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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0637**

In re the Marriage of: Robert Thomas Brown, petitioner,
Respondent,

vs.

Kathryn Charlene Brown,
Appellant.

**Filed March 21, 2022
Reversed in part and remanded
Rodenberg, Judge***

St. Louis County District Court
File No. 69DU-FA-18-234

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Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Rodenberg,
Judge.

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Appellant Kathryn Charlene Brown appeals from the district court's judgment and
decree dissolving her marriage to respondent Robert Thomas Brown, arguing that the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

district court abused its discretion by making an inequitable division of marital property. Because the district court's erroneous failure to treat respondent's pension benefits as marital property subject to division, treatment of debt incurred during the marriage as appellant's individual debt, and reliance on findings unsupported by the record resulted in an inequitable division of marital property, we reverse in part and remand.

FACTS

The parties were married in August 1983 and separated in December 2017, when respondent moved out of the marital home. Respondent petitioned for dissolution of the marriage on March 13, 2018. The district court ordered financial early neutral evaluation (FENE) to address, among other issues, division of the marital estate. The parties did not complete the ordered FENE and, over the next year, tried and failed to agree on a division of the marital estate.

The case was tried to the district court on May 21, 2019. The district court heard testimony from the parties regarding their income, employment, living expenses, and marital assets and received exhibits reflecting the same. Following trial, and as described in more detail below, the district court left the record open for determination of the value of the marital home. After the parties agreed on the value of the home and that appellant would purchase it from the marital estate at that agreed-upon value, the district court entered a final judgment and decree dissolving the marriage and dividing the marital estate on November 2, 2021.

The parties obtained seven different appraisals and estimates which valued the marital home between \$445,000 and \$617,000. In a posttrial order, the district court

determined that the most appropriate method to resolve the parties' dispute over the value of the marital home was to sell it and divide the net proceeds. On June 20, 2019, the district court issued an order directing that the marital home be placed on the market for immediate sale but, recognizing appellant's attachment to the property, granted her a right of first refusal to purchase the property at the price a disinterested third party was willing to pay, subject to her ability to obtain financing. This right of first refusal created problems with listing the marital home because it impaired the right of a realtor to collect a commission on the sale. The marital home was never formally listed. Appellant and her significant other¹ made two offers to purchase the property in July 2019, first for \$535,500 and then for \$545,000. Respondent rejected both offers. In January 2020, respondent agreed to sell the marital home to "wife or her agent" for \$525,000, and the sale closed on April 15, 2020, netting \$158,664.52 after payment of encumbrances.

During the marriage, respondent worked as a carpenter and acquired a pension through the Carpenters & Joiners Benefit Funds (the carpenters pension) valued at \$705,759. When respondent retired in 2015, he elected a "Joint & 100% Survivor Benefit" which reduced his monthly benefit from what it would have been without the survivorship benefit to \$4,198.06. Appellant obtained the right to receive the same amount for the remainder of her life if respondent predeceases her. Respondent also collects \$275 monthly from a military pension acquired before the marriage and \$1,777 monthly in Social

¹ We use the term "significant other" because the district court used that term to describe the relationship between appellant and the person who participated in the purchase of the property.

Security benefits. He also had various annuities worth approximately \$50,000 when the parties separated, and which were completely depleted at the time of trial.

Appellant worked as a nurse during the marriage. She has two pensions, neither of which are in pay status, and a 401(k). She has a Twin Cities Nurses pension valued at \$72,000 with a projected monthly benefit of \$455, and a pension from St. Luke's Hospital valued at \$12,557 with a projected monthly benefit of \$134. At the time of separation, appellant's 401(k) had a balance of approximately \$110,000. This 401(k) was also completely depleted at the time of trial.

At the time of trial, respondent was collecting the carpenters pension, the military pension, and Social Security benefits for a gross monthly income of \$6,270. The district court found that respondent had reasonable monthly expenses of \$4,550.

Appellant ended her regular employment at St. Luke's Hospital in May 2017 but continued to collect a paycheck until September under a severance agreement. She testified that she retired in 2017, but also testified that she worked "intermittently" during the dissolution proceedings and that she had a job offer at the time of trial, which she intended to accept, paying \$30 an hour with a \$4800 per month on-call bonus for a monthly gross income of \$6,000. The district court found that appellant had monthly living expenses of \$3,380.

The parties owned all of the ordinary furnishings of a home. They owned personal motor vehicles, recreational equipment, and other personal property. Respondent recovered some personal property from the marital home after the parties separated and he submitted at trial a list of property he had recovered with a total value of \$15,947.67.

