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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0340**

In re the Marriage of: William T. Bienemann, petitioner,
Respondent,

vs.

Yelena Y. Bienemann,
Appellant.

**Filed March 7, 2022
Affirmed in part, reversed in part, and remanded
Reyes, Judge**

Hennepin County District Court
File No. 27-FA-19-842

Sean A. Shiff, Sean A. Shiff, P.L.L.C., Minneapolis, Minnesota (for respondent)

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Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-wife challenges the district court's marriage-dissolution order, arguing that the district court (1) overstated respondent-husband's nonmarital property; (2) erroneously awarded wife less spousal maintenance than it found she needed; (3) abused its discretion by denying wife's request for need-based attorney fees; and

(4) abused its discretion by failing to allocate some of husband's nonmarital property to wife. We affirm in part, reverse in part, and remand.

FACTS

Appellant Yelena Bienemann (wife) and respondent William Bienemann (husband) married in 2000. Wife grew up in the former Soviet Union, had degrees in mathematics, and worked as a math teacher and software consultant. Wife moved to the United States to marry husband. Throughout the parties' marriage, wife took care of the home and was a stay-at-home parent to the parties' minor child. Husband is a self-employed salesperson. Husband's income, as well as the inheritance and gifts that husband received from his family, allowed the parties to enjoy a comfortable standard of living during the marriage.

Husband filed for dissolution of the parties' marriage in February 2019. Lengthy dissolution proceedings followed. The parties tried the issues of property division, spousal maintenance, child support, custody, and parenting time in June 2020. The district court granted joint legal custody of the parties' child but gave husband sole physical custody with the parties' home designated as the child's primary residence. The district court found husband, who sold apparel to retailers on a commission basis, to be voluntarily underemployed and set his annual income at \$90,000. It also found wife, who taught math at a Russian-language charter school nine months out of the year, to be voluntarily underemployed and set her annual income at \$31,000. The district court awarded permanent spousal maintenance to wife. It also accepted husband's offer to pay education or training costs of up to \$2,500 per year for two years to enable wife to increase her earning

capacity. Because of the financial disparities between the parties, the district court determined that wife would not pay any child support.

The district court awarded the parties' homestead to husband after finding that the parties purchased it with the sale proceeds of husband's prior inherited properties and that most of the remaining mortgage on it had been paid off with husband's inheritance from his mother. It also awarded husband his Ford truck, his boat, his hunting-club membership, which the district court found husband had purchased with inherited funds, and all other personal property currently in his possession. Husband also received the assets in two Baird trust accounts (the trust accounts) comprising \$1,377,298 and \$283,671, which the district court found husband inherited from his mother upon her death in 2017. Husband received a third Baird account with \$146,369 in funds inherited from his mother's IRA (the inherited IRA account). Finally, husband received two annuities inherited from his mother and a \$227-per-month pension upon retirement earned and vested before the parties' marriage.

Wife received her Mercedes vehicle and all other personal property currently in her possession.

The parties received their individual Wells Fargo accounts and half of their joint checking accounts. Overall, the district court determined the total marital property to be worth \$191,270.40 and awarded each party half of that amount. After subtracting the value of her Mercedes from wife's portion, and adding \$20,000 from husband to furnish her new home, the district court awarded wife a \$90,635.20 equalizer payment. The district court denied both parties' motions for attorney fees.

Wife, proceeding self-represented, sought posttrial relief and moved for amended findings or a new trial (amended-findings motion). The district court summarily denied that motion. This appeal follows.

DECISION

I. The district court erred by overstating husband's nonmarital property.

Wife first argues that the district court overstated husband's nonmarital property by (1) treating income reinvested into husband's trust and inherited IRA accounts as nonmarital; (2) ignoring wife's marital interest in the homestead arising from improvements made and paid for during the marriage; and (3) failing to apportion any of the homestead's market-based appreciation to the marital estate. Wife also argues that the district court failed to hold husband to his burden of tracing nonmarital property. We discuss each issue in turn.

