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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0708**

In re the Marriage of: Cassie Marie Birr, petitioner,
Respondent,

vs.

Darrin John Birr,
Appellant.

**Filed April 10, 2017
Affirmed
Stauber, Judge**

Blue Earth County District Court
File No. 07-FA-15-1667

Tami L. Peterson, Saxton Peterson Law Firm, Mankato, Minnesota (for respondent)

Ryan B. Magnus, Jennifer L. Thon, Jones and Magnus, Attorneys at Law, Mankato,
Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this marital-dissolution case, appellant-husband challenges the district court's
division of marital property and its award of attorney fees to respondent wife. We affirm.

FACTS

In the course of their dissolution of marriage, appellant Darrin John Birr (Darrin) and respondent Cassie (Cassie) Marie Birr, settled issues of child custody and support, spousal maintenance, and division of most of their marital property; but they were unable to agree on division of the parties' homestead and farm (the property). The parties stipulated that the property was marital and "that the values and encumbrances identified [in the stipulation] shall be used by the Court when determining the equitable division of assets and debts." The parties agreed that the property "has a value of \$1,811,900 and is encumbered by [a] contract for deed in the amount of \$172,107.62."

The parties have a vendee's interest in the property, which has been owned and farmed by Darrin's family for years and includes the parties' homestead. In 2011, the parties entered into a contract for deed to purchase the property from Darrin's father, Marvin Birr, agreeing to pay a significantly discounted price of \$200,000 at 4.25 percent interest amortized over a 20-year period. At the time of the dissolution judgment, the parties had paid \$60,275.88 in principal and interest, and the contract had a remaining balance of \$172,107.62.

The contract for deed includes restrictive covenants. The parties are not permitted to "create or . . . to accrue liens or adverse claims against the [p]roperty." They cannot "sell, assign, or otherwise transfer" their interest in the contract without the consent of Marvin Birr in his "sole discretion," and they "shall not have the right to prepay this Contract at anytime without the expressed written consent of Seller, Marvin L. Birr." The contract also provides that "[i]n the event of any voluntary or involuntary sale or

transfer of the property during the term of this Contract, Seller, Marvin L. Birr, shall have the right of repurchase of the property for the same purchase price [of \$200,000, on the same terms].”

Both parties work full time in non-farm employment and have roughly equal incomes. Darrin also farms the property. The marital assets consisted largely of the property and the equipment that Darrin uses to farm the property, which was awarded to him. Because there were no liquid assets to distribute, Cassie was unable to purchase a home, and she requested that she be permitted to occupy the homestead with the parties’ three children, while Darrin would be permitted to farm the attached land. The district court found that it was “possible [for Darrin] to farm without going into the [house].”

Because of the restrictions contained in the contract for deed, which would permit Marvin Birr to cancel the contract upon a default, the district court proposed two alternative methods of effecting an equitable distribution. Under the first option, Cassie would occupy the homestead and would pay for its utilities and maintenance, and Darrin would farm the property. Darrin would pay the contract-for-deed payments and farm-operation expenses out of the gross profits of the farm, and would be permitted to draw a stipend of \$18,000 per year for working on the farm. The parties would divide any profit from the farm after the other expenses and the stipend were deducted. This arrangement would continue until the contract for deed was paid off in 2032, at which time either party could buy out the other by “tendering one half of the full market price . . . as of the date of the final payment.”

Under the second option, Darrin would negotiate with Marvin Birr for consent to obtain financing to prepay the contract for deed. If Darren chose this option, he was required to complete all arrangements by May 1, 2016, or option one would “automatically go into effect.” Darrin would pay Cassie \$275,000 immediately, and the balance of \$544,896.19 over a period of ten years at five-percent interest. Cassie would convey her interest to Darrin immediately upon the final payment of the contract for deed.

Darrin moved for reconsideration of the district court’s order for judgment, but the district court denied the motion. Darrin appealed to this court, which initially rejected the appeal because no judgment had yet been entered. Judgment was entered on March 29, 2016, and Darrin filed this appeal.

On May 5, 2016, the district court held a hearing on Cassie’s motion for immediate occupancy of the homestead, as Darrin failed to meet the May 1 deadline for the second option. The district court also ordered Darrin to pay \$2,979.50 for Cassie’s attorney fees incurred for Darrin’s motion for reconsideration, and \$500.00 relating to the motion to permit Cassie’s immediate occupancy of the homestead.

D E C I S I O N

I.

The district court has broad discretion to divide marital property, and we will reverse its decision only for an abuse of discretion. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). “Determining the specific value of an asset is a finding of fact. Such findings of fact, when made without a jury, shall not be set aside unless clearly erroneous

on the record as a whole.” *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (quotations and citations omitted). The district court must make a “just and equitable division of the marital property.” Minn. Stat. § 518.58, subd. 1 (2016). But a just and equitable division need not be a strictly equal division of property. *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005).

Stipulations are a favored means of simplifying dissolution litigation and are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). As with any contract, if the language of the contract is clear and unambiguous, a reviewing court construes it according to its plain meaning. *Ertl v. Ertl*, 871 N.W.2d 410, 415 (Minn. App. 2015). “A writing is ambiguous if it is reasonably subject to more than one interpretation. Whether a contract is ambiguous is a question of law reviewed de novo.” *Id.* (citation omitted).

