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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0091**

In re the Marriage of:
Tamara Ann Fonoti, petitioner,
Respondent,

vs.

Mace Faamasani Fonoti,
Appellant.

**Filed May 14, 2018
Affirmed
Klaphake, Judge*
Dissenting, Ross, Judge**

St. Louis County District Court
File Nos. 69DU-FA-14-1072, 69DU-FA-15-1290

Jeremy M. Hurd, Orman Nord & Hurd, P.L.L.P., Duluth, Minnesota (for respondent)

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Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Klaphake,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KLAPHAKE, Judge

Appellant Mace Faamasani Fonoti challenges the district court’s determinations that respondent Tamara Ann Fonoti was his putative spouse from 1989 until 2013, and that she was entitled to receive spousal maintenance and a property allocation as if the parties had been legally married during that period. Respondent cross-appealed, arguing, among other things, that the district court erred in failing to award her an equalization payment in the property distribution. We affirm because appellant did not challenge the district court’s findings as to respondent’s status as a putative spouse, the district court’s findings support its conclusions as to that status, and the district court’s property distribution was not an abuse of its discretion.

D E C I S I O N

Under Minnesota law, “[a] civil marriage entered into before the dissolution of an earlier civil marriage of one of the parties” is “prohibited.” Minn. Stat. § 517.03, subd. 1(1) (2016). But when a person in a cohabiting relationship mistakenly, but in good faith, believes that he or she is married, the putative-spouse statute may apply. Minn. Stat. § 518.055 (2016). That statute provides:

Any person who has cohabited with another to whom the person is not legally married in the good faith belief that the person was married to the other is a putative spouse until knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of the status, whether or not the marriage is prohibited or declared a nullity. If there is a legal spouse or

other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Id. Whether a person is a putative spouse in “‘good faith’ is judged subjectively.” *Xiong v. Xiong*, 800 N.W.2d 187, 191 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Aug. 16, 2011). An appellate court will not disturb a district court’s determination that a party is a putative spouse “unless, upon review of the record, it is left with a definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

Appellant argues that the district court erred by failing to properly weigh evidence suggesting that respondent knew that the parties were not legally married after they received a phone call in 1991 from appellant’s “former” wife, Beulah Fonoti, in which Beulah asserted that appellant’s prior marriage to her was not dissolved. But respondent testified that she retained her good-faith belief in the legality of her marriage even after this phone call, telling appellant to “take care of it,” which, in her view, meant that he should resolve any potential impediments to the otherwise legal status of their marriage. The district court found that respondent

maintained that at that point she still believed herself to be legally married to [appellant] even though his previous marriage to Beulah had reportedly not been dissolved as the parties continued to hold themselves out as husband and wife, [appellant] did not indicate to her that they were not legally married, they had a marriage license signifying they were husband and wife, and they executed legal documents referring to themselves as husband and wife.

For several reasons, we decline to overturn the district court's determinations that respondent was a putative spouse. First, the district court's findings, which are based largely on credibility determinations, should not be assailed on appellate review. Appellate courts "defer to the district court's opportunity to assess the credibility of witness[es]." *In re Pamela Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012). Here, the district court made numerous credibility findings in support of its decision. As to respondent, the district court found that she "clearly articulated her understanding of the nature of the parties' relationship since its inception and the significance of the marriage license and ceremony to the parties' relationship," and her testimony was consistent and corroborated even by appellant, who testified that he also believed that the parties were legally married until 2012 or 2013. The district court noted the conflicting evidence on whether respondent knew that appellant's "marriage to Beulah had not been dissolved," but relied on the "frankness and sincerity of [respondent's] testimony" and its "reasonableness . . . in light of all the other evidence in this case." On this record, we cannot reach a conclusion other than that the district court found respondent credible. As to appellant, the district court also made credibility findings generally rejecting his testimony, and specifically found not credible appellant's testimony that he believed respondent knew that they were not legally married, noting that appellant himself testified that he "'had no clue' whether he was divorced from . . . Beulah and that he had never taken any steps on his own to dissolve their marriage nor did he receive any documentation that the marriage had been dissolved." Finally, the district court rejected the testimony of the parties' children and one other

witness, whose testimony the district court found either “not conclusive” or based on an “estranged relationship.”

