STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1562

In re the Marriage of:

Lisa Marie Kent, petitioner,
Appellant,

vs.

Brenton Jackson Kent,
Respondent.

Filed October 12, 2020
Affirmed in part, reversed in part, and remanded
Jesson, Judge

Stearns County District Court
File No. 73-FA-16-9954

Greg A. Engel, Engel Law Offices, St. Cloud, Minnesota (for appellant)

Timothy R. Reuter, Kelm & Reuter, P.A., Sauk Rapids, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Jesson, Judge.

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

JESSON, Judge

In this marital dissolution proceeding, appellant Lisa Marie Kent raises 16 challenges to the district court's resolution of property and financial issues stemming from the couple's divorce. After consolidating related issues, we address the

following allegations that the district court: (1) erroneously determined that certain business interests were gifted to husband and therefore his nonmarital property; (2) should have ruled that husband dissipated certain marital property; (3) misvalued marital and nonmarital business interests; (4) incorrectly allocated marital debt to husband; (6) should have awarded wife more spousal maintenance; (7) should have awarded wife need-based attorney fees; (8) should have ordered an upward deviation from the child-support guidelines; and (9) should have secured wife's property award. We affirm the district court on all issues, except for the issues of spousal maintenance, need-based attorneys fees, and a $211,531 withdrawal by husband from J.K. Self Storage in 2017. With regard to these items, we reverse and remand for additional findings.

FACTS

Appellant Lisa Marie Kent (wife) and respondent Brenton Jackson Kent (husband) were married in 1998. They have three children together, the oldest of whom was 18 years old at the time of the dissolution trial but had not yet graduated from high school.

Wife filed a petition to dissolve the marriage in October 2016. Husband and wife entered into a partial-marital-termination agreement which they filed with the district court in October 2018. The district court approved the partial agreement and issued a judgment and decree dissolving the marriage in December 2018. The district court's December 2018 judgment and decree resolved issues of custody and parenting time, and reserved resolution of a number of outstanding financial issues until trial. The decree also established September 30, 2017, as the valuation date for husband and wife's assets.

Following a court trial, the district court issued supplemental findings of fact, conclusions of law, and order for judgment in May 2019. The district court ordered husband to pay wife $950 per month in spousal maintenance, $783 per month in net child support, and a property-equalizer payment of $168,832, which husband could pay in monthly installments of $2,000 per month plus interest. The district court denied wife's requests for need-based and conduct-based attorneys fees.

In the course of equalizing the property settlement, the district court resolved husband and wife's respective interests in four business entities: Motors-N-More, Inc. ("Motors-N-More"); J.K. Real Estate Services, LLC ("J.K. Real Estate"); J.K. Self Storage, LLC ("J.K. Self Storage"); and Benton Development LLC ("Benton Development"). The district court found that husband's interests in Motors-N-More and J.K. Self Storage were marital assets. But the district court determined that husband's interests in J.K. Real Estate and Benton Development were gifts from his mother, and therefore nonmarital.

Wife moved the district court for amended findings and a new trial. With the exception of one typographical correction, the district court denied wife's motions in their entirety. Wife appeals.

D E C I S I O N

Wife raises 16 challenges to the district court's resolution of the outstanding property and financial issues stemming from the couple's divorce. Where possible, we have condensed related claims to avoid redundancies in our analysis.

Nonmarital property – J.K. Real Estate and Benton Development

Wife asserts that the district court incorrectly classified husband's 50% ownership interest in J.K. Real Estate and 25% ownership interest in Benton Development as nonmarital gifts from his mother. Whether property is marital or nonmarital presents a legal question, but we must defer to the district court's underlying findings of fact. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). "However, if [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court's decision to be clearly erroneous." *Id.* (quotation omitted).

We presume that all property obtained by either spouse during the marriage, regardless of the form of ownership, is marital property. *Id.* In order to overcome this presumption, husband must demonstrate by a preponderance of the evidence that the property is nonmarital. *Id.* Nonmarital property includes property acquired as a gift to one spouse only from a third party. Minn. Stat. § 518.003, subd. 3b(a) (2018).

