This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0389

In re the Marriage of:
Bette Lou Gubbe Slag, petitioner,
Appellant,

vs.

David Alan Slag,
Respondent.

Filed April 1, 2024
Affirmed
Cochran, Judge

Sherburne County District Court
File No. 71-FA-20-257

Jennifer Nixon, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for appellant)

Caitlin E. O'Rourke, Benjamin J. Sime, Katie M. Jendro, Hess & Jendro Law Office, P.A., Elk River, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this marital dissolution dispute, appellant-wife challenges the district court's determinations that (1) the parties' antenuptial agreement is valid; (2) the purported

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

revocation of the parties' antenuptial agreement was invalid; (3) the majority of the parties' homestead is husband's nonmarital property; (4) husband's valuation of a piece of marital property is more accurate; (5) the capital gains distributions from husband's mutual accounts are nonmarital; and (6) certain portions of three accounts are husband's nonmarital property. We affirm.

FACTS

The district court held a three-day court trial in the parties' dissolution proceeding. On January 20, 2023, the district court filed its findings of fact, conclusions of law, order for judgment, and judgment and decree (order). The following summarizes the district court's findings of fact from its 59-page order and the evidence received during the trial.

Parties' Early Relationship

Appellant Bette Lou Gubbe Slag n/k/a Bette Gutsy Gooby (wife) and respondent David Alan Slag (husband) met in 1988 at an open house where wife was working as a real estate agent. Wife began working as a realtor in 1984 and worked as a realtor for more than 20 years. During that time, wife attended multiple closings and dealt with complicated legal documents, including closing deeds, purchase agreements, mortgages, and statements from the U.S. Department of Housing and Urban Development. Husband owned his own software logistics company, DSE Limited, until he retired in 2015. When the parties met, both had been married and divorced once before.

After the open house, wife became husband's real estate agent and helped him both purchase a new home and sell his old home. Shortly thereafter, the parties began dating.

Cohabitation Agreement and Wills

In 1992, the parties hired attorney David Olson to draft a cohabitation agreement and individual wills, which were designed to protect the parties' individual assets. Husband testified that the parties hired attorney Olson because wife was working with him on other matters and recommended his services. The parties executed the cohabitation agreement and wills that same year before they moved in together. The cohabitation agreement provided, in relevant part: "The parties understand that upon marriage . . . this agreement would be null and void and that in order to enforce or limit rights to premarital property a prenuptial agreement would need to be signed prior to marriage."

Maple Grove Property

After executing the cohabitation agreement, the parties purchased a home in Maple Grove pursuant to a verbal agreement whereby husband would "supply the funds" for the home, wife would purchase the home using these funds, wife would reimburse husband for half the cost of the home, and, upon reimbursement, wife would quitclaim the property to both parties.

Wife closed on the property in February 1992, and the parties moved in together the following month. Wife quitclaimed the property to both parties as joint tenants in January 1993.

Antenuptial Agreement

After they were engaged, the parties hired attorney Olson to draft an antenuptial agreement and new wills. Wife testified that husband first presented her with the antenuptial agreement the day before their wedding, when she was worried about work and

wedding preparations. Wife testified that she did not have a chance to fully review the agreement before signing it. By contrast, husband testified that wife "was very much involved in" the process of drafting the antenuptial agreement and that she reviewed it on the way to attorney Olson's office on the day they executed it.

The parties executed the antenuptial agreement and new wills on November 16, 1995, the day before their wedding. The antenuptial agreement established that "the Property of each party will be allocated between Marital Property and Non-marital Property in accordance with" the agreement and provided definitions for "Property," "Marital Property," and "Non-marital Property." The agreement also provided that, upon dissolution or separation, "each party shall retain his or her non-marital property free and clear of any right or claim of the other . . . except that any assets acquired during the marriage, from the property of both parties, shall be divided between the parties in proportion to the consideration provided by each."

With regard to the execution of the antenuptial agreement, husband testified that attorney Olson spent approximately one hour reviewing "every line of everything" with the parties and that both parties declined the opportunity to consult different counsel. Attorney Olson testified that both parties "appeared to [him] to be sophisticated enough that they would have read the document and that they would have had the capacity to understand it." Attorney Olson also testified that wife did not seem upset at the time and that he would not have let the parties proceed if there was any indication that she was under duress, unsure about signing, or unable to read the document. Husband testified that the

parties executed the antenuptial agreement and wills in front of two witnesses and that he "paid for everything."

In its order, the district court found that "much of" wife's testimony was not credible—especially her testimony "that she was rushed into and did not understand the consequences of the [cohabitation and antenuptial agreements]." The district court made this credibility determination in light of attorney Olson's testimony. The district court then concluded that the antenuptial agreement is procedurally and substantively fair and that it "must be enforced."

Revocation of Antenuptial Agreement

In 1997, wife proposed that the parties revoke their antenuptial agreement. Wife engaged a lawyer to draft a revocation agreement and presented the agreement to husband, but husband declined to sign it. Husband then drafted his own agreement, which provided:

> IT IS NOW THEREFORE AGREED: That neither party shall enforce the terms and/or conditions of the said "ANTENUPTIAL AGREEMENT," and all property and marital rights of the parties shall be determined under Minnesota common and statutory law.

The parties signed husband's agreement on November 10, 1997. The signed agreement was notarized but not witnessed.

Husband testified that he "signed an agreement that allowed [wife] to stay in the house if something happened to [him]," but he denied that the agreement was a revocation agreement. Husband further testified that he never intended to revoke the antenuptial agreement.

In its order, the district court concluded that the purported revocation agreement was not valid because it was not signed by two witnesses and neither party had been advised by counsel, as required by Minnesota Statutes section 519.11 (2022). Accordingly, the district court determined that the parties' antenuptial agreement is valid and enforceable.

