STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1905

In re the Marriage of:

Jill Nicole Prokop, petitioner,
Respondent,

vs.

Christopher Jon Prokop,
Appellant.

Filed September 28, 2020
Affirmed
Cochran, Judge

Dakota County District Court
File No. 19AV-FA-18-1928

Jenna K. Monson, Linda S.S. de Beer, de Beer & Associates, P.A., Lake Elmo, Minnesota (for respondent)

Matthew J. Gilbert, Gilbert Alden Barbosa, Burnsville, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and Slieter, Judge.

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

COCHRAN, Judge

In this marital-dissolution dispute, appellant-husband challenges the district court's denial of his motion for a new trial. He also contests certain aspects of the original judgment and decree including the district court's findings regarding the best interests of

the parties' minor child and the requirement that he pay the property-equalizer from his share of the marital-home sale proceeds. Finally, appellant argues that the district court erred by failing to consider the tax treatment of his traditional IRA account. We affirm.

FACTS

Appellant Christopher Prokop (husband) and respondent Jill Prokop (wife) separated in July 2018, after 20 years of marriage. At a temporary hearing on October 15, 2018 (the hearing), the parties stipulated that wife would have sole legal and physical custody of the parties' minor child,[1] and that husband would pay temporary child support. The parties also agreed that husband could request modification of the custody arrangement if husband made the request prior to January 1, 2020, and if the child's therapist supported the proposed modification. In addition to the child-custody issues, the parties stipulated that if husband sold the marital homestead, the parties would "share equally" in the net proceeds from the sale. The parties also outlined a process for resolving spousal maintenance. Specifically, the parties agreed to "waive their rights to trial, and submit the issue of spousal maintenance" to the district court. And, during the hearing, the parties discussed that if an equalizer payment was not agreed upon, the parties would submit that issue to the district court for resolution.

The schedule established by the district court contemplated filings related to spousal maintenance by November 5, and filings relating to the property equalizer by November 12, if that issue was not resolved by the parties. The schedule was designed to meet the parties'

[1] The parties also have a second child, but that child had reached the age of majority before the hearing.

goal that the district court enter a judgment and decree prior to the end of the year—when certain relevant tax-law changes became effective.

The parties did not reach an agreement on either spousal maintenance or the property equalizer. Instead, the parties made filings as contemplated by the district court's schedule. By a letter dated October 31, 2018, husband's counsel made a filing related to spousal maintenance and specifically noted that the parties agreed that the district court was to decide "only the spousal-maintenance issue." But in a subsequent filing dated November 8, 2018, husband filed property-equalizer related information including a summary of husband's assets and supporting documentation. And, in that filing, husband's counsel stated that he was providing the property-equalizer related information "[i]n accordance with our agreement" but then went on to state that the "only" issue that the court was to decide was spousal maintenance.

Wife's counsel filed her submissions on November 5, and November 12, 2018. In her submission on November 5, related to the issue of spousal maintenance, wife's counsel stated:

> The parties stipulated that the issues not agreed upon would be reserved and determined by the [district court] following written submissions. Specifically, spousal maintenance . . . would be determined pursuant to November 5, 2018 written submissions and, if not stipulated to, property division and attorney fees would be determined pursuant to November 12, 2018 written submissions.

Wife's November 12, 2018 filing included written submissions related to the issue of property division, as well as proposed findings of fact and conclusions of law.

On November 27, 2018, the district court issued its findings of fact, conclusions of law, order for judgment and judgment and decree, dissolving the parties' marriage. The

district court ordered husband to pay wife $2,200 per month in permanent spousal maintenance. The district court also divided the parties' marital property, and ordered husband to pay wife a cash equalizer payment of $92,768. And the district court ordered husband to make this payment out of his share of the home sale proceeds. Finally, the district court ordered husband to pay wife $5,000 in need-based attorney fees.

