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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-86**

In re the Marriage of

William J. Peppler, petitioner,
Appellant,

vs.

Kate J. Peppler,
Respondent.

**Filed November 17, 2009
Affirmed
Shumaker, Judge**

Washington County District Court
File No. F5-07-2964

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Considered and decided by Hudson, Presiding Judge; Lansing, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

In this marital-dissolution appeal, appellant-husband argues that the district court abused its discretion by ordering him to pay respondent-wife spousal maintenance of \$3,000 each month for three years and that the district court erred by finding that all of the parties' funds in a certain account were marital. Because husband has not shown that the district court abused its discretion or misapplied the law, we affirm.

FACTS

The parties married on June 7, 1981, and were married for 26 years. Appellant-husband William J. Pepler was 58 years old at the time of trial and was employed as a metallurgical engineer. As of the time of trial, husband received a gross annual salary of approximately \$135,000, annual trustee fees, distributions from his oil-well limited partnership, and income from his investments.

Respondent-wife Kate J. Pepler was 60 years old at the time of trial and in apparently good health. She has a bachelor of arts degree in communications with a minor in marketing, and a master of arts degree in human development. In addition, wife is currently enrolled in school to obtain a master of divinity degree with an expected graduation date of June 2010. She has had a relatively limited employment history outside the home. Wife pursued a career in horticulture from 1970 through 1992, from which she earned very modest or no annual income.

In 1992, wife left her employment in the horticulture industry to care for the parties' adopted son. From 1992 through 2000, wife reported no income (with the

exception of \$196 in 1999). From 2001 through 2006, wife maintained church-related employment and did volunteer and paid work for her business, Mind-Heart Connections, from which she earned only modest income (varying from \$10,550 to \$28,933). At the time of trial, wife's gross monthly income was \$550, based on part-time work at \$9.50 an hour.

In 1990, husband received an inheritance from his mother's estate in the amount of \$251,962. This money was placed into a Dean Witter Active Assets managed account and was professionally managed from 1990 to 1998. The balance of this account grew to \$542,000 by March 1998. The management fees and the tax liability arising from income and dividend distribution, as well as from realized capital gains, were paid entirely with marital funds. In addition to the inheritance account, the parties established a separate account at Dean Witter that was funded by marital income and was used to pay marital living expenses until 1998.

In 1998, upon husband's initiative, the inheritance account and the marital account were transferred from Dean Witter into a single Charles Schwab account. The opening balance of the merged account was \$849,304. This joint account earned various annual returns since September 1998, depending on market conditions and the active management of the account through a professional manager whom the parties hired. The account was also funded by all of the parties' respective employment incomes since 1998, all of the trustee fees received by husband, reimbursement from the Janet K. Moreno Trust for monies advanced on behalf of the parties' son, and income generated

by the nonmarital oil-well interest. In essence, all of the parties' income was placed into the joint Charles Schwab account and was used to fund all of the parties' living expenses.

The district court equitably distributed the parties' marital assets. In addition, the district court ordered husband to pay wife spousal maintenance in the amount of \$3,000 per month for three years and determined that all money in the Charles Schwab account was marital money. Husband appeals.

D E C I S I O N

1. *Spousal Maintenance*

In a marital dissolution, a district court may award spousal maintenance if a party lacks property sufficient to allow the party to approximate the marital standard of living or if the party otherwise lacks the ability to be self supporting. Minn. Stat. § 518.552, subd. 1 (2008). The amount and duration of a maintenance award is set based on the district court's consideration of the factors that are set forth in Minn. Stat. § 518.552, subd. 2 (2008). Each case must be decided on its own facts, with no single statutory factor being dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). Appellate courts review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion in a maintenance determination if its findings of fact are unsupported by the record or if it improperly applies the law. *Id.* (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

A district court must address several factors when determining whether spousal maintenance is appropriate. The statutory factors include:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;

(c) the standard of living established during the marriage;

(d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

(e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;

(f) the age, and the physical and emotional condition of the spouse seeking maintenance;

(g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and

(h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

Minn. Stat. § 518.552, subd. 2. The district court addressed all of these factors before awarding wife spousal maintenance. Husband does not contest the factors individually; he generally argues that wife's monthly expenses were unreasonable, her current educational endeavors will not increase her earning capacity, and she does not need spousal maintenance to be self sufficient. We discuss each of the statutory factors in turn.

a. *Financial resources of party seeking maintenance*

The district court ordered an equitable division of the marital estate, which consisted of property, investments, and retirement assets. The district court found that wife's gross monthly income at the time of trial was \$550, based on part-time work at \$9.50 per hour. The district court found that wife was unable to meet her reasonable monthly expenses of \$5,251.¹ Together with the income from her property settlement and retirement assets and \$3,000 each month in spousal maintenance, wife's gross monthly income will be \$7,007, with a net monthly income of \$5,255. The district court reasoned that when wife finishes school in 2010, she will be able to increase her yearly income to approximately \$30,000 and with her retirement income will be able to meet her monthly expenses on her own.