Dissolution Proceedings

Wife began dissolution proceedings in April 2020. As part of these proceedings, the parties hired a neutral financial expert to trace the parties' assets and to guide the district court's division of these assets. To trace the parties' assets, the neutral expert asked the parties questions and attempted to verify their responses. When she was unable to find direct evidence of an asset, she looked for corroborating evidence, such as tax returns, or relied on the parties' representations. The neutral expert then created asset schedules for each party. The parties stipulated to these schedules at trial. The neutral expert explained that she created separate schedules to accommodate the parties' differing interpretations of the antenuptial agreement. Accordingly, husband's schedule assumes that the antenuptial agreement is valid, while wife's schedule assumes that it is invalid. As a result, the parties' schedules contain key differences—namely, what and how much property is considered nonmarital.

Wife and husband also hired their own financial experts to supplement the neutral expert's testimony. Wife's expert testified about the tracing of nonmarital assets and the treatment of capital gains distributions. Husband's expert testified about the treatment of capital gains distributions. The following sections detail the parties' disputes over various assets.

Homestead

The parties purchased land in November 1998 and finished building their homestead on the land in 2004. Husband testified that he paid for all of the construction costs for the home with funds from his nonmarital investment account. Husband testified that he was unable to find payment receipts or bank transfer records because many of the payments were in cash and the transfer records "don't go back that far." But husband testified that he was able to find an electronic spreadsheet of the construction costs, which he shared with the neutral financial expert.

The neutral expert testified that the parties purchased the land for $46,700 using marital funds and that husband likely paid for the construction costs of the home using nonmarital funds. To support this conclusion, the neutral expert relied on an $80,000 transfer from husband's nonmarital investment account, which she determined was used to pay construction costs, as well as on husband's representations. Because the parties disputed whether the construction payments came from husband's nonmarital accounts, husband's schedule provides that approximately 93% of the value of the homestead is husband's nonmarital property, while wife's schedule provides that the same amount is marital property.

The district court concluded that husband "met his burden for nonmarital tracing of the marital residence" and allocated more than 90% of the value of the homestead to husband as his nonmarital property.

Becker Property

In June 2020, shortly after wife filed for divorce, husband signed a purchase agreement for a new home in Becker, Minnesota. As part of the dissolution proceedings, both parties hired different experts to appraise the property. Both appraisals were dated February 28, 2021. At that time, the property was zoned as residential and consisted of land, an outbuilding, and a house that was "three-quarters" of the way built.

Wife's appraiser determined that the property was worth $235,000. Wife's appraiser used two methods to appraise the property: the "cost approach" and the "sales comparison approach."[1] Wife's appraiser arrived at a value of $245,000 using the cost approach and a value of $210,000 using the sales-comparison approach. Wife's appraiser then "reconciled down" the higher valuation to arrive at an appraisal of $235,000. Wife's appraiser included "entrepreneurial profit" in his appraisal to reflect the work husband intended to put into the property. Wife's appraiser also included the value of a well that he was told was on the property.

Husband's appraiser determined that the property was worth $168,000. Husband's appraiser used only the sales-comparison approach to appraise the property because it is "market driven" and the "most fair, honest" way to value a property. Husband's appraiser compared the property to three parcels of land with outbuildings that were within a seven-mile radius of the property. Husband's appraiser also considered the costs of the

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[1] Under the cost approach, an appraiser uses market estimates to value the land and whatever buildings reside on it. Under the sales-comparison approach, an appraiser uses "comparable" properties in the area to estimate the value of a property.

buildings on the property and based her valuation of those buildings on documents husband provided to her, which she independently verified with the construction company. Husband's appraiser did not include the value of a well in her appraisal because she was told that the property did not have one.

The district court found husband's appraiser to be more credible and accepted her $168,000 valuation for the Becker property.

Capital Gains Distributions

Husband had a nonmarital mutual fund account which resulted in capital gains distributions during the parties' marriage. The parties' experts disagreed about when capital gains distributions should be considered marital income.

The neutral expert testified that capital gains distributions are a form of appreciation, which constitutes marital income only when it is generated by a marital account. The neutral expert testified that it is industry standard to treat capital gains distributions as appreciation because capital gains distributions capture the appreciation within a given mutual fund, are variable, and are not guaranteed. For this reason, the neutral expert did not allocate to wife any capital gains distributions from husband's nonmarital mutual fund account.

Husband's expert testified that it is standard practice to treat capital gains distributions as appreciation because they are "not a steady periodic source of income" and people cannot rely on them.

Wife's expert testified that he treated capital gains distributions as marital income because, unlike appreciation, capital gains distributions are taxed. Wife's expert admitted

that capital gains distributions are variable but explained that other forms of marital income can be variable as well, depending "on the investment mix." Because wife's expert treated capital gains distributions from husband's nonmarital mutual fund account as marital income, wife's expert's estimate for marital income exceeded the neutral expert's estimate by approximately $200,000.

The district court found the neutral expert and husband's expert to be credible and determined that the capital gains distributions from husband's nonmarital mutual fund account would "remain solely with [husband]."

Parties' Accounts

Finally, wife's expert testified that the neutral expert erred in estimating the nonmarital share of three accounts: (1) husband's KeyPort Life/Fidelity & Guaranty/Allianz Annuity (Annuity); (2) husband's DSE SEP IRA (SEP IRA); and (3) the parties' Merrill Lynch brokerage account.

Annuity

Wife's expert testified that the neutral expert erred by categorizing husband's annuity as nonmarital because this designation was based on husband's representation that the annuity was funded by a withdrawal from one of his nonmarital accounts.

The district court found that the neutral expert's testimony was credible and that wife's expert failed to address another document that the neutral expert relied on when determining that the annuity was funded with husband's nonmarital funds. Accordingly, the district court concluded that the neutral expert's "accounting and scheduling as it relates to [husband's] annuity was proper and accurate."

SEP IRA

Wife's expert testified that there was a $6,800 marital contribution to husband's SEP IRA in 1998 which was improperly excluded from the neutral expert's report. Wife's expert also identified a $6,500 contribution to husband's SEP IRA in 1996, $1,500 of which the neutral expert determined was nonmarital because it was designated for the prior year. Wife's expert testified that this $1,500 contribution should be considered marital because it was made while the parties were married.

