STATE OF MINNESOTA
IN COURT OF APPEALS
A11-445

In re the Marriage of:
Michael William Riopel, petitioner,
Respondent,

vs.

Amy Preston Riopel,
Appellant.

Filed January 17, 2012
Affirmed in part, reversed in part, and remanded
Huspeni, Judge*
Dissenting in part, Ross, Judge

Washington County District Court
File No. 82-FA-09-3836

D. Patrick McCullough, Kelly Eull, Justin Terbeest, McCullough & Associates, P.A., St. Paul, Minnesota (for respondent)

Steven C. Pundt, Pundt Law Firm, Minneapolis, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Ross, Judge; and Huspeni, Judge.

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

U N P U B L I S H E D O P I N I O N

HUSPENI, Judge

This appeal involves a challenge to the district court's division of property following the divorce of Michael Riopel and Amy Riopel. The main issue of contention is the ownership of the Riopel family farm, a nearly 200-acre dairy farm. Appellant Amy Riopel argues that the district court erroneously determined that the Riopel farm was nonmarital property and that it abused its discretion in distributing the parties' marital property. In the alternative, she argues that if the Riopel farm is Michael Riopel's nonmarital property, the district court abused its discretion by failing to apportion it between the parties to prevent unfair hardship. She also contests the district court's findings regarding spousal maintenance and attorney fees. Because the district court properly concluded that the Riopel farm is Michael Riopel's nonmarital property, we affirm its property division and its finding that Amy Riopel did not suffer an unfair hardship. We also affirm the district court's conclusion that each party should pay their own attorney fees and costs. But because Amy Riopel has a need for spousal maintenance that Michael Riopel is currently unable to pay, we reverse and remand for the district court to reserve the issue of future maintenance.

FACTS

In the fall of 1996, Catherine Riopel contemplated a sale of the Riopel family farm, located in Hugo, to her son, Michael Riopel. The Riopel farm has been in the Riopel name since 1906, and Michael Riopel has worked as a dairy farmer on the family farm his entire life. On November 21, 1996, Catherine Riopel received an appraisal of

$415,000 for the approximately 181 acres of farm property. After receiving the appraisal, on December 31, 1996, Michael Riopel entered into a purchase agreement with his mother to transfer ownership of the farm. Michael Riopel and his mother re-codified the purchase agreement giving him the right to buy the farm on February 28, 1997, and the agreement stated in part that "[Catherine Riopel] has deeply felt feelings and desires [that] the [Riopel farm] remain in the family and be actively farmed as a working farm so that it can be determined to be a century farm . . . ."

Despite the existing purchase agreement, less than a month later Michael Riopel and Catherine Riopel entered into a lease agreement dated March 18, 1997 that charged Michael $1,125 per month in rent to lease the farm and also gave him the right to purchase the farm for $192,800. The lease agreement referenced a $10,000 down-payment that was given as a gift from Catherine Riopel to Michael Riopel. Michael understood that each subsequent year he would receive a gift of $10,000 to be applied toward the remaining balance of the $192,800 purchase price.

Michael Riopel and Amy Riopel were married on October 20, 1999, and they made their living operating the dairy farm. In 2002, the parties made a plan to purchase the farm for $192,800 from Catherine Riopel. Amy Riopel's parents, Arnold and Rusk Anderson, loaned the parties $213,000 and in return the parties signed a promissory note and a mortgage in their favor. The mortgage required interest-only payments for a number of years along with a final balloon payment. Prior to the purchase, the parties hired an attorney to review the abstracts of title and do a title opinion. In order to convey the entire farm property, the attorney revised the legal description to add approximately

35 more acres. The purchase closed in June 2002, and Catherine Riopel executed a full warranty deed to convey full title to the farm to the parties as joint tenants.

Catherine Riopel reported the entire purchase price on her 2002 income tax return as the sale price. There is no evidence that she ever filed a gift tax return for the sale price of the farm. Catherine Riopel died on June 26, 2008. After Michael Riopel and Amy Riopel purchased the farm in 2002, they paid monthly interest payments to Amy Riopel's parents pursuant to the promissory note and mortgage from their farm income. A few years later, the Riopel farm was targeted as a prime area for development and, prior to the collapse of the real estate market, a purchase agreement for approximately $16 million was executed between the parties and the Beard investment group to sell the property. The parties were represented by Jeffrey Anderson, an attorney and Amy Riopel's brother, in the negotiations for the potential sale of the farm. Although the potential buyers paid numerous extension fees totaling nearly $350,000 to extend the closing date, the contract has never been finalized and is now in default.

Amy Riopel was diagnosed with bipolar disorder with chemical dependency after suffering a major mania event in 2007. She was admitted to Fairview Riverside hospital and received inpatient psychiatric treatment for a month, and was then transferred to a different in-patient program. Following that in-patient program she participated in a 12-week aftercare program. She continues to see a psychiatrist for treatment and for purposes of adjusting her medication.

Michael Riopel filed for divorce on May 28, 2009. At trial Amy Riopel argued that the farm was a marital asset because the law presumes that assets purchased during

the marriage are marital property. Michael Riopel argued that the farm was his nonmarital asset because his mother had made a gift to him of the difference between the purchase price and the actual value of the farm, or, in the alternative, that he had a pre-marriage ownership interest in the farm that made it his nonmarital asset. A neutral appraisal of the farm determined that the property has a current fair market value of $4,570,000 and had a fair market value of $1,500,000 at the date of the parties' marriage.

The district court found that the testimony and exhibits during the trial showed that Catherine Riopel put into place a succession plan wherein Michael would purchase the farm and its acreage at a value far below the fair market price based upon the appraisal done in 1996. This plan, which included the December 31, 1996 purchase agreement (re-codified on February 28, 1997), was then substituted by the land lease with the same purchase terms on March 18, 1997. Because of this succession plan, the district court held that the change in title that occurred after the parties' marriage was only a consummation of the succession plan under the terms of the agreement put into place prior to the parties' marriage.

In finding that Catherine Riopel wished to make a gift to Michael Riopel, the district court focused on the fact that she knew the 1997 fair market value of the farm was $415,000 and she allowed her son to purchase the farm for 54% of this value, while gifting him the remaining 46% of the value. She also left her son with the understanding that every year he would receive $10,000 to reduce the amount of the purchase price he owed, and she initially gave him $10,000 to cover the required down-payment. The court also noted that Catherine Riopel had expressed her desire that her son stay on the farm

and that the farm stay in the Riopel family to become a century farm. These factors, among others, led the district court to conclude that based on a preponderance of the evidence Michael overcame the presumption that the Riopel farm was marital property.