Respondent also submitted a list of “personal property pending” with an estimated total value of \$7,124, representing the property he wished to retrieve from the home but had not obtained. Respondent drives a 2016 Ford F150 four-wheel drive pickup truck that was subject to a \$21,272 lien at the time of trial. Appellant drives a 2017 Toyota Sienna minivan that was subject to a \$27,042.16 lien at the time of trial.

During the marriage, appellant took out educational loans in 2010 and 2011 which had an outstanding balance of \$16,214 in 2018. The parties also had credit card debt totaling roughly \$30,000 at the time of trial.

The district court issued a judgment and decree dissolving the marriage and dividing the marital assets and liabilities as follows:

	Respondent	Appellant
Carpenters Pension	\$705,759 ²	
Twin Cities Nurses Pension		\$72,000
St. Luke’s Pension		\$12,557
Marital Home Sale Proceeds	\$8,664.52 ³	\$125,000
Personal Property Credit	\$25,000	
Credit Card Debt		(\$29,320.30)
Educational Debt		(\$6,000) ⁴
Total Award	\$739,423.52	\$174,236.70

² The district court did not use a table such as this to reflect the assets awarded and debts allocated to each party. As discussed below, it treated the carpenters pension as an income stream and not as property and appears not to have considered the significant disparity in the division of marital property that resulted from that treatment.

³ The district court awarded respondent \$25,000 for a personal property credit, as discussed below, and this \$8,664.52 is the amount awarded to respondent after that \$25,000 credit.

⁴ As discussed below, the district court determined this was appellant’s individual debt—not marital debt—and therefore did not consider it as part of the distribution of the marital estate. We conclude that this debt was marital and should properly have been considered in the allocation of marital property. The district court also apparently concluded that the \$6,000 appellant claimed was spent on household expenses represented the entire loan amount, but the record shows \$16,214 in total outstanding educational loans.

The district court concluded that the pickup truck and minivan had insufficient equity to warrant separate consideration in the allocation of property and debt, and it awarded the pickup truck to respondent and the minivan to appellant. The overall distribution of the marital estate allocated more than 75% of the marital estate to respondent and less than 25% of it to appellant.

After the district court issued its judgment and decree, appellant moved for amended findings of fact and a new trial. The district court amended its findings of fact to correct inconsistencies with trial testimony regarding appellant's income but declined to consider new evidence of appellant's income after the trial or to grant a new trial.

This appeal followed.

DECISION

Appellant argues that the judgment and decree awarding her less than one-quarter of the net marital estate was not just and equitable and, therefore, was an abuse of the district court's discretion. She challenges several specific aspects of the property division, arguing that the district court erred in awarding respondent the entire carpenters pension, allocating to her all of the credit card debt, and awarding respondent \$25,000 as compensation for personal property he was unable to retrieve from the home.⁵

⁵ Appellant summarily argues that the district court erred in assigning no equity to the parties' vehicles and provides estimates of the vehicles' equity, but she provides no explanation for how she reached those equity estimates. Because this issue is inadequately briefed and argued, we do not address it. *State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016).

In a marital dissolution action, the district court has broad discretion in valuing and dividing property, and appellate courts will not overturn a property division absent an abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court acts within its discretion if the division has an acceptable basis in fact and principle. *Id.* A district court abuses its discretion if it resolves the matter in a manner that is “against logic and the facts on record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The division must be just and equitable, but it need not be mathematically equal. Minn. Stat. § 518.58, subd. 1 (2020); *Johns v. Johns*, 354 N.W.2d 564, 566 (Minn. App. 1984).

I. The district court abused its discretion by treating the carpenters pension as income and not as marital property.

Appellant argues that the district court abused its discretion by awarding the entire carpenters pension to respondent. She argues that the district court’s failure to treat that pension as marital property was an error of law. She also argues that the district court used the division of property as punishment for marital misconduct.

“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. Vested pension benefits are marital property, placing their division within the district court’s discretion to divide as marital property. Minn. Stat. § 518.003, subd. 3b (2020); *Faus v. Faus*, 319 N.W.2d 408, 413 (Minn. 1982); *Johnson v. Johnson*, 627 N.W.2d 359, 362 (Minn. App. 2001), *rev. denied* (Minn. Aug. 15, 2001). When dividing marital property, the district court must consider all relevant factors, including the

amount and sources of income, length of the marriage, age, health, and needs of each party. Minn. Stat. § 518.58, subd. 1.

The district court found that equally dividing the carpenters pension would reduce respondent's gross monthly income to "approximately \$4,470 thus creating a measurable disparity in income." It therefore awarded him the entire carpenters pension because, combined with his other retirement income, "his income matches [appellant]'s." Before making this finding, the district court speculated about what appellant's assets would have been if she had worked during the pendency of the dissolution but acknowledged that this was "wishful thinking" and ultimately based its division on the income of the parties, not any speculation about possible marital misconduct.