Husband filed a motion for amended findings and/or a "new trial" on December 26, 2018, requesting that the judgment and decree be reopened and a "new trial" be granted "on all issues due to . . . the parties' mutual mistake/failure to have a meeting of the minds relating to the issues they had agreed upon and/or the issues that would be submitted before the [district court] in lieu of trial." The district court denied the motion, concluding that the "record shows that there was a meeting of the minds as to the issues that had been resolved and the process by which the outstanding issues would be resolved." Although the district court entered an amended judgment and decree, the amended judgment and decree corrected only clerical errors.

Husband filed his notice of appeal on May 1, 2019, but thereafter requested leave to bring a motion in district court to correct clerical errors related to the property-equalizer payment established in the judgment and decree. This court granted husband's motion and dismissed the appeal without prejudice. Husband subsequently filed a motion requesting that the district court, among other things (1) modify legal custody of the parties' minor child; (2) adjust the equalizer payment; (3) recalculate the value of his IRA; and (4) correct the value of the parties' vehicles.

In a written order dated October 1, 2019, the district court granted husband's motion to adjust the equalizer payment to accurately reflect the value of the parties' vehicles and to avoid double counting of one of husband's financial accounts. But the district court denied husband's request to adjust the equalizer payment related to husband's traditional IRA. And, after making detailed findings on the best-interest factors, the district court denied husband's motion to modify legal custody. The district court then entered a second amended judgment and decree. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion in denying husband's motion for a new trial related to the property division and attorney fees.

Husband challenges the district court's denial of his motion for a new trial related to the division of property, the property equalizer payment, and attorney fees. An appellate court generally defers to the district court's broad discretion in deciding whether to grant a new trial. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). Prejudice is the primary consideration in determining whether to grant a new trial. *Wild v. Rarig*, 234 N.W.2d 775, 786 (Minn. 1975).

The rules of civil procedure provide that a new trial may be granted for irregularity in the proceedings that deprived the moving party of a fair trial. Minn. R. Civ. P. 59.01(a). "An irregularity is a failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law." *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. June 14, 1995). To

receive a new trial based on an irregularity in the proceedings, a party must establish both that an irregularity occurred and that he or she was deprived of a fair trial. *Id.*

A. Property Division

Husband argues that the district court abused its discretion in denying his motion for a new trial because the parties did not agree, in their written stipulations or at the hearing, to allow the district court to decide unresolved issues regarding the parties' marital property. Husband contends that, as a result, he was denied his due process right to a trial on the issues of property division and the property equalizer.

Stipulations are a favored means of simplifying dissolution litigation and are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). The rules of contract construction apply when construing such stipulations. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "[T]he existence and terms of a contract are questions for the fact finder." *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992).

This court will "set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). "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*, 607 N.W.2d at 472. When there are facts in the record that support the district court's findings, those findings are not clearly erroneous,

even if the district court also could have reached a different conclusion. *Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 779-80 (Minn. 1989).

In its order denying husband's motion for a new trial, the district court found that, at the hearing, the parties informed the court that they had "resolved issues relating to custody, parenting time, the minor child, and the homestead and had reduced those agreements to written stipulations signed by the parties." The district court also noted that the parties agreed that the issue of spousal maintenance would be submitted to the district court through filings made no later than November 5, 2018. In addition, the district court found that, at the time of the hearing, there were remaining assets that the parties needed to equalize, including bank accounts, investments, and IRAs, and that the parties were waiting on discovery to determine the equalizer payment. But the district court found that because the parties wanted the judgment and decree entered by the end of the year, "they agreed to submit these issues to the Court by November 12, 2018 if no agreements were reached by November 5, 2018." Thus, the district court concluded that the record shows that the parties had "a meeting of the minds as to the issues that had been resolved and the process by which the outstanding issues would be resolved."

