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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1001**

In re the Marriage of:
Jana Kim Goldenman-Haakenson, petitioner,
Respondent,

vs.

Jon Arthur Haakenson,
Appellant.

**Filed July 15, 2008
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge**

Hennepin County District Court
File No. 27 FA 293631

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Considered and decided by Willis, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this appeal from a dissolution judgment, appellant challenges the district court's
property division, valuation of certain financial accounts, conclusion that respondent

retained a nonmarital interest in certain assets, and the award for child-care costs. Because we conclude that the district court properly determined the value of appellant's stock options and the amount of the child-care costs, we affirm in part. But because we conclude that the district court abused its discretion in the property division and clearly erred in the valuation of various other assets and that these errors likely influenced its determination that a portion of these assets are nonmarital in nature, we reverse in part and remand.

FACTS

Appellant Jon Haakenson and respondent Jana Goldenman-Haakenson were married in June 1994. They have two children together, E.H. and N.H., who are presently ages 13 and 11. The parties separated in July 2003, and respondent petitioned to dissolve their marriage in July 2004.

Following a two-day court trial, the district court issued a judgment. Appellant moved to amend more than 20 findings and conclusions contained in the judgment. The district court amended one conclusion of law that is not relevant to this appeal but otherwise denied appellant's motion in its entirety. This appeal follows.

D E C I S I O N

I.

The first of appellant's several claims of error concerns the division of the parties' marital property. In a marriage-dissolution proceeding, all marital property is subject to an equitable, but not necessarily equal, division between the former spouses. Minn. Stat. § 518.58, subd. 1 (2006); *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). A

district court generally has broad discretion in dividing property during a dissolution action and will not be reversed unless it abuses this discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989). “We will affirm the [district] court’s division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach.” *Antone v. Antone*, 645 N.W.2d 96, 100-01 (Minn. 2002). But if the division of property is “against logic and the facts on record . . . this court will find that the [district] court abused its discretion.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Detailed findings regarding the division of property are not necessary, but the findings must demonstrate consideration of the relevant statutory factors, express a rationale for the chosen division of assets, and allow for effective appellate review. *Dick v. Dick*, 438 N.W.2d 435, 437 (Minn. App. 1989); *Vinnes v. Vinnes*, 384 N.W.2d 589, 592 (Minn. App. 1986).

Appellant and respondent were the owners in joint tenancy of a homestead that is located in Golden Valley. The home’s fair market value at the time of the dissolution was \$255,000, and it was encumbered by a \$70,000 mortgage. The district court found that appellant had “a non-marital claim of \$59,000” in the homestead, which respondent does not dispute. Subtracting this nonmarital share and the mortgage leaves a net marital value of \$126,000 in the property. The district court awarded title to the homestead to respondent.

Appellant contends that the district court improperly divided the marital portion of the homestead. His argument focuses on the following table contained in the dissolution judgment that apportions the parties’ marital property:

25. It is appropriate and equitable for [appellant] to pay to [respondent] \$21,592.50:

<u>Description</u>	<u>[Respondent]</u>	<u>[Appellant]</u>
401(k) (Less 50%)	\$28,056	\$78,680
Cash Balance Account		\$23,294
Life Insurance		\$6,800
Stock Options	\$1,519	\$21,893.50
Homestead	\$126,000	\$59,000
Automobiles	\$10,000	\$2,500
TOTAL	\$165,575	\$187,167.50
Equalization	\$21,592.50	(21,592.50)

Specifically, appellant contends that the district court erred in attributing to him the value of his \$59,000 nonmarital interest in the parties' homestead. Appellant correctly asserts that the district court does not explain its reasoning for including appellant's nonmarital interest in the homestead in the property division. Without incorporation of this \$59,000 amount, the value of the marital property awarded to appellant is less than the value of the marital property awarded to respondent, and appellant would not be required to make an equalization payment to respondent.

By attributing the \$59,000 nonmarital interest to appellant in the property division, the district court essentially invaded his nonmarital property. A district court is permitted to invade one party's nonmarital property to "prevent . . . unfair hardship," but if it does so, it must make findings supporting the invasion. Minn. Stat. § 518.58, subd. 2 (2006). Here, the district court did not state that an unfair hardship existed, and no findings are present to support such a determination.

Neither logic nor the facts in the record support the district court's decision to attribute to appellant the value of his nonmarital share in the parties' homestead when dividing their marital property. Therefore, it was an abuse of the district court's discretion. We reverse and remand the district court's marital property division for recalculation without the \$59,000 figure or for the proper findings if, upon reconsideration, the district court determines that invasion of appellant's nonmarital property is warranted.

II.

The next issue before us involves the district court's purportedly incorrect valuation of certain assets in the form of stock options and retirement accounts held by both parties. In a dissolution action, the district court values marital assets for the purpose of dividing them between the parties. Minn. Stat. § 518.58, subd. 1. "Determining the specific value of an asset is a finding of fact." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). A district court's valuation will not be set aside unless it is "clearly erroneous on the record as a whole." *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975); *see also* Minn. R. Civ. P. 52.01. "An appellate court does not require the district court to be exact in its valuation of an asset; 'it is only necessary that the value arrived at lies within a reasonable range of figures.'" *McIntosh v. McIntosh*, 740 N.W.2d 1, 6 (Minn. App. 2007) (quoting *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979)).