However, as an initial matter, we first address husband's argument that wife forfeited her nonmarital-property claims by failing to raise them at the district court. We generally do not consider issues that were not presented to and considered by the district court. *See Toth v. Arason*, 722 N.W.2d 437, 443 (Minn. 2006). Wife repeatedly raised issues relating to the marital share of the homestead and husband's failure to trace adequately his nonmarital property during trial and in her amended-findings motion, so those issues are properly before us on appeal. Wife acknowledges, however, that she did not directly raise the issue of marital investment income from husband's trust and inherited IRA accounts. While we generally do not consider issues not raised at the district court, we *may* review them in the interest of justice. *See* Minn. R. Civ. App. P. 103.04; *Oanes v.*

Allstate Ins. Co., 617 N.W.2d 401, 403 (Minn. 2000). Review is particularly appropriate here, when the source and nature of husband’s funds are necessarily related to the district court’s overall assessment of the marital property and when wife represented herself at various times before the district court.¹ *See Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987) (noting that courts provide some leeway to self-represented litigants). We therefore consider all of wife’s claims regarding husband’s nonmarital property.

Whether property is marital or nonmarital is a question of law which we review de novo, but we defer to the district court’s underlying findings of fact unless they are clearly erroneous. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). All property acquired by either spouse during the marriage is presumed to be marital property. *Id.* at 302. To overcome this presumption, a spouse has the burden of proving by a preponderance of the evidence that the property is nonmarital. *Id.* Nonmarital property includes property which “(a) is acquired as a gift, bequest, devise, or inheritance made . . . to one but not to the other spouse,” or “(c) is acquired in exchange for or is the increase in value of property” described in clause (a). Minn. Stat. § 518.003, subd. 3b(a), (c) (2020). Marital property is equitably divided between the parties, while nonmarital property remains with the spouse to whom it belongs. *See* Minn. Stat. § 518.58, subd. 1 (2020).

¹ Counsel represented wife at trial but wife submitted her amended-findings motion pro se.

A. The district court erred by failing to treat income earned on husband's nonmarital trust and inherited IRA accounts as marital property.

Wife argues that the district court erred by failing to treat income earned by husband's nonmarital trust and inherited IRA accounts as marital property. We agree.

Generally, income produced during a marriage from a nonmarital investment, such as interest and dividends, is marital property. *See Gottsacker v. Gottsacker*, 664 N.W.2d 848, 854 (Minn. 2003); *Swick v. Swick*, 467 N.W.2d 328, 331 (Minn. App. 1991), *rev. denied* (Minn. May 16, 1991). Appreciation in the value of nonmarital property, by contrast, is marital only if it is the result of active management of the property during the marriage. *Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008).

The district court determined that husband's two Baird trust accounts and inherited IRA Baird account were nonmarital property after finding that they were inherited from husband's mother after her death in 2017 and awarded them to husband. The parties' tax returns of record indicate that the trust accounts earned over \$60,000 in interest and dividend income between 2017 and the dissolution valuation date in March 2019.² Evidence regarding the inherited IRA account likewise indicates that it earned income through interest and reinvested dividends. In awarding husband all of the assets in the Baird accounts, the district court did not distinguish the principal of the investments and their growth due to appreciation, which are *nonmarital* property, from the dividend and interest *income* earned from the investments, which is marital property.

² The parties' tax returns show \$25,040 and \$8,379 in dividend and interest income, respectively, for 2018, and \$19,756 and \$10,590 in dividend and interest income for 2017.

Husband argues that the district court did not err because wife did not show that the increase in value in these accounts resulted from active investment decisions by husband. Husband cites *Ranik v. Ranik*, 383 N.W.2d 431, 435 (Minn. App. 1986), *rev. denied* (Minn. May 22, 1986), for the proposition that interest in nonmarital funds remains nonmarital if it is kept separate from marital funds and is not the product of active management during the marriage. But the active-versus-passive distinction applies to increases in value due to *appreciation* of the nonmarital asset, not to increases from interest and dividend reinvestment, which are considered income produced from the nonmarital asset. See *Gottsacker*, 664 N.W.2d at 854. And we have confirmed since *Ranik* that dividend reinvestment and interest income generated from a nonmarital asset during a marriage is marital property. See *Prahl v. Prahl*, 627 N.W.2d 698, 706 (Minn. App. 2001) (stating that shares acquired by dividend reinvestment are marital property); *Swick*, 467 N.W.2d at 332-33 (holding interest on certificate of deposit during marriage is income and thus marital property). The district court therefore erred by concluding that the total increase in the Baird accounts was all husband's nonmarital property. We accordingly remand to the district court to determine what increase in the accounts came from reinvested dividends or interest and to apportion it to the marital estate.