Husband argues that the parties' written stipulations provided that "the only issues that would be submitted to the [district] court based upon written submissions were spousal maintenance, its duration and amount, as well as child support." Husband acknowledges that counsel had additional discussions on the record regarding other submissions beyond those listed in the written stipulations. But he contends that "[e]ven if discussions were made on the record with counsel regarding making written submissions on other issues, the

record at best, is confusing as to whether an agreement was reached by counsel." On this basis, husband argues that the district court erred when it found that the parties agreed to submit unresolved issues related to the property-equalizer to the district court if no agreement was reached. We are not persuaded.

When the record is viewed in the light most favorable to the district court's findings, as is required on appellate review, the record supports the findings regarding the scope of the parties' agreement. The record reflects that at the hearing, the parties provided the court with written stipulations that resolved many issues including custody, temporary child support, and the sale of the parties' home. One of the written stipulations provided that the "parties agree to waive their rights to a trial, and submit the issue of spousal maintenance, its duration and amount, as well as child support" to the district court. (Emphasis added.) The parties further agreed in the written stipulation to make supplemental filings related to spousal maintenance and child support no later than November 5, 2018. The written stipulations, however, were silent on the issue of the property equalizer.

After discussing the details of the stipulations on the record, the parties had an exchange about the role of the district court in addressing unresolved issues. Counsel for husband stated "I want to make sure . . . the only involvement the [district court] has in the future is to determine spousal maintenance, duration, length, and amount. That's all we're asking the court to do." Counsel for wife responded by noting that, because discovery regarding the parties' property was not yet complete, the property equalizer payment was not finalized. She then stated that "we can bind ourselves to the process and dates by which

to get it done. It's a simple case." Later in the hearing, counsel for wife explained that the parties had agreed to division of much of the parties' property including husband's pensions as well as personal property. She stated that the remaining assets that needed to be equalized were bank accounts, investments, and IRAs and again noted that they were "awaiting exchange of formal discovery" regarding those assets. The parties then discussed submitting proposals for the remaining property-equalization division issues to the district court by December 5, if they were unable to resolve them.

The district court raised concerns about the December 5 date and whether that date would allow the judgement and decree to be entered before the end of the year. The following exchange then occurred on the record:

> THE COURT: *If we push to the 11/5 date, and then you could have submissions after that. At least use the 11/5 to agree upon the equalizer. At that point you're going to know you're going to need to submit something.*
> WIFE'S COUNSEL: Yes agreed.
> THE COURT: *Does that work, [counsel for husband]?*
> COUNSEL FOR HUSBAND: Yes, sir. I just want to make it clear that the only thing we're submitting to the Court.
> THE COURT: Is May. [sic]
> COUNSEL FOR HUSBAND: *Yes. We're equalizing bank accounts and the retirement plans and things like that—*
> THE COURT: *Right.*
> COUNSEL FOR HUSBAND: *—which is just a paper thing to do.*
> THE COURT: Right. *But if there are outstanding issues, then you've defeated the purpose of your efficiencies if you don't get this Judgment and Decree completed before the end of the year.*
> COUNSEL FOR HUSBAND: *That's correct.*
> COUNSEL FOR WIFE: I'm hopeful we'll get it done, Your Honor, but there's no guarantee.
> . . . .

> COUNSEL FOR WIFE: *Your Honor, I would propose if we're unable to reach our equalizer agreement by November 5th, that we submit it along with everything else.* Because if it is just bank accounts, there's a lot of them. There's probably 15 of them or so, but it should be simple enough. It should be also straightforward and document-intensive rather than testimony-intensive. Even though it is cumbersome to the Court to ask for an expedited review of something like that, it should be simple enough to present to the Court in affidavit format.
> THE COURT: *All right. [Counsel for husband], any disagreement with that; what is your position?*
> COUNSEL FOR HUSBAND: *My client has three bank accounts and four pensions. We've talked about what we're going to do with the pensions, so I don't know what the problem would be.*
> THE COURT: *Okay.*
> . . . .
> THE COURT: *Once you get the discovery in, we should be able to nail down all of that information. So, we'll use that November 5th, dates then. And then obviously that's when those submissions are due and the maintenance. I probably could give you another week, then, on the issue of the accounts.*
> COUNSEL FOR WIFE: That would be helpful, Your Honor.
> THE COURT: *So that would be the November 12th, and then we'll just include that all in the Court's decision.*
> COUNSEL FOR WIFE: That would be helpful, Your Honor.