Because the farm was a nonmarital asset, in order to determine the division of the parties' property the court subtracted the original purchase price from the fair market value as of the date of the marriage, ($1,500,000 - $192,800) for a total of $1,307,200. The court then divided this total ($1,307,200) into the fair market value as of the date of marriage ($1,500,000) and, adopting a submission introduced by Michael Riopel's expert, found that Michael Riopel had a nonmarital interest of 87.1446% while the parties together had a marital portion of 12.8534%, which was apportioned equally between them at 6.4267%. The district court noted that its decision was equitable because of the relatively short length of the parties' marriage in comparison to the length of the farm's existence in the Riopel family.

The Riopel farm real estate, valued at $4,570,000, was awarded to Michael Riopel, and the court also awarded him the cattle, valued at $60,600 (all marital) and the farm equipment, valued at about $208,125 ($76,650 nonmarital, $131,475 marital). Amy Riopel was awarded a 1999 Chevrolet Suburban valued at $2,000 with an encumbrance of $927 remaining on an auto loan from River Bank. Michael Riopel received a 1998 Jeep Cherokee valued at $1,100 and a 1995 Ford F350 valued at $1,675. Amy Riopel was awarded $369,176.18 in the form of a lien against the Riopel farm for her approximately six-percent interest in the homestead and farm real estate and for her marital portion of the cattle and farm equipment. The court did not order the farm or any

part of it to be sold to pay Amy Riopel's lien, but it did order Michael Riopel to satisfy her lien within six months of the date of entry of the judgment and decree.

Amy Riopel requested an award of spousal maintenance because she claimed that she lacked the resources to pay her reasonable living expenses. She was formerly employed as a teacher by the Minneapolis school district and has a four-year teaching degree, but had been a stay-at-home parent since the birth of the children. The district court noted that a vocational expert concluded that, although Amy Riopel could not return to teaching due to situational emotional issues, she was capable of being employed at least on a part-time basis at a rate of $9 to $10 per hour. The district court also found that the part-time work should end up as full time as her situational condition improves and she is able to fulfill the requirements to update her teacher's licensure, resulting in a return to teaching with a salary range of $40,000 to $45,000 per year. In contrast, the court found that Michael Riopel has only a high school education and no other trade or profession besides being a dairy farmer. The court noted the parties' low standard of living during the marriage and their inability to acquire significant income and declined to award spousal maintenance.

For purposes of child support, the district court imputed income of $2,500 per month to Michael and ordered him to pay child support of $795 per month. The court awarded joint legal custody of the children with sole physical custody to Amy Riopel. The court's apportionment of the parties' debts included, among other obligations, ordering Michael Riopel to pay "any and all of the debts associated with the farm operation, including loans, credit advances, outstanding farm equipment loans or any

other obligations of the farming operation," and ordering Amy Riopel to pay "her individual debts and obligations including any debts to her parents." Both parties were ordered to pay their own attorney fees and costs.

Amy Riopel appeals.

D E C I S I O N

I.

We first address Amy Riopel's argument that the district court erred when it found that the Riopel farm was Michael Riopel's nonmarital asset, and abused its discretion in awarding the parties' marital property. For the reasons that follow, we hold that the district court did not abuse its discretion and properly divided the parties' marital and nonmarital assets.

A district court has broad discretion over the division of property in a dissolution proceeding and will not be overturned on appeal except for an abuse of discretion. *Antone v. Antone,* 645 N.W.2d 96, 100 (Minn. 2002). "Whether property is marital or nonmarital is a question of law," but we defer to the district court's underlying findings of fact. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). We review the findings supporting the characterization of property for clear error. *Swick v. Swick*, 467 N.W.2d 328, 330 (Minn. App. 1991), *review denied* (Minn. May 16, 1991).

A 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 (2008). Real property that is acquired by either of the parties during the existence of the marriage is presumed to be marital property unless a party can show by a

preponderance of the evidence that the property is nonmarital. Minn. Stat. § 518.003, subd. 3b (2008); *see also Baker v. Baker*, 753 N.W.2d 644, 649–50 (Minn. 2008). Nonmarital property is excluded from division and is

> property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse; (b) is acquired before the marriage; (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e); (d) is acquired by a spouse after the valuation date; or (e) is excluded by a valid antenuptial contract.

Minn. Stat. § 518.003, subd. 3b. "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.

Riopel farm is nonmarital property because it was a gift to Michael Riopel from his mother

Amy Riopel argues that Michael Riopel failed to satisfy his burden of proof that the farm is nonmarital property because it was a gift to him alone. The legal elements of a gift are delivery, donative intent, and absolute disposition. *Olsen*, 562 N.W.2d at 800. The most important factor in determining whether a gift is marital or nonmarital is the donor's intent. *Id.* Amy Riopel first contends that there is no evidence of donative intent because Catherine Riopel did not file a gift tax return after executing the purchase agreement or lease agreement. But the lack of a gift tax return does not prove Catherine Riopel's donative intent. The lease agreement includes language speaking to Catherine Riopel's intent that the Riopel farm remain in her family and pass for a set price, not the actual value. Catherine Riopel was aware of the actual value of the farm in 1997 because

she received an appraisal of $415,000 in late 1996. These facts are evidence of Catherine Riopel's donative intent, and there is no indication that the district court erred in analyzing them.

Amy Riopel also argues that Catherine Riopel and the parties did not know the value of the farm at the time of the purchase and sale in 2002, and this proves that the farm was a gift to both parties. We disagree. The facts do not prove that Catherine Riopel was attempting to make a gift of the farm to both parties in 2002, but instead they prove that Catherine was following through with the gift she had made in 1997 to Michael Riopel. The district court found that all of the parties were aware in 2002 that a sale of the farm at the price of $192,800 was significantly less than fair market value, and this price remained constant even after it was determined that there were approximately 35 more acres to be conveyed than was described in the 1997 lease agreement. The reduced price stood as the purchase price for the parties in 2002 because Catherine Riopel intended the remaining amount to be a gift to her son as planned in 1997.