B. The district court erred by failing to account for marital improvements to the homestead.

Wife argues that the district court further erred by failing to account for approximately \$200,000 in marital improvements to the homestead. Again, we agree.

Improvements to nonmarital property made by the parties during the marriage are presumed to be marital property. *Dorweiler v. Dorweiler*, 413 N.W.2d 572, 576 (Minn. App. 1987) (citing *Faus v. Faus*, 319 N.W.2d 408, 412 (Minn. 1982)). Any increase in value to nonmarital property resulting from marital improvements is also marital, while an increase in value due solely to market-based appreciation is nonmarital. *Id.* at 576.

The parties testified at trial about a 2017 addition and renovation to their homestead. Husband's exhibits included a receipt from the renovations describing \$193,000 in expenses, and husband testified about additional renovation-related costs not included on that receipt. Husband testified that the parties paid for most of the renovation with funds from the parties' joint account that held husband's employment income. The homestead appraisal noted the improvements and indicated that they contributed to the property's good condition.

The district court's findings did not mention the improvements at all. The district court merely found that husband had purchased the homestead for \$535,000 with nonmarital funds plus a marital \$275,000 mortgage, \$32,574.55 of which the parties paid down before husband satisfied the remaining balance with his nonmarital inheritance. It found that the homestead had a value of \$650,000, did not account for any marital improvements, awarded the marital estate only the \$32,574.55 mortgage pay-down, and found that the rest of the homestead's equity of \$617,425.45 was husband's nonmarital property.

Husband argues that wife failed to answer husband's discovery requests supporting her denial of husband's nonmarital interests and failed to provide evidence at trial that

improvements to the homestead caused the increase in the homestead's value. But husband, not wife, has the burden of showing that the entire increase in the homestead's value was nonmarital, and husband's own evidence showed that the parties made substantial improvements to the homestead with funds that were marital, or at least presumed to be marital, and that those improvements contributed to the homestead's good condition at the time of its appraisal. Because improvements to the homestead made during the marriage and any increase in value due to those improvements were marital property, or at least presumptively marital property, the district court erred by awarding the entire value of the homestead's increased value to husband without addressing the value of the marital improvements to the home. We therefore remand to the district court to make further findings regarding the extent to which the improvements to the home were marital and to equitably divide any marital interest it identifies.

C. The district court erred by failing to apportion the marital estate its share of the homestead's market-based appreciation.

Wife argues that the district court erred by failing to apply the formula set forth in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981), to ensure that the marital estate received its share of the homestead's appreciation. Wife's argument has merit.

When marital equity is created in a nonmarital property as a result of parties using marital funds to reduce the mortgage balance, the marital estate is entitled to its share of the property's market-based appreciation. *See Antone v. Antone*, 645 N.W.2d 96, 102-03 (Minn. 2002). Characterizing a property's market-based appreciation as entirely nonmarital even though there is *some* marital equity in the property deprives the marital

estate of any return on its investment. *Id.* at 103. The marital estate's share of the property's appreciation is determined by applying the *Schmitz* formula. *Id.* Under the *Schmitz* formula,

[t]he present value of a nonmarital asset used in the acquisition of marital property is the proportion the net equity or contribution at the time of acquisition bore to the value of the property at the time of purchase multiplied by the value of the property at the time of separation.

Brown v. Brown, 316 N.W.2d 552, 553 (Minn. 1982) (summarizing formula applied in *Schmitz*, 309 N.W.2d at 750). The remaining equity increase is considered marital property and distributed accordingly. *Id.*

The district court did not apply the *Schmitz* formula to the homestead's appreciation. It simply credited the marital estate \$32,574.55 for the marital mortgage pay-down and distributed the remaining balance of the equity of \$617,425.45 to husband. This was error. The marital estate is entitled to its share of the homestead's appreciation.

