STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0921

In re the Marriage of:
JoAnn Kay Barton, petitioner,
Respondent,

vs.

Brian Philip Barton,
Appellant.

Filed March 10, 2014
Affirmed
Hudson, Judge

Kandiyohi County District Court
File No. 34-FA-12-245

Ann M. Gustafson, Willmar, Minnesota (for respondent)

Brian M. Olsen, Cokato, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

HUDSON, Judge

In this appeal from the dissolution of a marriage, appellant-husband argues that the district court abused its discretion in its division of the parties' nonmarital and marital

assets and by reserving the issue of spousal maintenance rather than awarding him a lump-sum payment. We affirm.

FACTS

Respondent JoAnn Kay Barton petitioned for dissolution of her 17-year marriage to appellant Brian Philip Barton. At the time, respondent was employed as a registered nurse; appellant, who had previous sporadic employment as a farm laborer, was unemployed due to injuries sustained during a farm accident and was receiving social security and workers' compensation payments. Respondent was awarded full legal and physical custody of the parties' two children pursuant to a stipulated agreement.

Prior to and during the marriage, respondent wife inherited several sums of money from various relatives. Nearly all of the money respondent inherited was placed in a money-market account (MMA) and was not co-mingled with marital assets. A large portion of respondent's inheritance money was used to purchase the parties' homestead. When dividing assets, the district court applied the *Schmitz* formula and determined that respondent's nonmarital interest in the homestead exceeded the net equity in the home. Accordingly, respondent was awarded the homestead in full. The value of the marital property was split equally between the parties. This appeal follows.

D E C I S I O N

I

Appellant argues that the district court erred by awarding respondent 100% of the homestead as nonmarital property because it incorrectly applied the *Schmitz* formula, and alternatively because respondent's nonmarital interest was extinguished because the

home is held in joint tenancy. Appellant also argues that, even if the homestead is 100% nonmarital, the district court abused its discretion by not applying Minn. Stat. § 518.58, subd. 2 (2012), to find he had an undue hardship and to award him a portion of respondent's nonmarital assets. Finally, appellant argues that the district court abused its discretion in its division of marital assets.

The district court has broad discretion to divide property in a marital dissolution and its decisions will not be overturned absent an abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). The district court's division of property will be affirmed if it has "an acceptable basis in fact and principle," even if the appellate court might have taken a different approach. *Id*. The district court's findings of fact are reviewed for clear error. *Id*. The classification of property as marital or nonmarital is a question of law reviewed de novo. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Nonmarital property includes property "acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse." Minn. Stat. § 518.003, subd. 3b(a) (2012).

***Schmitz* Formula Calculations**

Appellant does not dispute that the money respondent contributed to the homestead was nonmarital but, rather, argues that the district court erred in its application of the *Schmitz* formula. "The *Schmitz* formula may be used to determine marital and nonmarital interests in property acquired during the marriage with a nonmarital downpayment." *Kerr v. Kerr*, 770 N.W.2d 567, 570 (Minn. App. 2009) (quotation omitted) (citing *Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981)). Pursuant to the

formula, the current value of a party's nonmarital interest in a homestead acquired during marriage "is calculated by dividing the party's equity in the property at the time of purchase by the value of the property at the time of purchase and then multiplying by the value of the property at the time of dissolution; the remainder of the equity increase is marital property." *Id*. The district court properly defined the *Schmitz* formula and went on to conclude that respondent's nonmarital interest exceeded the equity in the homestead that would remain after its sale.

Appellant argues that because respondent only paid around 50% of the purchase price of the home with nonmarital inheritance funds, it was error for the district court to award her 100% of the equity. But appellant did not take into consideration the refinancing of the home, in which respondent paid additional nonmarital money toward the mortgage. Respondent initially paid approximately $88,000 of nonmarital funds toward the mortgage and costs and fees associated with the purchase of the homestead for $183,000. When the homestead was refinanced two years later, appellant paid approximately $36,000 more toward the mortgage and additional costs and fees. Thus, the district court did not err in concluding that respondent's nonmarital interest in the homestead exceeded 50%.