On the deference to be accorded the district court’s credibility determinations, the case of *Xiong* is instructive. There, this court affirmed a determination that a Hmong woman, who participated in a Hmong cultural marriage ceremony and later signed a marriage license that was never registered, was a putative spouse. *Xiong*, 800 N.W.2d at 188-92. As in this case, the putative spouse held herself out in the community as a spouse and signed numerous legal documents as a spouse. *Id.* at 189. The district court determined that the woman was a putative spouse until she learned the true status of her relationship upon petitioning for divorce. *Id.* at 189-91. The district court relied on “ample record evidence” to support the existence of a putative marriage, and this court affirmed, deferring to the district court’s credibility determinations. *Id.* at 191-92.

Second, we observe no error in the district court’s interpretation of either the “good faith” or “knowledge” provisions of Minn. Stat. § 518.055, both of which the district court addressed in reaching its decision. This court has interpreted the statute to require “only a ‘good faith belief,’ not a ‘reasonable belief.’” *Id.* at 192. As noted, the district court concluded that respondent retained a subjective good-faith belief in the legality of her marriage; record evidence supports that finding. The district court also considered and rejected the notion that the assertion by Beulah extinguished respondent’s good-faith belief by providing respondent with knowledge that she was not legally married to appellant. The statute does not define the term “knowledge.” But its ordinary definition accords “[a]n awareness or understanding of a fact or circumstance; a state of mind in which a person

has no substantial doubt about the existence of a fact.” *Black’s Law Dictionary* 1003-04 (10th ed. 2014) (defining knowledge). In the statute, juxtaposition of “good faith” to “knowledge” suggests that “knowledge” requires an actual awareness of the true status of the illegality of the putative marriage. *See State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (stating that courts “construe a statute as a whole and interpret its language to give effect to all of its provisions” and that the canon against surplusage “favors giving each word or phrase in a statute a distinct, not an identical, meaning”) (quotations omitted); *cf. All Parks All. for Change v. Uniprop Manufactured Hous. Cmty. Income Fund*, 732 N.W.2d 189, 193 (Minn. 2007) (noting that analysis of the plain language of a statute requires interpretation “in light of . . . surrounding sections”). Again, the district court’s findings and the underlying record support the district court’s decision. Respondent, who has a high school education and has worked as a housecleaner throughout her career (with a net monthly income of \$416), apparently chose to reject the assertion of Beulah, who may have had emotional or financial reasons for claiming that her marriage to appellant had not been dissolved. We decline to impute actual knowledge of the prohibited nature of her own marriage to respondent when the only support for that conclusion was offered via an isolated phone call from a former spouse. After receiving the information, appellant and respondent continued to act in reliance on the legality of their own marriage for over 20 years. While we acknowledge that the district court could have made findings to support an opposite conclusion, on this record, we cannot say that the district court erred in determining that respondent did not have actual knowledge of the true status of her marriage. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (“That

the record might support findings other than those made by the [district] court does not show that the court's findings are defective."); Minn. R. Civ. P. 52.01 (stating that an appellate court will not set aside a trial court's factual findings unless they are clearly erroneous); *see also Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988) ("To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must strike us as wrong with the force of a five-week-old, unrefrigerated dead fish."). When questioned at the hearing about what she would have done if she had been told that her marriage was prohibited as a matter of law due to the existence of a prior marriage, respondent acknowledged that she might have done things differently, but she "had a marriage certificate that said [she] was married" and "believed that [she] was still legally married." She further stated, "I am not a lawyer. I'm not a paralegal."

In reaching this decision, we decline to rely on the general presumption that a party is presumed to know the law. The specific knowledge requirement of the statute controls, rather than the general presumption. To rule otherwise would contradict the statutory language establishing that a party can be a putative spouse unless the party has "knowledge" of the illegality of the marriage. *See Elect. Short Line Terminal Co. v. City of Minneapolis*, 242 Minn. 1, 7, 64 N.W.2d 149, 153 (1954) (approving the statement "that it is fallacious to hold that the presumption that everybody knows the law supplies adequate constructive notice" in some circumstances); *Peterson v. First Nat'l Bank of Ceylon*, 162 Minn. 369, 375, 203 N.W. 53, 55 (1925) (referring to the presumption "that all know the law" as "almost humorous and wholly suppositious" in some contexts, and stating that the

rule should not “justify or even suggest that a loss should be imposed on one and an unconscionable gain permitted another merely because of the former’s ignorance of law”); *WGSB, Inc. v. Bollinger*, 384 N.W.2d 592, 594 (Minn. App. 1986) (“Under some circumstances, ignorance of the law can be a reasonable excuse.”). The question to be answered here is a question of fact—whether respondent had actual knowledge of her marital status—and her testimony, which the fact-finder believed, shows that she did not. Further, to the extent that the presumption applied, it was rebutted in this case. *See* Minn. R. Evid. 301 cmt (“If sufficient evidence is introduced that would justify a finding of fact contrary to the assumed fact the presumption is rebutted and has no further function at the trial.”).