Amy Riopel argues that nothing in the closing documents supports Michael Riopel's argument that Catherine Riopel was making a gift to him alone or demonstrates Catherine Riopel's donative intent. At the 2002 closing, the farm was conveyed by warranty deed to Michael Riopel and Amy Riopel as joint tenants, and they both signed a promissory note and mortgage in favor of her parents for the loan to purchase the farm. Amy Riopel points to one document in particular, the Certificate of Real Estate Value and Supplemental Schedule signed by Michael Riopel, to prove that he represented to the county tax assessor that the parties had no prior interest in the land other than as tenants

and that the parties claimed no interest by inheritance or gift. But Michael Riopel testified at trial that he did not draft, type, or even read this document and instead just signed it along with all the other documents presented at closing. A proper inference can be made that the district court found this testimony credible. Thus, the district court did not clearly err in failing to impute significance to Michael Riopel's failure to claim gift or inheritance on the Certificate.

It is true that Dr. Anderson, Amy Riopel's father and holder of the mortgage note, testified that neither Michael Riopel nor Catherine Riopel suggested that Catherine Riopel was making a gift of a portion of the farm value to her son alone, or that he was claiming any prior ownership interest in the farm. But Dr. Anderson's knowledge of the details of the farm purchase has no bearing on Catherine Riopel's donative intent. And even though there may have been a close relationship between Catherine Riopel and Amy Riopel, this relationship does not supersede the purchase and lease agreements executed approximately five years before the 2002 purchase. The district court found that these earlier agreements were not nullified by the 2002 purchase and mortgage. Instead of negotiating a new price term for the Riopel farm, the 2002 agreement merely financed the purchase price agreed to prior to the parties' marriage. Also, the fact that Catherine Riopel did not request a new appraisal in 2002, as she had before entering into the previous agreements with her son, supports that her intent was for the substantial value of the farm to be a gift to Michael Riopel.

Amy Riopel cites to *Olsen v. Olsen* as illustrative of a failed attempt to prove a gift to one spouse only because of a long history of family ownership. There the wife's

family had owned land along Lake Superior's North Shore for over 100 years and the property was deeded to the husband and the wife as a gift by the wife's uncle. *Olsen*, 562 N.W.2d at 798-99. The court ruled that the marital presumption applied for the property and the wife had the burden to overcome the presumption. *Id*. at 800. Both the wife and grantor uncle indicated at trial that the intention was to make a gift to the wife only in order to keep the property in the family, and the district court found that the property was the wife's nonmarital asset. *Id.* at 799. This court reversed and the supreme court affirmed, holding that the testimony was insufficient to overcome the marital presumption and the donor's intent was demonstrated by the fact that the property was deeded to the husband and wife as joint tenants and the uncle filed a gift tax return, which stated that he had given a one-half interest to each party. *Id*. at 799, 801.

But the facts in *Olsen* can be distinguished from this case. First, in *Olsen* the uncle filed a federal gift tax return that stated the transfer of land granted one-half interest to both the husband and wife, while here Catherine Riopel never filed a federal gift tax return giving one-half interest to her son and Amy Riopel. *See id.* at 799. Also, the gift in *Olsen* took place during the marriage, while here Catherine Riopel gave the gift to her son prior to his marriage to Amy Riopel. *See id.* at 798. There was no evidence in *Olsen* of a land appraisal, while here the record clearly reflects that Catherine Riopel knew the value of the property because of the 1996 appraisal. The transfer in *Olsen* did not contain any strong language of a desire to keep the property in the family, and the uncle had actually tried to sell it to third parties before he gifted it to the niece and her husband. *See id.* at 799. In contrast, Catherine Riopel specifically stated how she wanted the farm to

remain in the Riopel name as a century farm. Finally, in *Olsen* the court held that the uncle was fully aware of the meaning of a deed granting the land as joint tenants with right of survivorship, because he had acquired the property through survivorship himself and he acknowledged that he understood that if his niece died, her husband would own the land outright. *Id.* at 799, 801. Here there is no evidence that Catherine Riopel or Michael Riopel had any knowledge of how joint tenancy would work in regard to legal ownership of the farm.

Because the agreement in this case existed prior to the parties' marriage and because the price that Catherine Riopel asked for the farm never changed from the original 1996 purchase agreement, even though the farm increased in value and the parties married, the reduced price was obtained solely for Michael Riopel's benefit as a gift. Because of the evidence that Catherine Riopel made a gift to Michael Riopel, we hold that the district court did not err in determining that the Riopel farm was Michael Riopel's nonmarital property.

Michael Riopel acquired an interest in the Riopel Farm prior to the parties' marriage

Amy Riopel also contends that the evidence demonstrates that Michael Riopel did not own any interest in the property prior to the parties' marriage, and that the 1996 and 1997 agreements between Michael Riopel and his mother were subsumed into the 2002 purchase agreement. Amy Riopel contends that this court should apply de novo review to the interpretation of these unambiguous contracts. *See, e.g., In re Estate & Trust of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002) ("We review a district court's

construction of an unambiguous instrument de novo."). She points to the fact that at trial an attorney who specializes in real estate matters testified that Michael Riopel's interest in the homestead and the farm real estate prior to the marriage consisted of two things only: a right to rent the property and an option to buy it at the death of his mother. Because of this, Amy Riopel argues that the 2002 agreement that granted the property to the parties as joint tenants should control.

But the fact that the deed for the Riopel farm transferred the farm to Michael Riopel and Amy Riopel as joint tenants is not determinative as to whether it is nonmarital property. The state of the title will not determine whether the property acquired during a marriage is marital or nonmarital property, and "merely transferring title from individual ownership to joint tenancy does not transform non-marital property into marital property." *Montgomery v. Montgomery*, 358 N.W.2d 169, 172 (Minn. App. 1984). Similarly, "transferring joint property into one party's name for estate planning purposes does not convert marital property into nonmarital property." *Pfleiderer v. Pfleiderer*, 591 N.W.2d 729, 732-33 (Minn. App. 1999).

