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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2075**

In re the Marriage of:
Bret Raymond Collier, petitioner,
Appellant,

vs.

Debra Jeanne Collier,
Respondent.

**Filed January 8, 2008
Affirmed as modified
Huspeni, Judge***

Sherburne County District Court
File No. F7-05-376

Susan Anne Daudelin, Katz, Manka, Teplinsky, Due & Sobol, Ltd., 225 South Sixth Street, Suite 4150, Minneapolis, MN 55402 (for appellant)

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Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Huspeni Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

In this marital dissolution action, appellant Bret Raymond Collier challenges the district court's division of marital property and award of attorney fees to respondent Carole Jean Nordahl, f/k/a Debra Jean Collier. Because the record supports the district court's decision, we conclude that the court did not abuse its discretion, but to correct a mathematical error, we modify the district court's order placing a lien against the homestead. Therefore, we affirm as modified.

FACTS

The parties were married on June 2, 2001, and have no children, although respondent has children from previous marriages. Both parties owned their own homes before the marriage, and both parties continued to live in those homes while appellant built the parties' homestead in Big Lake. Appellant had purchased the lot on which the homestead was later built for \$48,544 in March 2001, before the parties married. Appellant had also purchased tools and supplies intended for use in the construction of the homestead before the marriage; these premarital acquisitions totaled \$2,067.82. During the marriage, appellant acted as general contractor for the construction and also did a significant amount of the construction work himself. The parties moved into the almost-completed house on January 23, 2003.

Respondent sold her house in October 2002 and received net proceeds of \$28,340. Of this amount, approximately \$5,000 went to the buyer for closing costs and a carpet

allowance; \$9,871 was paid to appellant, who charged respondent for expenses he had incurred on her behalf; \$7,500 was used to retire premarital debt; and the remaining amount, almost \$6,000, was used for family expenses after the marriage.

Appellant sold his home on May 23, 2003, and received net proceeds of \$133,881. On July 23, 2001, appellant borrowed \$18,000 from the cash value of an insurance policy he owned before the marriage. On November 27, 2001, appellant cashed in a mutual fund he owned before the marriage, and received \$10,000. Appellant claims that all or most of this money was used for construction of the homestead in Big Lake.

During the marriage, respondent worked as a medical laboratory technician. Her total earnings from the date of the marriage until the parties separated were \$130,495. Appellant is a nuclear engineer. He worked only four months during the marriage, devoting himself instead to the homestead construction. Based on the four months when he did work, appellant earned between \$45 and \$74 per hour; the court found his earning capacity to be \$116,000 per year. Neither party made a claim for maintenance.

Appellant kept meticulous records of the parties' expenses and charged respondent for her share. Because some of respondent's children lived with them, appellant charged respondent for 60% of all expenses and he contributed 40%. The court found that

[appellant's] intent [in maintaining these records] was an attempt to insure that the money he brought into the marriage only went to the construction of the home, with none being used for living expenses. [Appellant] intended that monies earned throughout the marriage by the Respondent exclusively went to living expenses.

Appellant admitted on cross-examination that some of the money from the sale of his house and liquidation of premarital assets may have been used for living expenses and to retire debt. Also, despite appellant's extensive financial records, the parties commingled all the money from all sources in one account.

The court found that the Big Lake homestead had an appraised value of \$435,000 as of June 23, 2005, the appraisal date closest to the valuation date. The court deducted \$151,345 for a first mortgage, and \$127,140 for a home equity line of credit. The court took these values from appellant's prehearing statement, which recorded the outstanding balance as of May 17, 2005, the date closest to the valuation date. The court determined the gross equity to be \$156,515.

The court found, based on appellant's testimony and exhibits, that he had brought \$183,236.15 of nonmarital funds to the marriage. Of this amount, appellant admitted that \$117,704.83 was used for living expenses, and the court found that \$33,970.54 had been used to retire a debt on an MBNA credit card account. Appellant also testified that a further \$9,809.27 was used for other marital expenses. The court calculated that, after deducting these expenses from the nonmarital funds, appellant used \$21,751.51 of nonmarital assets in construction of the homestead.

The court concluded that appellant should be credited with a nonmarital interest in the lot, which had increased in value from \$48,544 to \$90,000; \$2,067.82 for materials purchased before the marriage, and \$21,751.51 of nonmarital funds contributed toward construction. This total, \$113,819.33, was deducted from the gross equity of \$156,515, resulting in marital equity of \$42,695.67, which was to be divided equally between the

parties. The court also found that appellant received \$13,554.34 in marital personal property and that respondent received \$5,944.95, of which \$1,233 was a retirement account and \$800 was her share in a boat. In order to equalize the marital property, the court added the equity in the Big Lake homestead to appellant's share of the personal property for a total of \$56,250.01. From this, the court subtracted respondent's share of marital property and divided this amount in half, calculating that respondent should receive \$25,152.53 as an equalization payment. Appellant owed respondent \$3,076 for her share of the state and federal tax refunds but had made a total of \$4,792 in payments on a 1997 Mercury Sable that respondent received. Offsetting these two amounts, the court determined that respondent owed appellant an additional \$1,716, to be deducted from her equalization payment.

