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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-95**

In re the Marriage of:
Bonny Jean Carlsen, petitioner,
Appellant,

vs.

Ronald Folmer Carlsen,
Respondent.

**Filed March 30, 2010
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

Dodge County District Court
File No. 20-FA-06-167

Bruce K. Piotrowski, George F. Restovich & Associates, Rochester, Minnesota (for appellant)

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Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-wife Bonny Carlsen challenges the division of the marital property made in the judgment and decree dissolving her marriage to respondent-husband Ronald

Carlsen. Because several aspects of the property division are not supported by sufficient findings, are based on legal error, or otherwise reflect abuse of the district court's discretion, we affirm in part, reverse in part, and remand.

FACTS

The parties married in 1982 and separated in 2006. During the marriage, the parties acquired interests in several businesses, including the BJC Companies partnership. BJC is connected to nine real properties at issue in this case. The parties also acquired interests in other real properties. Wife's involvement in managing and developing the real estate tapered off following the birth of the parties' first child in 1987. During the separation and dissolution proceeding, husband worked for the various family businesses. In July 2007, the parties stipulated to the values of the nine real properties. A December 12, 2007 partial judgment and decree dissolved the marriage but reserved the issues of property division and spousal maintenance.

Between the time the stipulation was entered and the April 2008 trial, husband paid more than \$230,000 against the mortgages on various properties, apparently with rents generated by the properties and funds held in the accounts of the associated businesses. After trial, the district court entered an amended judgment and decree that provided (1) the increased equity in the properties was marital to the extent it was traced to a particular property; (2) the value of the BJC properties would be reduced by 10% to account for liquidation costs; (3) husband would receive 60% of the value of the BJC properties; (4) most real-property and business interests would be awarded to husband, with wife receiving other property and 15 years of monthly payments from husband as

her share of the marital estate; and (5) wife was to claim one-half of the income and expenses for the partnerships on her 2007 and 2008 tax returns. Wife appeals.

DECISION

I.

In a dissolution, the district court must make a “just and equitable” division of marital property in light of its findings on “all relevant factors,” including those listed in Minn. Stat. § 518.58, subd. 1 (2008).¹ District courts have broad discretion over property divisions and we will not reverse in the absence of clear abuse of discretion or error in the application of law. *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005).

Wife argues that the district court erred in failing to distribute the marital property equally. As an initial matter, we reject wife’s contention that section 518.58 and *Ellesmere v. Ellesmere*, 359 N.W.2d 48 (Minn. App. 1984), create presumptions that marital-property divisions are to be equal and that unequal divisions are inequitable. The statute does not, by its terms, require that property divisions be “equal,” and courts lack authority to read terms into a statute. *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 119 (Minn. 2001). And while an equal division of assets accumulated during a long-term

¹ The record is unclear regarding whether BJC has a legal existence distinct from the parties and whether BJC or the parties own the properties associated with BJC. If BJC has a separate legal existence and owned some or all of the real properties associated with its ventures, the district court lacked authority to award those properties to either party. *See Sammons v. Sammons*, 642 N.W.2d 450, 457 (Minn. App. 2002) (noting that a district court may not exercise jurisdiction over a non-party). The parties did not raise this issue so we decline to consider it in this appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

marriage is presumptively equitable, *Miller v. Miller*, 352 N.W.2d 738, 742 (Minn. 1984), a property division need not be equal to be equitable. *Sirek*, 693 N.W.2d at 900.

Wife challenges the reduction of the value of the BJC real properties to account for liquidation costs, and the award to husband of a disproportionate share of the value of those properties. The record does not show that husband intends to sell the properties; it indicates otherwise—that the district court awarded the properties to him to avoid the necessity of a sale. Thus, the district court’s 10% reduction from the value of these properties to account for the costs of their potential sale is, at best, speculative. “[S]peculative or contingent liabilities should not be considered in determining the net marital estate.” *Nolan v. Nolan*, 354 N.W.2d 509, 513 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1994). Husband’s reliance on the district court’s explanation for awarding wife property equalization payments for 15 years, rather than spousal maintenance, as support for the 10% reduction, is misplaced. The district court’s concerns do not appear to relate to the reduction of the value of the properties for liquidation (or any other) costs in any manner.

Wife also argues that the property division is inconsistent with the conclusive statutory presumption that each party made a significant contribution to the acquisition of the marital property. Minn. Stat. § 518.58, subd. 1. We agree. The district court’s rationale for awarding husband a disproportionate share of the value of the BJC properties focused exclusively on wife’s recent lack of contribution to BJC, rather than on her contributions during the entire 24-year marriage. This misapplies the law. *See Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008) (noting that financial contributions

are only one of several contributions to a marriage, and that property is to be distributed based on the totality of the circumstances); *see also Ebnet v. Ebnet*, 347 N.W.2d 840, 842 (Minn. App. 1984) (stating that a district court’s misapplication of the law regarding the division of marital property renders the division defective).

Husband argues that the disproportionate division is consistent with his post-separation payment of the mortgages and Minn. Stat. § 518.58, subd. 1’s requirement that the district court consider the contributions to the parties’ property “while they were living together as husband and wife.” We disagree. Although the statute permits a district court to adjust the valuation of an asset that substantially changes in value between the date of valuation and the final distribution, the record does not support the disproportionate distribution on that basis. At least part of the increased equity in the properties apparently resulted from paying down the mortgages with funds in the accounts of businesses in which the parties had interests. These funds would have been included in the values of the marital interests in those businesses had the parties’ property been divided as of the dissolution date,² and, accordingly, do not support the disproportionate division.

² The district court did not fully explain the mechanics of its 60%-40% division of the BJC properties, but it may have (a) reduced the value of the BJC properties by 10%; (b) assumed each party was entitled to one-half of the remaining 90%; and (c) awarded all of the BJC properties to husband, with an award of other property to wife in place of her interest in the BJC properties. If the district court equally divided 90% of the BJC properties, each party received 45% of their total value which, when added to the remaining 10% awarded to husband, resulted in a 55%-45% split.

II.

Wife asserts that the district court misapplied the law by treating husband's obligation to make periodic payments to her as spousal maintenance and failing to make the requisite findings. The parties assert that the district court's characterization of the periodic payments is ambiguous. The district court stated:

[Wife] does not make a specific claim for a monthly spousal maintenance award; however, [her] claim for a cash equalization payment, if spread out during a fixed-term monthly payment schedule, resembles the characteristics and purposes of a spousal maintenance award. As and for [wife's] equity in and to the marital property being awarded to [husband] solely herein, and as full, final and complete settlement of all property issues, [husband] shall pay to [wife] [\$733,987] in cash, without interest, in equal monthly payments spread out during a fifteen year time period, totaling [\$4,077] per month for 15 years. Based upon the evidence and equities presented, however, the Court finds that a reduction of [\$550] per month of [husband's] obligation is appropriate and necessary, and therefore, [husband's] monthly obligation, which falls herein under the title of "spousal maintenance" but which shall be understood as the full and final equitable distribution of the parties' marital property in this case, shall be [\$3,527] **per month for 15 years**, commencing retroactive on September 1, 2008.

In its order denying posttrial relief, the district court states that the amended judgment "explicitly characterizes" the monthly award as equalization payments rather than spousal maintenance. We conclude that the payments are unambiguously property.

Wife argues that she should have been awarded interest on these payments. This argument has merit. If a property award is deferred, the district court must award interest on the payments or explain why interest is not included. *Thomas v. Thomas*, 407 N.W.2d 124, 127 (Minn. App. 1987). The district court neither awarded interest nor explained

why husband had no obligation to pay interest. On remand, the district court shall award wife interest on her property payments or make findings explaining why interest is inappropriate.

The reduction of wife's equalization payments by \$550 per month (which totals \$99,000 over 15 years) is also flawed. The district court's finding that the reduction was based on "the evidence and equities presented" is insufficient for us to review the reduction, and we remand for explanatory findings. *See Putbrese v. Putbrese*, 386 N.W.2d 849, 850 (Minn. App. 1986) (stating that findings must provide "a clear understanding of the basis and grounds for the decision"); *Vinnes v. Vinnes*, 384 N.W.2d 589, 592 (Minn. App. 1986) (stating that findings regarding property divisions must be sufficient to allow appellate review).