Appellant also claims that a $16,000 increase in the value of the homestead from the time of purchase to the time of dissolution should have been classified as marital property. The district court found that the increase could not be traced to improvements paid for with nonmarital funds, but never specifically concluded that the increase was due solely to market appreciation or if improvements made with marital funds may have

played a role. If marital funds were used to make improvements that contributed to the value of the homestead, the cost of improvements should have been subtracted from the $199,000 sale price "to determine the increase in value of the property due solely to appreciation." *Dorweiler v. Dorweiler*, 413 N.W.2d 572, 576 (Minn. App. 1987). But we see no evidence in the record that marital funds were used to make improvements to the property. Further, the *Schmitz* formula "need not be strictly applied." *Kerr*, 770 N.W.2d at 570 (quotation omitted). Rather, it is sufficient if the district court arrives at a figure close to that which it would have reached had the *Schmitz* formula been correctly applied. *Id*. Accordingly, there is no reversible error in the district court's conclusion that the homestead equity was 100% nonmarital.

The Effect of Joint Tenancy

Appellant next argues that the homestead could not be 100% nonmarital property because it was held in joint tenancy. The district court did not directly address the issue in its order; therefore, we assume it rejected appellant's argument. *See Palladium Holdings, LLC, v. Zuni Mort. Loan Trust*, 775 N.W.2d 168, 177–78 (Minn. App. 2009) (stating that "[a]ppellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion"), *review denied* (Minn. Jan. 27, 2010). The mortgage on the homestead was solely in respondent's name, but the parties owned the property as joint tenants.

To support his claim, appellant cites *McCulloch v. McCulloch*, 435 N.W.2d 564, 568 (Minn. App. 1989), in which this court held that the district court erred in using the *Schmitz* formula to award a husband a nonmarital interest in a homestead that was owned

in joint tenancy with his wife. There, this court concluded that the husband's nonmarital interest had been extinguished because his testimony showed that the joint tenancy was created with the intent to gift the wife equal ownership in the homestead. *Id.* But importantly, *McCulloch* also concluded that "merely transferring title from individual ownership to joint tenancy does not transform nonmarital property into marital property"; rather, it was the husband's donative intent that changed the nature of the ownership interests. *Id*. (quotation omitted).

Here, respondent testified that at the closing of the homestead purchase she put appellant's name on the deed on the advice of either a closing agent or realtor because she didn't think it was an option not to do so, "just—we were married. That's what they do." She further testified that she never intended "that the home that was basically purchased with inheritance monies would end up being an asset ordered to [appellant]." In addition, respondent did not show donative intent by transferring inheritance funds from her MMA to the marital checking account before making payments on the homestead because she could not write checks directly from the MMA, and the record shows that this kind of transfer was made every time respondent used MMA funds. *See Risk ex. rel. Miller v. Stark*, 787 N.W.2d 690, 696 (Minn. App. 2010) (stating that "[s]imply routing [nonmarital] funds through a joint account does not transform non-marital property into marital property") (quotation omitted), *review denied* (Minn. Nov. 16, 2010). Because appellant has not shown that respondent had the requisite donative intent to extinguish her nonmarital interest in the homestead, this case is distinguishable from *McCulloch*.

Application of Minn. Stat. § 518.58, Subd. 2

Appellant argues that even if the district court correctly concluded the homestead was 100% nonmarital property, the district court erred by not considering his circumstances to be an undue hardship and awarding him a portion of the nonmarital interest in the home.

The district court may award up to one-half of a spouse's nonmarital property to the other spouse if the other spouse's "resources or property. . . are so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2. A finding of unfair hardship should be based on "all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for further acquisition of capital assets and income of each party." *Id.* There must be a "very severe disparity between the parties . . . to sustain a finding of unfair hardship" such that apportionment of nonmarital property is necessary. *Reynolds v. Reynolds*, 498 N.W.2d 266, 271 (Minn. App. 1993).