We first consider the status of J.K. Real Estate. In concluding that husband's interest in this entity was a gift, the district court relied on the testimony of the attorney who incorporated the company, J.K. Real Estate's accountant, husband, and husband's mother. The district court found that all four people "testified credibly and unequivocally that [husband's] interest in J.K. Real Estate was a gift." Appellate courts defer to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Regarding husband's interest in Benton Development, the district court similarly found that the same four individuals provided "credible testimony" that husband received his interest in the entity as a gift from his mother. In light of these credibility

determinations made by the district court, the district court did not err by classifying husband's interests in J.K. Real Estate and Benton Development as nonmarital gifts from his mother.

Notwithstanding the district court's credibility determinations, wife asserts that husband could not have been gifted his ownership interests in J.K. Real Estate and Benton Development because when the companies were incorporated, both husband and his mother were initially identified as owners.

But that one piece of evidence does not, by itself, outweigh testimony from the accountant, husband, and husband's mother that neither husband nor wife invested *any money* in J.K. Real Estate. Furthermore, the district court found that the accountant consistently testified that "he transferred 25% capital [from Husband's mother to husband] in the initial year of the gift, and 5% of capital in subsequent years—and these [transfers] are reflected on the tax returns and in the capital accounts."

Regarding husband's interest in Benton Development, the district court found that while husband signed the purchase agreement for the land owned by Benton Development, "[t]he land was purchase[d] with a loan taken out by [the attorney] and [husband's mother] from Farmers and Merchants State Bank." The accountant testified that the attorney and husband's mother "contributed assets [to Benton Development], then [husband's mother] contributed 25% of her ownership interest to [husband]." The accountant, husband, and husband's mother all "testified that neither [husband nor wife] ever invested any money into Benton Development."

These findings adequately support the district court's determination that husband's interests in J.K. Real Estate and Benton development are nonmarital.

Increase in Value of Benton Development

Even if husband's ownership in Benton Development was nonmarital, wife argues that the increase in value of husband's interest in Benton Development during the course of their marriage was marital. As a result, she should be entitled to half of that increased value. Wife's argument is grounded in the legal principle that the increase in value of nonmarital property which is attributable to the efforts of a spouse is itself marital property, but the increase in value of nonmarital property which is attributable to market forces or inflation remains nonmarital. *Nardini v. Nardini*, 414 N.W.2d 184, 192 (Minn. 1987).

Here, the district court found that any increase in value was not attributable to husband's efforts. Rather, the district court determined that "the evidence shows that [husband's] actual work for the entity is limited to performing repairs and maintenance of rental units, performing yard care and snow removal, in addition to nominal work in accounting and operations . . . . [T]he increase is attributable to factors unrelated to [husband's] efforts." Wife does not assert that these findings are clearly erroneous. Therefore, because husband's efforts during the course of the marriage constituted nominal physical upkeep, the district court did not err by finding that the increased value of Benton Development during the course of marriage was not attributable to husband's efforts, and thus, a nonmarital asset.

Dissipated Assets and Entity Distributions

Wife similarly argues that this court should remand her unaddressed requests for an equitable accounting of dissipated assets and to apportion her share of husband's income and distributions received from the entities during the dissolution proceedings. In essence, wife asserts that the district court failed to account for certain items of marital property, of which she is entitled to her fair share. "[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal." *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted), *see also Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009) (citing *Loth* to support the proposition that "silence on a motion is . . . treated as an implicit denial of the motion"), *review denied* (Minn. Jan. 27, 2010). Thus, we treat the district court's silence on wife's requests for an equitable accounting and an apportionment of husband's income and distributions as an implicit denial of those requests, and address each of wife's specific concerns below.

- Properties sold by J.K. Real Estate and J.K. Self Storage

Wife identifies four real-estate transactions entered into by J.K. Real Estate, and one by J.K. Self Storage, that she asserts constitute an unaccounted-for dissipation of marital assets. *See, e.g.*, *Gill v. Gill*, 919 N.W.2d 297, 303 (Minn. 2018) ("[T]he proceeds from a sale of marital property that occurs during dissolution proceedings are marital property subject to the court's equitable division."). None of the properties sold were marital assets, but instead pertained to husband's marital interests in J.K. Real Estate and J.K. Self Storage.

