STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1347

In re the Marriage of:
Conrad Joseph Schwinn, petitioner,
Respondent,

vs.

Tonya Genevieve Schwinn,
Appellant.

Filed April 5, 2011
Affirmed
Ross, Judge

Morrison County District Court
File No. 49-FA-09-485

Virginia A. Marso, Eller Law Office, Waite Park, Minnesota (for respondent)

Jacob T. Erickson, Vermeulen Law Office, P.A., St. Cloud, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Connolly, Judge.

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

ROSS, Judge

One Morrison County district court judge presided over Tonya and Conrad Schwinn's marital-dissolution petition while a different one presided over a child-protection petition concerning their children. The district court judge in the dissolution

action granted Conrad Schwinn permanent sole custody of the couple's three boys and dissolved the marriage, ordering no spousal maintenance and dividing the parties' property in a manner with which Tonya Schwinn disagreed. Tonya Schwinn appeals, arguing that the dissolution court lacked subject-matter jurisdiction to make the custody decision before the child-protection court decided custody. She also maintains that it abused its discretion by not awarding her spousal maintenance, a portion of Conrad Schwinn's nonmarital property, and attorney fees. We hold that the dissolution court's custody decision raises no jurisdiction-related concerns because it expressly subordinated it to the child-protection court's authority and entered judgment on it after the child-protection court dismissed the child-protection petition. We also hold that the decree's merits reflect no abuse of discretion. So we affirm.

FACTS

During the parties' four-year marriage, Tonya Schwinn gave birth to three boys and gave up a nursing position to stay home with them. She had entered the marriage in 2004 with bachelor's degrees in biology, chemistry, nursing, English, and communications, and master's degrees in nursing and English. She also owned two cars, a truck, a farm, and several horses.

Morrison County Social Services became aware that Tonya Schwinn was addicted to drugs in 2006 when medical staff diagnosed her second child with withdrawal symptoms just after his birth. Two years later, her third son was born with the same symptoms. All three boys have developmental delays and special needs. The youngest boy requires surgeries and physical and occupational therapy. In July 2008, when he was

three months old, police arrested Tonya Schwinn for driving recklessly and intoxicated with him in the backseat.

The county soon filed a child-protection (CHIPS) petition and Conrad Schwinn separated from Tonya Schwinn and later filed a marital-dissolution petition. The child-protection court forbade Tonya Schwinn from seeing her children and later allowed her only supervised visits. She underwent a series of court-ordered chemical-dependency treatment programs, including a lengthy civil commitment. But according to a child-protection worker, as of February 2010,

> Ms. Schwinn ha[d] yet to . . . successfully complete her chemical dependency treatment and follow through with previously Court-ordered services through the CHIPS file, which include . . . dialectical behavior therapy, individual therapy, obtaining her medications from one doctor, and only taking them as prescribed, meeting with her sponsor regularly, and attending NA meetings to the point where she has not even moved from unsupervised visits . . . with the children.

By then, she had only seven supervised visits with her children in more than one year. And on her way to her eighth, she was arrested for driving while intoxicated and possessing drug paraphernalia.

A different district court judge was assigned to Conrad Schwinn's dissolution action. That judge presided over a one-day dissolution trial to resolve child-custody, spousal-maintenance, division-of-property, and attorney-fees issues. The dissolution court heard testimony from a county child-protection worker, the children's guardian ad litem in the CHIPS proceeding, and both parties. It granted sole custody of the children

to Conrad Schwinn, awarded no spousal maintenance or attorney fees, and divided the property so that each party retained his or her nonmarital assets. Tonya Schwinn appeals.

D E C I S I O N

I

We address Tonya Schwinn's contention that the Morrison County district court overseeing the dissolution petition lacked subject-matter jurisdiction to award sole custody to Conrad Schwinn. We do so first because subject-matter jurisdiction concerns the court's authority to hear classes of actions and determine particular questions. *Seehus v. Bor-Son Const., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). The issue of subject-matter jurisdiction may be raised at any time, even first on appeal. *Id.* We review de novo the question of a district court's jurisdiction. *In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 302 (Minn. App. 2009).