The district court did not specifically address wife's expert's argument regarding the SEP IRA. Instead, the district court found the neutral expert's testimony and reports to be "credible and proper" and incorporated the schedule prepared for husband into its order addressing the "final accounting and distribution of the parties' assets and liabilities."

Merrill Lynch Brokerage Account

Lastly, wife's expert testified that the neutral expert misestimated wife's contributions to the parties' Merrill Lynch brokerage account in 1998 and 2002. Wife's expert argued that these estimates were too low based on wife's income during the years immediately before and after 1998 and 2002.

The district court did not specifically address these income estimates and instead found the neutral expert's accounting and schedules to be "credible and proper."

Wife appeals from the district court's judgment and decree.

DECISION

Wife challenges the district court's determinations that (1) the parties' antenuptial agreement is valid; (2) the purported revocation of the parties' antenuptial agreement was

invalid; (3) the majority of the parties' homestead is husband's nonmarital property; (4) husband's valuation of the Becker property is more accurate; (5) the capital gains distributions from husband's mutual accounts are nonmarital; and (6) certain portions of three accounts are husband's nonmarital property. We consider each issue in turn.

I. The district court did not err by concluding that the parties' antenuptial agreement is valid.

Wife argues that the district court erred by determining that the parties' antenuptial agreement is valid. When the facts are undisputed, the validity of an antenuptial agreement is a question of law which we review de novo. *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 454 (Minn. App. 1998), *rev. denied* (Minn. May 28, 1998). We review disputed findings of fact for clear error. Minn. R. Civ. App. P. 52.01; *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

"An antenuptial agreement is a type of contract recognized and favored at common law." *Id.* at 455. "Antenuptial agreements must be fair, both procedurally and substantively." *Kremer v. Kremer*, 912 N.W.2d 617, 621 (Minn. 2018). Wife contends that the parties' antenuptial agreement is invalid because it is both procedurally and substantively unfair. We consider wife's arguments related to procedural fairness before addressing those pertaining to substantive fairness.

A. The antenuptial agreement is procedurally fair.

Wife first contends that the parties' antenuptial agreement is procedurally unfair. "Whether [an] [a]greement is procedurally fair is a mixed question of law and fact." *Id.* at 627. We review questions of law de novo and questions of fact for clear error. *Id.*;

Pollock-Halvarson, 576 N.W.2d at 454. A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). In other words, if the record reasonably supports a district court's factual finding, that finding is not clearly erroneous, even if the record may also support a contrary finding. *Id.* at 223. When applying the clear-error standard of review, we view the evidence in the light most favorable to the findings and do not reweigh the evidence or reconcile conflicting evidence. *Id.* at 221-22. We also defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Procedural fairness is governed both by Minnesota Statutes section 519.11, and by common law.[2] *Kremer*, 912 N.W.2d at 622. Section 519.11 provides, in relevant part:

> A man and woman of legal age may enter into an antenuptial contract or settlement prior to solemnization of marriage which shall be valid and enforceable if (a) there is a full and fair disclosure of the earnings and property of each party, and (b) the parties have had an opportunity to consult with legal counsel of their own choice. An antenuptial contract or settlement made in conformity with this section may determine what rights each party has in the nonmarital property, defined in section 518.003, subdivision 3b, upon dissolution of marriage, legal separation or after its termination by death and may bar each other of all rights in the respective estates not so secured to them by their agreement. *This section shall not be construed to make invalid or unenforceable any antenuptial agreement or settlement made and executed in conformity with this section because the agreement or settlement covers or includes marital property*, if the agreement or settlement would be valid and enforceable without regard to this section.

[2] Section 519.11 applies to all antenuptial agreements executed on or after August 1, 1979. Minn. Stat. § 519.11, subd. 6.

Minn. Stat § 519.11, subd. 1 (emphasis added).[3] In *Kremer*, the Minnesota Supreme Court interpreted section 519.11, subdivision 1. 912 N.W.2d at 624. We understand *Kremer* to hold that section 519.11, subdivision 1, provides "safe harbor" for provisions of an antenuptial agreement that distribute nonmarital property. *See id.* In other words, if an antenuptial agreement satisfies subdivision 1, then the provisions of the agreement that distribute *nonmarital* property are procedurally fair. *Id.* But, if an antenuptial agreement does not satisfy subdivision 1, then the question of whether the provisions that distribute nonmarital property are procedurally fair must be answered by common law. *Id.* Similarly, the supreme court held that, if an antenuptial agreement includes provisions that address *marital* property, the common law applies to determine whether the marital-property provisions are procedurally fair. *Id.* at 624.

Under common law, we review antenuptial agreements to determine whether they are fair and equitable. *In re Est. of Kinney*, 733 N.W.2d 118, 122 (Minn. 2007). To determine whether an antenuptial agreement is fair and equitable, the district court considers four factors:

> (1) whether there was fair and full disclosure of the parties' assets; (2) whether the agreement was supported by adequate consideration; (3) whether both parties had knowledge of the material particulars of the agreement and of how those provisions impacted the parties' rights in the absence of the agreement; and (4) whether the agreement was procured by an abuse of fiduciary relations, undue influence, or duress.

[3] Section 519.11 also requires that an antenuptial agreement "be in writing, executed in the presence of two witnesses and acknowledged by the parties" at least one day before the marriage takes place. Minn. Stat. § 519.11, subd. 2. Wife concedes that the antenuptial agreement satisfies these requirements.

Id. at 124; *see also Kremer*, 912 N.W.2d at 626 (upholding this multifactor test). Procedural fairness is determined by weighing the common-law factors, with no one factor being dispositive. *See Kremer*, 912 N.W.2d at 627-29 (analyzing an antenuptial agreement "as a whole"). The opportunity to consult with independent counsel is also "a 'relevant factor,' but is not determinative of whether an agreement is procedurally fair." *Id.* at 625-26 (quoting *Kinney*, 733 N.W.2d at 124).

