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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-249**

In re the Marriage of:
Renee E. Erickson, petitioner,
Appellant,

vs.

Kirk A. Erickson,
Respondent.

**Filed December 12, 2011
Reversed and remanded
Klaphake, Judge**

Clay County District Court
File No. 14-FA-10-227

Chitra Ramanathan, Legal Services of Northwest Minnesota, Moorhead, Minnesota (for appellant)

Timothy P. Hill, Kimberlie Larson Likness, Fargo, North Dakota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Schellhas, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from a marital dissolution judgment, appellant Renee Erickson challenges the district court's maintenance and marital property division determinations. Because the district court abused its discretion by refusing to reserve the issue of spousal

maintenance in light of appellant's poor health, and because the division of marital property between appellant and her former husband, respondent Kirk Erickson, was not just and equitable, we reverse and remand to the district court for further proceedings consistent with this opinion.

DECISION

Spousal Maintenance

We review the district court's decision on whether to reserve the issue of spousal maintenance for an abuse of discretion. *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). Generally, the district court may award maintenance if it finds that one party lacks sufficient property to provide for his or her reasonable needs or is unable to provide adequate self-support through employment. Minn. Stat. § 518.552, subd. 1 (2010). The district court may either award maintenance, decline to do so, or "reserve jurisdiction of the issue of maintenance for determination at a later date." Minn. Stat. § 518A.27, subd. 1 (2010).

Reservation of the issue of spousal maintenance "allows the court to later assess and address future changes in one party's situation as those changes arise, without prematurely burdening the other party." *Prahl*, 627 N.W.2d at 703. In *Prahl*, we concluded that it may be appropriate to reserve maintenance when one spouse provides evidence of a potentially progressive illness. *Id.* at 704. In the appropriate circumstances, the district court should include findings that explain its decision to reserve or not reserve the issue of spousal maintenance. *Id.*

The facts in *Prahl* are similar to those here: the spouse seeking maintenance was not awarded maintenance in the initial decree, despite serious illness, because he could meet his current expenses, but this court considered him to be a likely candidate for future maintenance because of his serious and potentially progressive illness. *Id.* at 703. Because the district court made no findings about why it did not reserve the issue of maintenance, this court remanded the matter to the district court. *Id.* at 704.

The district court here enumerated the reasons why it chose not to reserve jurisdiction over the issue of spousal maintenance: (1) appellant received more in benefits than her listed expenses; (2) there was no evidence that she anticipated a change in lifestyle; (3) appellant is deemed disabled by the Social Security Administration and intends to continue receiving benefits; (4) appellant has more education and greater employment skills than respondent; (5) the parties have no children and were married a relatively short period of time; (6) respondent's work is seasonal, and he collects unemployment during the off-season; therefore, he lacks consistent income to make payments; and (7) the parties are the same age.

All of these reasons amply support the district court's decision not to award current maintenance. But appellant has well-documented mental illness with no guarantee that her circumstances will not make a dramatic change for the worse. This is the sort of person for whom reservation of maintenance is appropriate. *See id.* at 703 (stating that spouse's ability to currently support himself, coupled with medical condition, "suggest that [spouse] may be the type of person for whom maintenance should be reserved"); *Wopata v. Wopata*, 498 N.W.2d 478, 485-86 (Minn. App. 1993) (affirming district

court's order reserving maintenance based on "uncertain" health of one party); *Tomscak v. Tomscak*, 352 N.W.2d 464, 465-66 (Minn. App. 1984) (reversing district court's order denying maintenance and ordering court to reserve maintenance, when spouse, who currently did not need maintenance, could need it if breast cancer recurred).

We conclude that under the circumstances here, the district court abused its discretion by refusing to reserve the issue of maintenance.

Division of Marital Property

The district court has broad discretion in the division of marital property and we will not reverse its decision unless it abuses that discretion. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). We defer to the district court's findings of fact, which we will not set aside unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

In a dissolution action, the district court is to make a "just and equitable division of the marital property." Minn. Stat. § 518.58, subd. 1 (2010). The court considers a number of factors, including the length of the marriage, age, health, occupation, income, vocational skills and employability, liabilities, needs, and probable future income and ability to acquire capital assets. *Id.* "It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife." *Id.* A property division may be equitable despite not being mathematically equal. *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

The district court awarded to each party the personal property and retirement accounts in his or her possession or name. The district court also awarded respondent the homestead, including all the equity, five of the parties' six vehicles, a 1977 Coachman camper, his tools, and an EGA machine; this represented most of the parties' assets. According to respondent's testimony, some of the tangible property items were acquired during the marriage and some were non-marital in nature. Appellant was awarded only the property that she testified was premarital, but little else. She received title to one car, which she said was a gift after she left the marital home. The district court did not make findings about the marital or non-marital nature of the property, or the value of the vehicles and camper awarded to respondent.

As to the marital homestead, the district court concluded that there was \$23,752 in equity, but found that appellant "never had a financial stake in the real estate and therefore is not entitled to any equity in the property." The district court noted that appellant had signed the mortgage note with a disclaimer, stating that she signed for the sole purpose of subjecting the property to the mortgage lien and took no personal responsibility for the mortgage debt. The district court added, "She cannot have her cake and eat it, too."

Certainly, appellant disavowed any interest in receiving the vehicles and house, but she did not waive receipt of an equitable share of the marital assets. The district court must make a just and equitable award, in light of factors including the parties' age, health, employability, and probable future income and acquisition of capital assets. Minn. Stat. § 518.58, subd. 1. In doing so, the district court must consider a party's contribution

to acquisition of the property, including presuming that both parties contributed to the acquisition of property during the marriage. In addition to this presumption, appellant testified that most of her disability check was deposited into the parties' joint bank account, which was used to pay bills. Finally, the district court must value marital assets for the purpose of dividing them. *Id.* Although the district court valued the homestead, it did not value the vehicles. Without findings, we are unable to make a meaningful review of the district court's division of marital property. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 718 (Minn. App. 2009) ("Findings are necessary to facilitate meaningful appellate review, to show that the trial court considered all the relevant statutory factors, and to satisfy the parties that the trial court fairly resolved their case.").

An award of marital property need not be equal. *See, e.g., Prael*, 627 N.W.2d at 705 (concluding based on the record that awards of \$202,354 and \$179,741 to parties were just and equitable, if not equal). But appellant here was awarded none of the marital property; her age, health, employability, and future prospects suggest that she should receive a portion of the marital assets. The district court reasoned that she had no interest in the homestead because she signed a disclaimer of personal responsibility when the parties mortgaged the house, but she deposited her disability checks in the joint checking account from which the bills, including the mortgage, were paid. *See Ziemer v. Ziemer*, 386 N.W.2d 348, 350-51 (Minn. App. 1986) (concluding that failure to award any marital property to one party was an abuse of discretion, despite the fact that one party contributed more to acquisition of property than the other), *review denied* (Minn. July 16, 1986). While the district court apparently took into consideration the fact that appellant

could not retain her social security disability eligibility if she was in receipt of income above a certain threshold amount, her receipt of income conceivably could be structured to remain below that amount through periodic payments.

Because the refusal to reserve the issue of maintenance was an abuse of discretion and because we are unable to make a meaningful review of the marital property division in the absence of findings, we reverse and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.