1976)). "When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings," *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000), and defers to the district court's credibility determinations, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

We review the district court's decision to unequally divide the earn-out payments for an abuse of discretion. "A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted). "[An appellate court] will affirm the [district] court's division of property if it had an acceptable

basis in fact and principle even though we might have taken a different approach." *Id.* A district court abuses its discretion in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

First, we conclude that the district court did not clearly err when it determined that husband's post-separation contribution grew the value of the earn-out payments. Because the maximum purchase price was $350 million, and Unilever paid $180 million up front, the value of the earn-out payments ranged from $0 to $170 million, depending "on the amount by which annual sales exceeded an established 'floor' ($120 million in net sales), multiplied by a set multiplier (1.75), and subtracting certain variable costs." *Gill*, 919 N.W.2d at 300. As a factual matter, the district court determined that husband's work in 2015 and 2016 contributed to the value of the earn-out payments. The district court found that husband "put in the considerable efforts, post-separation and divorce, that [were] necessary to lead Talenti in actually 'earning' the earnouts, and thereby growing the value of the ownership interest." During those two years, after the parties lived separately, the district court concluded that wife did not contribute to the value of the earn-out payments.

The record supports these findings. Testimony from the trial established that "for every dollar and net revenue that we generated between zero and $120 million, our return was zero" and "we don't make one dollar until we get above 120 million." The record further indicates that sales goals depended on overcoming production and distribution challenges—both customary (such as listeria outbreaks) and novel (such as adapting to Unilever's distribution channels). Despite restrictions on marketing and concerns about

displacing other Unilever brands, Talenti would also have to negotiate for additional shelf space in order to exceed the required sales goals. All of these factors fall under the direct responsibility of husband, as CEO of Talenti. We conclude that on this record, the district court did not clearly err when it determined that husband's "efforts were absolutely critical" and without his contribution, "the earnouts would not have been achieved." Based on the trial record, the district court also did not clearly err in concluding that wife's post-separation contribution[7] did not directly affect the value of the earn-out payments.

Next, we conclude that the district court did not abuse its discretion in dividing the earn-out payments for 2015 and 2016, respectively. As noted above, district courts must apply the factors in section 518.58 to determine an equitable division of property, including "the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property," "the contribution of a spouse as a homemaker," along with the following characteristics of the parties and the marriage: "the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party." Minn. Stat. § 518.58, subd. 1. The district court specifically discussed several factors. For example, the district court observed that husband is five years' older than wife, and suffers from various medical conditions. The district court also noted a difference in employability, observing that husband's comparative employability is limited by a noncompete

[7] As noted above, the presumption of equal contribution only applied through 2014, "while [the parties] were living together as husband and wife." Minn. Stat. § 518.58, subd. 1.

agreement. Neither party was previously married, and the district court discerned little difference between the parties in their liabilities or station. The district court concluded that, for purposes of dividing the earn-out payments, these statutory factors are mostly neutral, except for the contributions of the parties. Therefore, the district court divided the earn-out payments based on its assessment of the parties' contributions during the marriage and husband's post-separation contribution to the value of the earn-out payments. The district court used a fraction like the one suggested in *Janssen* to quantify the statutory factor at issue.

When characterizing the earn-out payments, the district court balanced the contributions during the marriage with husband's unique post-separation efforts. The district court considered both husband's contribution in 2015 and 2016 and the "work made during the marriage" that put Talenti in a position to achieve the necessary sales goals to grow the earn-out payments:

> These adjustments reflect that the right of the marital asset to receive earn-outs accrued during the marriage and work made during the marriage to put Talenti in that position, with the fact that Husband provided the significant post-marital contribution to grow the sales of the asset to make the 2015 and 2016 earn-outs a reality, at a time in which the parties' relationship was over and no longer capable of receiving contributions from Wife.

To balance the contributions, the district court determined that the relevant time period for dividing the earn-out payments started in 2008, when husband first acquired an ownership interest in Talenti. By including the seven years from 2008 through the end of 2014, the district court acknowledged that Talenti's performance in 2015 and 2016 was tied to both

parties' contributions during the marriage. At the same time, the district court's decision to use a fraction like the one suggested in *Janssen* allowed the district court to also consider husband's unilateral contribution after separation. The district court awarded wife one-half of 7/8 of the 2015 payment and one-half of 7/9 of the 2016 payment. We conclude that this division of property is not "against logic and the facts on record." *See Rutten*, 347 N.W.2d at 50.

IV. Compliance with the Supreme Court Remand Instructions

Wife next argues that the decision to unequally divide the property violated the remand instructions from the Minnesota Supreme Court. We do not agree with this interpretation of the supreme court's decision. The plain language of the remand required the district court to equitably divide the earn-out payments—not to equally divide the earn-out payments. The district court did not violate the remand instruction by awarding an unequal division of the earn-out payments.

Affirmed.