(Emphasis added.)

After this discussion, husband had a brief conversation with his attorney. The following exchange then occurred on the record between husband and his attorney:

> COUNSEL FOR HUSBAND: [Husband], you know what happened this morning; you know what's going on?
> HUSBAND: Yes.
> COUNSEL FOR HUSBAND: All right. Do you have any questions for the judge or myself or [wife's counsel] about the settlements we made today?
> HUSBAND: No.
> COUNSEL FOR HUSBAND: Chiefly, do you understand the only thing we're going to leave in the Judge's hands at some

> point would be the spousal maintenance; do you understand that?
> HUSBAND: Yes.
> COUNSEL FOR HUSBAND: Now, when [counsel for wife] and I can come to an agreement, before we submit that to the judge, we could do that also; do you understand?
> HUSBAND: Yes.

The following exchange also occurred on the record between wife and her counsel:

> COUNSEL FOR WIFE: So our settlement related to the property division are based upon a process of how to do that rather than an exact number; do you understand that?
> WIFE: Yes.
> COUNSEL FOR WIFE: But we have a process in place and we are hopeful we'll be able to figure out an equalizer number and the marital property awards. But if we don't do that by November 5th, then by November 12th we're going to submit to this Court a proposed marital property settlement; do you understand that?
> WIFE: Yes.

And wife's attorney later noted:

> Your Honor, would you like to set a date by which you want a proposed decree, so if the portions we've agreed to, if for whatever reason we can't agree to a joint draft on that, that we submit our proposed decree with blanks or reserved areas for the 11/5 and 11/12 submissions.

The district court responded: "Okay. That would make some sense." When asked by the district court if there was "anything else" to address, husband's attorney responded: "No, sir." The parties concluded the hearing by striking the November 15 pretrial date as unnecessary.

The record of the hearing demonstrates that the parties were confident that they would be able to resolve the outstanding issues related to the property division and the equalizer payment. But the record of the hearing also reflects that the parties agreed to a

process to resolve the outstanding issues if they were unable to reach an agreement. Under the agreement, the parties would file written submissions by (1) November 5, 2018, related to the amount and duration of spousal maintenance; and (2) November 12, 2018, related to any remaining issues involving property division and the equalizer payment. The clarity of the parties' agreement is supported by the fact that the parties agreed to strike the pretrial date. And, although correspondence filed by husband after the hearing expressed his desire that the district court only decide the issue of spousal maintenance, he also submitted documents related to the property-equalizer issue, indicating that he understood that if no agreement was in place with respect to property division and an equalizer payment, the district court would decide those issues.

We acknowledge that the record of the parties' agreement related to the submission of the equalizer payment and related property division issues to the district court could have been clearer. But taken as a whole, the record reflects that husband and his attorney understood that the equalizer payment would be submitted to the district court on written submissions if an agreement was not in place. And it is not improper for the district court to rely solely on written submissions in family-law matters. *See Christenson v. Christenson*, 490 N.W.2d 447, 451 (Minn. App. 1992) (stating that in family-court matters, "[i]t is within the [district] court's discretion to restrict presentation of evidence to nonoral testimony"), *review granted* (Minn. Jan. 15, 1993), *review dismissed* (Minn. Feb. 16, 1993); *see also* Minn. R. Gen. Prac., 303.03(d)(1) (stating that family-law motions are generally decided on written submissions). Given the extremely deferential standard of review, we cannot conclude that the district court's finding that the parties had "a meeting of the minds" in

relation to the "issues that had been resolved and the process by which the outstanding issues would be resolved," is clearly erroneous. And because the parties had a meeting of the minds in relation to the property-division issues, husband's due-process rights were not violated. *See Master Blaster, Inc. v. Dammann*, 781 N.W.2d 19, 34 (Minn. App. 2010) (concluding that no due-process violation occurred where appellant had both notice and an opportunity to be heard), *review denied* (Minn. June 29, 2010).