The district court accurately stated wife's financial resources as of the time of trial. Because wife was attending school after having been a homemaker for nearly a decade, her income was minimal at the time of trial. Thus, the record indicates that she is in need of financial assistance while in school, but will be equipped to support herself when she is done.

¹ Husband argues that wife's monthly expenses were unreasonable and inflated. The district court found that the expenses were consistent with the lifestyle wife had enjoyed throughout the marriage, and further, that husband's expenses were comparable or higher than those of wife. On this record, we will not rule the finding of wife's reasonable monthly expenses to be clearly erroneous. *See* Minn. R. Civ. P. 52.01 (stating that findings of fact will not be set aside unless clearly erroneous).

b. *Time necessary to acquire sufficient education or training*

The district court acknowledged that wife is already well educated, but the district court was uncertain as to which of her skills had become outmoded because of her absence from the labor market. But the district court noted that wife shows expertise in the management of churches and has continued to acquire marketable skills from her paid and volunteer experiences.

It is anticipated that wife will receive a master of divinity degree in June 2010. Husband argues that obtaining this degree will not increase wife's earning capacity and that she is able to earn the same amount now as she likely will earn after her graduation. But husband overlooks the issue of the marketability of wife's skills. Her current training is more compatible with her most recent employment than with either her past employment or past educational achievements. As of 2001, when wife re-entered the workforce after being a homemaker for several years, she has maintained primarily church-related employment. Her training-in-process and her most-recent past employment support the conclusion that wife can actually, rather than hypothetically, earn self-sustaining income in her chosen field. Furthermore, there is no evidence in the record that, at age 60, wife's previous academic degrees will actually secure employment for her or otherwise make her as employable as the ministry will. Thus, wife's distant employment history, which indicates only the dollar amount of presumable earning capacity, is not as relevant as her recent employment history, which indicates both the presumable dollar amount of earning capacity and actual employability. The district

court did not clearly err in finding that wife needs to complete her current education to become self supporting.

c. *Standard of living established during the marriage*

The district court found that the parties enjoyed a comfortable, middle-to-upper-middle-class lifestyle during the marriage. This is accurate when considering husband's annual income and the amount of money the parties invested and withdrew throughout the marriage.

d. *Duration of the marriage and length of absence from employment*

The marriage lasted approximately 26 years. The district court considered that wife was a homemaker from 1992, when wife left the horticulture industry, until 2001, when she began her ministry work. The district court found that wife was out of the workforce for nearly a decade to care for the parties' son.

e. *Employment opportunities forgone*

By leaving her career and staying home to raise the parties' son, wife essentially abandoned her career in the horticulture industry. She was out of the workforce for nine years before pursuing a career in the ministry. Because of this absence, wife surrendered any income, benefits, or promotions that she may have received over that nine-year period.

f. *Age and physical/emotional condition*

Although wife appears to be healthy, she was 60 years old at the time of trial. Because she had actual recent church-related employment and is in the process of

acquiring skills for similar employment, it is reasonable to conclude that, at age 60, wife's best likelihood of securing a new career is in church work.

g. *Ability of spouse to meet needs*

The district court found that, as of the time of trial, husband had a gross annual salary of approximately \$135,000, trustee fees, distributions from his oil-well limited partnership, and income from his investments. Husband claimed monthly expenses of \$5,440. Based on these figures, the district court did not clearly err in finding that husband has the ability to meet the spousal-maintenance needs of wife.

h. *Contribution of each party to marital property*

Contribution includes monetary and nonmonetary input. Minn. Stat. § 518.552, subd. 2(h). The district court found that each party contributed to the acquisition of the parties' marital assets. Although husband clearly contributed more money to the marriage, the district court found that wife contributed her income when she was working and her personal capital as a homemaker when she was not employed outside the home.

The district court considered each of the requisite factors when deciding to award maintenance to wife. We conclude that the district court did not abuse its discretion in awarding wife \$3,000 monthly maintenance for three years. Thus, the district court did not abuse its discretion when awarding wife short-term, rehabilitative maintenance.

2. *Tracing Nonmarital Property*

Husband's second contention is that the district court erred in determining that the funds in the Charles Schwab account were marital and that husband had no nonmarital interest in the balance of this account. "Whether property is marital or nonmarital is a

question of law, but a reviewing court must defer to the [district] court's underlying findings of fact." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). "However, if [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court's decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings." *Id.* (quotations omitted).

With exceptions not relevant here, marital property is defined as real or personal property acquired by either party at any time during the existence of the marriage. Minn. Stat. § 518.003, subd. 3b (2008). In relevant part, nonmarital property is defined as real or personal property, acquired by either spouse, which "is acquired before the marriage" or "is acquired in exchange for or is the increase in value of" nonmarital property. *Id.* "All property acquired by either spouse during the marriage is presumptively marital, but a spouse may defeat the presumption by showing by a preponderance of the evidence that the property acquired is nonmarital." *Baker v. Baker*, 753 N.W.2d 644, 649-50 (Minn. 2008).