Husband argues that the district court did not err by failing to apply the *Schmitz* formula because wife did not raise the issue at trial or provide evidence demonstrating how much of the appreciation belonged to the marital estate. We are unpersuaded. As discussed above, wife raised the general issue of the marital share of the homestead before the district court, and to the extent that she did not explicitly raise the *Schmitz* formula issue at trial, we address it now in the interest of justice. Husband's related argument that wife did not provide evidence demonstrating how much of the appreciation belonged to the marital estate is equally unavailing. Because property acquired during marriage is presumed marital, *husband* had the burden to establish what portion of the homestead, including what

portion of its appreciation, was nonmarital. With at least \$32,574.55 of marital equity in the homestead, on remand the district court should apply the *Schmitz* formula to give the marital estate its share of the homestead's appreciation.

D. The district court did not clearly err by finding that husband traced his nonmarital interest in the homestead's final mortgage payment and the flow of nonmarital equity between the parties' homes.

Finally, wife argues that the district court did not hold husband to his burden of tracing his nonmarital interests. We are not persuaded.

Whether a party adequately traced a nonmarital interest is a question of fact which we review for clear error. *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009) (citation omitted). "When marital and nonmarital assets have been commingled, the party asserting the nonmarital claim must adequately trace the nonmarital funds . . . to establish their nonmarital character." *Id.* "Simply routing the funds through a joint account does not transform nonmarital property into marital property. And tracing property to its nonmarital source does not require intricate detail." *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 696-97 (Minn. App. 2010) (quotations and citations omitted).

Many of wife's tracing claims repeat wife's prior arguments which we have already concluded have merit. But wife also broadly argues that husband failed to address the significant commingling of his nonmarital inheritance in the parties' joint accounts.

First, wife argues that husband's 2017 transfer of the proceeds of his mother's trust into the parties' joint checking account commingled his nonmarital inheritance assets with marital assets and that husband failed to adequately trace his nonmarital proceeds into his BMO account. The district court found the following:

- On May 15, 2017, the parties' joint Wells Fargo account had \$22,750.55.
- On May 16, 2017, husband inherited \$505,725 from his mother which he deposited into the joint Wells Fargo account.
- On May 18, 2017, husband transferred \$100,000 of his inherited funds to his BMO account.
- On July 25, 2017, husband transferred another \$200,000 of his inherited funds from the Wells Fargo account to his BMO account.
- On September 11, 2017, Husband took \$125,000 of his inherited funds in his BMO account and deposited them back into the joint Wells Fargo account. Husband also took another \$125,000 from his nonmarital Baird trust account and deposited it into the joint Wells Fargo account.
- On September 13, 2017, a \$242,425 payment from the joint Wells Fargo account fully satisfied the remaining balance of the homestead mortgage.

Although Husband commingled his nonmarital inheritance with marital assets, the record supports the district court's findings that husband adequately traced his nonmarital funds through the accounts and into the mortgage payoff. Its findings are not clearly erroneous.

Wife also argues that husband failed to meet his burden of tracing the flow of nonmarital equity between the parties' homes. Wife challenges husband's testimony that they used nonmarital proceeds from the sale of husband's inherited Michigan home to purchase their 15th Avenue home, because that home purchase occurred before the Michigan property sale.³ Husband testified that he completed the purchase with a bridge loan from his mother, and the district court credited that testimony. *See Chamberlain v. Chamberlain*, 615 N.W.2d 405, 414 (Minn. App. 2000) (noting that credible testimony can

³ The parties moved into husband's inherited Michigan home upon their marriage in 2000. They then moved to the 15th Avenue home in 2003 and moved from the 15th Avenue home to their homestead in 2006.

be sufficient to prove a nonmarital claim), *rev. denied* (Minn. Oct. 25, 2000). Because we defer to the district court's credibility determinations, wife's claim fails.

II. The district court abused its discretion by awarding wife less spousal maintenance than it found she needed.

Wife next argues that the district court abused its discretion by awarding wife \$300 less per month in its conclusions of law than it found she needed in its findings of fact. We agree.