Here, the district court determined that husband's interest in J.K. Real Estate was nonmarital, and allocated wife $0 in increased value due to the unprofitability of J.K. Real Estate as demonstrated by the limited evidence presented at trial. And the district court determined that husband's interest in J.K. Self Storage was marital and allocated to wife half of the value of husband's ownership interest based on an appraisal conducted by Miller Welle Heiser. Therefore, any marital interest wife had in the sales of property by the companies would be subsumed in her overall marital share of husband's ownership interests in the companies, not in the parcels of land themselves.[1]

- Entity Distributions / Income

Similarly, wife argues that the district court erred by implicitly denying her request to apportion the income and distributions husband received from the entities between January 1 and September 30, 2017. Wife asserts that husband conceded in a post-trial submission that the distributions he received from Benton Development and J.K. Real Estate were marital, but the document cited by wife does not contain any such admission. Furthermore, wife does not point to any evidence presented at trial which establishes the amount of distributions husband allegedly received as income that were unaccounted for

[1] Wife further appears to incorrectly assert that husband bore the burden of proof at trial to connect the sales of the properties to the companies' ultimate valuations. Wife relies on Minn. Stat. § 518.58, subd. 1a (2018) for the proposition that spouses owe one another a fiduciary duty over the profits derived from a transaction involving a marital asset. However, that section goes on to state that the burden of proof under the subdivision "is on the party claiming that the other party transferred, encumbered, concealed, or disposed of marital assets . . . during the pendency of the current dissolution . . . and that the transfer . . . or disposal was not in the usual course of business." Minn. Stat. § 518.518, subd. 1a.

by the district court in its findings. Finally, the district court apportioned the spouses' interests in their bank accounts, which presumably accounts for their unspent cash holdings.

However, in its discussion of husband's ability to pay maintenance, the district court did make a finding that husband withdrew $211,531 from J.K. Self Storage in 2017. The district court did not provide any reasoning for not awarding wife any share of these funds. Remand is therefore warranted so the district court can address whether any of those funds were marital and if so, to address their division.

- Purchase of Automobiles

Next, wife argues that the district court erred by finding that cars purchased after the valuation date, or in one instance owned by husband's mother, were nonmarital. *See* Minn. Stat. § 518.003, subd. 3b (2018) (stating that the marital-property presumption applies to property acquired prior to the valuation date). Wife asserts that husband used "marital funds, loans and trade-ins to pay more than $200,000 for a variety of vehicles for the parties' sons, himself and work."[2] Wife does not support this assertion with a citation to any evidence in the record that traces the purchases to marital funds. Absent more, she has not shown the district court's findings that husband traced the cars to a nonmarital source are not clearly erroneous.[3] *See State, Dep't of Labor & Indus. V. Wintz Parcel*

[2] Wife does not connect this assertion to the $211,531 husband withdrew from J.K. Self Storage in 2017.

[3] Similarly, while wife asserts that she should be allocated her share of husband's attorney fees which he paid with marital assets, she fails to support this argument with evidence. However, the evidence presented at trial did not establish how much of husband's fees were paid by J.K. Self Storage, nor did it establish whether the payment occurred before or

Drivers, Inc., 558 N.W.2d 480, 480 (Minn. 1997) (noting that appellate courts decline to reach issues that are inadequately briefed); *see also Bradksy v. Bradsky*, 733 N.W.2d 741, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal); *Loth*, 35 N.W.2d at 546 (stating that "on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it" (quoting *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (1944)); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying this aspect of *Loth*).

In sum, with the sole exception of the $211,531 husband withdrew from J.K. Self Storage in 2017, wife is not entitled to an equitable accounting because she has not identified an unaccounted for marital interest in any of the identified items. We remand the issue of the $211,531 so the district court can make the necessary findings as to whether there is a marital interest in the withdrawal, and, if so, how it should be divided between the parties.

