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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1949**

In re the Marriage of:

Brad Wilfred Middendorf, petitioner,
Appellant,

vs.

Nicole Noel Middendorf,
Respondent.

**Filed October 28, 2013
Affirmed in part, reversed in part, and remanded
Cleary, Judge**

Hennepin County District Court
File No. 27-FA-10-9314

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Considered and decided by Cleary, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant challenges an amended marital-dissolution decree (amended decree),
arguing that the district court abused its discretion in valuing and dividing marital

property and debt, erred in calculating what was due to him pursuant to the temporary order, and abused its discretion in determining the amount and duration of spousal maintenance. We affirm in part, reverse in part, and remand.

FACTS

Appellant Brad Middendorf and respondent Nicole Middendorf married in 1998. While married, respondent owned, and the parties operated, a financial-planning business called Strategic Financial, Inc. (SFI). They owned two residential properties, referred to as the 3030 Property and the Wayzata Homestead. They also owned a commercial property, referred to as the 101 Commercial Property, out of which SFI operated.

Respondent filed a petition for dissolution of marriage in December 2010, and a temporary order was issued in April 2011. A four-day court trial was held in November 2011. In March 2012, a marital-dissolution decree (decree) was entered that, among other things, divided marital property and debt and awarded appellant spousal maintenance. Appellant filed a motion to amend the decree, and an amended decree was entered in September 2012. This appeal follows.

DECISION

I.

Appellant contends that the district court abused its discretion in its valuation of the 3030 Property and the 101 Commercial Property and in its division of a home equity line of credit (HELOC) on the Wayzata Homestead. Upon a dissolution of 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 (2012). “The court shall base its findings on all relevant factors” *Id.* “An equitable division of marital property is not necessarily an equal division.” *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

A district court “has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court abuses its discretion when it resolves a matter in a manner that is against logic and the facts on record. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). An appellate court “must affirm the [district] court’s division of property if it had an acceptable basis in fact and principle even though [the appellate] court may have taken a different approach.” *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

A determination of the value of an asset is a finding of fact that should not be set aside unless clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). A district court need not be exact in its valuation. *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979). “[V]aluation is necessarily an approximation in many cases, and it is only necessary that the value arrived at lies within a reasonable range of figures.” *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975).

A. Valuation of the 3030 Property

As part of the dissolution, appellant was awarded title to the 3030 Property, subject to all encumbrances. It was undisputed that the property had negative equity of

\$25,253. But the district court declined to list the property as having a negative value on the marital balance sheet for the purpose of dividing marital property. Instead, the court listed the property as having a zero value and did not allocate the debt of \$25,253 to appellant on the marital balance sheet. The court reasoned:

Awarding [appellant] the 3030 [Property] with negative equity could result in [appellant] letting the property go into foreclosure, and still incurring the benefit from the property award. Moreover, if the housing market recovers, the property value of the 3030 [Property] may increase thus resulting in an inequitable division of marital property.

Appellant claims that the court's assignment of a zero value to the 3030 Property, rather than a negative value, was error.

The district court's zero valuation of the 3030 Property, when the parties were in agreement that the property had negative equity of \$25,253, overvalues the property by \$25,253 and was clearly erroneous on the record as a whole. Minnesota courts have cautioned against basing marital-property divisions and valuations on speculative future events. *See, e.g., Aaron v. Aaron*, 281 N.W.2d 150, 153–54 (Minn. 1979) (stating that “courts base the distribution of property on the value of the property at the time of distribution” and “are hesitant to speculate about the future value of the property,” and affirming a decision not to consider speculative tax consequences when dividing a marital estate); *Nolan v. Nolan*, 354 N.W.2d 509, 513 (Minn. App. 1984) (noting that “[i]t is generally held that speculative or contingent liabilities should not be considered in determining the net marital estate,” and affirming a decision not to consider a personal note a liability of a marital estate when the husband's obligation to personally pay on the

note was speculative), *review denied* (Minn. Dec. 20, 1984). Additionally, respondent was awarded a residential property that may also increase in value if the housing market recovers, so it is unclear that potential housing-market recovery would result in “an inequitable division of marital property.”

B. Valuation of the 101 Commercial Property

At trial, the parties disputed the valuation and disposition of the 101 Commercial Property. Appellant testified that the property should be valued at \$703,500, its tax-assessed value. Respondent presented the testimony and report of a real estate broker, who stated that the 4,680-square-foot property had a market value of approximately \$90 per square foot (approximately \$421,200). It was undisputed that the total encumbrance on the property was \$500,000 and that the mortgage would need to be refinanced.