Husband argues that the entire growth of the inheritance Dean Witter account from 1990 to 1998 is his nonmarital property. He argues that his role in the growth of the account was similar to that of the husband in *Baker*. Husband further argues that he was clearly able to trace his alleged nonmarital interest in the Charles Schwab account by a preponderance of the evidence. The district court's conclusion that husband's nonmarital property interest is not traceable is supported by the applicable law and the record.

An inheritance from a third party to one, but not to the other, spouse is nonmarital and is not affected by the presumption of marital property. Minn. Stat. § 518.003, subd.

3b(a). For property to retain its nonmarital character, it must be kept separate from marital property or be readily traceable to an identifiable nonmarital asset. *Olsen*, 562 N.W.2d at 800; *Robert v. Zygmunt*, 652 N.W.2d 537, 541 (Minn. App. 2002), *review denied* (Minn. Dec. 30, 2002). Simply transferring property into a joint account does not erase the nonmarital nature of the funds. *Nash v. Nash*, 388 N.W.2d 777, 781 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986). Furthermore, tracing property to its nonmarital source does not require intricate detail. *Danielson v. Danielson*, 392 N.W.2d 570, 572 (Minn. App. 1986); *see also Nash*, 388 N.W.2d at 781.

Although nonmarital property can continue to be nonmarital as long as it is “readily traceable” to its nonmarital source, appreciation of the property is analyzed under a different test. *Baker*, 753 N.W.2d at 646; *Robert*, 652 N.W.2d at 541. To determine whether the appreciation of nonmarital property is marital or nonmarital, the district court looks to “the extent to which marital effort—the financial or nonfinancial efforts of one or both spouses during the marriage—generated the increase.” *Baker*, 753 N.W.2d at 646; *see also Nardini v. Nardini*, 414 N.W.2d 184, 191 (Minn. 1987). The difference between active and passive appreciation can be described as follows:

[I]ncrease in the value of nonmarital property attributable to the efforts of one or both spouses during their marriage, like the increase resulting from the application of marital funds, is marital property. Conversely, an increase in the value of nonmarital property attributable to inflation or to market forces or conditions[] retains its nonmarital character.

Baker, 753 N.W.2d at 650 (quoting *Nardini*, 414 N.W.2d at 192). When considering the contribution of the parties, “absent evidence that the efforts of one or both spouses

directly affected the value of an investment, the appreciation in the value of the investment is properly characterized as passive [or nonmarital].” *Id.* at 652.

When husband received the inheritance of \$251,962, it was nonmarital money. *See* Minn. Stat. § 518.003, subd. 3b(a). During the eight years that the inheritance was in a separate Dean Witter account and professionally managed, the account grew to \$542,000. Despite his argument that this was passive growth, management fees and the tax liability arising from income and dividend distribution were paid entirely with marital funds. Because appreciation is analyzed according to the extent to which marital efforts generated the increase, which includes the application of marital funds, the increase in this account is not passive. *See Baker*, 753 N.W.2d at 650. Had the marital funds not been used for this account, they could have been used to benefit the marriage in some other way. For that reason, the appreciation in this account is considered active and is therefore marital property.

With that said, the determination as to whether the appreciation of an investment is marital or nonmarital becomes irrelevant where the nonmarital money is so commingled with marital money that it is impossible to distinguish between the two. *Id.* at 653. When monies are so commingled, all of the money is considered marital money. *Id.*

In 1998, when the inheritance account was merged with a marital account to create a single Charles Schwab account, it is possible that the original inheritance amount—as well as any passive appreciation—was readily traceable to its nonmarital roots. But the district court determined that, once the accounts were merged in 1998 and the stock held by the inheritance account was sold and deposited into the joint Charles Schwab account,

the funds ceased to have a separate identity. And over the next ten years, there was a significant amount of activity with this account, as it was used for the parties' living expenses. All money received from any source was deposited into the account through September 30, 2007, and the parties withdrew sums for various marital purposes. Over a ten-year period there had been \$9,215,855 received from sale proceeds, and the account had purchased assets totaling \$9,732,381 prior to the dissolution. Since 1998, \$1,322,693 has been disbursed to the parties for their living expenses. The district court rejected both the Last-In-First-Out (LIFO) and the First-In-First-Out (FIFO) approaches presented by the parties, stating that these approaches are applicable to inventory, not to cash transactions. We agree.

The district court did not clearly err in finding that the parties' monies were so commingled that it was impossible to determine which monies were nonmarital. Thus, the district court properly determined that all money from the joint Charles Schwab account should be treated as marital money.

Affirmed.