The district court heard testimony from both parties regarding the status of the title in 2002 and did not conclude that the transfer of the title from Michael Riopel's individual ownership to joint tenancy with Amy Riopel transformed the nonmarital property into marital property. Michael Riopel testified that he did not intend to give his family farm to Amy Riopel when signing the financial documents and that the only reason he knew of for obtaining such financing was for estate planning purposes. Sufficient evidence exists on the record to conclude that Michael Riopel received the

farm as a gift from his mother in 1997 and therefore he had a nonmarital property interest in it when the title was transferred to both him and Amy Riopel in 2002. The fact that in 2002 the parties paid the exact price contracted for in the 1996 and 1997 agreements supports this conclusion. Because the district court's findings of fact are not clearly erroneous, it did not abuse its discretion when it determined that the Riopel farm is Michael Riopel's nonmarital property.

The Riopel farm's increase in value was not from marital efforts

Amy Riopel argues that the district court abused its discretion when it found that marital efforts did not increase the value of the farm property and that this supported Michael Riopel's position that the farm is primarily his nonmarital asset. In a property division, a spouse receives their nonmarital assets, plus any passive appreciation in value. Minn. Stat. § 518.003, subd. 3b(c); *Swick*, 467 N.W.2d at 331. The formula to establish property division was first announced in *Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981). The *Schmitz* formula provides that the value of a spouse's nonmarital interest in homestead property is the proportion that the spouse's net equity or contribution at the time of marriage bears to the value of the property at the date of marriage, multiplied by the value of the property at the time of separation. *Id*. "[C]entral to the classification of appreciation of nonmarital property as martial or nonmarital is the principle that effort expended to generate property during the marriage—that is, 'marital effort'—should benefit both parties rather than one of the parties to the exclusion of the other." *Baker*, 753 N.W.2d at 651. "In all of the cases where [the court] [has] held the appreciation of nonmarital property to be marital, significant effort that otherwise could have been

devoted to the generation of marital property was diverted and applied toward nonmarital property instead." *Id.* This is also known as active appreciation—marital property that is created when the spouses contribute money or effort during the marriage to a nonmarital asset. *White v. White*, 521 N.W.2d 874, 878-79 (Minn. App. 1994). In contrast, "[u]pon dissolution, a spouse is entitled to receive the original nonmarital asset and any passive appreciation in value." *Id.* at 878. And "an increase in the value of nonmarital property attributable to inflation or to market forces or conditions, retains its nonmarital character." *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 853 (Minn. 2003) (quotation omitted).

Amy Riopel argues that the concept of active and passive appreciation does not apply to this particular property division because the claims involve real estate. But this court has applied the concept of passive appreciation to real estate in a marital property division in the past. *See Berry v. Breslain*, 352 N.W.2d 516, 518 (Minn. App. 1984), *review denied* (Minn. Nov. 8, 1984). In *Berry*, this court held that where a wife purchased a house prior to marriage and the house increased in value primarily due to economic conditions, and the wife put the title in joint tenancy with the husband primarily to ensure security on the mortgage, the house was nonmarital property and should be given to the wife in its entirety. *Id.*

Even though Amy Riopel argues that passive appreciation does not apply in this case, she argues alternatively that there is substantial evidence proving that both her own and Michael Riopel's marital efforts contributed to the increase in value of the Riopel farm. She lists 18 pieces of evidence to support her argument including: that Michael

Riopel had no interest in the farm prior to their purchase in 2002, that without the loan from her parents the parties would not have been able to purchase the farm, the mortgage interest payments made by the parties during the marriage, and the expenses incurred in attempting to sell the land to real-estate developers. But the district court was also presented with other evidence that supported the argument that the Riopel farm increased in value through passive appreciation, such as the fact that the parties never paid down any amount of the principal on the 2002 mortgage and the fact that no improvements have been made to the farm land itself to affect the value of the land to developers. Therefore, the district court did not abuse its discretion in evaluating the evidence and concluding that the land increased in value primarily due to economic conditions.

In addition to determining that the increase in value of the Riopel farm was due to passive appreciation, the district court applied the *Schmitz* formula to the parties' property division. Our review of the record causes us to conclude that the district court did not abuse its discretion in so doing. It correctly calculated Michael Riopel's nonmarital interest of 87.1446% in the farm, leaving a marital portion of 12.8534% to be split evenly between the parties at 6.4267%. We hold that there is no error in the district court's findings of fact and it did not abuse its discretion in determining that the majority of the Riopel farm is Michael Riopel's nonmarital property and that Amy Riopel should receive a marital portion of 6.4267%.

II.

Amy Riopel also argues that the district court abused its discretion in declining to apportion Michael Riopel's nonmarital property because she has suffered an unfair

hardship. We hold that the district court did not abuse its discretion because its property division did not cause Amy Riopel to suffer an unfair hardship that would require an invasion of Michael Riopel's nonmarital property.

A district court has broad discretion over the division of marital property in a dissolution and will not be overturned on appeal except for an abuse of discretion. *Antone*, 645 N.W.2d at 100.

> If the court finds that either spouses' resources or property, including the spouse's portion of the marital property . . . are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded [as nonmarital] to prevent the unfair hardship.

Minn. Stat. § 518.58, subd. 2. "If the court apportions property other than marital property, it shall make findings in support of the apportionment." *Id.* "'A very severe disparity between the parties is required to sustain a finding of unfair hardship necessary to apportion nonmarital property.'" *Robert v. Zygmunt*, 652 N.W.2d 537, 546 (Minn. App. 2002) (quoting *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990)).

Amy Riopel contends that the facts support a hardship award, and the district court did not make the required findings to support her request for a hardship award To support her claim for unfair hardship she contends that the parties have no retirement assets, investments, or savings. She also points out that she is the primary physical custodian of the parties' two children, ages 11 and 7, and that she has not worked outside the home or farm since 2000. She suffered a major mania event in 2007 and was

diagnosed with bipolar disorder with chemical dependency, and though she continues to receive treatment she currently has an earning capacity of only $774 per month. She also testified at trial that her car was repossessed because she could not afford the monthly payment, and she was receiving public assistance from the State of Wisconsin in the form of food stamps and health insurance benefits.

But in making her argument, Amy Riopel ignores her ex-husband's circumstances. Neither of the parties has retirement savings or investments, and, after expenses, Michael Riopel's income is almost nothing, even though his gross farming income is approximately $100,000. He also has only a high-school education, while Amy Riopel has a four-year teaching degree. The same neutral vocational expert who opined that Amy Riopel currently could earn only $774 per month also stated that as her situational condition improves and she fulfills the requirements to update her teacher's licensure, she could return to teaching with a salary range of $40,000 to $45,000 per year. And the district court placed a greater portion of the parties' debts with Michael Riopel.