Tonya Schwinn mistakenly refers to her challenge as a question of subject-matter jurisdiction. It is not. Her subject-matter-jurisdiction argument presumes the existence of separate child-protection and dissolution courts. But despite occasional continuation of various colloquial names for convenience only, a unified trial court now exists in Minnesota, the district court, and each district court has "original jurisdiction in . . . all civil actions within [its] respective district[]," including "the jurisdiction of a juvenile court as provided in chapter 260." Minn. Stat. § 484.01 (2010); *see also State v. Loveless*, 425 N.W.2d 602, 604 (Minn. App. 1988) (discussing the 1986 unification of the previously separate trial courts), *review denied* (Minn. Aug. 31, 1988). District courts are also authorized to decide dissolution petitions. Minn. Stat. § 518.06, subd. 1 (2010).

The Morrison County district court addressing the dissolution petition therefore had subject-matter jurisdiction over the dissolution *and* child-protection petitions, even as those petitions were addressed in different courtrooms.

This clarification does not resolve Tonya Schwinn's challenge, however, because assigning different judges of the district court to preside over a dissolution proceeding and a child-protection proceeding at least potentially raises an issue of priority jurisdiction in decision-making authority concerning child custody. "The juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services." Minn. Stat. § 260C.101, subd. 1 (2010). Once the district court, rendering decisions as the "juvenile court," issues a child-placement order, its jurisdiction automatically terminates unless it is expressly retained. Minn. R. Juv. Prot. P. 42.07, subd. 2. And once that jurisdiction terminates, remaining custody issues "shall be brought in the family court" for decision under section 518. *See id.*, subd. 4.

Apparently for practical reasons, the district court judges here did not exactly follow that priority-jurisdiction scheme. Rather than awaiting the child-protection court's disposition of custody under the CHIPS petition, the dissolution court issued a custody order favoring Conrad Schwinn. And although it could have resolved any priority concerns by consolidating the two cases, *see Durkin v. Hinich*, 442 N.W.2d 148, 152 (Minn. 1989), the district court did not do so here. We nevertheless hold that, for two reasons, the priority jurisdiction favoring the child-protection court does not encumber the dissolution court's custody order.

First, the dissolution court issued its order expressly "[s]ubject to final disposition of the CHIPS action." This qualification demonstrated that the dissolution court recognized the child-protection court's priority of authority over the custody decision and that the child-protection court could have either expressly incorporated the dissolution court's order or terminated its own proceedings to allow the order to take effect automatically. Although section 260C and rule 42 do not expressly contemplate the dissolution court's solution to the priority-jurisdiction issue it sought to remedy, the approach is both practical and reasonable and neither provision prohibits it. Second, our review of the record informs us that, at the time the dissolution court filed its now-challenged order, the child-protection court had already disposed of the action, effectively terminating its jurisdiction. It dismissed the CHIPS petition in an order filed May 5, 2010, one day before the dissolution court entered judgment on its order granting Conrad Schwinn custody. For these reasons we hold that no priority-of-jurisdiction conflict exists here.

II

We now address Tonya Schwinn's argument that the district court erroneously failed to grant her part of Conrad Schwinn's nonmarital property under Minnesota Statutes section 518.58 (2010). She maintains that dividing Conrad Schwinn's nonmarital property was necessary to achieve fairness because he retained those assets throughout the marriage while she had disposed of her nonmarital property (her farm, truck, and horses) for the parties' shared benefit during the marriage.

We narrowly review property divisions and reverse a district court's judgment only if it clearly abused its broad discretion. *Dammann v. Dammann*, 351 N.W.2d 651, 652 (Minn. App. 1984). We will not simply replace the district court's conclusions about fairness with our own conclusions on matters about which reasonable minds can differ. We see no abuse of discretion here.

