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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1409**

In re the Marriage of:

Desiree Fawn Naatz, n/k/a Schlicher, petitioner,
Appellant,

vs.

Duane Dean Naatz,
Respondent.

**Filed November 13, 2012
Affirmed
Kalitowski, Judge**

Mower County District Court
File No. 50-FA-09-3143

Desiree Fawn Schlicher, LeRoy, Minnesota (pro se appellant)

Scott Richardson, Richardson Law Office, Austin, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this marital-dissolution appeal, pro se appellant Desiree Naatz argues that the district court abused its discretion by granting respondent Duane Naatz a continuance

when he failed to appear, by dividing the marital property inequitably, and by denying her request for spousal maintenance. We affirm.

DECISION

I.

In October 2010, the district court dissolved appellant's and respondent's marriage and set an evidentiary hearing for November on the issues of the division of property and spousal maintenance. Respondent did not appear at the November hearing, and respondent's counsel explained that he was unable to reach respondent, so he requested a continuance. Counsel for appellant said that appellant was prepared to proceed and that he anticipated calling only appellant as a witness. Appellant's counsel explained that although appellant's children were present, they were there only as potential rebuttal witnesses. Respondent's counsel agreed to proceed, and at the close of appellant's testimony, the district court continued the matter and held a continued hearing in February 2011.

Appellant argues that the district court erred in granting a continuance when respondent failed to appear at the hearing. The granting of a continuance is within the discretion of the district court and will not be reversed absent a showing of clear abuse of discretion. *Kate v. Kate*, 234 Minn. 402, 410, 48 N.W.2d 551, 557 (Minn. 1951).

Appellant asserts prejudice, claiming that her rebuttal witnesses were unavailable at the continued hearing in February because they were unable to get off work. But at no point during either hearing did appellant's counsel argue that the continuance was error or that appellant was prejudiced by the delay. And at the February hearing, counsel did

not seek to call rebuttal witnesses other than appellant. Nor did counsel request a continuance because appellant's rebuttal witnesses were unavailable. And appellant filed no motion for a new trial asserting this alleged error to the district court. Because appellant never raised this argument to the district court, we do not consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts do not consider issues not raised and presented to the district court).

II.

In an order filed in June 2011, the district court distributed the parties' marital property, allocated the marital debt, and equalized the distribution between appellant and respondent. The court concluded that appellant had not shown a need for spousal maintenance and denied her request for \$900 per month for five years. Appellant argues that the district court abused its discretion by dividing the marital property inequitably and by denying her request for spousal maintenance.

A district court's decision concerning the division of marital property and spousal maintenance is reviewed for an abuse of discretion. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). A district court abuses that discretion if it makes a clearly erroneous conclusion that is against logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Appellate courts defer to a district court's findings of fact, and will uphold them unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted).

Marital Property

“Upon a dissolution of a marriage . . . the 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 (2010). The district court must consider “all relevant factors including the length of the marriage, . . . the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party.” *Id.* Debts are apportioned as part of the property settlement and are treated in the same manner as the division of assets. *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987). If a district court’s division of property has “an acceptable basis in fact and principle,” it will be affirmed on appeal. *Antone*, 645 N.W.2d at 100.

Appellant argues that the district court’s division of the marital property is inequitable because the district court awarded a motorcycle to respondent. The district court found that the parties’ marital assets included the motorcycle, which respondent had in his possession at the time of the dissolution, and awarded the motorcycle to respondent subject to any encumbrances.

Property acquired by either spouse during the marriage is presumed to be marital property, regardless of the form of ownership. Minn. Stat. § 518.003, subd. 3b (2010). “To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital.” *Olsen v. Olsen*, 562

N.W.2d 797, 800 (Minn. 1997). Whether property is marital or nonmarital is a question of law. *Id.*

Appellant does not dispute that respondent purchased the motorcycle during the marriage, but contends that the district court should not have awarded the motorcycle to respondent because he perjured himself when he testified that he bought it for himself. Respondent testified that he bought the motorcycle for his own use; however, appellant testified that respondent bought the motorcycle for her as a gift. But whether respondent purchased the motorcycle for his use or as a gift for appellant is not controlling on the issues of whether the motorcycle is marital property, or whether the division of marital property is equitable. Appellant provides no legal authority to support a conclusion that her testimony that respondent gifted the motorcycle to her during the marriage, if credited by the court, would overcome the presumption that the motorcycle is marital property. Moreover, we defer to any credibility determinations made by the district court about the parties' conflicting testimony. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (“Deference must be given to the opportunity of the trial court to assess the credibility of the witnesses.”).

Our review of the district court's division of marital property is limited to whether the division is “just and equitable.” Minn. Stat. § 518.58, subd. 1. On this record, we cannot conclude that the court's division of personal property, which included an equal distribution of the marital property and debt, is against logic or the facts in the record.

Appellant also argues that the district court's division of marital property is inequitable because it was merely “taken from respondent's summation” and not “based

on court records.” This characterization is inaccurate. A review of respondent’s and appellant’s proposed valuations of marital property submitted to the court and the court’s valuation of the marital property shows that the court assigned some values consistent with respondent’s estimates, but also assigned other values consistent with appellant’s estimates. And for other items, the court assigned a value different from either party’s proposed value. Accordingly, we conclude that the court did not abuse its discretion in dividing the parties’ marital property.

Spousal Maintenance

The district court may award spousal maintenance if it finds that the recipient spouse lacks sufficient property to provide for the “reasonable needs of the spouse considering the standard of living established during the marriage,” or “is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment.” Minn. Stat. § 518.552, subd. 1 (2010). In determining the amount and duration of maintenance, the district court must consider the relevant factors in Minn. Stat. § 518.552, subd. 2 (2010).

Appellant requested spousal maintenance of \$900 per month for five years. The district court made factual findings on appellant’s and respondent’s gross monthly earnings and on each of the statutory factors in Minn. Stat. § 518.552, subd. 2. The district court determined that appellant is able to meet her needs through her current employment; appellant was employed by the same employer full time throughout the approximately 14-year marriage; appellant’s standard of living will be comparable to that

established during the marriage; appellant did not forego employment or advancement opportunities during the marriage; appellant is in good health and anticipates being employed through the foreseeable future; appellant is capable of supporting herself; and both parties contributed to the value of the marital property. The district court concluded that no factors favored an award of maintenance and denied appellant's request.

Appellant argues that she is entitled to spousal maintenance because respondent "made twice the amount that [she] did." The district court found that appellant earns \$15.31 an hour and that her gross monthly income is approximately \$2,633.32, while respondent earns \$19.65 an hour and that his gross monthly income is approximately \$3,379.80. Because these findings are supported by appellant's and respondent's pay stubs in the record, they are not clearly erroneous. Significantly, appellant challenges none of the district court's factual findings on the statutory factors supporting its conclusion that she is not in need of maintenance. It is appellant's burden to establish a need for maintenance, which she has failed to do. *See Dobrin*, 569 N.W.2d at 202 (stating implicit in Minn. Stat. § 518.552 is that spouse seeking maintenance demonstrate need). Because the district court's factual findings concerning appellant's ability to meet her needs are not clearly erroneous and the district court has not misapplied the law, we conclude that the district court did not abuse its discretion in denying appellant's request for maintenance.

Affirmed.