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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0547**

In re the Marriage of:
Gretchen Alva Fillion, petitioner,
Respondent,

vs.

Robert James Fillion,
Appellant.

**Filed October 22, 2012
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-FA-10-781

Gretchen Alva Fillion, West St. Paul, Minnesota (pro se respondent)

Robert James Fillion, St. Anthony, Minnesota (pro se appellant)

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

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges the judgment and decree dissolving his marriage, arguing that the district court made erroneous findings of fact and was biased against him. We affirm.

FACTS

Appellant Robert Fillion and respondent Gretchen Fillion were married in May 2002 and have two children together. The parties commenced dissolution proceedings in February 2010, the district court issued a temporary order in June, and the parties physically separated in August 2010.

Following a hearing before a referee, in which respondent was represented by counsel and appellant was pro se, judgment was entered on August 18, 2011. The district court entered an amended judgment to correct an error on January 23, 2012. This appeal followed, in which both parties are pro se.

DECISION

I.

Appellant contends that several of the district court's findings of fact are erroneous and do not support its conclusions of law. But because neither party requested a transcript to enable a review of the evidence upon which the findings are based, the scope of our review is limited to whether the district court's conclusions of law are supported by its findings of fact. *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970).

Appellant attempts to dispute the district court's valuation of several items of marital and nonmarital property. But the valuation of property is a finding of fact, as "valuation is necessarily an approximation in many cases." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). Because valuation is an approximation, "it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) (citing *Hertz v. Hertz*, 304 Minn. 144, 145, 299 N.W.2d 42, 44 (1975)). This court also defers to the district court for credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (holding that appellate courts "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder").

Appellant contends that the district court erred in determining the values of the nonmarital homestead (inherited by appellant), a home-equity line of credit (HELOC), credit-card debt, personal property, appellant's PERA pension plan, and real property in Sartell. Essentially, appellant argues that the district court's findings are inconsistent with appellant's testimony and evidence that he presented at trial. Supporting its valuation determinations, the district court found appellant's testimony and contested valuations less credible than respondent's. Absent a transcript, the district court's factual findings are outside the scope of our review.

Appellant also contends that in apportioning responsibility for repayment of the HELOC, the district court did not consider the relevant statutory factors prerequisite to findings to prevent undue hardship. If either spouse's resources or property are so

inadequate as to cause an unfair hardship, the district court may apportion marital property to prevent the unfair hardship based on “all relevant circumstances.” Minn. Stat. § 518.58, subd. 2 (2010). But “[i]f the court apportions property other than marital property, it shall make findings in support of the apportionment,” based on factors including the parties’ age, occupation, amount and sources of income, employability, and opportunity for future acquisition of capital assets and income. *Id.* Whether the district court correctly applied the statute is a question of law, which we review de novo. *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008). If the district court failed to make the necessary findings provided by the statute, then this court will remand the case. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding maintenance question because findings were inadequate).

While the property encumbered by the HELOC was the parties’ home that was awarded to appellant as his nonmarital property, the district court ruled that the HELOC debt was marital. This determination is consistent with the fact that the HELOC proceeds were used to assist respondent’s brother with a down payment on his home, and to pay marital credit-card debt, joint taxes, child-care and schooling expenses, and family living expenses. Another portion of the HELOC proceeds went to satisfy a judgment against appellant and in favor of his previous wife. Because the HELOC debt is marital, the district court is permitted to apportion it without making the findings necessary when apportioning nonmarital property under Minn. Stat. § 518.58, subd. 2.

In apportioning only \$15,000 of the \$92,000 HELOC debt to respondent, the district court reasoned that, in the end, appellant will hold title to a house while

respondent will not. The district court also observed that after a ten-year marriage, respondent will have only \$4,000 in assets while appellant will have significantly more. Finally, the district court explained that even though respondent is better educated than appellant, she will be the custodial parent to the children. The district court concluded that it would not be fair or equitable to make respondent responsible for half of the HELOC debt because it would impair her ability to secure a residence for herself and the children. On the limited record available to us, appellant has not shown that the district court abused its discretion by ruling him responsible for the greater share of the marital HELOC debt. *See Kreidler v. Kreidler*, 348 N.W.2d 780, 783 (Minn. App. 1984) (affirming an award of most of the marital property to one party and apportionment of most of the marital debt to the other because the latter had the greater earning power).

Finally, appellant contends that because he is eligible to receive unemployment benefits after an evidentiary hearing cleared him of his employer's accusation of misconduct, the district court erred in finding him voluntarily unemployed. Whether a parent is voluntarily unemployed is a question of fact when imputing income for child-support purposes. *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). Because voluntary unemployment is a question of fact and we are without a transcript, whether the district court erred in finding appellant voluntarily unemployed is outside the scope of our review.

Appellant is also voluntarily unemployed as a matter of law under Minn. Stat. § 518A.32 (2010). There is a rebuttable presumption that a parent can be gainfully employed full-time, 40 hours per week. Minn. Stat. § 518A.32, subd. 1. The district

court did not find that appellant rebutted this presumption and that appellant works less than 40 hours per week. A parent is not considered voluntarily unemployed or underemployed when less than full-time employment is temporary and will ultimately lead to an increase in income, there is a bona fide career change, or the parent is mentally or physically incapacitated. *Id.*, subd. 3. The district court did not find that any of these exceptions apply here. If a parent receives unemployment benefits, there are specified procedures to impute income. *Id.*, subd. 2(2). Here, an unemployment judge found that appellant is eligible to receive unemployment benefits. The statute explicitly provides that appellant's income can be imputed by following the specified procedures. Because appellant is voluntarily unemployed or underemployed by the plain language of the statute, the district court was within its authority to impute income to appellant as a matter of law.

II.

Appellant claims that the district court was biased against him regarding the homestead valuation, division of personal property, and apportionment of the HELOC debt based on respondent's undue hardship. Whether a judge has violated the Code of Judicial Conduct is a question of law, which we review de novo. *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005). "A judge shall perform the duties of judicial office . . . without bias or prejudice." Minn. Code Jud. Conduct Rule 2.3(A). A judge is prohibited through acts or words from manifesting bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. *Id.* at 2.3(B). In asserting this claim,

appellant conflates unfavorable findings with bias. An unfavorable finding against a party does not equate to bias. *State v. Kramer*, 441 N.W.2d 502, 505 (Minn. App. 1998), *review denied* (Minn. Aug. 9, 1989). Having carefully reviewed the appellate record, we see no support for the claim of bias on the part of the district court against appellant.

Affirmed.