Amy Riopel points to *Rutten v. Rutten*, 347 N.W.2d 47 (Minn. 1984) to support her argument that a hardship award is required. In *Rutten*, the wife was awarded 25% of the husband's nonmarital inherited property because she received no maintenance, was assigned responsibility to pay debts, had custody of the parties' minor children, and had lower income than the husband. *Id.* at 50-51. But in *Rutten*, the wife had a cash income of $725 per month, while the husband had $1,400 per month as well as nonmarital property valued at approximately $72,000. *Id.* at 51. *Rutten* can be distinguished from the case at hand because while Michael Riopel may have a gross farming income of

$100,000, after expenses he has a net income of almost nothing. And 18 years after *Rutten* was decided, this court held in *Robert v. Zygmunt* that a superior financial condition due only to nonmarital holdings was an improper basis for an unfair hardship finding. 652 N.W.2d at 546. Michael Riopel's superior financial condition is due only to his nonmarital holdings, specifically the Riopel farm, and therefore the district court did not abuse its discretion in failing to apportion his nonmarital property because Amy Riopel has not suffered an unfair hardship. Because the district court did not find that Amy Riopel suffered an unfair hardship and did not apportion property other than marital property, it is not required to make findings in support of the apportionment.

III.

Amy Riopel next argues that the issue of spousal maintenance should be reserved. We agree. A district court's determination of the proper amount and duration of an award of spousal maintenance is reviewed by this court for an abuse of discretion. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). While recognizing the broad discretion vested in the district court, this court often affirms, occasionally remands for more extensive findings and conclusions, and rarely reverses outright on issues such as the one we address here. *See* Doris Ohlsen Huspeni, *Family Law: Appellate Opinions On Trial*, Bench and Bar of Minnesota, August 1990, at 20. This case compels one of those rare determinations.

Review of existing caselaw is informative, both regarding continuing jurisdiction of the district court in family law matters and the loss of that jurisdiction, and in regard to the deference granted to the district court when it considers whether jurisdiction over a

particular issue should be reserved.[1] In *Eckert v. Eckert*, the supreme court ruled that where the district court failed to reserve spousal maintenance it is without jurisdiction to revisit that issue in the future. 299 Minn. 120, 126-27, 216 N.W.2d 837, 841(1974). Two years later, in *Berger v. Berger*, the supreme court stated "that under some circumstances it is reversible error not to reserve jurisdiction." 308 Minn. 426, 428, 242 N.W. 2d 836, 837 (1976).

Cases illustrating both the broad discretion vested in the district court and the limitations of that discretion include *Felsheim v. Felsheim*, 298 Minn. 287, 214 N.W.2d 696 (1974), *Van De Loo v. Van De Loo*, 346 N.W.2d 173 (Minn. App. l984), *Tomscak v. Tomscak*, 352 N.W.2d 464 (Minn. App. 1984), *Wopata v. Wopata*, 498 N.W.2d 478 (Minn. App. 1993), and *Prahl v. Prahl*, 627 N.W.2d 698 (Minn. App. 2001).

In *Felsheim*, a case especially apposite in illustrating that it need not be only medical conditions of the needy spouse that compel a reservation of spousal maintenance, and also a case quite similar to the one here in terms of economic circumstances of the parties, the supreme court disagreed with the district court that had failed to reserve maintenance. *Felsheim*, 298 Minn. at 289, 214 N.W.2d at 697. In so doing, the court held "Even though funds for the payment of alimony to plaintiff may not be available at this time, largely because of the state of the defendant's health, plaintiff should not be foreclosed from all possibility of such consideration." *Id*.

[1] Case law too abundant to need citation requires that without exception the issue of child support must be reserved in the dissolution decree when a determination of an actual dollar-amount payment is not made.

In *Van De Loo*, even though the parties were self-sufficient at the time of the dissolution, the medical condition of one was uncertain. 346 N.W.2d at 174, 178. The district court reserved maintenance and this court affirmed. *Id.* at 178.

In *Tomscak*, although one of the parties suffered from a medical condition that made future self-sufficiency uncertain, the district court failed to reserve maintenance. *Tomscak*, 352 N.W.2d at 465. This court reversed, noting that the failure to reserve maintenance left the district court unable to address a possible change in circumstances in the future. *Id*. at 466.

In *Wopata*, although both parties were self-sufficient at the time of the dissolution, the husband's two heart attacks caused concern regarding his future health and the district court reserved maintenance. *Wopata*, 498 N.W.2d at 485. This court affirmed. *Id.*

Finally, in *Prahl*, the husband argued that the district court erred by failing to award him spousal maintenance or, in the alternative, reserve the issue, because he had medical conditions subject to worsening and that would cause him to lose his ability to be self-supporting. *Prahl*, 627 N.W.2d at 702-703. The district court did not award or reserve maintenance because it found that both parties were self-sufficient at the time of the dissolution, and despite the husband's illness, his physician had not restricted his work, he had not applied for disability benefits, and he had not presented evidence showing his inability to obtain gainful employment. *Id.* We remanded on the issue of the reservation of spousal maintenance, holding that the district court failed to make sufficient findings to justify its decision. *Id.* at 703.

The district court here set out at length its consideration of Minnesota Statutes section 518.552 (2008), and that statute's applicability to the current circumstances of the parties. It ultimately concluded that "neither party has the financial ability to pay spousal maintenance to the other." That language clearly speaks to the present. While the parties' life-style during the marriage is one of the factors listed for consideration in section 518.552, subd. 1(b), "all relevant circumstances" are also listed in that section. Here, "all relevant circumstances" surely include the district court's determination that Amy Riopel "currently has no income," "was diagnosed with bipolar disorder with chemical dependence," "received inpatient psychiatric treatment for a month," "transferred to an inpatient treatment program . . . participated in a 12-week aftercare program," and "is now treated by a psychiatrist." An inference may be drawn that Amy Riopel's physical and emotional condition is in question. In addition, the district court determined that her current monthly living expenses are $2,880. While the district court did not specifically use the term "reasonable" in describing these expenses, again it seems that a proper inference of reasonability may be drawn. Child support is $795 per month. Given the district court's own calculations, an inference of need is inevitable.[2] And perhaps the most telling circumstance leading to the conclusion that there is need, and therefore spousal maintenance must be reserved, is the acceptance by

[2] The dissent sets out at length the circumstances of the parties' economic and health conditions at the time of the dissolution. We take no issue with the dissent's recitations of those circumstances. We note, however, that the language of the district court leads to but one inference. There is a need for maintenance in this case. While respondent did not seek maintenance, appellant did. It is clear from the language of the district court that there is need but there is no present ability to pay.

the court that Amy Riopel "has had sources of income or support for meals from the food shelf and county assistance; she is on medical and dental assistance from the State of Wisconsin." While food shelf donors are often persons of substantial compassion for others and no official determination of need is required for access to food shelves, qualification for benefits from the state is understandably not easy to achieve. Yet another proper inference of need is therefore drawn.