Wife asserts that the parties' antenuptial agreement satisfies neither the common-law factors nor the statutory standards for procedural fairness. Because the parties' antenuptial agreement expressly provides for the distribution of marital property as well as nonmarital property, the procedural fairness of at least part of the agreement is governed by common law. *See id.* at 624-25. And because the common-law procedural-fairness analysis overlaps with the statutory analysis, we first consider whether the agreement as a whole is procedurally fair under common law before addressing whether the provisions of the agreement pertaining to nonmarital property are entitled to "safe harbor" under section 519.11, subdivision 1. *See id.* at 624, 626.

i. Full and Fair Disclosure

The first common-law factor a district court considers when determining whether an antenuptial agreement is procedurally fair is "whether there was fair and full disclosure of the parties' assets." *Kinney*, 733 N.W.2d at 124. While it is "prudent" to make such a disclosure in writing, "that form is not necessary to the validity of [an antenuptial] agreement." *Pollock-Halvarson*, 576 N.W.2d at 456. Likewise, "full disclosure" does not

require the disclosure of "every item of tangible or intangible property that a party has an ownership interest in," as this interpretation would impose "an intolerable burden" on contracting parties and "foster the defeasibility of the contract for the most trivial omission." *Id.* Indeed, we have held that general knowledge of a spouse's financial situation and a willingness to sign an antenuptial agreement are sufficient to satisfy the disclosure requirement. *Id.* (citing *Hill v. Hill*, 356 N.W.2d 49, 52 (Minn. App. 1984), *rev. denied* (Minn. Feb. 19, 1985)). Where disclosure is less than perfect, "we must look to the nature and circumstances of the deficiency to determine [its] significance." *Id.* at 457. "[G]ood faith oversights" will not undermine a finding of full and fair disclosure. *See id.*

Wife argues that the district court clearly erred by finding that there was full and fair disclosure of the parties' assets prior to the execution of the antenuptial agreement. She contends that this finding is not supported by the record. We are not persuaded.

The record supports the district court's finding that the requirements for full and fair disclosure were met here. As noted above, general firsthand knowledge of a spouse's financial situation and a willingness to sign an antenuptial agreement are sufficient to constitute full and fair disclosure of that spouse's assets. *Id.* at 456. That standard is met here. Wife became husband's realtor in 1988 and helped him buy and sell homes for several years. In 1992, the parties purchased the Maple Grove home together, and husband provided the funds. Wife and husband then lived together for several years before getting married in 1995. Finally, attorney Olson did not observe any signs that wife or husband did not understand the antenuptial agreement or were signing it against their will. Taken together, these facts support the district court's finding that the parties had general

knowledge of each other's financial situation and were willing to sign the antenuptial agreement. Accordingly, we conclude that the district court did not clearly err by finding that there was full and fair disclosure of the parties' assets prior to the execution of the antenuptial agreement.[4] *See id.*

ii. Adequate Consideration

The second common-law factor a district court considers when assessing procedural fairness is "whether the agreement was supported by adequate consideration." *Kinney*, 733 N.W.2d at 124. Ordinarily, consideration is easily satisfied by "any exchange that has value under the law." *Kremer*, 912 N.W.2d at 627. But we require more in the context of antenuptial agreements "[b]ecause antenuptial agreements typically involve parties in a confidential relationship, capable of exploitation." *Id.* Accordingly, the consideration supporting an antenuptial agreement must be "adequate" for this factor to be satisfied. *Id.* (quoting *Kinney*, 733 N.W.2d at 122-23).

To determine whether an antenuptial agreement is supported by adequate consideration, "we examine the circumstances surrounding the execution and enforcement of antenuptial agreements to determine whether they are fair and equitable." *Id.* An antenuptial agreement is not supported by adequate consideration if it does not sufficiently

[4] Wife also argues that the district court clearly erred by finding that there was full and fair disclosure of the parties' assets because the district court did not consider whether *husband* had full and fair disclosure of *wife's* assets. Wife has not demonstrated that she was prejudiced by this alleged error, which relates to husband's substantial rights. Consequently, we decline to consider the argument. *See* Minn. R. Civ. P. 61 (requiring that harmless error be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) ("Although error may exist, unless the error is prejudicial, no grounds exist for reversal.").

provide for the financially disadvantaged spouse. *See id.* Whether an antenuptial agreement sufficiently provides for the financially disadvantaged spouse depends on the unique facts of each case. *See, e.g.*, *id.* at 628 (concluding that an antenuptial agreement lacked adequate consideration because husband entered the marriage with "significant assets" while wife had "very little" and wife "would leave the marriage with very little" if the agreement were enforced, despite her contributions to husband's farming operation, her maintenance of the household, and raising the parties' child); *In re Est. of Serbus*, 324 N.W.2d 381, 385 (Minn. 1982) (stating that "[t]he consideration for the antenuptial contract was clearly inadequate" because wife would receive "far less than she would be entitled to" in the absence of the contract) (overruled on other grounds by *Kinney*, 733 N.W.2d at 125).

Wife contends that the district court clearly erred by finding that the antenuptial agreement was supported by adequate consideration because it did not consider whether the agreement sufficiently provided for wife.

In finding that the antenuptial agreement was supported by adequate consideration, the district court did not specifically identify the consideration wife received in exchange for executing the agreement. The district court instead considered "the circumstances surrounding the execution and enforcement of [the] antenuptial agreement[] to determine whether they [were] fair and equitable." The district court concluded that they were, based on attorney Olson's testimony about the parties' sophistication, wife's familiarity with complex legal documents due to her experience as a realtor, and the parties' familiarity with divorce proceedings. Additionally, the district court found that "[m]ultiple pieces of

evidence alluded to the fact that [husband] paid for the majority of the parties' needs while living together and during the marriage," including "legal fees for other matters in which [wife] used [a]ttorney Olson."