The court then totaled the amount of property each party received. Respondent received \$56,250.01 less the equalization payment to appellant of \$25,152.53, for a total of \$31,097.48; appellant received \$5,944.95 plus the equalization payment of \$25,152.53, less the remaining car debt of \$1,716, for a total of \$29,381.48. The court awarded the Big Lake homestead to appellant, subject to a lien in respondent's favor of \$29,381.48.

Appellant's accounting procedures complicate an understanding of the parties' financial position. He sought to reduce interest charges by repeatedly moving debt from one credit card to another to take advantage of low or no-interest "teaser" rates, and would then move debt to the home equity credit line when the interest rates became less favorable. Appellant also billed respondent for daily living expenses and interest charges

despite the commingling of funds. These actions led to some confusion about some of appellant's claims.

For example, respondent's son received braces during the marriage. Appellant calculated that the treatment would be cheaper if paid for in full to receive the orthodontist's reduction in price. Instead of making monthly payments, the full cost of orthodontia was paid for out of the home equity loan. The court found this to be a marital expenditure because of the use of the home equity loan, terming it an encumbrance against the Big Lake house that reduced the equity available for division. The court refused to reimburse appellant for this expense. Appellant calculates that the amount financed for the braces on the home equity loan was \$2,393.46.

Appellant claims that the district court erred by finding that the \$33,970.54 payment to MBNA for credit card debt should be deducted from his nonmarital assets. He claims that this debt was incurred for construction materials and should increase, rather than decrease, his nonmarital interest in the Big Lake homestead. Because appellant habitually transferred debt between credit cards and the home equity loan, the court concluded that the credit card debt was not specifically for house construction or that the origin of the debt was uncertain.

Appellant also argues that the district court used the wrong valuation dates. According to an appraisal done January 18, 2005, the homestead was worth \$430,000 and the lot was worth \$90,000. A second appraisal was done in June 2005, shortly before the first prehearing date of July 8, 2005. On that date, the house was valued at \$435,000 and the lot was worth \$80,000. The court valued the house at \$435,000 and the lot at

\$90,000. The court also used the mortgage and equity loan balances of May 17, 2005, respectively \$151,050 and \$127,140. Appellant objects because the equity loan balance was far higher on the date of separation in January 2005, because he transferred \$19,258 to a low interest credit card after that date, as was his habit. Appellant argues that this artificially raised the marital equity in the homestead.

Appellant also asserts that he was forced to pay some of respondent's attorney fees, because he transferred \$2,500 from the home equity line to give respondent to use as a retainer for her attorney. Appellant argues that because he is responsible for the equity loan, he has, in effect, paid for her attorney fees. Appellant was also ordered to pay an additional \$2,000 of respondent's attorney fees and states that there is no basis in the record to support an award of \$4,500. Beyond this, appellant challenges the award of any amount of attorney fees as unmeritorious.

By notice of review, respondent challenges the district court's conclusion that appellant had a nonmarital interest in the Big Lake house of \$21,751.51, arguing that the district court erred by finding that marital and nonmarital funds had been commingled, but nevertheless establishing appellant's nonmarital interest.

D E C I S I O N

1. Nonmarital Property Interest

We review the district court's determination of whether property is marital or nonmarital as a question of law, but defer to the district court's findings of fact unless clearly erroneous. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). The party proposing that property is nonmarital has the burden of proving this by a preponderance

of the evidence. *Id.* Findings are clearly erroneous if “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999) (quotation omitted). “If there is reasonable evidence to support the district court’s findings, [the reviewing court] will not disturb them.” *Id.* An appellate court reviews the record in the light most favorable to the district court’s findings. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

“Nonmarital property” includes property acquired by a party before the marriage or acquired in exchange for such property. Minn. Stat. § 518.003, subd. 3b (2006). The increase in value of nonmarital property is nonmarital if “solely attributable to market forces or conditions, such as simple appreciation in value of an asset.” *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 413 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Oct. 25, 2000). Increases in the value of nonmarital property that are due to “entrepreneurial decision-making” efforts of one or both spouses are considered to be marital property. *Id.*

The party seeking to establish the nonmarital nature of property must either maintain the nonmarital property separately or be readily able to trace it even if commingled with marital funds. *Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993). If a party cannot show that nonmarital property was invested in a readily traceable asset, and it appears that marital and nonmarital funds have been commingled to a degree that renders the nonmarital funds untraceable, the district court should declare it to be marital property. *Id.* Although there is no strict dollar-for-dollar tracing requirement, a

party proposing that property is nonmarital must prove it by a preponderance of the evidence. *Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997).