B. Attorney Fees

Husband also argues that the written-submission schedule did not afford him with an opportunity to respond to wife's request for attorney fees. We disagree. The record reflects that wife's November 5, 2018 submission indicated her intent to seek attorney fees. Husband then responded on November 8, 2018, requesting that the judgment and decree include "[a] statement merely in the Findings and Conclusions that each pay their respective attorney fees." And husband submitted a second correspondence on November 8, 2018, in which he acknowledged wife's request for attorney fees. Consequently, the record reflects that husband knew of wife's request for attorney fees, had full opportunity to respond, and did so twice.

Moreover, a district court "shall award attorney fees" in a marriage-dissolution action if the court finds:

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

Minn. Stat. § 518.14, subd. 1 (2018). Thus, the district court's decision to award attorney fees was not dependent upon an agreement by the parties.

Here, husband makes no argument that the district court abused its discretion by awarding wife attorney fees; rather he challenges the award solely on the basis that he did not have the opportunity to respond to wife's request for attorney fees. Because the record reflects that husband had a full opportunity to respond to wife's request for attorney fees, husband is unable to show that the district court's award of need-based attorney fees to wife was improper.

II. Husband's challenge concerning the best interests' finding in the original judgment and decree is moot.

Husband challenges the district court's finding in the original judgment and decree related to the child's best interests. The finding states that "[t]he parties stipulated that the best interests and welfare of the minor child will be served by granting permanent sole legal custody and permanent sole physical custody to [wife]." Husband argues that the finding is clearly erroneous because neither party stipulated that the custody arrangement agreed to by the parties was in the best interests of the child. Wife responds that the issue is moot because a subsequent order of the district court expressly addressed the statutory factors and determined that the custody arrangement in the original judgement and decree is in the child's best interests. We agree with wife.

An issue is moot when a determination of that issue "would make no difference in respect to the controversy on the merits." *Obermoller v. Fed. Land Bank of St. Paul*, 409 N.W.2d 229, 230-31 (Minn. App. 1987) (quotation omitted), *review denied* (Minn.

Sept. 18, 1987). Here, the original judgment and decree provided that husband could seek modification of the legal custody designation prior to January 1, 2020, if modification was supported by the child's therapist. The record reflects that husband made such a motion in September 2019. Specifically, husband sought an order, "[c]onsistent with the presumption under Minn. Stat. § 518.17, awarding the parties' joint legal custody" of the parties' minor child. The district court denied husband's motion in an order dated October 1, 2019. In that order, the district court expressly addressed each of the factors in Minn. Stat. § 518.17 and concluded that modification of legal custody was not in the child's best interests. By denying husband's September 2019 motion to modify the custody arrangement because it would not be in the best interests of the child, any initial flaw in the parties' custody stipulation related to best interests is moot. *See Obermoller*, 409 N.W.2d at 230-31 (defining an issue as moot when a determination of the issue "would make no difference in respect of the controversy on the merits" (quotation omitted)). And husband has not challenged the denial of his motion to modify the custody arrangement. Instead, his argument on appeal with respect to the custody arrangement focuses on the original judgment and decree.