The circumstances and evidence relied on by the district court may be sufficient to show that the antenuptial agreement was supported by adequate consideration. *See Kremer*, 912 N.W.2d at 627-28. But even if we were to assume that the record does not support the district court's finding of adequate consideration, we would still affirm the district court's overall determination that the agreement is procedurally fair if the other three common-law factors support the determination. *See e.g.*, *Serbus*, 324 N.W.2d at 385-86 (concluding that an antenuptial agreement was procedurally fair even though it was not supported by adequate consideration); *Hill*, 356 N.W.2d at 53-54 (same). That is the case here. As discussed above and below, the other common-law factors favor procedural fairness. Therefore, we need not decide whether the district court clearly erred when it found that the parties' antenuptial agreement was supported by adequate consideration.

iii. Knowledge of the Particulars

The third common-law factor a district court considers when evaluating procedural fairness is "whether both parties had knowledge of the material particulars of the agreement and of how those provisions impacted the parties' rights in the absence of the agreement." *Kinney*, 733 N.W.2d at 124.

Wife asserts that the district court clearly erred by finding that the parties had knowledge of the particulars of the antenuptial agreement because it based this conclusion

on several findings that were not supported by the record. The record persuades us otherwise.

The record before us supports the district court's finding that the parties understood the antenuptial agreement and how it would affect their rights. The parties signed a cohabitation agreement, which attorney Olson testified was unusual for most unmarried couples who live together. This suggests that the parties understood how to use legal agreements to protect their assets well before they executed the antenuptial agreement. Moreover, husband testified that wife was involved in the process of drafting the antenuptial agreement and that wife reviewed the agreement on the day it was executed before the parties arrived at attorney Olson's office. Wife also testified that she reviewed the agreement, albeit briefly, on the day it was executed before arriving at attorney Olson's office. Finally, husband testified that attorney Olson reviewed the entire agreement in detail with both parties immediately before they signed it and that neither party appeared confused or distressed during this process. These facts show that the parties were aware of the particulars of the antenuptial agreement and how it would affect their rights moving forward. *See id.* Accordingly, we discern no clear error in the district court's finding that this factor favors procedural fairness.[5]

[5] To the extent that wife is challenging the district court's decision to credit the testimony of husband and attorney Olson, we defer to the district court's credibility determination. *Sefkow*, 427 N.W.2d at 210.

iv. Abuse of Fiduciary Relations, Undue Influence, or Duress

The fourth and final common-law factor a district court considers when determining whether an antenuptial agreement is procedurally fair is "whether the agreement was procured by an abuse of fiduciary relations, undue influence, or duress." *Id.* "Duress is coercion by means of threats or other circumstances that destroy the victim's free will and compel her to comply with some demand of the party exerting the coercion." *Kremer*, 912 N.W.2d at 628. "The test is not the nature of the threats, but rather whether or not the victim really had a choice . . . ." *Id.* (quotation omitted). In assessing this factor, we evaluate the circumstances surrounding the execution of the antenuptial agreement to determine whether the disadvantaged spouse "acted of her own free will, or whether her free will was overcome by" the advantaged spouse. *See id.*

Wife argues that the district court clearly erred by finding that the antenuptial agreement was not procured by undue influence or duress because the circumstances at the time of execution—namely, "the disparity in [the parties'] financial positions," "the manner and timing in which the [agreement] was presented," and "the pressure exerted on [w]ife to sign"—support the opposite conclusion. Wife compares this case to the supreme court's decision in *Kremer*. In *Kremer*, the supreme court concluded that husband procured the parties' antenuptial agreement by duress because he threatened to call off the wedding if wife did not sign the agreement and gave her only three days to review it and consult with an attorney. *Id.* The supreme court also noted that husband was aware of wife's reservations about signing the agreement, that none of the agreement's terms had been

negotiated by the parties, and that wife "was completely in the dark for more than a month while [husband] received legal advice and prepared the [a]greement." *Id.*

The facts of this case differ significantly from those in *Kremer*. Here, the district court found that wife was not only aware of the antenuptial agreement well before the parties executed it, but also helped to draft it. The district court also noted that wife did not testify that husband demanded that she sign the agreement. Nor did he threaten to call off the wedding if wife did not sign the agreement. Wife's reliance on *Kremer* is unavailing.

We conclude that the district court did not clearly err when it determined that wife's execution of the antenuptial agreement was not procured by abuse of fiduciary relations, undue influence, or duress. Along with the facts discussed in the preceding paragraph, the record demonstrates that wife had experience with complex legal documents through her work as a realtor and through her involvement in legal proceedings, including a divorce proceeding. Attorney Olson testified that wife was a sophisticated party who exhibited no signs of duress before or during the execution of the antenuptial agreement. And husband testified that wife helped draft the antenuptial agreement and reviewed it several times before the parties arrived at attorney Olson's office on the day that it was executed. These circumstances support the district court's finding that the antenuptial agreement was not procured by duress. *Cf. id.* Additionally, although wife testified that she was preoccupied by work and wedding arrangements on the day the parties executed the antenuptial agreement, the district court determined that the testimony of attorney Olson and husband was more credible than wife's testimony, and we defer to the district court's credibility

determinations. The district court did not clearly err by finding that the antenuptial agreement was not procured by abuse of fiduciary duties, undue influence, or duress.

v. *Opportunity to Consult with Counsel*

We also consider the parties' opportunity to consult with independent counsel when determining whether an antenuptial agreement is procedurally fair under common law, although this factor is separate from the multifactor test and is not required for an antenuptial agreement to be procedurally fair. *See Kinney*, 733 N.W.2d at 124. A party waives her right to object on the grounds that she did not have an opportunity to consult with independent counsel when the party fails to show that her spouse pressured her into signing the agreement, prevented her from seeking legal advice, or concealed her rights from her. *Pollock-Halvarson*, 576 N.W.2d at 457.

Wife contends that the district court clearly erred by finding that she had the opportunity to consult with counsel because the facts the district court relied on "do not indicate that [w]ife had time to consult with an attorney." We are not persuaded.

