STATE OF MINNESOTA
IN COURT OF APPEALS
A10-365

In re the Marriage of: Kari Donna Erickson
n/k/a Kari Donna Jacobson, petitioner,
Respondent,

vs.

Kraig Steven Erickson,
Appellant.

Filed October 12, 2010
Affirmed
Minge, Judge

Itasca County District Court
File No. 31-F8-04-001199

Kari Donna Jacobson, Duluth, Minnesota (pro se respondent)

Kraig Erickson, Duluth, Minnesota (pro se appellant)

Considered and decided by Minge, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

MINGE, Judge

This appeal arises out of a marriage dissolution and has been the subject of a prior appeal to this court. We remanded. Appellant-father challenges a district court order on remand concerning a joint checking account, child-support payments, a retirement-account balance, and home-sale disbursements. Because there is sufficient evidentiary

support for the district court's determinations and because the district court neither abused its discretion nor erred as a matter of law, we affirm.

FACTS

On July 1, 2004, appellant Kraig Erickson (father) and respondent Kari Jacobson (mother) signed a marital-termination agreement (MTA). In part based on the MTA, the district court filed a judgment and decree dissolving the marriage on August 3, 2004. Since then, the parties litigated disputes over child support, maintenance, custody, and other issues arising out of the decree and took an appeal to this court. In that appeal we reviewed a district court order that determined child-support arrearages and decided several issues including whether certain checking account withdrawals by mother should be considered child-support payments by father. *Erickson v. Erickson*, No. A06-2061 (Minn. App. Nov. 20, 2007).[1] We affirmed in part, reversed in part, and remanded. *Id*.

Following remand from this court, the district court decided, among other things, that (1) mother was entitled to certain proceeds from the sale of the parties' homestead and the cashing out of father's retirement account; (2) father was not entitled to compensation for withdrawals made by mother from the parties' joint checking account made before August 2004; and (3) father was to be stripped of $2,000 in child-support credit previously recognized because father had already received that credit when he transferred that amount from mother's checking account to his own account in 2004. Father appeals.

[1] Our earlier opinion sets forth the factual background of this litigation.

D E C I S I O N

The district court has "broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). There is no abuse of discretion if the district court "had an acceptable basis in fact and principle even though [the appeals court] might have taken a different approach." *Id.* There is an abuse of discretion if the district court made findings unsupported by the evidence or improperly applied the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

I.

Father first contends that the district court erred in its valuation of the checking account previously shared by the parties. "Marital property" consists of assets acquired during the marriage up to the "date of valuation." Minn. Stat. § 518.003, subd. 3b (2008). The "date of valuation" in a dissolution proceeding is "the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable." Minn. Stat. § 518.58, subd. 1 (2008). The district court has broad discretion in adjusting the marital property valuation date. *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *review denied* (Minn. Oct 15, 2002).

The district court designated August 1, 2004 as the valuation date for the parties' joint checking account. This was the date the joint account was to be closed by father and was two days prior to the date of the judgment and decree dissolving the marriage. Father argues this was error because "the parties implicitly agreed" the valuation date

would be two weeks earlier, June 16, 2004. The basis for his contention is that the parties separated on June 15; only he deposited money into the account after June 15; and the decree noted that the parties would be individually responsible for debts incurred after June 15.

But the parties stipulated in the decree that the joint account would not be closed by father until August 1. This indicates that the parties agreed that either could write checks against the joint account and that it would effectively belong to both parties until that date. Although the decree noted that each party would be responsible for their debts after June 15, the district court found that,

> requiring that the parties each assume responsibility for their own debts . . . is not necessarily the same as stating that each party will be responsible for paying all of their own living expenses as of that date, particularly when one of the parties has no income and is entirely dependent upon the other party. Here, Mother was solely dependent upon Father and had to meet her living expenses using the joint checking account and any voluntary support or maintenance payments that Father may have made.

Under the district court's findings, father was under no obligation to deposit money into the joint checking account at the same time he was obligated to pay child support, but he did so anyway. The stipulation provided that the parties would share the contents of the joint account until August 1. Thus, father's act of making voluntary deposits into the account before the August 1 valuation date does not require that we conclude that the district court erred in setting the valuation date.

Father also argues that the August 1 valuation date was erroneous because it resulted in his income that was transferred into the account being treated as marital

property at the same time that it was used to pay child support. He asserts that this violates this court's ruling that a pension awarded to a former husband as his portion of marital property could not be used as a basis for calculating maintenance obligations. *See Lee v. Lee*, 775 N.W.2d 631, 640 (Minn. 2009); *Kruschel v. Kruschel*, 419 N.W.2d 119, 121-22 (Minn. App. 1988).