Valuation of Assets

Wife argues that the district court made incorrect findings regarding the increased value of J.K. Real Estate, the value of Benton Development, and the value of J.K. Self Storage. A district court's valuation of an item of property is a finding of fact, and it will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). "That the record might support findings other than

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after the valuation date. Due to this lack of evidence, the district did not err by implicitly denying wife's request for an apportionment of husband's attorney fees paid by J.K. Self Storage.

those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In order to successfully challenge a district court's findings of fact, "the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Id.* With this standard of review in mind, we turn to each challenged valuation.

- J.K. Real Estate

Unlike its conclusion regarding the increased value of Benton Development, the district court concluded that wife was entitled to one half of the increased value of J.K. Real Estate attributable to husband's efforts during the course of the marriage. And, noting that neither party submitted an appraisal of the value of J.K. Real Estate, the district court turned to the company's September 30, 2017 balance sheet—the agreed upon valuation date—to determine the increased value of the company.[4]

According to the balance sheet, J.K. Real Estate's liabilities exceeded its assets by more than a million dollars, and the value of husband's capital account was -$206,811. Given this negative value, the district court valued J.K. Real Estate at $0.00. As a result, the court did not apportion wife any increased value attributable to husband's efforts during the course of the marriage. Since wife does not point to any other evidence presented at trial which established the total value of J.K. Real Estate as of

[4] The district court acknowledged that book value was not the optimal method of valuing the company, but relied upon it given the limited valuation evidence presented at trial.

September 30, 2017, the district court did not clearly err by relying on the balance sheet when establishing the (lack of) increased value of the company.[5]

Still, wife argues that the district court, rather than relying on J.K. Real Estate's book value, should have turned to the terms of the company's buy/sell agreement for the method of valuing the company. *See, e.g.*, *Rogers v. Rogers*, 296 N.W.2d 849, 852 (Minn. 1980) (stating that a company's buy/sell agreement should be considered when valuing a company in a dissolution proceeding, but that the agreement is not dispositive of value). One of the methods for valuing the company in the Member Control Agreement is the selection of an accountant to conduct a valuation of the seller's interest, which wife characterizes as an appraisal. But this argument brings us full circle to the fact that neither party submitted an appraised value of J.K. Real Estate. Therefore, wife's assertion that the district court erred by not following the terms of the buy/sell agreement is not supported by the record.

Finally, wife argues that even if book value is an appropriate measure, the book value relied on by the district court was incorrect. The district court found that the balance sheet indicated total assets of $4,195,287.66, and total liabilities of $5,208,671.17. Wife asserts that evidence was presented at trial that J.K. Real Estate had assets totaling $4,569,374.75, and that the liabilities should have been reduced by $3,867,042.47 because

[5] We note that, consistent with our analysis above, in order to establish that an increase in J.K. Real Estate's value during the course of the marriage was a marital asset, it needed to be established what portion of that increase in value was attributable to husband's efforts. *See Nardini*, 414 N.W.2d at 192. The parties do not address this aspect of the issue, but because the district court did not clearly err by finding that J.K. Real Estate had a negative value, it is not necessary to reach this issue here.

two debts had been satisfied. But the company's accountant testified that while the Wells Fargo debt was satisfied, this occurred because two additional debts were incurred to pay it off.

Regarding the other obligation that wife asserts was satisfied, the September 2017 balance sheet includes an entry under long-term liabilities for "IRET Shares Debt Basis[,] [$]2,550.740.68." Wife relies on testimony and exhibits which indicate that a $2,900,000 mortgage taken out by J.K. Real Estate, and guaranteed by Investors Real Estate Trust (IRET), on February 20, 2007, was satisfied as of June 16, 2015. But because wife does not point to evidence clearly connecting the satisfied mortgage to the liability listed on the balance sheet, we cannot say that the district court's finding was clearly erroneous.