The record demonstrates that wife had an opportunity to consult with independent counsel before the parties executed the antenuptial agreement. Husband testified that the parties decided to get married in September 1995 and that, shortly thereafter, he suggested that they update their legal documents. Husband testified that wife was very involved in the process of drafting the antenuptial agreement and reviewed it multiple times before the parties executed it. And attorney Olson testified that neither party seemed surprised by the antenuptial agreement and that both parties declined the opportunity to consult with independent counsel. This testimony, which the district court credited, shows that wife

had an opportunity to consult with independent counsel before executing the antenuptial agreement but did not take the time to do so.

For the foregoing reasons, we conclude that the district court did not clearly err by finding that the common-law factors favor procedural fairness. Nor did it clearly err by finding that wife had an opportunity to consult with independent counsel.

vi. Statutory Standards

As discussed above, section 519.11, subdivision 1, provides "safe harbor" for provisions of an antenuptial agreement addressing nonmarital property when (1) "there is a full and fair disclosure of the earnings and property of each party" and (2) "the parties have had an opportunity to consult with legal counsel of their own choice." Minn. Stat. § 519.11, subd. 1; *Kremer*, 912 N.W.2d at 624.

Wife asserts that the district court erred by concluding that these requirements were satisfied because the district court did not consider whether the parties had full and fair disclosure of each other's "earnings," as required by statute, and did not examine whether the parties had an opportunity to consult with counsel. We are not persuaded.

First, with regard to consideration of "earnings," wife cites no authority to support her apparent assertion that "full and fair disclosure" under section 519.11, subdivision 1, requires the district court to make express findings regarding the parties' awareness of each other's incomes. And the statute does not support such a reading. *See* Minn. Stat. 519.11, subd. 1. Second, with regard to the opportunity to consult with legal counsel, the district court did consider whether the parties had an opportunity to consult with counsel and concluded that they did. This finding is supported by the record. Accordingly, wife has

not met her burden of proving that the district court erred when it determined that the statutory procedural-fairness factors were satisfied. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it."); *see also Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (quoting *Waters*).

Moreover, in addressing similar considerations in our preceding analysis of the common-law factors, we concluded that the district court did not clearly err by finding that the parties had full and fair disclosure of each other's assets and had an opportunity to consult with counsel. We therefore similarly conclude that the district court did not err by determining that, for purposes of section 519.11, subdivision 1, the parties had full and fair disclosure of each other's earnings and property and an opportunity to consult with counsel of their choice. Accordingly, we conclude that section 519.11, subdivision 1, provides "safe harbor" to the provisions of the parties' antenuptial agreement that address nonmarital property. *See Kremer*, 912 N.W.2d at 624.

B. The antenuptial agreement was substantively fair.

We next consider wife's argument that the parties' antenuptial agreement was substantively unfair. "Substantive fairness guards against misrepresentation, overreaching and unconscionability." *Pollock-Halvarson*, 576 N.W.2d at 455. Antenuptial agreements must be substantively fair at the time of execution and enforcement. *See McKee-Johnson v. Johnson*, 444 N.W.2d 259, 267 (Minn. 1989) (overruled on other grounds by *Kremer*, 912 N.W.2d at 626). When evaluating substantive fairness at the time

of execution, we consider whether the circumstances at the time of execution show a "potentiality for overreaching by one party over the other due to the relationship existing between them." *Id.* When evaluating substantive fairness at the time of enforcement, we consider whether a change in the parties' circumstances would render enforcement of the agreement "oppressive and unconscionable." *Id.*

Wife contends that the district court erred by determining that the antenuptial agreement was substantively fair at the time of execution because it did not make sufficient findings to support its conclusion that "the parties were on equal footing" when they executed the agreement.[6] Wife argues that this conclusion is contrary to the district court's finding regarding the disparity in the parties' assets at the time that they entered into the antenuptial agreement. This argument is unavailing.

To begin, wife's argument misunderstands what is required for an antenuptial agreement to be substantively fair. Wife appears to assert that the disparity in the parties' assets necessarily means that the parties were not "on equal footing"—in other words, that they did not have equal negotiating power—and that the district court clearly erred by making these purportedly contradictory findings. We disagree. A disparity in party assets does not necessarily mean that the party with fewer assets has less negotiating power, nor does it necessarily mean that the party with more assets is overreaching. The record in this case underscores this point. Therefore, we are not persuaded by wife's argument that the

[6] Wife appears to concede that the antenuptial agreement was substantively fair at the time of enforcement.

district court's findings regarding the parties' assets and negotiating power are necessarily contradictory and therefore clearly erroneous.

Moreover, the record supports the district court's determination that the antenuptial agreement was substantively fair at the time of execution. As discussed above, the record shows that wife was a sophisticated party who was familiar with complicated legal documents and who had entered into several legal agreements before, including a cohabitation agreement with husband. The record also shows that wife was aware of the possibility of an antenuptial agreement before the parties got engaged, was involved in drafting the agreement after the parties got engaged, and showed no signs of duress at the time of execution. These facts do not show a "potentiality for overreaching" by husband which would justify infringing on the "freedom of contract between informed, consenting adults." *See id.* at 267-68; *see also In re Est. of Aspenson*, 470 N.W.2d 692, 696 (Minn. App. 1991). Accordingly, we conclude that the district court did not clearly err by determining that the parties' antenuptial agreement was substantively fair at the time of execution.

II. The district court neither erred nor abused its discretion in determining that the purported revocation of the antenuptial agreement was invalid and unenforceable.

An antenuptial agreement may be revoked "only by a valid postnuptial contract or settlement which complies with [section 519.11] and the laws of [Minnesota]." Minn. Stat. § 519.11, subd. 2a. And a postnuptial contract is valid under section 519.11 only if both parties were represented by independent counsel at the time of execution and the contract was signed by both parties in front of two witnesses and a notary public. *Id.*,

subds. 1a(c), 2. Whether the parties' revocation agreement (a postnuptial agreement) satisfies the requirements under section 519.11 presents a question of statutory application, which we review de novo. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007).