We do not read *Lee* and *Kruschel* to preclude the district court's actions here for two reasons. First, in the present proceeding, the district court did not treat the property in the joint account as father's "income"; it merely treated it as marital property while father was paying child support. This is important because father "might have sufficient [other] income from which to pay [child support]."[2] *Lee*, 775 N.W.2d at 640. Second, father voluntarily agreed to pay child support while not closing the joint account until the time the dissolution decree was issued, and he voluntarily deposited money into the joint account. Thus, even if the account's designation as marital property until August 2004 was problematic, "[p]arties to a marriage dissolution may bind themselves to a level of performance that is higher than that which courts could require of them." *Plath v. Plath*, 393 N.W.2d 401, 403 (Minn. App. 1986) (citing *In re LaBelle's Trust*, 302 Minn. 98, 111, 223 N.W.2d 400, 408 (1974)).

Based on the record in this appeal, we conclude that the district court did not abuse its discretion in setting the valuation date.

[2] Ultimately, father did pay child support from the joint account (due to mother's withdrawals in response to his nonpayment), but such payments were not required to come from that source.

II.

Father also argues that the district court erred in allocating credit for child-support payments. Here, the district court's determinations regarding whether payments were made by father and which payments should be credited to mother are fact intensive. The determinations required analyzing spreadsheets, bank statements, written submissions, and cancelled checks and assessing the credibility of witnesses. We defer to the district court's factual findings and credibility determinations and will not reverse unless we conclude there is clear error. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

Father stipulated in the decree to pay child support starting July 1, 2004, a month before the decree was entered. After July 1, 2004, mother wrote checks against the joint account because father did not pay child support. These checks included (1) a July 22, 2004 check to herself for $3,000 which she labeled "retirement"; (2) a July 29 check for $1,500 which she labeled "child support"; and (3) an unlabeled check on August 1 for $500. The district court, in its August 2006 order, subtracted these amounts from father's child-support arrears. Mother made withdrawals and initiated other actions on this joint account throughout the fall of 2004.

On remand, in an April 2009 order, the district court noted that father had transferred $2,000 from mother's bank account to the joint account on August 3, 2004. The district court found that father made this transfer to offset the $2,000 from mother's checks dated July 29 and August 1, 2004. The district court recognized that because its August 2006 ruling offset these checks by mother against child support, father had

already received a $2,000 child-support credit. The district court found that its $2,000 offset constituted a double adjustment and made a correction. The district court also corrected its August 2006 order to recognize that mother's July transfers were from the joint account, which was marital property. The district court did this by giving father credit for child support in an amount equal to half of those withdrawals by mother.

Father challenges the district court's crediting of mother with the "double compensated" $2,000 payment because he claims she already received the credit. But other than general allegations and credibility attacks, father does not identify where, how, or why specific district court findings regarding this credit are mistaken, or point to documents or transcripts that clearly show that the district court's action was erroneous.

Father also alleges that the district court erred by not crediting him with other withdrawals made by mother from the joint account after August 2004. In its August 2006 order, the district court noted that other withdrawals and payments from the joint account were not shown to be made for child support or maintenance purposes. Father argues that the April 2009 order did not address whether these withdrawals should be credited. The district court's April 2009 order did, however, note that it only counted "transactions that are clearly attributable to Mother, or alleged by Father to have been transactions by Mother and which have not been rebutted by Mother." Father, again, does not point to anything in the record clearly showing the district court's findings to be erroneous. Because father has not offered a factual basis for this court to disturb the district court's findings regarding child-support credits and payments from the joint account, we affirm on those issues.

III.

Finally, father argues that the district court erred by crediting mother with certain distributions from the closing of father's retirement account. The decree specified that father's retirement account was to be closed by father as of July 1, 2004, with account funds to be used by father to pay joint debts, with any remainder split between the parties. Any amount paid from the retirement account by father "would be considered an equal contribution from both parties since [the account] was entirely marital."

Father appears to allege that the district court improperly credited mother for paying half of certain purchases that were made from the joint account before August 1, rather than from the retirement-account proceeds. The district court provided a detailed chart showing the distribution of the retirement account, the marital debts that were supposed to be paid from that retirement account, and captions with detailed explanations of why payments were or were not credited to mother. Father does not establish how those detailed findings are clearly erroneous. We also note that, because it was not error to value the joint account as of August 1, crediting mother for half of payments made before that date and from the account was proper.

Father also contends that the distribution of the homestead sale incorrectly credited mother with half payment for a "Prosource" class. The homestead, deemed marital property, was to be sold, with the proceeds used to pay debts associated with the home. The district court stated that it awarded mother half the cost of the Prosource class because "the best evidence in the record is that Mother paid for the class and was not reimbursed by Father," as required under the decree. Father does not clearly explain this

error or establish that the magnitude of any alleged error is significant enough to warrant reversal. Based on the record, we conclude the district court did not err in the distribution of the retirement account and the proceeds from the homestead sale.

Affirmed.

Dated: