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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0320**

In re the Marriage of:
Lian Yang McGaughey, petitioner,
Respondent,

vs.

William Howard Taft McGaughey,
Appellant.

**Filed January 13, 2014
Affirmed in part, reversed in part
Ross, Judge**

Hennepin County District Court
File No. 27-FA-11-2008

Caryn D. Ye, Roseville, Minnesota (for respondent)

William H. T. McGaughey, Jr., Minneapolis, Minnesota (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Crippen,
Judge. *

UNPUBLISHED OPINION

ROSS, Judge

William McGaughey contests the district court's division of marital property,
award of spousal maintenance, and invasion of his nonmarital property from the

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

dissolution of his marriage to Lian McGaughey. Because the district court acted within its discretion when it divided the marital property and awarded spousal maintenance, we affirm in part. But because the district court acted beyond its discretion when it attempted to mitigate the hardship of one party, whose means do not cover her own expenses, by invading the marital property of the other party, whose means do not cover his own expenses, we reverse in part.

FACTS

The parties provided evidence of the following facts at their dissolution trial. William McGaughey and Lian McGaughey were married on January 28, 2000, in China when William was 58 years old and Lian was 43. Lian, a Chinese citizen, moved to the United States with her then-teenage daughter in 2001. She worked three years and resigned her employment in 2006 when she injured her hip. She never returned to work and considers herself a homemaker. She has a \$5,000 401(k) account. She receives about \$300 a month from a Chinese retirement fund. Lian also continues to own an apartment in Beijing, valued at around \$200,000, having sold one other Chinese property during the marriage.

William had an “accounting[-]related job.” Before the marriage he bought rental property to prepare for his retirement. He purchased two properties on Glenwood Avenue in north Minneapolis—a fourplex at 1702 Glenwood, valued at \$160,000, and a nine-plex at 1708 Glenwood, valued at \$280,000. William also owns a nonmarital cabin in Wisconsin, valued at \$20,000, and a nonmarital house in Pennsylvania, valued at

\$280,000. When he first married Lian, William relied on rental income, two retirement accounts, and stock dividends and distributions to cover his expenses.

Once married, the couple purchased properties at 1715 Glenwood and 1719 Glenwood, together worth \$110,000. They fell into debt. William entered the marriage having only about \$5,000 in debt, and Lian had none. In 2003, they borrowed \$100,000 by mortgaging William's fourplex. William consolidated a number of debts into a loan secured by a mortgage on the 1715 Glenwood property. A \$173,000 debt remained on that mortgage. They refinanced the fourplex in 2010, and an \$84,000 debt remains. The couple also had significant unsecured debt. Their credit lines at several banks and credit card debt totaled approximately \$70,000.

William incurred additional debt through interactions with his former wife. He allowed her to live nearly rent-free in one of his properties. And he never required her to repay so-called "loans" he gave her. William admitted to "dissipat[ing]" about \$86,000 in marital assets through these arrangements.

Lian has diabetes. She was also diagnosed with cancer in 2009 and sought medical treatment in China because she had no health insurance. When Lian returned from China in October 2010, she sold one property that she owned in Beijing and gave the proceeds to her daughter to purchase a townhouse in Virginia.

Lian petitioned for divorce in March 2011. Before the trial in May 2012, Lian and William entered into a partial settlement agreement, stipulating to values on some property and to partial division of their property.

At trial, Lian sought spousal maintenance, argued that she had obtained a marital interest in William's premarital rental properties, and sought attorney's fees. William sought an equal division of the marital debt and wanted a lien on Lian's daughter's townhouse because he claimed that it was purchased with proceeds from marital property. The district court found that Lian had no marital interest in William's premarital properties. It allocated the ownership and debt of the marital properties at 1715 and 1719 Glenwood (which were encumbered by debt exceeding their value) and a substantial amount of the other marital debt to William, awarded Lian permanent spousal maintenance of \$500 a month, and invaded William's nonmarital property to award Lian \$50,000.

The district court made minor changes after William moved it to amend the order. It left William solely responsible for the debt on both mortgages (totaling roughly \$255,000) and about \$65,000 in other debt. It assigned Lian only \$8,000 of debt. William appeals.