In his reply brief, husband argues that the district court's best-interests findings in the October 1, 2019 order are insufficient to resolve his best-interests challenge related to the original judgment and decree because the district court applied an endangerment standard to husband's motion to modify custody. But generally, parties forfeit any issues that they do not argue in their principal brief. *Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987). And this court may deem forfeited issues that are argued for the first time in a reply brief. *Lund ex rel. Revocable Tr. of Kim. A. Lund v. Lund*, 924 N.W.2d 274, 284

(Minn. App. 2019), *review denied* (Minn. Mar. 27, 2019). Because husband failed to make this argument in his principal brief, we decline to address the argument.

III. The district court did not abuse its discretion by ordering husband to pay the property-equalizer payment from his share of the marital-home sale proceeds.

Husband challenges the district court's decision in the original judgment and decree to require husband to pay the property-equalizer payment as a lump sum from his 50% share of the marital-home sale proceeds. "Upon a dissolution of a marriage . . . the [district] court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2018). The district court has broad discretion in evaluating and dividing property, and its determinations will not be overturned except for abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). If the district court's division of property has an acceptable basis in fact and principle, we will affirm. *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

Dissolution-related stipulations are treated as contracts. *Shirk*, 561 N.W.2d at 521. The district court is "a third party to dissolution actions" and, as a third party, has a duty "to protect the interests of both parties" and "to ensure that the stipulation is fair and reasonable to all." *Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994) (quotation omitted). "Thus, because dissolution stipulations are treated as contracts and because the district court must ensure that dissolution stipulations are fair, a dissolution stipulation must be both contractually sound and otherwise fair and reasonable." *Kielley v. Kielley*, 674 N.W.2d 770, 777 (Minn. App. 2004). But "while a district court may reject all or part

of a stipulation, generally, it cannot, by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their 'day in court.'" *Toughill v. Toughill*, 609 N.W.2d 634, 639 n.1 (Minn. App. 2000).

Husband argues that by ordering him to pay the property-equalizer payment from his 50% share of the proceeds from the sale of the marital home, the district court unilaterally modified the parties' written stipulation that husband be awarded half of the proceeds from the sale of the marital home. Thus, husband argues that the district court "denied [husband] his day in court and denied him the benefit of [his] bargain." We are not persuaded.

As husband correctly points out, the parties' written stipulation provides that the "parties shall share equally in home proceeds if the property is sold after expenses of sale." The district court incorporated this stipulation into the judgment and decree, concluding that "[p]ursuant to the parties' stipulation," the "parties shall equally share in the net proceeds" from the sale of the parties' marital home. The district court then ordered husband to pay wife "a cash equalizer payment of $92,768" in order to "equalize the marital property division." The district court also ordered that husband pay this sum out of his share of the marital-home sale proceeds.

Husband takes issue with the district court's decision to order him to pay the equalizer payment from the proceeds of the sale of the marital home. But as addressed above, the parties agreed that if the parties could not reach an agreement on an equalizer payment after a division of the marital assets, the district court would decide the amount of the equalizer payment. As wife points out, there "were no carve-outs or caveats to this

stipulation," and "[u]pon receipt of the property information from both parties, the district court proceeded to do exactly what the parties asked of it—namely to arrive at an equalizer amount." The judgment and decree is consistent with the parties' stipulation. Thus, despite husband's argument to the contrary, the district court did not modify the parties' stipulation.

Husband contends that "[e]ven if a property settlement was due and owing to [wife], the property settlement could have been subject to payments over time or from the disposition of other assets such as [husband's] retirement accounts." Indeed, with respect to property settlements, "[p]ayments over a period of time are ordinarily favored, absent reasons warranting immediate payment." *Kennedy v. Kennedy*, 376 N.W.2d 702, 705 (Minn. App. 1985); *see Bollenbach v. Bollenbach*, 175 N.W.2d 148, 161 (Minn. 1970) (ordering immediate payment of a property settlement because of a risk that the ex-spouse might squander assets). But there is no indication that husband made a request that the property settlement be subject to payments over time. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that a party cannot complain about a district court's failure to rule in her favor when she did not submit the evidence that would allow it to do so), *review denied* (Minn. Nov. 25, 2003). And aside from asserting that "[c]ash is king," an assertion that would apply equally to wife, husband makes no argument demonstrating why a lump-sum equalizer payment was an abuse of discretion. Moreover, husband does not quibble with the amount of the equalizer payment. Husband, therefore, is unable to demonstrate that the district court's equalizer payment was an abuse of discretion. *See Swanstrom v. Swanstrom*, 359 N.W.2d 634, 636 (Minn. App. 1984) (stating