The parties stipulated that the property, identified as “155221 557th Avenue, Good Thunder, MN 56037 with acreage (3 Parcels),” was marital in nature and that it “has a value of \$1,811,900.00 and is encumbered by contract for deed in the amount of \$172,107.62.” The parties also stipulated that “the values and encumbrances identified below shall be used by the Court when determining the equitable division of assets and debts.” Darrin argues that the property is not “precisely identif[ied],” and the value is not certain, because “value” could mean the purchase price, the tax-assessed value, or the net-equity value of either the tax-assessed value less the encumbrance or the contract price less the encumbrance.

Darrin’s alternative arguments are not supported by the stipulation, which is not ambiguous: it directs the court to use the agreed upon value of \$1,811,900 as a basis for an equitable distribution of property. Likewise, the description of the property is sufficiently definite to provide a means of identifying the property. *See Crown CoCo, Inc. v. Red Fox Restaurant of Royalton, Inc.*, 409 N.W.2d 919, 921 (Minn. App. 1987) (stating that a lease “must provide a reasonably certain means of identifying the demised property”), *review denied* (Minn. Oct. 21, 1987).

Darrin also argues that the district court erred by treating the contract for deed as “merely a technicality.” Darrin contends that the restrictive features of the contract for deed limit the options the parties have and that those restrictions limit the value to the contract-for-deed purchase price. But the district court’s first option, which grants occupancy of the homestead to Cassie and permits Darrin to farm the property while continuing to make payments on the contract for deed until the termination of the contract in 2032, recognizes that the contract restrictions could block an earlier sale or encumbrance of the property. The district court was aware of the contract restrictions and attempted to structure an equitable settlement within the contract parameters.

Finally, Darrin argues that the proposed property division is not just and equitable because, under the first option, the district court ordered him to pay the contract for deed, taxes, and insurance out of farm income proceeds, while permitting Cassie to reside in the homestead without contributing to those payments and awarding her one-half of the value upon payoff of the contract. Darrin asserts that this is unjust and against logic and facts in the record. But according to the record, the parties have always made those payments

out of farm income, Darren is permitted to deduct those expenses on his taxes, and option one grants him a stipend of \$18,000 before any farm profit is shared with Cassie. In addition, Darrin's child-support obligation is based solely on his non-farm income.

We will not set aside the district court's factual findings, which are supported by record evidence, unless clearly erroneous. *Maurer*, 623 N.W.2d at 606. The district court made an equitable and fair distribution in light of the nature of the parties' marital property and the issues presented by the restrictive clauses in the contract for deed and did not abuse its discretion.

II.

Darrin argues that the district court abused its discretion by awarding Cassie attorney fees for the hearings on Darrin's motion for reconsideration and Cassie's motion to enforce the judgment and decree after Darrin failed to meet the deadlines under the decree.

A court

shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:

- (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
- (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2016). A court may also, in its discretion, award conduct-based fees. *Id.* But it appears that the district court made only an award of need-based fees because the court’s discussion includes only the need-based factors set forth in the statute.

Because the statute uses the word “shall,” need-based fees must be awarded if the court makes the appropriate findings. *See* Minn. Stat. § 645.44, subd. 16 (2016) (stating that “[s]hall” is mandatory”). A district court must make findings that are sufficient to permit appellate review. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 720 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009), *and appeal dismissed* (Minn. Feb. 1, 2010). And the court must make specific findings on the need-based factors. *In re Marriage of Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991). But

a lack of specific findings on the statutory factors for a need-based fee award . . . is not fatal to an award where review of the order reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case and had access to the parties’ financial records.

Geske v. Marcolina, 624 N.W.2d 813, 817 (Minn. App. 2001) (quotation omitted).

The district court found that Cassie did not have the means to pay fees and costs, relying on an affidavit that she submitted detailing her current financial situation. The district court had just finished a hearing on the division of the parties’ marital property and was well-versed concerning their finances. As to Darrin’s ability to pay, the district

court found that he “has both a full time job and a farming operation. [Darrin] has full access to all of the farming operation and its income which was not used toward the calculation of child support. [Darrin] has the means to pay the fees, costs, and disbursements.” The court also found that Cassie’s “response to [Darrin’s] motion [for reconsideration] did not contribute to the length or expense of the proceeding.” Darrin, not Cassie, moved for reconsideration of the district court’s initial order. Cassie moved to enforce the judgment and decree because Darrin had failed to act within the deadlines set forth in the judgment. These circumstances do not support a finding that Cassie contributed to the length or expense of the proceedings.

These findings, while not lengthy, are more detailed than those in *Hemmingsen*, in which this court remanded the attorney fees question to the district court for additional findings. 767 N.W.2d at 720. In *Geske*, this court also remanded the question of the award of attorney fees to the district court, when the district court failed to disclose the basis for its findings. 624 N.W.2d at 819. Here, the district court explained that it relied on Cassie’s affidavit, which explained her financial circumstances, and on its knowledge of Darrin’s financial circumstances. The district court did not err by awarding need-based attorney fees.

Affirmed.