D E C I S I O N

William McGaughey challenges the district court's decisions to encumber him with a greater amount of debt than Lian, to grant Lian permanent spousal maintenance, and to invade his nonmarital property to award Lian \$50,000. He also contends that the district court erred by not finding that Lian's sale of her Beijing property constituted a transfer in anticipation of dissolution and by not granting him an interest in that property.

I

William contends that the district court abused its discretion by dividing the marital property unequally. District court discretion to divide marital property is broad. We will uphold a district court's marital property division, even if we disagree with that division, so long as the division has a "basis in fact and principle." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court should consider all relevant factors, such as the length of the marriage and the age, health, station, occupation, sources of income, skills, employability, and needs of the parties, to come to a "just and equitable division of the marital property." Minn. Stat. § 518.58, subd. 1 (2012). It should also consider "the contribution of each [spouse] in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property." *Id.* Marital assets and debts are treated the same for purposes of marital property division. *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. 1984). William argues that the district court abused its discretion in four ways. He asserts it erred by failing to declare the total value of property to be divided, mischaracterizing some property, awarding an asset that no longer existed, and dividing property inequitably.

William's contention that the district court failed to specify the total value of all debts does not persuade us to reverse. The district court's order appears to have tracked all debts and assets. All marital property is referenced. No apparent prejudice resulted from the district court's decision not to calculate a total value of the debt—a value that can be ascertained accurately from the findings. We therefore see no abuse of discretion in the omission.

William argues next that the district court mischaracterized some marital debt as nonmarital debt. The characterization of property is a question of law that we review de novo. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). Any property or debt “acquired by the parties . . . at any time during the existence of the marriage relation” is presumed to be marital. Minn. Stat. § 518.003, subd. 3b (2012). This presumption can be overcome by other evidence, such as proof that it was acquired before the marriage, after the marriage as a gift or devise to only one spouse, or in exchange for such premarital or gifted property. *Id.*, subd. 3b(a)–(c); *Kerr v. Kerr*, 770 N.W.2d 567, 569 (Minn. App. 2009). William asserts that the district court improperly characterized the \$173,000 mortgage on the 1715 Glenwood property and the \$84,000 mortgage on the fourplex as nonmarital. Although the district court seems to imply that these two mortgages secure nonmarital debt, it does accurately list both as marital debts. The findings of fact also seem to put the onus on William to explain what part of the consolidated \$173,000 debt on the 1715 Glenwood property is nonmarital. Such a requirement would be contrary to statutory law and caselaw because Lian had the burden to demonstrate that the presumptively marital debt was nonmarital. See *Maher v. Maher*, 93 N.W.2d 190, 194 (Minn. App. 1986). But the record reveals that the district court properly characterized this debt as marital. Its original order found that the “marital debt[] includ[es] the \$173,000 mortgage.” This clarifies the district court’s characterization.

William similarly challenges the district court’s statement that the “award” of the nonmarital fourplex represents a “net gain” to him of roughly \$80,000. William correctly asserts that he is entitled to this nonmarital real property, so including the marital debt

attached to that property does not accurately support a calculation of a “net gain.” The misstatement caused confusion, but it resulted in no apparently errant consequence.

William next argues that the district court erred by purporting to award Qwest/Century Link stock that no longer existed because it had been sold nine years before the divorce. Assuming error occurred, the error as to William is harmless. See Minn. R. Civ. P. 61 (“The court . . . must disregard any error . . . [that] does not affect the substantial rights of the parties.”). The previously conveyed stock was erroneously awarded to Lian, not to William, and Lian did not appeal the errant award or contest any imbalance the error might have caused. William identifies no detriment to him.

William contends that the district court abused its discretion by burdening him with more debt than Lian and by failing to make adequate findings to support that decision. A district court need not apportion marital property equally so long as it apportions the property equitably. *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987). And it must explain its rationale. *Dick v. Dick*, 438 N.W.2d 435, 437 (Minn. App. 1989). The district court must also consider relevant factors. Minn. Stat. § 518.58, subd. 1.

The district court’s initial order assigned William about 98% of the marital debt because it found that he had incurred the mortgages essentially to offset the rent deficiencies in his nonmarital real estate and rolled his own debt into a new “jumbo” loan. It also reasoned that William had the greater ability to pay the debt because of his real estate holdings. The final result burdened William with the two mortgages and credit debt, totaling roughly \$320,000. Adding the equity on the marital property that William

received, this left him with a net debt of about \$210,000. By contrast, Lian was left with debt of only about \$8,000. After William moved the district court to amend its findings, alleging an inequity, the district court further justified the debt-division decision by adding that William had wasted assets by his interactions with his former wife, redirecting marital funds to benefit her and diminish the marital estate.