Income is a relevant factor for the district court to consider when dividing marital property, but it must consider "*all* relevant factors." Minn. Stat. § 518.58, subd. 1 (emphasis added). Vested pension benefits, such as respondent's pension here, must be regarded as marital property. Minn. Stat. § 518.003, subd. 3b. Although the district court noted the total value of the pension plan, it treated the pension and the payments received from it as an income stream. It did not expressly assign it a value as property when effectuating the division of the marital estate.

It is true that respondent relies on his pensions and retirement benefits as his sole sources of income, but it is also undeniably true on this record that this marriage spanned nearly the entire working life of both parties, appellant is nearing retirement age and can reasonably be expected to soon experience reduced income, and appellant recently had a serious illness which led her to end her full-time employment. By focusing solely on

income as the basis for its award of the carpenters pension to respondent, the district court abused its discretion.

We acknowledge that making an equitable division of property may be difficult when pension benefits constitute the majority of one party's income, but the district court has available to it tools to effectuate an equitable division of property, such as a qualified domestic relation order. *See* 29 U.S.C. § 1056(d)(3) (2018). And a pension plan need not be divided equally, so long as the overall division of the marital estate is just and equitable. Minn. Stat. § 518.58, subd. 1. The value of the pension plan cannot be disregarded in the distribution of the marital estate. This is especially true when the resulting division of the marital estate allocates three-fourths of the marital estate to one spouse and less than one-fourth to the other spouse.

Also troubling—and despite respondent having not raised the issue on appeal—is the district court's not having considered or determined the value of the survivorship benefit that appellant will receive should she outlive respondent. The record establishes that, when respondent began collecting his pension in 2015, he elected a 100% survivorship benefit for appellant should he predecease her. This decreased respondent's monthly benefit from the amount he would have received if he had not selected this option. Both parties testified that they expected appellant would keep the survivorship benefit following the dissolution, and, at oral argument, counsel for respondent agreed that appellant remains entitled to the survivorship benefit if she lives longer than respondent.

Divisions of marital property are final except in very limited circumstances. Minn. Stat. § 518A.39, subd. 2(g) (2020) (“[A]ll divisions of real and personal property provided

by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state”); *see* Minn. Stat. § 518.145, subd. 2 (2020) (providing reasons a judgment concerning a division of property may be reopened). It is imperative that the district court account for all marital property in the record before it.

Here, it seems evident that appellant’s survivorship rights under the carpenters pension have an ascertainable value (using reasonable assumptions about interest rates and the parties’ life expectancies). That value is undoubtedly less than the present value of the payments being made to respondent for his lifetime, but it is marital property with a value. Although the record contains no expert report or testimony concerning the value of the survivorship benefit, it is a marital asset subject to division. Minn. Stat. § 518.003, subd. 3b. As such, it is marital property omitted by the judgment and decree.

II. The district court’s property division is also inequitable by reason of the district court having allocated the entire marital debt to appellant in the context of having awarded the most valuable marital asset to respondent.

Appellant argues that the district court abused its discretion by allocating to her all of the parties’ credit card debt, which contributed to the inequitable division of the marital estate.

“In dissolution proceedings, debts are apportioned as part of the property settlement and are treated in the same manner as the division of assets.” *Korf v. Korf*, 553 N.W.2d. 706, 712 (Minn. App. 1996); *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *rev. denied* (Minn. May 29, 1986); *Filkins v. Filkins*, 347 N.W.2d 526, 528-29 (Minn. App. 1984) (concluding as a matter of first impression that debts are apportionable as property

under the definition of marital property in the precursor to Minn. Stat. § 518.003, subd. 3b). Marital property includes property “acquired by the parties, or either of them, to a dissolution, . . . at any time during the existence of the marriage relation between them.” Minn. Stat. § 518.003, subd. 3b. Although debt incurred during the marriage is generally marital property subject to just and equitable division, assigning a party sole responsibility to pay debt that benefits only that party is not an abuse of discretion. *Tasker v. Tasker*, 395 N.W.2d 100, 105 (Minn. App. 1986) (concluding it was not an abuse of discretion to allocate one party all his student loan debt where the education had not yet produced any financial benefit).