A further word on the policy issues implicated in spousal maintenance questions is appropriate. Notwithstanding the current life-style consideration included in section 518.552, the thrust of a reservation of any issue included in a marriage dissolution decree, be it reservation of child support, parenting time, actual custody, or spousal maintenance, must be forward-looking. If that was not the case, the language in Minnesota Statutes section 518A.39, subdivision 2 (2008), would be superfluous in its mandate that the district court consider whether there has been a substantial change in circumstances rendering the current order unreasonable or unfair. Changed circumstances can only occur in the future. And the future of the parties here may, indeed, change. Speculation would permit us to conjecture that the financial circumstances of *either* party in this case may so improve that an award of spousal maintenance might be possible. Only Amy Riopel has requested that the district court retain the jurisdiction to at least examine whether financial circumstances have so improved as to enable one party to contribute to the financial shortfall of the other.

It would be highly improper for this court, at this time, to conjecture as to what might be the district court's answer to that question in the future. All that we decide here

is that the courthouse door should not be permanently closed because of circumstances that exist today. Today's circumstances are relevant, but they also importantly provide the rock-solid threshold from which would spring the future consideration of whether a substantial change in circumstances rendering the current order unreasonable and unfair has, in fact, occurred. What we do here is provide the district court the opportunity, if need be, to address that question and to exercise its broad discretion in arriving at an answer.

We remand the issue of spousal maintenance to the district court with instructions to amend the judgment and decree to reserve the question of future maintenance.

IV.

Amy Riopel contends that her $46,050 loan to pay living expenses for her and the parties' minor children during the pendency of the action should be allocated equitably between the parties. We disagree.

"A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for an abuse of discretion." *Antone*, 645 N.W.2d at 100. "We will affirm the district court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Id.* Debts are apportionable between spouses as property in dissolution proceedings. *Wehner v. Wehner*, 374 N.W.2d 569, 571 (Minn. App. 1985). In *O'Donnell v. O'Donnell*, 412 N.W.2d 394, 396-97 (Minn. App. 1987), this court overturned the district court's determination that a husband should repay $9,500 owed to his ex-wife's parents. In reaching this conclusion, this court reasoned that

> because the $9500 debt was incurred for the benefit of the family, because respondent's parents may be hostile creditors as far as appellant is concerned, and because appellant's voluntary assumption of the remaining $69,205 in marital debts is a reasonable alternative property division in a difficult case, appellant should not be required to assume responsibility for this debt.

Id.

In this case, Amy Riopel was expected to repay the loan she obtained from her parents to pay for the living expenses for herself and the children after separation. From the parties' separation through trial, Michael Riopel paid temporary child support of $655 per month, and, after trial, the district court ordered child support of $795 per month. He also was ordered to pay nearly $300,000 of the parties' marital debts, including $213,000 of the mortgage from Amy Riopel's parents and approximately $83,000 he incurred after the parties separated, both of which could be argued were incurred to support his family.

The facts of this case are similar to those found in *O'Donnell*, Although there is no evidence in the record before us that hostility would, in fact, arise between Michael Riopel and Amy Riopel's parents if he was ordered to repay the $46,050 contested here, we conclude that it is a very questionable practice to require one spouse to pay the other spouse's debts incurred after separation. Such a practice could be used as a weapon in what is already oftentimes a contentious proceeding. The district court did not abuse its discretion in requiring Amy Riopel to repay the $46,050.

V.

We finally address Amy Riopel's contention that she deserves a compensatory award of property to pay a portion of her need-based attorney fees and costs. This argument fails.

We review an award of attorney fees for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). The court is required to award attorney fees if the fees are necessary to enable one party to continue an action brought in good faith, if the other party has the means to pay the fees, and if the requesting party does not have the means to pay them. *See* Minn. Stat. § 518.14, subd. 1 (2008). In *Beck v. Kaplan*, 566 N.W.2d 723, 724, 727 (Minn. 1997), the supreme court held that an award of attorney fees was appropriate when the wife did not have the means to pay fees and, in order to satisfy the obligation, she would be required to deplete the limited capital assets available to her for retirement, while in contrast the husband was financially secure.

Here, both parties were allowed the opportunity to submit posttrial affidavits from their attorneys stating their attorney fees and costs, and Amy Riopel claimed that she has incurred attorney fees and costs of $77,867.40. After reviewing the affidavits, the district court ordered each party to pay their own attorney fees and costs. Amy Riopel argues that the district court abused its discretion in failing to award her attorney fees and reiterates the same arguments advanced regarding her financial situation, her prospects of employment, and the fact that she is the sole physical custodian of the parties' children. But although Amy Riopel may need assistance in paying attorney fees, Michael Riopel may as well. In contrast to the parties in *Beck*, neither party is in a substantially better

financial situation than the other, and we hold that, based on the evidence in the record, the district court did not abuse its discretion in declining to grant either party attorney fees.

Affirmed in part, reversed in part, and remanded.

ROSS, Judge (dissenting in part)

I respectfully dissent from part III of the majority opinion because I strongly disagree that the district court abused its discretion by not reserving the question of spousal maintenance. The majority expressly infers a material fact that the district court did not find, it expressly infers a legal conclusion that the district court clearly did not reach, it infers—actually creates—an argument that the appellant did not make based on caselaw that the appellant did not cite, and finally, it relies on a statute for a proposition that the statute contradicts.