Appellant cites *Reynolds* to support his claim that the district court abused its discretion by not finding that his circumstances constituted an undue hardship. There, this court held that the district court did not abuse its discretion by finding an undue hardship where one party's potential to earn future income was "significantly brighter" than the other's. *Id.* at 271–72. Appellant also cites *Van de Loo v. Van de Loo*, 346 N.W.2d 173, 177–78 (Minn. App. 1984), in which this court held it "would indeed be an

unfair hardship not to apportion any nonmarital property" where one of the only major assets of a marriage was a nonmarital homestead, and one party's earning potential was half that of the other party. But Minn. Stat. § 518.58, subd. 2, does not mandate that the district court evaluate whether any party would suffer an undue hardship. Here, although the district court did find that appellant's mental and physical condition and disability status make it unlikely that he will obtain further education or employment in the future, the district court also found that, based on their post-dissolution incomes, neither party was able to meet their monthly expenses or maintain the standard of living enjoyed during the marriage. Accordingly, we conclude that the district court did not abuse its discretion by failing to award a portion of respondent's nonmarital property to appellant. *See Reynolds*, 498 N.W.2d at 271.

Division of Marital Assets

Appellant argues that, in dividing the marital assets, the district court ignored the mandate of Minn. Stat. § 518.58, subd. 1 (2012), which provides that the district court "shall . . . conclusively [presume] that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife." Specifically, appellant argues that he should have received a larger portion of respondent's retirement accounts.

The Minnesota Supreme Court has previously held that "equal division of the wealth accumulated through the joint efforts of the parties is appropriate on dissolution of a long term marriage." *Miller v. Miller*, 352 N.W.2d 738, 742 (Minn. 1984). Although appellant did not receive 50% of respondent's retirement accounts, the marital assets

were divided about equally overall, with each party receiving $29,440 in marital assets. This included apportioning all of the parties' debt to respondent because the district court acknowledged that appellant "is on a fixed SSI disability income." There is nothing in the record that indicates the district court did not presume that each spouse made substantial contributions to income and property during the marriage; thus, we conclude that the district court did not abuse its discretion by dividing the marital assets equally.

II

Appellant argues that the district court abused its discretion in reserving the issue of spousal maintenance. Particularly, appellant argues that the district court should have taken into consideration respondent's nonmarital and marital assets and awarded him a one-time lump-sum payment in lieu of monthly maintenance.

This court reviews a district court's factual findings regarding maintenance for clear error; determination of the proper amount and determination of an award of spousal maintenance are reviewed for an abuse of discretion. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). A spousal maintenance award "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." Minn. Stat. § 518.552, subd. 2 (2012). Relevant factors include (1) the financial resources and ability to independently meet needs of the party seeking maintenance; (2) the duration of the marriage and for homemakers, the length of absence from employment; (3) the ability of the spouse from whom maintenance is sought to meet their own needs while paying maintenance; and (4) the contribution of each party in the acquisition and preservation of

marital property and the contribution of a spouse as a homemaker or in furtherance of the other spouse's employment. *Id*. The district court essentially "balances the recipient's needs against the obligor's ability to pay." *Maiers*, 775 N.W.2d at 668.

Here, the district court concluded that respondent should be providing spousal maintenance to appellant, but because she has sole custody of the parties' two minor children, with no child support from appellant, she is unable to provide spousal maintenance at this time. Thus, the district court reserved the issue of maintenance until "the emancipation of a child of the parties." Appellant claims that the district court's order reserved the issue of spousal maintenance until the parties' youngest child reaches age 18, but a close reading of the order indicates that it only reserves maintenance until the oldest child, who is currently 17, reaches age 18 or graduates from high school. The order specifically states that maintenance is reserved until emancipation of "a" child of the parties, and the district court's memorandum further explains that maintenance is "subject to reconsideration after each child graduates from high school or turns 18." Therefore, the district court's order allows appellant to move to establish spousal maintenance after each child graduates from high school or turns 18. The district court properly considered the statutory factors in reaching its conclusion to reserve spousal maintenance, and its finding that respondent is unable to meet her monthly obligations on her current income while caring for the two children is supported by the evidence of her expenses. Thus, the district court did not abuse its discretion in reserving the issue of spousal maintenance.

Affirmed.