The order and record indicate that the district court had a basis in fact and principle to divide the property as it did. Because the district court apportioned the majority of the debt to William rather than divide it equally, we calculate that Lian received roughly \$106,000 less debt than she would have. Given the district court's rationale and the record, we will not reverse its decision. A different district court decision-maker could have reasonably reached a different result. But given the district court's plausible explanation and its broad discretion in this equitable decision, we hold that it acted within its discretion.

II

William argues that the district court erred by awarding Lian permanent spousal maintenance. We will reverse a spousal maintenance award only when we find “a clearly erroneous conclusion that is against logic and the facts on the record.” *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Before awarding spousal maintenance, a district court must find that the spouse requesting it lacks sufficient means to provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2012). If the movant proves need, the district court must then consider relevant factors to determine the amount and duration of maintenance. *Id.*, subd. 2. District courts have broad discretion in setting the amount and

duration of spousal maintenance. *Reinke v. Reinke*, 464 N.W.2d 513, 514 (Minn. App. 1990). Considering many of the factors listed in the statute, the district court found need and awarded Lian \$500 a month in permanent maintenance.

William contends that the district court clearly erred by finding that Lian has grim future employment prospects and abused its discretion by awarding maintenance even though Lian has a \$200,000 property in China. Regarding future employment prospects, William questions the findings that Lian does not speak English well, that her medical conditions impede her employability, and that she may be “near destitute” without spousal maintenance.

The challenged findings have sufficient support in the record. We do not disturb factual findings that are supported by the record. *Antone*, 645 N.W.2d at 100. The district court found that Lian receives only \$300 monthly from a retirement fund, contrasted with reasonable monthly expenses of \$1,000. It found that Lian has a poor grasp of English because she relied on an interpreter during court proceedings. Lian introduced evidence through multiple witnesses of her current medical problems and significant anticipated cost of treatment. William failed to rebut Lian’s evidentially supported claims of need.

The district court considered the evidence that Lian owns a \$200,000 property in China. Despite this evidence, the district court was convinced that Lian lacks sufficient property to provide for her reasonable needs. Given Lian’s bleak employment prospects and poor health, we cannot say that the district court’s rationale or findings reflect error.

William’s most persuasive argument concerning maintenance faults the district court for ordering maintenance despite recognizing that William is retired, had

insufficient income to meet his own expenses, particularly while providing for Lian, and has his own bleak economic prospects. In the typical case, we would be inclined to reverse in this circumstance. When setting the amount of maintenance, the district court should consider the obligor's ability to pay while still meeting his needs. Minn. Stat. § 518.552, subd. 2(g). But the district court emphasized that William diverted significant income during the marriage solely to benefit his nonmarital interests, such as maintaining his nonmarital Pennsylvania property in which the district court assigned no interest to Lian. And by comparison, Lian had a roughly \$700 shortfall each month (about \$300 in means for \$1,000 in expenses) while William had only a \$70 shortfall (about \$2,000 in means for \$2,070 in expenses). The district court then exercised its discretion to more evenly distribute the hardship. We have previously authorized this approach. *See Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) (affirming a modified award even when the obligor could not meet his reasonable expenses, including maintenance, with his income); *Justis v. Justis*, 384 N.W.2d 885, 891–92 (Minn. App. 1986) (affirming a spousal maintenance award when appellant had insufficient income to provide for himself, his children, and his former spouse), *review denied* (Minn. May 29, 1986). By awarding Lian \$500 in monthly maintenance, the district court brought Lian to \$800 a month, or 80% of her reasonable monthly expenses, and it left William with \$1,500, or about 73% of his monthly expenses. Although William's expenses exceed his income more than Lian's expenses exceed her income, the district court implicitly recognized that William's expenses are essentially unreasonable because they derive in part from his reallocation of marital assets to fund his nonmarital property. William offers reasonable

grounds that might have convinced a different district court to conclude differently. But the district court's finding of Lian's need for maintenance is well-supported by evidence, and the district court has significant discretion in determining the maintenance amount in light of the marital standard of living. Applying our standard of review, we cannot say that the district court abused its discretion.