The district court concluded that the purported revocation agreement did not meet the requirements of section 519.11, subdivision 2a, because neither party was represented at the time of execution and no witnesses signed the agreement. Wife does not argue that the district court erred by concluding that the revocation agreement was invalid under section 519.11, subdivision 2a.

Instead, wife contends that the district court erred by declining to enforce the revocation agreement under the equitable theory of promissory estoppel. We review a district court's exercise of equitable relief for an abuse of discretion. *Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005), *rev. dismissed* (Minn. Oct. 28, 2005). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

"Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000) (quotation omitted). Promissory estoppel is based on one person's "good-faith reliance" to her detriment on another person's promise. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 150 (Minn. 2001). The party invoking the doctrine of promissory estoppel bears the burden of proving that (1) "promises or inducements were

made"; (2) she "reasonably relied upon the promises"; and (3) she "will be harmed if estoppel is not applied." *Heidbreder v. Carton*, 645 N.W.2d 355, 371 (Minn. 2002).

In arguing that she is entitled to relief under the doctrine of promissory estoppel, wife relies on two cases. Wife first cites *DeLa Rosa v. DeLa Rosa*, for the proposition that district courts have "inherent power to grant equitable relief as the facts in each particular case and the ends of justice may require." 309 N.W.2d 755, 758 (Minn. 1981) (quotation omitted). In *DeLa Rosa*, the supreme court upheld the district court's decision to award restitution in a marriage-dissolution case despite the "absence of a specific statute authorizing" such relief. *Id.* at 757-58. In other words, the supreme court *affirmed* the district court's decision to *exercise* its equitable authority—it did not *reverse* the district court's decision *not* to exercise such authority. *See id.* Here, wife asks this court to reverse the district court's decision not to use its equitable authority to enforce the revocation agreement despite husband's testimony, which the district court credited, that he did not intend to revoke the agreement. In light of the inapposite factual background of *DeLa Rosa* and our deference to the district court's credibility determinations, wife's reliance on *DeLa Rosa* is misplaced.

Wife also compares the facts of this case to *Pollock-Halvarson*, in which this court determined that an antenuptial agreement was valid under section 519.11, subdivision 2, despite evidence that the purported notary was not commissioned, because the parties had no reason to know that she was not commissioned. 576 N.W.2d at 457. But this case is distinguishable from *Pollock-Halvarson* because, here, the parties' failure to comply with the requirements of section 519.11, subdivision 2, was the result of their own ignorance of

the law, not a third-party error as was the case in *Pollock-Halvarson*. *See id.* Wife's comparison to *Pollock-Halvarson* is unavailing. *See id.*; *see also Siewert v. Siewert*, 691 N.W.2d 504, 506-07 (Minn. App. 2005) (concluding that an antenuptial agreement "is invalid and unenforceable" when the agreement "does not satisfy the plain requirement of [section] 519.11, [subdivision] 2"), *rev. denied* (Minn. May 17, 2005).

For these reasons, we conclude that the district court did not err by determining that the revocation agreement was invalid under section 519.11, and wife has not demonstrated that the district court abused its discretion by declining to grant wife relief under the equitable theory of promissory estoppel.

III. The district court did not clearly err in determining the extent of husband's nonmarital interest in the parties' homestead.

Wife asserts that the district court abused its discretion in determining husband's nonmarital interest in the parties' homestead. "Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the district court's underlying findings of fact." *Muschik v. Conner-Muschik*, 920 N.W.2d 215, 223 (Minn. App. 2018) (quotation omitted).

"All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless" of how it is held. Minn. Stat. § 518.003, subd. 3b (2022); *see also Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). "To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Olsen*, 562 N.W.2d at 800. All property acquired before a marriage or after the marriage is over, acquired

during a marriage as a gift from a third party to one spouse only, or excluded by a valid antenuptial agreement is nonmarital property. Minn. Stat. § 518.003, subd. 3b; *Baker v. Baker*, 753 N.W.2d. 644, 649 (Minn. 2008). "For nonmarital property to maintain its nonmarital status, it must either be kept separate from marital property or, if commingled with marital property, be readily traceable." *Olsen*, 562 N.W.2d at 800.

"A spouse seeking to trace an asset to a nonmarital source is not held to a strict tracing standard, but need only show by a preponderance of the evidence that the asset was acquired in exchange for nonmarital property." *Doering v. Doering*, 385 N.W.2d 387, 390 (Minn. App. 1986) (quotation omitted); *see also Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997) (citing this aspect of *Doering*).

Wife argues that the district court clearly erred in determining that the majority of the parties' homestead is husband's nonmarital property. In support of this argument, she contends that the homestead determination is based on several findings that are clearly erroneous—namely, that (1) wife was not working while the parties were building the property; (2) husband paid for all of the parties' personal expenditures; (3) wife's financial expert testified that the parties' monthly income was insufficient to cover construction costs for the property; and (4) husband could not find paper copies of receipts from the house construction because wife took them from the home. We are not persuaded.

Even if we assume that the findings wife identifies are clearly erroneous, the record as a whole shows that it is more likely than not that husband paid for the parties' homestead using funds from his nonmarital account. Husband produced an electronic spreadsheet detailing the construction costs for the homestead and testified that he paid those costs from

his nonmarital account. In addition, the neutral financial expert was able to trace an $80,000 payment to husband's nonmarital account. Husband also testified that, after wife took tens of thousands of dollars from the parties' joint account in 1997, he kept much less money in the account but would transfer money into the joint account when he needed to pay a bill. The parties testified that wife worked for DSE (husband's company) while the property was being built and that wife's checks were deposited in the company account. And preliminary schedules show that the parties' monthly income was not sufficient to cover the construction costs. Taken together, these facts are sufficient to show that husband more likely than not paid for the vast majority of the parties' homestead using nonmarital funds. We therefore conclude that the district court did not clearly err in determining that more than 90% of the parties' homestead is husband's nonmarital property.