The district court allocated to appellant the parties’ entire credit card indebtedness because appellant testified that the majority of the debt was for maintenance of the marital home. The district court reasoned that appellant “insisted on keeping the house with all of the maintenance costs,” and other possible origins of credit card debt were “not clearly differentiated.” Our review of the record confirms that the credit card debt is not clearly differentiated, but it is also clear from the record that the majority of the credit card debt was incurred before the parties separated. And even to the extent that the credit card debt was related to home maintenance, respondent directly benefited from maintenance of the home in which he was living. He further benefitted from the purchase price actually paid for the home when appellant and her significant other bought it from the marital estate at an agreed-upon price. That price was almost exactly at the midrange of the various appraisals and estimates valuing the home. We are therefore compelled to conclude that

the district court exceeded its discretion by allocating the entire credit card debt to appellant while awarding the parties' major marital asset to respondent.

The district court also allocated the entire responsibility for appellant's educational debt to her, apparently outside of any computation of the overall marital estate. Appellant had \$16,214 in outstanding student loan debt incurred in 2010 and 2011. She testified that approximately \$6,000 of that amount was used for household expenses. The district court ordered appellant to assume as her sole responsibility "the \$6,000 in student loans that she received" based on "the assumption that student loans benefit the recipient."

Appellant continued to work for six years after incurring this educational debt, and there is no indication in the record that the marriage did not benefit from her education and the corresponding indebtedness. *See id.* The remaining \$10,000 in student loan debt was similarly incurred during the marriage and presumptively benefited the marriage, but the district court makes no mention of it and omission of this debt in its division of the marital estate contributes to the inequitable division of marital property.

III. The record fails to support the district court's award to respondent of \$25,000 for personal property he was unable to recover.

Appellant argues that the district court abused its discretion by awarding respondent \$25,000 to be paid from the proceeds of the home sale to compensate respondent for personal property.

A division of marital property must be based on facts in the record. *Antone*, 645 N.W.2d at 100; *Rutten*, 347 N.W.2d at 50.

Respondent provided the district court at trial with three lists of personal property. One list was of property he had retrieved from the marital home with valuations. A second list was of “personal property pending” with valuations. A third list identified other personal property without valuations. Respondent valued the personal property he had recovered at \$15,947.67 and “personal property pending” at \$7,124, for a total of \$23,071.67. Respondent also received several of the unvalued items through a judicially approved agreement with appellant.

The district court found that respondent “request[ed] \$25,000 for his share of personal property given the house, cabin, and garage were fully furnished and full.” He requested no such thing. He acknowledged having received almost \$16,000 of personal property and wanted to retrieve an additional \$7,124 worth of personal property. The district court awarded each party the personal property in their possession or subject to the transfer agreement and also awarded respondent “\$25,000 for his share of personal property.” The record fails to support that respondent requested \$25,000 as compensation for personal property. Even if respondent were to be awarded compensation for personal property, the largest such award supported by this record would be \$7,124 for “personal property pending.” The district court’s award of \$25,000 to compensate respondent for personal property to which he should have been entitled is unsupported by the facts in the record and, therefore, was an abuse of discretion.

We generally defer to a district court’s discretion in dividing a marital estate. *See Taylor v. Taylor*, 329 N.W.2d 795, 797 (Minn. 1983) (“In dissolution cases the district court is given broad discretion regarding the division of property. . . .”). But here, the

district court failed to treat the carpenters pension as a marital asset when it divided the marital estate (and appears to have omitted from consideration the value of appellant's survivorship rights under the pension because of a failure of the parties to appreciate at trial that the survivorship benefit has value, resulting in a failure to allocate the entire marital estate). The district court also erroneously treated appellant's educational debt as her individual responsibility and not as marital debt and made an award of compensation to respondent for personal property that is unsupported by the record. These are errors we cannot ignore. The resulting overall award to appellant of less than 25% of the marital estate makes this the rare case in which the district court abused its broad discretion to craft a just and equitable property division. *See Gummow v. Gummow*, 375 N.W.2d 30, 35-36 (Minn. App. 1985) (concluding "[t]he ultimate division" of marital property was not an abuse of discretion despite erroneous valuation of certain property).

For these reasons, we reverse in part and remand for the district court to readdress its division of the marital property in light of this opinion. The remand is limited to the division of marital property and does not affect the finality of the decree dissolving the marriage or the other portions of the decree not relating to division of the marital estate.⁶

⁶ At oral argument, respondent maintained that the district court could have considered in dividing the marital estate that it was awarding respondent neither spousal maintenance nor attorney fees. First, respondent made no claim for spousal maintenance and the district court expressly concluded that neither party is entitled to spousal maintenance. Second, the district court expressly determined that neither party should receive attorney fees or costs from the other. Neither party appealed those provisions of the judgment and decree. Similarly, we treat the determination that the vehicles have insufficient equity to warrant separate consideration as not appealed because it was inadequately argued. *See supra* n.2.

On remand, the district court has the discretion—but not the duty—to reopen the record.

Reversed in part and remanded.