III

William challenges the district court's decision to invade his nonmarital assets. The district court may invade a spouse's nonmarital assets if the marital assets are so minimal that the other spouse will suffer an undue hardship without an additional award. Minn. Stat. § 518.58, subd. 2. The district court possesses some discretion to award nonmarital assets, but the discretion is narrower than in the property division context. *Stageberg v. Stageberg*, 695 N.W.2d 609, 618 (Minn. App. 2005), *review denied* (Minn. June 19, 2005). Awards of nonmarital property should occur only in an "unusual case." *Ward v. Ward*, 453 N.W.2d 729, 733 (Minn. App. 1990), *review denied* (Minn. June 6, 1990). An undue hardship exists when there is a "very severe disparity" in assets and future earning potential between the parties. *Id.* at 733. The record must support the finding of an undue hardship, and the failure to make findings on the record constitutes an abuse of discretion. *Id.*

William argues that the district court failed to find an "undue hardship" and failed to base its findings on evidence. The district court expressly declared that it could award nonmarital property to avoid an undue hardship. It then awarded nonmarital property after it considered all of the factors listed in section 518.58, subdivision 2. William's

argument that the district court failed to mention “undue hardship” or base its findings on evidence therefore fails.

William also asserts that the court abused its discretion by not considering his hardship after the divorce and by improperly considering his role in losing assets during the marriage. The assertion that the district court did not consider William’s hardship has little merit. The district court discussed in detail William’s circumstances—his age, his earning power, his portfolio, and his other property. The district court properly considered the statutory factors.

We are persuaded, however, by William’s charge that the district court overemphasized his depreciation of marital assets when it invaded his nonmarital property. William argued to the district court in his postdecision motion that the district court had misconstrued and misapplied the concept of “dissipation” of assets and used it improperly as a basis to invade his nonmarital property. The district court seems to have recognized that William’s argument is correct.

The district court originally awarded Lian \$50,000 of William’s nonmarital property primarily because William’s arrangement with his former wife reduced the value of marital property. It invoked the statutory provisions requiring it to compensate Lian for what it referred to as William’s “dissipation” of the marital estate. *See* Minn. Stat § 518.58, subd. 1a (addressing compensation of one spouse for the other’s transferring, encumbering, concealing, or disposing of marital assets). But the relevant part of the statute governing what the district court referred to as William’s “dissipation” requires, among other things, that the district court find that the conduct occurred “in

contemplation of commencing, or during the pendency of, the current dissolution.” *Id.* The district court made no finding that William’s arrangement with his former wife occurred in that fashion, and the record does not suggest that it did.

The district court’s amended order candidly retreats from its original position that “dissipation” supports the invasion of marital property. As noted in the previous section, the district court’s amended order redirects its concern over the misnamed “dissipation” rationale (William’s mid-marriage redirection of marital assets to benefit his former wife and incidentally diminish the value of the marital estate) to respond to William’s postdecision challenge to the assignment of almost all marital debt to William. William’s redirection of assets to his former wife appears to have cost the marital estate approximately \$86,000, which does in part justify the assignment of the marital debt mostly to William. But because the full \$86,000 of “dissipation” is remedied by awarding William a heavily disproportionate share of the marital debt, and because Lian is otherwise awarded spousal maintenance to cover most of her reasonable needs, there remains no justification for the district court’s decision to invade William’s nonmarital property to remedy Lian’s hardship.

We need not address William’s challenge to the finding that Lian suffers a hardship despite spousal maintenance because, even if she does, the district court abused its discretion by attempting to lessen that hardship by invading the nonmarital property of William, who was left with an even greater monthly budget deficit than Lian. The statutory factors do not justify the district court’s invasion of William’s nonmarital

property to order him to relinquish 10% of its value to Lian. We therefore reverse the district court's decision on this issue.

IV

William next asserts that the district court erred by not making a finding as to whether Lian's sale of her Beijing apartment constituted a transfer of property in anticipation of divorce. Unless property is a "marital asset," it is not subject to Minnesota Statutes section 518.58, subdivision 1a. Lian's small apartment was not marital property. It was acquired before the marriage, and the evidence does not support a finding that the sale proceeds became marital property. *See* Minn. Stat. § 518.003, subd. 3b. William has no claim to the proceeds. Any error committed by the district court on this point is therefore harmless.

Affirmed in part, reversed in part.