IV. The district court did not clearly err in valuing the Becker property.

Wife contends that the district court clearly erred in valuing the Becker property. The district court's valuation of an asset is a finding of fact which "shall not be set aside unless clearly erroneous on the record as a whole." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (quotation omitted). "[V]aluation is necessarily an approximation in many cases." *Hertz v. Hertz*, 229 N.W.2d 42, 44 (Minn. 1975). Accordingly, valuations that fall within a "reasonable range of figures," as identified by "competent witnesses," must be sustained. *See id.*

Wife asserts that the district court "erred [] in determining the value of the Becker [p]roperty" because it relied on findings that were clearly erroneous—specifically, that husband's expert relied solely on husband's representations regarding construction costs.

Wife also notes that "the district court's findings in this section were taken nearly verbatim from [h]usband's [m]emorandum of [l]aw," which raises a question as to whether the district court independently evaluated the evidence. *See Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992) (cautioning district courts not to adopt one party's findings and conclusions "wholesale"), *rev. denied* (Minn. Feb. 12, 1993). This argument is unavailing.

In challenging the district court's valuation of the Becker property, wife essentially challenges the district court's decision to credit the testimony of husband's expert over wife's expert. In general, we defer to district court credibility determinations. *See Sefkow*, 427 N.W.2d at 210; *Kremer v. Kremer*, 827 N.W.2d 454, 463 (Minn. App. 2013) (applying this deference to a district court's decision to credit the testimony and report of an expert), *rev. denied* (Minn. Apr. 16, 2013). Moreover, the district court's decision to credit the testimony of husband's expert over wife's expert is supported by the record. Wife's expert testified that he used two different methods, the cost approach and the sales-comparison approach, when valuing the Becker property, and that his final estimate included "entrepreneurial profit." Husband's expert testified that she only used the sales-comparison approach because that was standard practice for residential property, and the Becker property is residential property. Husband's expert further testified that using the cost approach and including entrepreneurial profit in appraisals was more appropriate when appraising nonresidential properties. Lastly, wife's expert included the cost of a well in his appraisal while husband's expert did not, and the record shows that the property did not contain a well at the time of appraisal. These facts demonstrate that the district court had good reason to credit husband's expert over wife's expert and did not clearly err in doing

so. We therefore conclude that the district court did not clearly err in valuing the Becker property.

V. The district court did not clearly err by designating the capital gains distributions from husband's nonmarital mutual funds as nonmarital property.

Wife argues that the district court clearly erred in determining that the capital gains distributions from husband's nonmarital mutual accounts were nonmarital. "We independently review the issue of whether property is marital or nonmarital, giving deference to the district court's findings of fact." *Baker*, 753 N.W.2d at 649. "In determining whether the appreciation in the value of a nonmarital investment is marital or nonmarital, we look to whether or not the appreciation is the result of active management of the investment, classifying active appreciation as marital property and passive appreciation as nonmarital property." *Id.* at 650. "[A]bsent evidence that the efforts of one or both spouses directly affected the value of an investment, the appreciation in the value of the investment is properly characterized as passive," and therefore nonmarital. *Id.* at 652.

Wife contends that the district court clearly erred by finding that the capital gains distributions from husband's nonmarital mutual accounts were nonmarital because it applied the definition of "income" set forth in Minnesota Statutes section 518A.29 (2022), which governs child support, rather than the common-law definition of "income." We disagree for two reasons.

First, the definition of "income" under section 518A.29 applies to divisions of marital property. Minnesota Statutes section 518A.26, subdivision 1 (2022) provides: "For

the purposes of this chapter *and chapter 518*, the terms defined in this section shall have the meanings respectively ascribed to them." (Emphasis added.) Chapter 518 governs marriage dissolution, including the division of marital property. *See* Minn. Stat. §§ 518.002-.68 (2022). Minnesota Statutes section 518A.26, subdivision 8 (2022), defines "[g]ross income" as "the gross income of the parent calculated under section 518A.29." Therefore, the definition of income under section 518A.29 applies to the division of marital property under section 518.58 by operation of section 518A.26, subdivision 1. *See also Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009) (explaining that "the legislature intended section 518A.29's definition of gross income to apply to chapter 518"). Wife's argument to the contrary is unavailing.

Second, there is no evidence that the capital gains distributions from husband's nonmarital mutual accounts were the result of wife's or husband's active management of those investments. Accordingly, these distributions retain their nonmarital character. *See Baker*, 753 N.W.2d at 650.

For these reasons, we conclude that the district court did not clearly err by finding that the capital gains distributions from husband's nonmarital mutual accounts were nonmarital property.

VI. The district court did not clearly err in determining the extent of the nonmarital shares of three accounts.

Finally, wife asserts that "[t]he district court erred and abused its discretion" in determining the nonmarital shares of three accounts. "We independently review the issue

of whether property is marital or nonmarital, giving deference to the district court's findings of fact." *Id.* at 649.

In challenging the district court's determinations regarding husband's annuity, husband's SEP IRA, and the parties' Merrill Lynch Brokerage account, wife essentially challenges the district court's decision to credit the testimony of the neutral financial expert over the testimony of wife's financial expert. Again, we generally defer to district court credibility determinations. *See Sefkow*, 427 N.W.2d at 210; *Kremer*, 827 N.W.2d at 463. And again, the district court's decision to credit the neutral financial expert over wife's financial expert is supported by the record. The record shows that the neutral financial expert was hired by both parties and reviewed thousands of documents in her efforts to trace the parties' marital and nonmarital assets. The record also demonstrates that the neutral financial expert worked with the parties to amend the schedules when she received new information or the parties requested that she take a different approach. And the record reflects that the neutral financial expert offered credible testimony regarding industry standards and best practices. By contrast, wife's expert was hired by wife alone to verify the neutral financial expert's work and therefore was not as familiar with the parties' assets. These facts show that the district court had good reason to credit the neutral financial expert over wife's financial expert and did not clearly err in doing so. We therefore conclude that the district court did not clearly err in determining the extent of the nonmarital shares of husband's annuity, husband's SEP IRA, and the parties' Merrill Lynch Brokerage account.

Affirmed.