Furthermore, wife still does not point to any evidence purporting to establish a *total* valuation of J.K. Real Estate as of September 30, 2017 other than the balance sheet. Therefore, the district court properly relied on the September 30, 2017 balance sheet as the best evidence of the company's value.[6]

- J.K. Self Storage

Wife next argues that the district court erred by relying on the appraised market value of J.K. Self Storage. Husband and wife retained the accounting firm of Miller Welle Heiser to appraise the market value of J.K. Self Storage. The district court adopted that

[6] Wife also argues that the district court improperly valued Benton Development based on the September 30, 2017 balance sheet. However, because we affirm the district court's determinations that husband's interest was nonmarital, as was the increase in value during the period of the marriage, we do not reach wife's claim regarding the district court's valuation of this entity.

valuation. Wife argues this was an error because the appraiser included a ten percent marketability discount and gains taxes.[7] Further, wife asserts that the district court should have considered independent appraisals of individual parcels of land owned by J.K. Self Storage which were not submitted to Miller Welle Heiser as part of its appraisal of the company. Because the appraised value was not below the liquidation value of the entity, and because wife did not provide the appraisers with her individual appraisals of the individual parcels, the district court did not err by relying on the appraised market value of J.K. Self Storage.

To attempt to persuade us otherwise, wife, relying on *Nardini*, asserts that the inclusion of the discount and taxes impermissibly lowered the value of J.K. Self Storage beyond a certain floor. In *Nardini*, the supreme court stated that for the purposes of a marital property division, the value of a family business "cannot be less than a sum equal to the net proceeds which could be realized from the forced sale of the tangible assets of the business and the collection or assignment of intangibles such as accounts receivable, and after payment of all liabilities." 414 N.W.2d at 189. But here, the appraiser stated that this floor value was taken into consideration.[8] As a result, the inclusion of the discount

[7] In their determination of the market value of J.K. Self Storage, the appraisers included a $238,285 liability for built-in gains taxes on the difference between the book and fair-market value of the real estate.

[8] In his analysis the appraiser stated that "the liquidation premise of value was considered and rejected as not applicable, as the going-concern value results in a higher value for the interest than the liquidation value, whether orderly or fixed."

value[9] and gains taxes in the appraisal did not lower the appraised value of J.K. Self Storage below the minimum value identified in *Nardini*.

Nor did the district court err by declining to rely on the appraisals of two individual parcels of land submitted by wife to the district court. First, in its denial of wife's motion for amended findings, the district court acknowledged that it "did receive as exhibits appraisals for properties owned by J.K. Self Storage. [The appraiser] also testified, and the [district] court found, that [the appraiser] asked the parties for appraisal documents but there was no response." Second, the appraisals wife relies on are from August 2013, more than four years before the valuation date.

Allocation of Debt

Wife argues that the district court erroneously allocated to husband a $300,000 promissory note owed to husband's father as husband's marital debt, because the obligation was also included in the liabilities of Motors-N-More. Marital debt is apportionable under the same statute that governs division of marital property. *Filkins v. Filkins*, 347 N.W.2d 526, 528 (Minn. App. 1984). In denying wife's motion for amended findings, the district court noted that no evidence was offered or received at trial linking the liability listed on Motors-N-More's books to the promissory note from husband's father. On

[9] While not relied on by wife, *Nardini* does state that "there is no justification for discounting an undivided interest in a corporation all of whose shares are owned by one or both spouses." 414 N.W.2d at 189. This statement is however distinguishable on two bases. First, J.K. Self Storage is not entirely owned by husband and wife. Second, the discount in *Nardini* was a discount for lack of control, not a marketability discount.

appeal, wife points to two portions of the record which, she claims, establish this link. We examine each portion below.

First, wife asserts that husband testified that the two obligations were the same. Wife points to husband's deposition testimony,[10] where he stated in a discussion of Motors-N-More that "as time goes on and we start to expand and they were able to get other floor-planning money—and then my dad loaned us the money to put in there." But this statement does not identify the amount of money loaned by husband's father, nor does it establish the obligation listed on Motors-N-More's books was the same as the personal obligation set forth in the promissory note.

Wife next broadly asserts that the company's accountant testified that the two obligations were identical. Yet she does not cite to any specific testimony in support of this claim. Our review of the accountant's testimony does not indicate any discussion of the promissory note owed to husband's father, nor that the obligation listed on Motors-N-More's books is the same obligation set forth in the promissory note. The accountant did provide the following testimony regarding the couple's capital contributions to Motors-N-More:

> Q: And did the Kents contribute funds into that corporation?
> A: Define funds.
> Q: Money?
> A: Equity or a loan?