The district court may grant spousal maintenance if it finds that one spouse lacks sufficient property to provide for their reasonable needs or is unable to provide adequate self-support through appropriate employment. Minn. Stat. § 518.552, subd. 1 (2020). A district court's grant of spousal maintenance must be in an amount that it deems just after considering all relevant factors. *Id.*, subd. 2. The district court, in essence, balances the recipient's needs with the obligor's ability to pay. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). We review a district court's spousal-maintenance award for an abuse of discretion. *Schmidt v. Schmidt*, 964 N.W.2d 221, 226 (Minn. App. 2021). A district court abuses its discretion if it resolves the discretionary question in a manner that is against logic and the facts on the record. *See Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

The district court awarded wife permanent spousal maintenance after considering the statutory factors and finding that her limited financial resources, age, long absence from her profession, limited English skills, diminished earning capacity, and health challenges supported her need for maintenance and that husband could meet his and their child's needs while paying maintenance to wife. In its findings of fact, the district court found that wife

needed permanent spousal maintenance of \$3,800 per month by calculating wife's monthly expenses as \$6,302 and her projected monthly salary as \$2,583 ($\$6,302 - \$2,583 = \$3,719$, rounded up to \$3,800). The district court also explicitly referred to the \$3,800 amount as "Husband's spousal maintenance obligation" in its child-support analysis and determined that it would impose no child-support obligation on wife, because "given her *projected income of \$6,383 from maintenance and her salary*, she will only have \$81 remaining after deducting her projected monthly expenses of \$6,302." (Emphasis added.) Finally, in its Child Support Guidelines Worksheet, it once again listed husband's spousal-maintenance obligation to wife as \$3,800. But in its conclusions of law, the district court ordered that "husband shall pay wife the sum of \$3,500 per month as and for spousal maintenance." The district court never explained the \$300 difference.

Generally, the district court's maintenance award in its conclusions of law prevails over the inconsistent maintenance amount in its findings of fact. *See Dailey v. Chermak*, 709 N.W.2d 626, 631-32 (Minn. App. 2006), *rev. denied* (Minn. May 16, 2006). But here, that conclusion is contrary to logic and several of the district court's explicit findings. Rather, it is apparent that the \$3,500 in the conclusions of law is a clerical error of substituting an "8" for a "5" and that the correct spousal-maintenance amount is \$3,800. *See Johnson v. Johnson*, 379 N.W.2d 215, 218 (Minn. App. 1985) (A "clerical error" is "an error of form made by the court itself . . . in drafting the order or judgment."). This court may correct clerical errors on appeal. *See id.*; Minn. R. Civ. P. 60.01.

Husband argues that the \$3,500 figure was neither a clerical error nor an abuse of discretion. Husband asserts that the lower \$3,500 amount is logical because at that time he

had a monthly income of \$0. But that argument contradicts the district court’s explicit findings that husband did have the ability to meet his needs while paying maintenance because he was voluntarily underemployed and was capable of earning a higher income. Husband also relies on the district court’s denial of wife’s posttrial amended-findings motion which in part challenged the \$300 discrepancy. While the district court stated that it had “carefully reviewed all of [wife’s] requests and [found] that none have merit,” we note that wife filed a 98-page motion, and the district court never explicitly addressed this discrepancy in its terse, one-page order.⁴ We conclude that the district court abused its discretion by failing to correct this clerical error in a conclusion of law that is contrary to logic and all of its clear and consistent factual findings in the record. We therefore remand to the district court to correct its error and set wife’s permanent spousal maintenance at \$3,800 per month.

⁴ We are troubled by the district court’s cursory approach to many of wife’s claims. The district court adopted, nearly verbatim, almost all of husband’s proposed findings regarding his nonmarital property. “Verbatim adoption of a proposed ruling raises questions about whether the district court independently evaluated the evidence and whether the ruling adopted . . . is sufficient to allow meaningful appellate review.” *Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014). Later, the district court chastised husband for submitting posttrial proposed findings that were “totally inadequate” but then proceeded to “adopt his proposal in its entirety, and if the Court of Appeals finds this effort to be lacking and refers the matter back, it should be clear where the fault lies.” But the district court is ultimately responsible for “assur[ing] that findings and conclusions—whether they be the court’s alone, one or the other party’s, or a combination—are always detailed, specific, and sufficient enough to enable meaningful review.” *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993).

III. The district court abused its discretion by denying wife’s request for need-based attorney fees without making any findings supporting its denial.

Wife argues that the district court abused its discretion by denying her request for need-based attorney fees without making findings. We agree.

We review a district court’s denial of need-based attorney fees for an abuse of discretion. *See Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). A district court “shall” award 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.

