

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1465**

In re the Marriage of: Jacqueline A. Archer, petitioner,  
Respondent,

vs.

Thomas J. Archer,  
Appellant.

**Filed July 11, 2011  
Affirmed in part, reversed in part, and remanded  
Ross, Judge**

St. Louis County District Court  
File No. 69DU-FA-08-157

Robert A. Standke, Standke & Page, Ltd., Minnetonka, Minnesota (for respondent)

Larry M. Nord, Mary Katherine Cohen, Orman Nord & Hurd, P.L.L.P., Duluth,  
Minnesota, (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

This appeal involves a challenge to the district court's property-distribution order following the divorce of a couple who owned a cabin, two houses, a vacant lot, and four corporations that own commercial real estate. Appellant Thomas Archer argues that the

district court erroneously failed to consider the tax consequences of awarding Jacqueline Archer the real estate owned by one of the corporations without also awarding her the corporation itself. He also contests the district court's property valuations and its findings regarding spousal maintenance, attorney fees, and the obligation to pay real-estate taxes. Because the district court's order may be construed as directing the conveyance of property belonging to corporations that were not parties to the action, we remand for further review and a new order. And we hold that the district court abused its discretion by refusing to address the alleged tax consequences of the division after it deemed an exactly equal division to be equitable but one of the parties made a showing that he would incur almost \$280,000 in taxes because of the structure of the division. We otherwise affirm.

## **FACTS**

Thomas and Jacqueline Archer married in 1997. They managed Thomas Archer's car-racing career and their four companies: Archer Parts and Accessories, Inc. (AP & A); Archer Properties, Inc.; TJA, LLC; and LRW, LLC. They divorced without children in 2010.

The marriage dissolution action primarily concerned division of the couple's \$1.5 million estate. They sold their \$300,000 Duluth home at the commencement of the action. Their remaining real properties at the time of trial included a cabin, two houses, and a vacant lot. Each of their four corporations owned one or more commercial buildings (these buildings are referred to by the district court as the Twig Bakery, the TJA building, the LRW property, and the Canal Park property).

The district court heard testimony in a five-day trial from both Archers, their CPAs, their appraisers, and an expert hired to trace marital and non-marital property. The district court issued an order that purported to equally divide the marital property precisely. Both parties moved to amend the findings. The district court made some changes but denied Thomas Archer's request to reopen the record to consider the tax consequences of the property division's unanticipated structure.

The district court's final order left Jacqueline Archer with both houses and the Canal Park commercial property owned by AP & A. But it left ownership of AP & A itself with Thomas Archer, along with the cabin, the vacant lot, and the other three commercial buildings. He also retained ownership of all the shares in the three other corporations. The district court ordered Thomas Archer to pay Jacqueline Archer \$15,995.71 to equalize the marital property division based on a valuation that left each of them with \$778,780.71 in total assets. It also ordered him to pay \$1,640.97 in previously ordered attorney fees and \$353 for spousal maintenance arrearages. And it required him to pay the previously assessed real-estate taxes on the Canal Park property.

Thomas Archer appeals.

## **DECISION**

Thomas Archer argues that the district court abused its discretion in its division of property. The district court "shall make a just and equitable division of the marital property of the parties . . . after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2010). It has broad discretion in dividing the property. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). And we will affirm the division if it

had “an acceptable basis in fact and principle even though we might have taken a different approach.” *Id.*

## I

We first address the district court’s jurisdiction to award property owned by a nonparty corporation. Although neither party raised this issue, we address it in the interests of justice. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (“[I]t is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be ‘diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities.’” (quotation omitted)); *Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n. 1 (Minn. App. 1990) (applying *Hannuksela* in civil case), *review denied* (Minn. Feb. 4, 1991); Minn. R. Civ. App. P. 103.04 (permitting appellate review of “any other matter as the interest of justice may require”).

The district court’s property-division order leaves Thomas Archer solely with commercial properties owned by three corporations: the Twig Bakery, owned by Archer Properties, Inc.; the TJA building, owned by TJA, LLC; and the LRW property, owned by LRW, LLC. It also awards Jacqueline Archer the Canal Park property, owned by a fourth corporation, AP & A. Although these businesses are wholly owned by the parties, they are distinct legal entities and were not parties to the dissolution action. Because they were not parties, the district court lacked the authority to award the Archers their property. *See Danielson v. Danielson*, 721 N.W.2d 335, 339 (Minn. App. 2006) (stating that “in a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty’s property rights”); *Blohm v. Kelly*, 765

N.W.2d 147, 153 (Minn. App. 2009) (stating that “[c]orporate assets ‘do not belong to the stockholders, but to the corporation’” (quotation omitted)). The district court can award one party in a divorce proceeding the shares in a corporation owned by the couple, but it cannot order a nonparty corporation to relinquish its property to either party without implicating the corporation’s due process rights.

The district court therefore erred as a matter of law by ordering the transfer of ownership of property belonging to a nonparty corporation.

## II

We next address Thomas Archer’s challenge to the property division. By ordering Thomas Archer to pay the specific amount of \$15,995.71 to equalize the division the district court reflected its intent to leave the parties with property valued at exactly the same amount. Neither party challenges as inequitable the district court’s attempt to precisely divide the property.

The question Thomas Archer raises is whether, after deciding that an exactly equal division is proper, the district court committed reversible error by failing to effectuate an equal division by not addressing the resulting disproportionate and significant tax consequences. Thomas Archer contends that the district court’s required conveyance of the Canal Park property from AP & A to Jacqueline Archer without also awarding her the shares in AP & A creates a taxable event for which Thomas Archer, as sole shareholder of AP & A, will be solely responsible. He estimates his personal liability to be \$123,225 in income taxes and \$155,910 in capital-gains taxes.