Based on the testimony and evidence presented at trial, the district court believed that “neither party will have the ability to refinance the property,” but found that respondent had “put forward a more detailed and credible plan for refinancing.” The court therefore awarded title to the 101 Commercial Property to respondent, subject to all encumbrances, provided that she would be able to refinance the mortgage within 90 days of entry of the decree. If respondent failed to refinance within 90 days, title to the property was to transfer to appellant. If appellant failed to refinance within 90 days of the transfer, the property was to be sold and the parties were to split the resulting proceeds or liability equally. The court assigned a zero value to the 101 Commercial Property on the marital balance sheet, and appellant claims that this valuation was error.

The district court's valuation of the 101 Commercial Property was not clearly erroneous on the record as a whole. A district court's valuation of marital property will be upheld if it "lies within a reasonable range of figures." *Hertz*, 304 Minn. at 145, 229 N.W.2d at 44. Here, factoring in the property's encumbrance, a value of zero lay within the range of values assigned to the 101 Commercial Property during trial. Moreover, if, as the district court believes, neither party is able to refinance the property, the district court's valuation becomes irrelevant because the property will be sold, with the parties equally splitting any positive or negative equity that the property actually had.

C. Division of the HELOC

As part of the dissolution, respondent was awarded title to the Wayzata Homestead, subject to all encumbrances. It was undisputed that the homestead had a value of \$800,000 and was encumbered by a mortgage in the amount of \$392,320.05. There was also a HELOC on the homestead. At some point after the parties' separation, appellant drew \$136,000 on the HELOC without respondent's authorization and used those proceeds to pay for his living expenses and attorney fees during the course of the dissolution proceedings. Appellant disputes the way that the district court accounted for the Wayzata Homestead's equity and encumbrances on the marital balance sheet.

The district court categorized the \$136,000 in HELOC proceeds as "an advance on [appellant's] property settlement." Subtracting the mortgage and HELOC balances from the Wayzata Homestead's value, the court calculated the homestead's equity as being \$271,679.95. The court then determined that appellant had previously received approximately his half share of this equity by drawing \$136,000 on the HELOC, leaving

\$135,679.95, which represented approximately respondent's half share of the equity. The court recorded \$136,000 and \$135,679.95 in appellant's and respondent's columns on the marital balance sheet respectively.

The district court's method of accounting for the Wayzata Homestead's equity and encumbrances on the marital balance sheet was clearly erroneous because the court effectively subtracted the HELOC balance twice when determining respondent's property award. Respondent did not actually receive property with a value of \$135,679.95, but rather received property with a net value of \$271,679.95, and this figure should have been reflected in her column on the marital balance sheet. Correction of this figure will result in appellant being awarded an additional \$67,839.98.¹

Appellant also disputes the district court's treatment of the HELOC proceeds as a property advance. He argues that, because the proceeds were used to pay for living expenses during the marriage, his use of the proceeds was not an improper disposition of marital assets, and the proceeds should be treated as having been consumed by the parties equally. A district court must make a "just and equitable division of the marital property," Minn. Stat. § 518.58, subd. 1, and its division will not be overturned unless it abused its discretion by reaching a conclusion that is against logic and the facts on record. *Rutten*, 347 N.W.2d at 50. The district court found it "equitable" to treat the \$136,000 as a property advance, and this categorization of the HELOC proceeds was not an abuse of the court's discretion. Appellant drew on the HELOC without respondent's authorization

¹ \$800,000 (property value) - \$392,320.05 (mortgage balance) = \$407,679.95 ÷ 2 = \$203,839.98 (property award to each party) – \$136,000 (appellant's property advance) = \$67,839.98 (owing to appellant as a result of division of the Wayzata Homestead).

and used the proceeds solely for his expenses. Additionally, appellant received an award of temporary spousal maintenance during the pendency of the dissolution proceedings.

II.

Appellant claims that the district court erred in calculating what was due to him under the terms of the April 2011 temporary order. Pursuant to that order, commencing May 1, 2011, appellant was to receive \$13,754 per month from SFI.² In the amended decree, the district court categorized these payments as temporary spousal maintenance. It was undisputed that, through the time of trial in November 2011, SFI had paid appellant \$31,930. In the amended decree, the district court awarded appellant an additional \$64,348 to satisfy the terms of the temporary order. Appellant contends that the \$96,278 that he received is insufficient to satisfy the terms of the temporary order.

The \$96,278 that appellant received represents seven months of temporary payments from May 1, 2011 through November 30, 2011. The decree was entered in March 2012, but the district court made the decree's maintenance award retroactive to December 1, 2011, and appellant does not dispute the court's decision to make the decree's maintenance award retroactive. It was appropriate for appellant to receive payments for temporary maintenance through November 30, when the decree's award of maintenance took effect on December 1. The district court did not abuse its discretion by awarding appellant \$64,348 to satisfy the terms of the temporary order.