Despite appellant's copious recordkeeping, it is difficult to trace his nonmarital funds because of his penchant for transferring debt from credit card to equity loan, the elaborate billing system he used to charge respondent for expenses, the commingled bank accounts, and his virtual lack of income during the marriage. Here, the district court accepted appellant's representations as to the amount of nonmarital funds and credited to him the increased value of the homestead lot, which he purchased before the marriage, and the construction materials purchased before the marriage. Although appellant argues that the court erred by reducing his nonmarital assets because of a payment to MBNA for credit card debt, he produced no evidence as to the nature of the debt, thus failing to meet his burden of proof.

Because there is a basis for the district court's findings in the record, the findings are not clearly erroneous, and because these findings support the district court's decision, we conclude that the district court did not err in identifying the marital and nonmarital property owned by the parties.

Appellant has raised additional challenges regarding property division. First, he asserts that the court's choice of valuation date was improper. Generally, the date of the initially scheduled prehearing settlement conference is used as the valuation date, unless the parties agree to another date or unless there is a specific finding by the court that another date would be fair and equitable. Minn. Stat. § 518.58, subd. 1 (2006). We review the court's determination of a valuation date for an abuse of discretion. *Grigsby*

v. Grigsby, 648 N.W.2d 716, 720 (Minn. App. 2002). We find no abuse of discretion in the court's choice of a valuation date. Because of appellant's continuous transfer of debt, it is nearly impossible to capture a static picture of appellant's financial affairs.

Second, appellant argues that he has been forced to pay for orthodontia for respondent's child because those payments were made from the home equity loan and appellant has been assigned responsibility for payment of the home equity loan. Appellant correctly argues that a stepparent cannot be ordered to provide support for a stepchild. *See Long v. Creighton*, 670 N.W.2d 621, 628 (Minn. App. 2003). A problem arises, however, in tracing the payment for the orthodontia. The district court has broad discretion in apportioning marital debt; a party may be liable for payment of marital debt even if the other party receives the benefit. *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987). Again, because of the complex financial machinations and his failure to properly trace this debt, appellant has failed to sustain his burden of proving that a portion of the remaining home equity loan balance is attributable to the orthodontia debt. Because the district court determined that the equity loan was marital, it did not abuse its discretion by simply assigning responsibility for the home equity loan to the party receiving the homestead.

Third, appellant argues that the district court made a mathematical error in determining each party's share of marital property. The parties have submitted a stipulation agreeing that the district court did err in calculating the lien payoff owed by appellant to respondent and that the proper lien amount against the homestead in favor of respondent should be \$23,436.53. We note that the district court, in ordering a lien in the

amount of \$29,381.48, included the marital property that respondent received. We therefore order that the lien against the homestead in respondent's favor be modified in accordance with the parties' stipulation to \$23,436.53.

2. Attorney Fees

In a dissolution proceeding, the district court shall award need-based attorney fees if it finds (1) the fees are necessary for a good-faith assertion of a party's rights; (2) the party from whom fees are sought has the means to pay them; and (3) the party to whom fees are awarded does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2006). In addition, the district court may award additional fees against a party who unreasonably contributes to the length or expense of the proceeding. *Id.* A district court's award of either need-based or conduct-based fees is reviewed for an abuse of discretion. *See, e.g., Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). Although the court is directed to make findings,

a lack of specific findings on the statutory factors for a need-based fee award . . . is not fatal to an award where review of the order reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case and had access to the parties' financial records.

Geske v. Marcolina, 624 N.W.2d 813, 817 (Minn. App. 2001).

The district court noted that appellant had unreasonably contributed to the length and complexity of the proceeding:

[Appellant] has consistently taken positions that would equate the marriage relationship to that of a business partnership . . . and based on his own subjective accounting philosophies has sought to "bill" [r]espondent for monies expended during the

marriage on what were clearly marital expenses. He has pursued issues and advanced legal interpretations with little or no merit, but which simply reflect his own subjective thoughts on what the legal princip[les] governing marriage dissolutions should be, rather than Minnesota law or the reality of a marital relationship. Finally, he has delayed this case by his insistence upon submitting voluminous and complicated records to the Court in an attempt to support these positions.

The district court also noted that respondent left the marriage with significant debt and with the responsibility of providing for her children. We see no abuse of discretion in the court's award of attorney fees.

Appellant argues that in reality he was forced to pay an additional \$2,500 for respondent's attorney fees, because he advanced money to respondent for a retainer from the home equity loan and then transferred the balance to a low-interest credit card, for which he is responsible. Attorney fees in a dissolution action are not part of the marital estate and thus are not apportioned as marital debt in a property settlement. But when the "amount paid to an attorney ha[s] long been reduced to a debt on a credit card," the district court may treat the credit card debt as part of the property settlement. *See Bone v. Bone*, 438 N.W.2d 448, 452-53 (Minn. App. 1989). The district court is vested with great discretion in dividing marital debt and we will not disturb that decision absent an abuse of discretion. *See Lynch*, 411 N.W.2d at 266.

Affirmed as modified.