A district court "*may* reserve jurisdiction of the issue of maintenance for determination at a later date," Minn. Stat. § 518A.27, subd. 1 (2008) (emphasis added), but it is not generally required to do so. We must affirm a district court's decision not to reserve spousal maintenance unless the district court abused its "broad discretion." *Prahl v. Prahl*, 627 N.W.2d 698, 703–04 (Minn. App. 2001). Here the district court decided—in my view well within its discretion and with a great deal of wisdom—to allow the question of spousal maintenance to be closed and the parties to be free of any lingering concern that litigation may suddenly revisit them.

The facts found by the district court portray an image that easily justifies its decision not to reserve the question of spousal maintenance for some later date. And the caselaw that ought to control our review of this decision on appeal does not, in my view, support today's outcome *requiring* the district court to reserve the issue.

The district court's fact findings by themselves justify its decision not to reserve the question of spousal maintenance. Spousal maintenance bridges the gap between a

person's need and her means if she relied on support during the marriage and lacks the ability to support herself. But in this case, neither party has ever had an income, and neither ever supported the other financially during the marriage. So in my view, regardless of whether one of them might become financially successful in the future, neither has any ground to expect that the other must suddenly begin to provide support after the dissolution. What is the logical ground for a person whose spouse *never* contributed financially to her during the marriage to demand that the spouse begin contributing to her after the marriage is over? On these marital conditions, I can think of no statutory, equitable, historical, or public policy reason justifying a spousal-maintenance award, either at the moment of dissolution or at any time in the future.

We have also often said that one of the key features in deciding whether to award spousal maintenance is the balance between one party's need and the other's ability to pay. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39–40 (Minn. 1982); *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009); *Prahl*, 627 N.W.2d at 702. Neither Michael nor Amy is in any position to pay spousal maintenance now. And neither has any reason ever to expect spousal maintenance from the other since neither party has ever earned an income, let alone a supportive income, during the marriage.

The district court expressly found that the parties have been perpetually without any income. They got by instead relying on found money, essentially; they survived on a temporary windfall—the earnest money forfeited to them from a prospective land sale that never materialized. And that money presumably is spent. The district court recognized that neither party should ever be beholden to the other in the form of spousal

maintenance. Its judgment offered a degree of finality that allows the parties to live their separate economic lives unburdened by the perpetual threat of yet more costly and intrusive litigation.

The district court's carefully crafted findings frame the question of maintenance and reservation. Specifically, the district court found that Michael Riopel could not meet his own expenses. It surveyed the parties' marriage and found that he "has had an average annual income of approximately zero or very nominal income." Then it "imputed" income to him of $2,500 monthly on the unexplained notion that he could somehow reduce his farming expenses and claim a sizable profit. (That income imputation is not appealed and, despite a lack of explanation justifying it, I accept it as it stands.) It also found that Michael's "current living expenses are $3,176," leaving him at a $676 monthly deficit even if he changes his farming operation in the way the district court speculated would make him suddenly profitable. When we subtract the $795 in child support that he had been paying voluntarily and has been ordered to continue to pay, Michael's monthly deficit is $1,471.

The district court found that Amy also could not meet her own expenses. It specifically found that, like Michael, she currently earns nothing. But it also found that she could immediately become employed making between $9 and $10 hourly. So the district court's findings regarding Amy's present ability indicates that she can now earn between $18,720 and $20,800 annually, plus the $795 a month she receives in child support, totaling $2,355 to $2,528 monthly. Her living expenses are $2,880. So although

Amy operates at a monthly deficit, her deficit is much smaller than Michael's; hers is between $648 and $821 while his is $1,471.

The district court found that *neither* Amy nor Michael ever had an income to meet their joint or individual expenses. It found that *both* parties had zero income, that *both* parties could immediately change some circumstance to gain some income (Michael by somehow reducing farm expenses and Amy by getting a job), but that *both* parties would still fall short of their expenses. And it found "that *neither* party has the financial ability to pay spousal maintenance *to the other.*" Based on the district court's findings, Amy is in a clearly better income-to-expenses present situation than Michael. (I add that it requires far less optimism to believe that Amy will suddenly secure a $10-an-hour job than to believe that Michael will suddenly transition his chronically deficit farm operation into the $2,500 monthly profit that the district court imputed to him.) The district court additionally found that, if Amy later overcomes her emotional and chemical-dependency issues, she can become employed earning much more than $10 hourly, making between $40,000 and $45,000 annually.

Given these findings, I strongly disagree with the majority's view that this is one of the rare cases in which we must reverse the district court's discretionary decision not to reserve the spousal-maintenance question for a possible later award. This is not the rare situation in which we should force the district court to act against its judgment and require it to keep one party—in this case Michael Riopel—on the hook for a potential later spousal-maintenance obligation. And given that Amy is in a much better present income-to-expenses position and has a seemingly greater chance of increasing her

income, it is clear to me why the district court rejected Amy's request to reserve the question of spousal maintenance.

The majority rests its reversal on its material *factual* "inference . . . that Amy Riopel's physical and emotional condition is in question," which in turn supports the majority's "one [*legal*] inference" that "[t]here is a need for maintenance in this case" based on a line of medical-condition cases. The district court never found Amy's condition was "in question" at all, let alone in question so as to prevent her from becoming immediately employed at up to $10 hourly. And the only real "question" about her medical condition that the district court expressly referred to was whether Amy might *improve* to become employed at a much higher salary. I know of no basis for this court to draw an inference that "[t]here is a need *for maintenance*" merely based on the district court's finding that neither party can presently cover expenses; there is a substantial difference between an out-of-balance income-to-expenses ratio and a determination of a "need *for maintenance*," and it is not this court's place to substitute its judgment for the district court's on this discretionary call.

The majority cites cases that it relies on to require reservation despite these facts. It requires the district court to reserve the question so that Michael might one day be ordered to pay spousal maintenance because the majority believes that, under our caselaw on reservation, Amy's medical condition (bipolar and chemical dependency) requires that result. But the majority ignores the fact that Amy never made the argument for reservation based on her medical condition. And even if she had, the majority reads far more into the medical-condition precedent than our holdings suggest. The uniform fact

pattern in which we have required (or approved of) the district court's decision to reserve spousal maintenance has repeated itself, almost exactly, in four cases. This case does not fit that pattern.