The district court begins with the strong presumption on the dissolution of a marriage that each party keeps the property that he or she brought into the marriage. A statutory exception allows the district court the discretion to grant to one party part of the other's nonmarital property if it finds that following the usual division would be "so inadequate as to work an unfair hardship." Minn. Stat. § 518.58, subd. 2. Although it is true that Conrad Schwinn leaves the marriage with his nonmarital property intact (approximately $200,000 in investment accounts) while Tonya Schwinn does not, the district court was not compelled on this record to find that Tonya Schwinn has suffered a genuine *hardship*; the marriage was short-lived and Tonya Schwinn leaves it while young (she is 32) and with multiple advanced post-secondary degrees establishing her ability to provide for herself. *See id*. (listing age and length of marriage among factors in unfair-hardship analysis). And even if some theoretical hardship existed, we cannot say that the district court was required to find that it was an *unfair* one; the district court was aware from this record that Tonya Schwinn's potentially income-inhibiting difficulties, if any, are at least partly self-induced. The marital property was divided evenly and this record does not compel us to reverse the district court's discretionary decision denying Tonya Schwinn's request for an undue-hardship adjustment to the nonmarital-property division.

III

We next address Tonya Schwinn's claim that she is unable to support herself without spousal maintenance and that the district court abused its discretion by holding that she could. A spousal-maintenance award is not a right; on marriage dissolution, a district court "*may* grant a maintenance order" to a spouse who lacks property and income to provide her own support. Minn. Stat. § 518.552, subd. 1 (2010) (emphasis added). Whether to grant spousal maintenance is within the district court's broad discretion. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009).

The district court denied Tonya Schwinn's spousal-maintenance request after it found that the marriage was short-lived, that no medical or other credible evidence established that Tonya Schwinn could not work, and that Conrad Schwinn lacks the income to support Tonya Schwinn while meeting the children's and his own needs. Any of these considerations standing alone could justify the district court's decision. *See* Minn. Stat. § 518.552, subd. 2(g) (2010) (requiring the district court to consider "the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance"); *Gatfield v. Gatfield*, 682 N.W.2d 632, 638 (Minn. App. 2004) (listing as an essential factor in determining spousal maintenance the financial condition of the spouse who would be providing it), *review denied* (Minn. Sept. 29, 2004). Each of the district court's maintenance-related findings have support in the record and are ample bases on which the district could, in its discretion, leave the parties separately to rely on himself and herself for future livelihood.

IV

Tonya Schwinn also contests the district court's denial of her need-based attorney-fees request. The district court must award attorney fees in dissolution proceedings if it finds that the award "is necessary for a party to assert his or her rights in an action, that the payor has the financial means to pay the fees, and that the payee lacks the means to pay the fees." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (citing Minn. Stat. § 518.14, subd. 1 (1996)), *review denied* (Minn. Feb. 18, 1999). Tonya Schwinn's share of the marital property was $26,195 and her attorney fees somewhat exceeded $13,000. The district court found that "[w]ith [Tonya Schwinn's] share of the marital property, [she] will have sufficient funds with which to pay her attorney's fees." This finding is supported by the record and alone disqualifies Tonya Schwinn from the statutorily mandated need-based attorney fees that she sought.

Tonya Schwinn unpersuasively relies on *Schultz v. Schultz*, 383 N.W.2d 379 (Minn. App. 1986), for the proposition that she should not be required to invade her property settlement to pay attorney fees. In *Schultz*, we held that the district court abused its discretion by requiring a wife to liquidate a substantial portion of her property award to pay her attorney fees when her husband's income was substantially higher and enabled him to pay the fees. *Id.* at 383. *Schultz* is of little consequence here, where Conrad Schwinn would also have to invade *his* property award to pay Tonya Schwinn's fees.

Affirmed.