[10] Wife relies on husband's deposition testimony rather than his trial testimony. While a copy of the deposition transcript was received into evidence, the parties do not address the evidentiary status of husband's statements contained in the deposition. Because we conclude that the district court did not clearly err by finding that no evidence was presented at trial linking the two obligations, it is not necessary to reach the evidentiary issues related to the deposition.

Q: Equity or a loan.
A: They did not contribute equity; a loan was contributed.
. . . .
Q: Do you have firsthand knowledge where those funds came from?
A: I do not.
Q: Do you have an understanding of how much those funds are?
A: I believe it to be $200,000.

This discussion pertains to wife's capital contribution to Motors-N-More of $220,000, not to a loan made by husband's father. Therefore, the district court did not err when it found that no evidence was presented at trial linking the promissory note husband owed his father to the obligation listed on Motors-N-More's books.

Spousal Maintenance

Wife argues that the district court erred by awarding her maintenance in the amount of $950 per month. We review a district court's original award of maintenance for an abuse of the district court's broad discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997).

First, wife asserts that the district court erred by considering her gross, rather than net, income. *See Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985) (stating that, within the context of a payor spouse's ability to pay, courts must determine their net income), *review denied* (Minn. July 26, 1985). However, as noted by the district court in its denial of wife's motion for amended findings, the district court would have considered wife's net income but wife did not submit it as evidence at trial. Therefore, the district

court did not abuse its discretion by using the only income figures for wife actually submitted at trial.

Next, wife argues that the district court impermissibly required her to invade the principal of her property settlement in order to pay her living expenses. The district court found that husband and wife "were affluent and enjoyed a comfortable standard of living during the marriage." The district court found that wife's reasonable monthly budget was $4,102, but did not make a finding regarding the marital standard of living during the marriage.[11]

In its consideration of wife's financial resources, the district court noted that she was "awarded assets, including vehicles, and a property equalizer payment in the amount of $168,832. She was already awarded $220,000 from the sale of the marital home and $39,143 from the sale of the cabin . . . . [Wife] took the bulk of the household goods and furnishings." While a district court must consider the income generated from the marital property received in the dissolution as part of its determination of spousal need, "a district court cannot require a maintenance-seeking spouse to invade the principal of the property [award] . . . to pay living expenses." *Curtis*, 887 N.W.2d at 254 (quotation omitted).

Because the district court did not make a finding regarding the amount of income potentially generated by the property settlement, and considering the fact that husband was

[11] The closest finding to a marital standard of living made by the district court was the following: "[Husband] denied that the parties spent $30,000 monthly on expenses as a married couple and instead estimated that they spent between $15,000 to $18,000 per month. [Husband] testified that the lifestyles they live now are similar to that they had in the marriage."

allowed to pay the settlement in monthly allotments of $2,000, the record is incomplete. This is especially so considering that no finding was made establishing the marital standard of living. *See* Minn. Stat. § 518.552, subd. 2(c) (listing the marital standard of living as a factor to be considered by a district court when determining the amount of a maintenance award). Wife's spousal maintenance award is therefore remanded so that the district court can make a finding on what amount of monthly income can be generated by wife's property settlement without invading the principal, and whether it is sufficient, along with the other factors considered by the district court, to meet the marital standard of living. On remand, the district court should make a finding on wife's marital standard of living as well.

Need-Based Attorney Fees

Wife argues that the district court erred by denying her request for need-based attorney fees. Appellate courts review an award of need-based attorney fees for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). *But cf.* Minn. Stat. § 518.14, subd. 1 (2018) (stating that the district court "shall" award need-based attorney fees if statutory requirements are met).

A district court shall award need-based attorney fees if it finds:

> (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
> (2) that the party from whom fees . . . are sought has the means to pay them; and
> (3) that the party to whom fees . . . are awarded does not have the means to pay them.

Id. The district court denied wife's request for need-based attorney fees on the basis of the third factor, finding that after considering "the property distribution ordered herein,

including the property already divided, in addition to the permanent maintenance award" need-based attorney fees were not warranted.