A. The parties' 401(k) accounts

The district court determined that respondent's 401(k) retirement account associated with respondent's prior employer (General Mills) had a value of \$56,113 and that appellant's 401(k) account with his employer, Wells Fargo, had a value of \$147,360. Based on our review, these figures have no support in the record. To the contrary, the parties agree that both valuations are exactly one-half of the actual worth of each 401(k) account. Uncontradicted evidence establishes that respondent's General Mills 401(k) account had a value of \$112,226.20 on the valuation date and appellant's Wells Fargo 401(k) had an actual value of \$294,719.92 on the valuation date.

Conceding the district court's mistake on both parties' accounts, appellant nevertheless argues that because respondent did not appeal the incorrect valuation of appellant's 401(k) account, she has waived any claim to have it corrected. For this court to reverse and remand for a presumably upward revaluation of respondent's 401(k) and to not treat appellant's 401(k) consistently, particularly in light of the magnitude of the misvaluation, would be highly inequitable to respondent. The prejudice to respondent would be further compounded because, at the time of the dissolution trial, respondent was soon to become unemployed, and appellant was better situated financially.

Appellate courts have discretion to address an issue when the interests of justice so require even though the issue would typically be deemed waived. *See* Minn. R. Civ. App. P. 103.04 (stating that "[appellate courts] may review any other matter as the interest of justice may require"); *Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987) (stating that this court has "discretion to decide [an issue not argued on appeal] sua

sponte” if prejudicial error is obvious). In this instance, the interests of justice require that the misvaluation of both 401(k) accounts be corrected. Accordingly, because the district court’s valuation of both appellant’s and respondent’s 401(k) accounts was clearly erroneous, we reverse and remand for revaluation and any adjustment of the property division that is necessary to achieve the equitable property division required by Minn. Stat. § 518.58 (2006).

B. Appellant’s stock options

In addition to his 401(k), appellant had certain stock options through his employer Wells Fargo. It is not disputed that these stock options were marital property because they were acquired during the parties’ marriage. Appellant exercised these stock options in the spring or summer of 2004, but the exact date is unknown.¹ The district court valued these stock options at \$21,893.50, their before-tax value, and attributed this amount to appellant in the marital property division. Appellant argues that this determination was incorrect because the district court should have only attributed \$13,316.30 to him—the after-tax value of the stock options.

The supreme court has addressed the consideration of tax consequences when valuing an asset in the marital-dissolution context and held that, as long as the tax

¹ Because appellant exercised these stock options in early 2004 (potentially even before respondent petitioned to dissolve the parties’ marriage), it is not clear to us why they are still being treated as an asset in existence at the time of the dissolution trial requiring valuation. But neither party raised this particular issue before the district court nor does either party raise it on appeal, so it is not properly before us. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (matters not raised before the district court are waived for the purposes of appeal); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed or argued on appeal are waived).

consequences are not speculative, the district court has discretion to consider, or not consider, their effect on the value of the asset. *See Maurer*, 623 N.W.2d at 604, 607 (“[i]t is within a [district] court’s discretion to consider the tax consequences of its [marital property] award” in a dissolution proceeding). Here, even though the district court could have valued the stock options after taxation because the tax consequences were established at trial, it chose not to do so. Under *Mauer*, this was a proper exercise of its discretion.

III.

The district court concluded that respondent’s nonmarital interest in her General Mills 401(k) was 50% of the account’s value. The district court also concluded that appellant retained a 50% nonmarital interest in his Wells Fargo 401(k). Appellant contends that the district court erred in concluding that respondent retained a nonmarital interest in her General Mills 401(k).

It is not clear from the dissolution judgment how the district court reached its conclusion that each party retained a 50% nonmarital interest in their respective 401(k)s. *See generally Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (stating that “[e]ffective appellate review . . . is possible only when the [district] court has issued sufficiently detailed findings of fact” to support its decision). It appears that the district court was attempting to achieve an equitable distribution of the parties’ property. While the district court’s attempt to fashion an equitable property settlement is certainly proper, this attempt was based on a mistaken belief regarding the value of each 401(k) account. Given our above conclusions, the property division on remand may differ substantially

from the judgment. Furthermore, a mistake that affects findings or conclusions in a dissolution judgment can, under certain circumstances, justify reconsideration of the subject matter the mistake underlies. *See* Minn. Stat. § 518.145 (2006) (stating that mistake is one justification for reopening a dissolution judgment). Thus, to ensure that the district court retains the flexibility to fashion an equitable property division, we reverse and remand the district court's conclusions regarding the marital/nonmarital division of both parties' 401(k) accounts.²

IV.