that an abuse of discretion will be found only if there is a "conclusion that is against logic and the facts on record").

IV. The district court did not abuse its discretion by failing to consider the tax treatment of appellant's traditional IRA account.

Finally, husband argues that the district court abused its discretion by failing to consider the tax consequences related to his traditional IRA in the original judgment and decree. Husband contends that, as a result, the district court arbitrarily treated husband's traditional IRA as an after-tax non-retirement asset.

Under Minnesota law, "it is within the [district] court's discretion to consider the tax consequences of its [marital property] award." *Mauer v. Mauer*, 623 N.W.2d 604, 607 (Minn. 2001) (quoting *Aaron v. Aaron*, 281 N.W.2d 150, 153 (Minn. 1979)). But, the supreme court has "repeatedly stated that the [district] court should not speculate about possible tax consequences." *Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984); *Aaron*, 281 N.W.2d at 153. "The court must have sufficient information that the actual tax liability resulting from the property division can be calculated with a reasonable degree of certainty." *Miller*, 352 N.W.2d at 744.

The original judgment and decree awarded husband his traditional IRA "with a value . . . as of September 28, 2018." Husband subsequently requested that the district court correct the equalizer payment to reflect that his traditional IRA is a pre-tax retirement asset. The district court denied husband's request, finding:

> Husband failed to provide the Court with any evidence or argument regarding the tax consequences associated with his . . . [traditional] IRA. His proposed property submission included the pre-tax value of his . . . [traditional] IRA, but it

> did not include a proposed allocation or division of this asset. As a result, [h]usband's . . . [traditional] IRA was treated as a post-tax retirement account and included in the Court's calculation of the equalizer payment.

Husband argues that when compared to the district court's treatment of a different retirement account, which was divided equally pursuant to a retirement-equalizer payment, the district court acted "arbitrarily" by treating his traditional IRA as an after-tax asset as opposed to a pre-tax retirement asset. Husband contends that because traditional IRA accounts are subject to income taxation under 26 U.S.C. § 408(d)(1) (2018), it was "wholly inequitable and an abuse of discretion for the [district] court to arbitrarily consider the tax ramifications of [his other retirement] account but not his [t]raditional IRA."

We are not persuaded. The United States Code provides that "[e]xcept as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee." 26 U.S.C. § 408(d)(1). While section 408(d)(1) indicates that husband's traditional IRA is subject to tax consequences, husband failed to provide the district court with any evidence of specific tax consequences concerning this asset. Husband did not propose an estimated tax-affected value of the traditional IRA. Instead, husband merely submitted a proposed value of the traditional IRA, which was consistent with the stated value set forth in the accounting statement provided by husband after the hearing. Without any evidence pertaining to the tax consequences of the traditional IRA, the district court would have been forced to speculate if it were to consider the tax consequences related to the traditional IRA. Such speculation would have been impermissible. *See Miller*, 352 N.W.2d at 744 (stating that

the district court should not speculate about possible tax consequences). Accordingly, it was within the district court's discretion not to consider the tax consequences related to husband's traditional IRA. *See Fick v. Fick*, 375 N.W.2d 870, 874 (Minn. App. 1985) (concluding that where no evidence was presented at trial on the occurrence or consequences of a taxable event, the district court did not abuse its discretion by declining to consider the tax consequences of the property division because such consideration "would have been pure speculation").

Affirmed.