As discussed above, the district court did not find the amount of income that could be generated from wife's property award. Therefore, when the district court states that the property award is sufficient to negate wife's claim for need-based attorney fees, it is unclear whether the district court is referring to the principal of the award or the income that can be generated therefrom. This court has held that when a spouse must liquidate a substantial portion of her property award to pay her attorney fees, a district court abuses its discretion by denying a request for need-based attorney fees. *Schultz v. Schultz*, 383 N.W.2d 379, 383 (Minn. App. 1986). Because the district court's findings do not indicate whether wife would be able to pay her fees out of the income generated by the property award, or would require her to liquidate a portion of her property settlement to pay her attorney fees, remand is therefore warranted so the district court can make the necessary findings.

Child Support

Wife argues that the district court erred by not ordering an upward deviation in child support, and by not ordering husband to pay child support for June 2019. The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record, or it misapplies the law. *See id.*

Following the basic-support guidelines set forth in Minn. Stat. § 518A.35, subd. 2, (2018), the district court found that husband and wife's combined-basic-support obligation

was $2,727—the maximum allowed under the guidelines for two children[12]—and that after the parenting expense adjustment,[13] husband had a basic support obligation of $900 and wife had none. After factoring in their respective medical-support obligations, husband had a net-child-support obligation of $900 and wife's was $117, for a total child-support award to wife of $783 per month.

Wife argues that the district court should have ordered an upward deviation from the basic-support guidelines pursuant to Minn. Stat. § 518A.35, subd. 3(b) (2018). Under that provision, the district court can order an upward deviation if it finds that the children have "other substantial, demonstrated need[s] for the additional support for those reasons set forth in section 518A.43," which include the standard of living enjoyed by the children during the course of the marriage. Minn. Stat. § 518A.43, subd. 1(3) (2018).

Here, the district court did not make a finding that the children had substantial demonstrated needs warranting an upward deviation. Furthermore, the district court noted that father's monthly budget included $6,522 in expenses for the children. Therefore, the district court did not abuse its discretion by following the guidelines in setting the monthly-child-support award.

Wife next contends that the district court erred by setting father's first child-support payment for July 1, 2019, asserting that he should have been ordered to pay beginning on June 1, 2019. The district court's order imposing father's child support obligation was

[12] Because the couple's oldest child had graduated high school by June 1, 2019, he was no longer considered a child for the purposes of calculating child support. Minn. Stat. § 518A.26, subd. 5 (2018).

[13] How the district court arrived at this number is unclear, but wife does not challenge it.

dated May 22, 2019. Additionally, father was already providing up to $4,500 per month for the children's extracurricular expenses under the terms of the December 2018 partial judgment and decree. Therefore, the district court did not abuse its discretion by ordering that father's child-support payments commence on July 1, 2019.

Security

Finally, wife asserts the district court erred by implicitly denying her request to secure her property award with liens on husband's interests in his business entities.[14] Wife does not support her claim with any citation to authority or argument, but merely asserts that she "is concerned that any additional property awarded to her will [not be] secure." An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Therefore, this argument is waived.

In light of the complexity of the issues raised by wife, we conclude by summarizing our preceding conclusions. We affirm the majority of the district court's careful, detailed findings, with the following limited exceptions. We reverse the district court's spousal-maintenance award and remand for additional findings on the marital standard of living and what amount of income may be generated by wife's property award. Relatedly, we reverse the district court's denial of wife's request for need-based attorneys fees so the

[14] In this section of wife's brief, she also requests, without citation to authority or supporting argument, that she be awarded a 1/3 ownership interest in Motors-N-More. This argument is also deemed waived on the same basis as wife's unsupported request for security.

district court can find whether the income generated from wife's property settlement is sufficient to pay her attorneys fees. Finally, we remand wife's request for an equitable accounting of the $211,531 husband withdrew from J.K. Self Storage in 2017 so the district court can make a finding as to whether those funds are marital and, if so, how they should be divided between the parties. On remand, the district court may, in its discretion, reopen the record.

Affirmed in part, reversed in part, and remanded.