When the sale of real estate is “required or is likely to occur within a short time after the dissolution” the district court “should” consider those tax consequences. *Aaron v. Aaron*, 281 N.W.2d 150, 153 (Minn. 1979); *see Reynolds v. Reynolds*, 498 N.W.2d 266, 271 (Minn. App. 1993) (reversing the district court’s award because it refused to consider the tax consequences of a 13-unit apartment building sale).

We recognize that Thomas Archer did not initially provide the district court with any information or argument about tax consequences of the property division, *see Johnson v. Johnson*, 277 N.W.2d 208, 213 (Minn. 1979) (holding the district court did not err despite its not adjusting the award in light of tax considerations “where no evidence on the issue was presented at trial or in a proposal submitted to the trial court prior to its decision”), but he did do so in his motion to amend after the potential tax consequence became apparent. Given that the district court decided *sua sponte* to order the corporation-owned real property to be conveyed to Jacqueline Archer without also ordering the conveyance of the corporation itself, we find persuasive Thomas Archer’s contention that “no one contemplated that the Court would create an unnecessary tax consequence for either party.” Once the court became aware that tax consequences allegedly would undermine its attempt to achieve an exactly equal property division, it should have amended its division or explained either how the alleged tax consequence was unlikely or inconsequential or why the resulting economic disparity between the parties is equitable.

### III

Thomas Archer also contests the district court's factual findings of the valuation of the Canal Park property, his obligation to pay back spousal maintenance arrearages and previously awarded attorney fees, and his responsibility for the real-estate taxes on the Canal Park property. We will not set aside the district court's factual findings unless they are unsupported by the record. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). For the reasons that follow, we hold that the district court's findings are supported by the record.

#### ***Valuation of the Canal Park Property***

Thomas Archer contends that he and Jacqueline Archer agreed to be bound by John Vigen's appraisal. The district court expressly found that there was no agreement to rely only on Vigen. The only evidence in the record supporting Thomas Archer's contention is his own uncorroborated testimony, which the district court was free to disbelieve. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (deferring to district court's credibility determinations). The finding is not clearly erroneous.

Thomas Archer also argues that the district court abused its discretion by valuing the property based on its mixing and matching of appraisal information from different sources. Valuing property is not an exact science. The district court may approximate property value by choosing what appraisal and nonappraisal testimony to rely on. "[T]he market valuation determined by the trier of fact should be sustained if it falls within the limits of credible estimates made by competent witnesses *even if it does not coincide*

*exactly with the estimate of any one of them.” Hertz v. Hertz, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975) (emphasis added).*

The district court heard appraisal testimony on the value of the Canal Park property from Ann Heimbach and Vigen, considered a report of a third appraisal from 1998, and considered evidence of a \$1,000,000 offer to purchase the property. The testifying appraisers explained that they rely on different estimating approaches. The district court’s finding that the Canal Park property was worth \$500,000 in 1997 is within the range of Vigen’s \$425,000 appraisal and the previous appraiser’s estimate of \$625,000. The district court’s finding of its present value of \$1,000,000 is also within the range: Vigen estimated \$725,000, Heimbach estimated \$1,055,000, and, most probative to the district court, one prospect had actually offered \$1,000,000 for the property.

### ***Spousal Maintenance***

The district court found that Thomas Archer owes \$353 in spousal-maintenance arrearages based on undisputed circumstances. The district court previously ordered Thomas Archer to pay Jacqueline Archer temporary spousal maintenance. He did not make all the payments. So the district court ordered Thomas Archer to pay \$18,624 in arrearages. He paid that amount but Jacqueline Archer claimed that he owed an additional \$372 that accrued after the hearing. When the district court vacated the arrearages order, it clarified that “[a]ny spousal maintenance arrearages owing as of November 12, 2009, are preserved.” At trial, Jacqueline Archer testified that Thomas Archer still owed \$353 (about \$20 less than she had claimed earlier). The district court’s finding that Thomas Archer still owed \$353 is therefore supported by the record.

### ***Attorney Fees***

We next address the district court's finding that Thomas Archer owed \$1,640.97 in attorney fees. The district court had ordered Thomas Archer to pay Jacqueline Archer's attorney \$20,000 in attorney fees. At trial, Jacqueline Archer testified that he still owed \$1,640.97 from that order. The only evidence in the record that he had paid it is his own trial testimony. The district court acting as fact finder was free to credit Jacqueline Archer's testimony over his. *See Sefkow*, 427 N.W.2d at 210.

### ***Real-Estate Taxes***

We also address the district court's finding that Thomas Archer is solely responsible for the accrued real-estate taxes on the Canal Park property. At the commencement of the dissolution, the district court granted operational control of the Canal Park property to Thomas Archer and enjoined both parties from incurring extra indebtedness or from encumbering any of the parties' assets. Based on Thomas Archer's admission, the district court found that "[t]he [Canal Park] tenants' rent amounts include their pro rata share of the real estate taxes," and that Thomas Archer "collected the rents but has not paid the real estate taxes due on the property." The district court's finding that the debt is his individual responsibility is therefore supported.

## **IV**

We affirm the district court's findings as stated above. We reverse the district court's property division because it lacked authority to order nonparty corporations to convey their assets and because it failed to address the alleged tax consequences of its division after Thomas Archer properly raised those consequences in his motion to amend.

We remand the case to the district court for further proceedings to divide the parties' property consistent with our holdings. Whether to reopen the record on remand rests in the district court's discretion.

**Affirmed in part, reversed in part, and remanded.**