² The issue of whether the district court properly exercised jurisdiction over SFI, a nonparty to this action, is not before us in this appeal.

III.

The district court ordered respondent to pay appellant \$5,000 for monthly spousal maintenance for a period of three years beginning on December 1, 2011. Appellant disputes the amount and duration of this maintenance award. In a dissolution proceeding, a court may grant an award of maintenance if it finds that the spouse seeking maintenance

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) 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 (2012). “The maintenance order shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors” *Id.*, subd. 2 (2012).

A district court has broad discretion in awarding maintenance and, “before an appellate court determines that there has been a clear abuse of that discretion, it must determine that there [is] a clearly erroneous conclusion that is against logic and the facts on record.” *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Findings of fact concerning maintenance must be upheld unless they are clearly erroneous in that the appellate court “is left with the definite and firm conviction that a mistake has been made.” *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (quotation omitted).

The appellate court must “view evidence in the light most favorable to the district court’s findings and defer to [its] credibility determinations.” *Id.*

A. Appellant’s income

When determining a maintenance award, a court must consider “the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party’s ability to meet needs independently.” Minn. Stat. § 518.552, subd. 2(a). A determination of income for the purpose of awarding maintenance is a finding of fact. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). At trial, the parties’ experts offered competing predictions regarding appellant’s income. The district court determined that, based on appellant’s “education, skills, licensure and experience,” he has the ability to earn a minimum net monthly income of \$4,638.08. But the court noted that appellant’s income “may be significantly higher” and that it “expects that [appellant] can increase his income.”

Appellant argues that, when calculating his expected income, the district court should have deducted business expenses that will be necessary to generate income while he starts a new business. The court specifically stated in the amended decree that appellant “failed to provide any evidence of what his necessary and ordinary business expenses will be once he is out on his own” and that “any determination [as to business expenses] at this point is purely speculation.” Appellant blames the district court for his failure to provide such evidence, arguing that “it is the [district] court that placed [him] in this position by denying [him] the operation of his business out of [the] 101 Commercial Property.” But appellant was aware that the disposition of the 101 Commercial Property

was at issue at trial, and yet he failed to provide the court with a prediction of his business expenses in the event that he was not awarded that property. The district court's findings regarding appellant's income are not clearly erroneous.

B. Appellant's expenses

At trial, appellant submitted that his personal monthly expenses total \$16,214.51. The district court decreased or deleted numerous expenses on appellant's proposed personal budget and arrived at a revised monthly budget of \$7,092.51. Appellant disputes some of the court's deletions.

The court deleted expenses for cable television, internet, telephone, cell phone, transportation, health insurance, and fitness-club memberships from appellant's budget entirely, which reduced the budget by \$1,702. The court found that these personal expenses were expensed through SFI during the marriage and "presume[d] that [appellant] will continue with the practice of expensing certain expenses through his business." Appellant argues that these expenses should not have been deleted, but it was not clear error for the district court to delete these personal expenses from appellant's proposed personal budget when it found that they were not expenses that appellant himself actually paid.

The district court also struck from appellant's proposed budget an expense of \$5,000 per month for savings, noting that the parties did not accumulate a large savings during the marriage and that appellant admitted at trial that the parties did not save \$5,000 per month during their marriage. Appellant argues that the expense for savings should not have been deleted. But the purpose of maintenance is not to allow the

receiving spouse to accumulate a large savings, but to allow the spouse to meet his or her reasonable needs. *See Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that maintenance is awarded to meet need and depends on a showing of need); *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007) (stating that an award of maintenance is appropriate when a spouse lacks the ability to provide adequate self-support and meet reasonable needs), *review denied* (Minn. Aug. 21, 2007). The district court’s findings regarding appellant’s expenses are not clearly erroneous.

C. Duration of maintenance

When determining a maintenance award, a court must consider “the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party’s age and skills, of completing education or training and becoming fully or partially self-supporting.” Minn. Stat. § 518.552, subd. 2(b). Appellant argues that the record does not support an award of maintenance for only three years.

At trial, the parties’ experts offered competing predictions regarding whether and how soon appellant will become fully self-supporting. Based on the testimony and evidence presented, the district court found that appellant will not require any more education, training, or licensure to become self-supporting and that he is fit and able to work. But the court determined that appellant will need time “to build a portable book of business and establish himself as [a financial] advisor.” Balancing these factors with appellant’s income and living expenses, the court found three years an appropriate duration for maintenance, and this finding is not clearly erroneous. The district court did

not abuse its discretion by awarding monthly maintenance of \$5,000 for a period of three years.

Affirmed in part, reversed in part, and remanded.