Wife argues that because she is receiving her share of the value of the real properties over 15 years, her interests must be protected by life insurance on husband or liens on the properties or both, and that the periodic payments do not sufficiently separate the parties' financial interests as suggested by *Ervin v. Ervin*, 404 N.W.2d 892, 895 (Minn. App. 1987), *review denied* (Minn. June 26, 1987). District courts have discretion when addressing liens in property divisions. *Rohling v. Rohling*, 379 N.W.2d 519, 523 (Minn. 1986). The district court found that the entanglement associated with liens would not be excessive, and left the issue open, permitting wife to decide whether to seek security. Wife does not explain how leaving the question of security open is an abuse of discretion and we discern no basis for reversal on this point.

Nor are we persuaded by wife's argument that she would be subject to the "vagaries" of the market that could deprive her of "her interest" in the properties divided in the judgment. The judgment awards the properties to husband, and wife did not seek security. Thus, she has no interest in the properties to lose. On this record, we conclude that the district court did not abuse its discretion in declining to provide security to wife as to the real properties. *See Preferred Fin. Corp. v. Quality Homes, Inc.*, 439 N.W.2d 741, 743 (Minn. App. 1989) (stating that a district court's denial of a party's posttrial motions will not be disturbed on appeal absent a clear abuse of discretion).

III.

Wife next argues that the district court erred in not allocating \$55,390 that was missing from a BJC account to husband. If the district court "finds" that a party to a dissolution disposed of an asset during or in contemplation of a dissolution other than in the ordinary course of business or for the necessities of life, that asset "shall" be apportioned to the disposing party, and the property division must be adjusted accordingly. Minn. Stat. § 518.58, subd. 1a (2008). Because the statute requires a "find[ing]" of improper asset disposition, we review the district court's determination for clear error. Minn. R. Civ. P. 52.01. The district court found:

Both parties suggest that \$55,390 exists, or once existed, in this account. Both parties, however, assert that the other party has enjoyed 100% sole benefit of these monetary funds. After a painstaking review of the record presented with respect to this account, the Court finds that both the testimony and documentation are insufficient for the court to make a finding supporting distribution or allocation of this alleged account. **As a result, \$55,390 will not be assigned to either party.**

Wife argues that “credible evidence” showed that husband had controlled the account “and failed to [provide] sufficient evidence that its depletion significantly benefited [wife].” The crux of wife’s argument is her disagreement with the district court’s credibility determinations. This court defers to such determinations. *See, e.g., Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (testimony); *Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) (affidavits). Accordingly, we conclude that the district court’s finding is not clearly erroneous.

IV.

Wife also challenges the district court’s apportionment of the 2007 and 2008 rental and partnership income and expenses equally to each party for tax purposes. Wife argues that she should not have to claim this partnership income because, given the court’s division of the property, husband received the benefits of the income. Whether to consider the tax consequences of a property distribution is discretionary with the district court. *Aaron v. Aaron*, 281 N.W.2d 150, 153 (Minn. 1981). The district court should not consider speculative tax consequences, but may consider tax consequences if there is a “reasonable and supportable basis for making an informed judgment as to [the] probable liability.” *Maurer v. Maurer*, 623 N.W.2d 604, 607-08 & n.3 (Minn. 2001) (alteration in original) (quotation omitted).

The district court finalized the property division in the amended judgment entered on September 4, 2008. And the district court’s order denying posttrial relief was not filed until November 19, 2008. Arguably, the 2007 tax consequences could have been

ascertained with certainty and the 2008 tax consequences could have been estimated at that time. But the district court's valuation of the BJC properties included consideration of the payments husband made to reduce the mortgage principals after the parties' stipulation and prior to trial. Wife received the benefit of much of the income from BJC in the form of compensation for her share of the increased equity in the BJC properties. Therefore, we cannot say that the district court abused its discretion by directing wife to claim BJC tax consequences on her 2007 and 2008 tax returns.

While the district court did not address any reductions in the mortgage amounts on other properties, this asymmetry was apparently the result of the fact that the district court was not provided with the relevant information for those properties. Accordingly, we will not alter the district court's ruling on the subject. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that a party cannot complain about the lack of a ruling in her favor when one of the reasons for the ruling was that the party failed to provide the district court with the relevant evidence), *review denied* (Minn. Nov. 25, 2003).

Whether to reopen the record on remand shall be discretionary with the district court.

Affirmed in part, reversed in part, and remanded.