Appellant claims that the district court erred in calculating the size of the marital-property equalization payment that it ordered him to pay respondent. The \$21,592.50 equalization payment was calculated based on the valuation of each party's 401(k) account and the inclusion of appellant's nonmarital interest in the parties' homestead when dividing their marital property, both of which we have concluded were error. Thus, the amount of the equalization payment (and perhaps even the party required to make the payment) may change when the district court recalculates how the parties' marital property will be divided on remand. Thus, we do not address this claim at this time.³

² By remanding we do not mean to imply the determined nonmarital interest in each party's respective 401(k) accounts is erroneous. But given the changed underlying circumstances, the district court should be allowed to reconsider its determination.

³ Nevertheless, we note that, if, as it appears, the district court's purpose in dividing the parties' marital property was to award each party one-half the value of the property, appellant's current equalization payment is too large. In the marital-property division table excerpted in section I. above, the district court subtracted the entire difference between the value of the marital property awarded each party to arrive at the amount of the equalization payment. If the district court's purpose was to equalize the value of the

V.

Appellant's final claim is that the district court abused its discretion in its determination of the amount of his monthly child-care obligation. District courts have broad discretion to award child support, which includes child-care expenses. *See* Minn. Stat. § 518.551, subd. 5(b) (2004)⁴ (stating that “[t]he amount allocated for child care expenses is considered child support”); *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). Minnesota law states that, in a dissolution action involving children, a district court shall determine “work-related and education-related child care costs” and allocate these costs “to each parent in proportion to each parent’s net income . . . after the [effect of the] transfer of child support and spousal maintenance” on their income is compensated for unless this would be inequitable. Minn. Stat. § 518.551, subd. 5(b). To compensate for certain tax benefits flowing from children, the cost of child care as calculated under this provision is “75 percent of the actual cost paid for child care.” *Id.*

Here, the district court found that child-care expenses averaged \$8,100 per year. It ordered appellant to pay 56% of 75% of this amount, or \$283.50 per month. In this same finding, the district court stated that the “parties shall mediate any dispute as to these

marital property awarded to each party, only one-half of the difference should have been paid by appellant to respondent.

⁴ We traditionally apply the current statute in effect when subsequent changes to the relevant portions do not affect the rights of the parties. *See McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986). But here, because the substantive changes to the relevant statute do affect the rights of the parties, we apply the statute in effect at the time of the decision. *See id.*

costs” in accordance with the procedures set forth in the judgment. Appellant raises three issues regarding this aspect of the dissolution judgment.

A. Apportionment of child-care costs

Appellant argues that the district court should have “made some kind of [an] offset to reflect the significant amount of time the minor children spend” in his care. But the district court did precisely what appellant is requesting. It apportioned just a little over one-half of the determined child-care expenses to him (56%), with respondent bearing the remaining percentage of the costs. When consideration is given to the fact that appellant’s income is greater than respondent’s, even after accounting for his child-support obligation (no spousal maintenance was awarded), the slightly greater burden of the child-care costs apportioned to appellant by the district court was within its discretion.

B. Summer-camp costs as child-care costs

The parties’ children historically attended numerous recreational camps during the summer (e.g., sailing camp and tennis camp) that were more expensive than standard child-care costs. Appellant claims that “[t]hese camps are extra-curricular costs, not work related daycare costs” and that the district court abused its discretion by treating them as work-related child-care costs under Minn. Stat. § 518.551, subd. 5(b).

Admittedly, the extracurricular activities engaged in at such summer camps do increase the cost of such camps. But it is also undeniable that children attending these camps are supervised, fed, housed, and cared for as they would be in a more traditional child-care setting. Furthermore, even though appellant now takes issue with the cost of such camps, he conceded during the parties’ dissolution trial that he helped plan these

summer activities. While there may be instances when a district court's inclusion of comparatively expensive activities that involve only minimal child care are improperly considered child-care costs, we conclude that this is not one of those instances.

C. Mediation requirement

Appellant claims that the district court abused its discretion by ordering the parties to mediate any dispute over child-care costs pursuant to mediation procedures set out in the judgment. He contends that this deprives him of his "day in court." It is true that, in certain circumstances, a district court cannot, without a hearing, impose upon parties to a dissolution judgment conditions to which they do not agree. *See Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000) (stating that, while a district court can reject private agreements between the parties to a dissolution action, "it cannot, by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their 'day in court'").

But here, the district court was expressly authorized to incorporate alternative-dispute-resolution (ADR) procedures in the dissolution judgment. Under the Minnesota Rules of General Practice, all family-law matters are subject to various forms of ADR, including mediation, absent limited exceptions not applicable here. *See* Minn. R. Gen. Pract. 114.02(a)(7) (identifying mediation as a permissible form of alternative dispute resolution), 310.01 (stating that, generally, "[a]ll family law matters in district court are subject to Alternative Dispute Resolution (ADR) processes as established in Rule 114"). Furthermore, the imposed mediation does not deprive appellant of his day in court because the mediation procedures set out in rule 114 are nonbinding and the dissolution

judgment allows either party to seek relief in district court if mediation fails to resolve the dispute. Thus, we conclude that the district court's sua sponte requirement that appellant and respondent mediate any dispute regarding child-care costs before seeking relief in district court was proper.

Affirmed in part, reversed in part, and remanded.