The first case is *Van De Loo v. Van De Loo*, where both of "[t]he parties were gainfully employed and capable of supporting themselves" at the dissolution, so the district court had awarded no spousal maintenance. 346 N.W.2d 173, 174 (Minn. App. 1984). One party had undergone major cancer surgery, and she faced an uncertain, potentially debilitating medical future. *Id.* at 178. We affirmed the district court's decision to reserve the question of spousal maintenance because the medical uncertainty left in doubt the original decision not to award spousal maintenance. *Id.*

Similarly in *Tomscak v. Tomscak*, the district court had denied spousal maintenance because each party could meet his or her own needs, but we observed that the court had failed to take into account the wife's recent bout with cancer and the possibility of its incapacitating recurrence. 352 N.W.2d 464, 465–66 (Minn. App. 1984). Like the then-self-sufficient wife in *Van De Loo*, the wife in *Tomscak* had a medical condition that made her future self-sufficiency unsure. By failing to reserve the maintenance question, the district court left itself "unable to respond to changed circumstances." *Id.* at 466. We therefore held that "[t]o protect [the wife], an award of maintenance must be reserved." *Id.*

Likewise in *Wopata v. Wopata*, we again addressed a circumstance in which the district court had awarded no spousal maintenance because, at the dissolution, it

found that "the parties are both presently financially self-sufficient." 498 N.W.2d 478, 485 (Minn. App. 1993). The husband had suffered two heart attacks and his future health was uncertain. *Id*. So we held that the district court did not abuse its discretion by reserving the question of spousal maintenance for later. *Id*.

Finally in *Prahl*, we again faced the circumstance in which both parties were self-sufficient at the dissolution and awarded no spousal maintenance. *Prahl*, 627 N.W.2d at 702–03. But one of them, the husband, had Hepatitis C and cirrhosis of the liver—conditions susceptible to worsening to "interfere with his ability to meet his own needs through self-support." 627 N.W.2d at 703. We held that the district court failed to make findings that justified its decision not to reserve the question of spousal maintenance in the face of the husband's "potentially progressive disease." *Id*. at 704.

These materially identical cases share a reservation-justifying fact pattern: the parties were self-sufficient needing no spousal maintenance at the dissolution, but one of them would remain self-sufficient only if his or her existing medical condition did not deteriorate. Reserving the issue of spousal maintenance was appropriate *only* because one could clearly foresee a medical change in circumstances that would alter the parties' relative financial circumstances.

This case bears no resemblance to those cases. After reflecting on the couple's ascetic lifestyle and each party's financial incapacity to meet even his and her own expenses, the district court decided not to obligate either to pay spousal maintenance or to reserve the question. This reasonable decision left the parties in the same economic-

deficit condition they have always experienced, consistent with the thrice repeated statutory focus on "the standard of living established during the marriage." Minn. Stat. § 518.552, subds. 1(a)–(b), 2(c) (2008). The district court recognized that it had no basis on which it should reserve the spousal-maintenance question for some later financial change, but this is what the majority now requires of it.[3]

In sum, until now we have honored the district court's "broad discretion" whether to reserve spousal maintenance, developing only one narrow limit in our caselaw. That limit applies only when one spouse's potential medical deterioration would render him or her unable to continue to meet expenses that the parties met during the marriage and that each party is separately meeting at the dissolution. That is not what the court does today. Today the court expressly stretches that narrow limit far beyond our precedent to cover speculative changes that might occur to one party's improved *financial* circumstances having nothing to do with future changes in either party's worsened *medical* circumstances.

[3] I point out an older supreme court decision, which also supports my view. In *Felsheim v. Felsheim*, the supreme court required the district court to reserve spousal maintenance because the obligor had an apparently temporary medical concern that rendered him temporarily unable to pay maintenance. 298 Minn. 287, 289, 214 N.W.2d 696, 697 (1974) ("Even though funds for the payment of alimony to plaintiff may not be available *at this time, largely because of the state of the defendant's health*, plaintiff should not be foreclosed from all possibility of such consideration.") (emphasis added). The point is exactly the same: a medically-based reservation is appropriate only when a temporary medical circumstance (the obligor's poor health that might improve or the obligee's good health that might deteriorate) undermines the basis on which spousal-maintenance has been decided. Here, the district court already accounted for the purported obligee's poor health by ascribing to her only a $9 to $10 hourly income, and no facts suggest that her medical condition is "in question" or might worsen.

The majority also finds support for its holding on its theory that spousal maintenance must be made by a "forward-looking" inquiry. But the law instead requires the district court to reflect *backward* at the parties' lifestyle during the marriage, and, based on *present* conditions, decide whether to award spousal maintenance. When the *present* circumstances are likely unsustainable because of a probable change in a *present* medical condition, then, *and only then*, has reservation been required or allowed. The statute that the majority relies on stands for the opposite proposition from the one for which the majority cites it. Rather than to suggest a "forward-looking" approach because "[c]hanged circumstances can only occur *in the future*," as the majority maintains, the cited spousal-maintenance modification statute considers the *present* conditions to see, looking *backward*, whether "there *has been* a substantial change" that renders the existing award unreasonable and unfair. *See* Minn. Stat. § 518A.39, subd. 2 (2008). I cannot agree with the majority's sweeping transformation of the medical-deterioration exception into a new financial-improvement exception.

In addition to misreading the statute for a "forward-looking" approach, the majority implicitly adopts the gross error in Amy's only asserted basis for reservation. The *only* argument Amy offers in asking us to require reservation is that Michael simply might one day sell the farm, which, Amy insists, is "ripe for development," and she believes that she is entitled to part of it. She cites 30 cases in her brief but offers none to support this theory. The majority elsewhere appropriately rejects Amy's claim to the farm, but by agreeing with her position on

reservation, the majority implicitly invites the district court to do later what it is prohibited from doing at all—convert Michael's *nonmarital-property* award of the farm into a *spousal-maintenance* obligation. Equally troubling, the majority advocates more than judges on this issue; it recognizes the weakness of Amy's unsupported reservation argument by not even mentioning it. Instead, it replaces it with its own entirely different argument on Amy's behalf and gives Michael no chance to respond: it introduces the medical-condition exception that Amy did not assert, creates the application argument that Amy did not make, relies on reservation caselaw that Amy did not offer, and infers findings that Amy did not suggest. Then it grants Amy the victory. This gives new meaning to *having your day in court*.

I therefore dissent in part, concurring in all other respects in the majority's otherwise well-reasoned decision.