Minn. Stat. § 518.14, subd. 1 (2020). A lack of findings on the statutory factors is not fatal when review of the district court’s order reasonably implies that it considered the relevant factors, had familiarity with the history of the case, and had access to the parties’ financial records. *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001).

Here, the district court denied wife’s request for \$20,000 in need-based attorney fees without making any findings on the statutory factors. Husband asks us to infer from the district court’s summary denial that it found the statutory requirements were not met because wife’s conduct increased the cost and length of litigation and she will receive sufficient assets to pay her own fees.

We are not persuaded. The district court’s findings *could* support awarding need-based attorney fees. Although husband argues wife’s conduct increased the cost and length

of litigation, the district court considered husband's motion for conduct-based fees and denied it. The district court's findings also suggest that husband has the means to pay while wife does not. The district court frequently noted that husband could earn a high salary and live comfortably on his inheritance, whereas wife could only survive with permanent spousal maintenance and would be made "destitute" if she had to pay child support.

Given the district court's findings on the parties' relative financial situations and the order's silence on wife's conduct, along with the complete lack of findings on the statutory factors, we conclude that the district court abused its discretion. We therefore reverse and remand for the district court to evaluate properly wife's need-based attorney-fee request.

IV. The district court did not abuse its discretion by failing to allocate some of husband's nonmarital property to wife.

Wife argues that the district court abused its discretion by declining to allocate any of husband's nonmarital property to wife.⁵ We are not persuaded.

If the district court finds that either spouse's resources or property "are so inadequate as to work an unfair hardship, the [district] court may, in addition to the marital property, apportion up to one-half of the [nonmarital] property. Minn. Stat. § 518.58, subd. 2. That one party will be in a superior financial condition due only to nonmarital holdings is an improper basis for an unfair-hardship finding. *See Robert v. Zygmunt*, 652 N.W.2d 537, 546 (Minn. App. 1990). A disparity between the parties' postdissolution assets also

⁵ Wife conceded at oral argument that she raised this argument in the alternative if we did not reverse on the other issues.

does not support a claim of hardship. *Id.* It is “an unusual case” in which nonmarital property is distributed. *Dammann v. Dammann*, 351 N.W.2d 651, 653 (Minn. App. 1984).

Wife argues that the district court abused its discretion by leaving her with barely \$100,000 in assets while husband left with over \$2,000,000. The district court noted that it had made its decisions regarding the parties’ incomes, spousal maintenance, child support, and property division with the goal of preserving husband’s parents’ testamentary intent while still ensuring it gave wife the financial resources to which she was entitled. Although there is a disparity in the parties’ postdivision assets, the division is not so severe as to require apportionment of nonmarital property.

Wife cites to cases in which we affirmed a district court’s invasion of nonmarital property after determining that one spouse would suffer undue hardship: *Frederiksen v. Frederiksen*, 368 N.W.2d 769, 775 (Minn. App. 1985) (affirming award of 10% of husband’s nonmarital property when parties were married 28 years and wife had serious health problems); *Roel v. Roel*, 406 N.W.2d 619, 622 (Minn. App. 1987) (affirming award of 40% of husband’s nonmarital asset when wife spent 30-year marriage as homemaker, lacked work experience, and had health problems); *Hanson v. Hanson*, 378 N.W.2d 28, 30 (Minn. App. 1985) (affirming award of husband’s nonmarital property because marital property was nominal after short marriage and wife moved from Taiwan).

But unlike *Hanson*, the marital property here is not nominal. Additionally, we noted in *Roel* that the district court’s nonmarital-property apportionment bolstered its decision *not* to award wife permanent spousal maintenance. 406 N.W.2d at 622. Here, the district court awarded wife over \$3,000 as monthly permanent maintenance. In *Frederiksen*, the

district court found that wife had *no* marketable skills, had been repeatedly hospitalized due to chemical dependency and serious health problems, and *still* might not meet her needs even with maintenance and nonmarital property. 368 N.W.2d at 775. Here, although the district court found that wife's age, health issues, and outdated skills permanently diminished her earning capacity, it also found that wife could earn at least \$31,000 per year and that she would be able to pay her expenses with her income. We conclude that the district court did not abuse its discretion by declining to apportion some of husband's nonmarital assets to wife.

Affirmed in part, reversed in part, and remanded.