We are satisfied that, applying the statutory language as interpreted in *Xiong*, the district court’s findings support its decision that respondent was a putative spouse for over 20 years because respondent had a good-faith belief that she was legally married to appellant. During that time, the parties obtained a marriage license, were married by a district court judge of this state, and, in accordance with their trial testimony and documentary evidence, held themselves out as husband and wife in every way. They purchased property as husband and wife, filed annual taxes as husband and wife, and executed reciprocal wills as husband and wife. They established themselves in the community as husband and wife, including living in a family household with two children born of their union.

Appellant next argues that the district court erred and abused its discretion by awarding permanent spousal maintenance to wife.¹ We disagree. The putative-spouse statute permits the putative spouse to “acquire[] the rights conferred upon a legal spouse, including the right to maintenance following termination of the status.” Minn. Stat. § 518.055. The only factual basis for appellant’s claim that the \$1,000 per month maintenance ordered was excessive is that the putative marriage lasted for only two years. Because we uphold the district court’s decision on the term of the putative marriage, we also uphold the district court’s determination on the amount of maintenance awarded. See *Duffey v. Duffey*, 416 N.W.2d 830, 833 (Minn. App. 1987) (“The [district court] has wide discretion in determining the amount and duration of spousal maintenance and its determination will not be reversed absent an abuse of that discretion.”), *review denied* (Minn. Feb. 24, 1988).

Appellant further argues that the district court erroneously set a valuation date for the division of property, including his retirement and stock accounts. The district court set the valuation date at June 30, 2014. Appellant argues that respondent “did not acquire any rights to his retirement and stock accounts that accumulated after the two year period” from

¹ Respondent argues that this court lacks jurisdiction to review issues of spousal maintenance and the valuation date of property acquired during the putative marriage because those issues were determined in the original judgment of October 28, 2016, and not altered by the amended judgment filed on November 21, 2016, from which appellant appealed. We reject this argument because respondent made a timely motion for amended findings, and under Minn. R. Civ. App. P. 104.01, subd. 2, “the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding.” On appeal, this “court may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.” Minn. R. Civ. App. P. 103.04.

1989 to 1991, when appellant argues that respondent “knew” of the marriage between Beulah and appellant. Again, this issue is resolved by our affirmance of the district court’s determination on the duration of the putative marriage. See Minn. Stat. § 518.58, subd. 1 (2016) (requiring the district court, upon dissolution of a marriage or an annulment, to “make a just and equitable division of the marital property,” taking into account such factors as “the length of the marriage”). Because we affirm the valuation date of the division of property, we also conclude that the division of marital property was a proper exercise of the district court’s discretion. See *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (“A [district] court has broad discretion in dividing property upon dissolution of a marriage.”).

In her cross-appeal, respondent argues that the district court erred by failing to award her an equalization payment of \$20,850.73 in the property division. She argues that the district court’s award of net marital property, less debt, reveals a 55%-45% split favoring appellant, which is inequitable. “We will affirm a district court’s division of property if it has an acceptable basis in fact and principle even though this court may have taken a different approach.” *Prahl v. Prahl*, 627 N.W.2d 698, 704 (Minn. App. 2001) (quotation omitted). “[D]ebts are apportioned as part of the property settlement and are treated in the same manner as the division of assets.” *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987). Respondent’s argument in seeking an equalization payment is based on the mathematical difference in the parties’ net property awards. “A [district] court’s division of marital property need not be mathematically equal.” *Johns v. Johns*, 354 N.W.2d 564, 566 (Minn. App. 1984). The property-division

statute requires the property division to be “just and equitable,” considering “relevant factors” such as “the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party.” Minn. Stat. § 518.58, subd. 1. The district court’s findings on the division of property were based on significant documentary evidence and the parties’ testimony, and are consistent with the evidence produced. In light of the whole record, we observe no abuse of discretion in the district court’s failure to award respondent an equalization payment.

Affirmed.

ROSS, Judge (dissenting)

Today's majority opinion distinguishes Minnesota as the first state in the union, and I expect last state, to dispose of the presumption that everyone knows she cannot marry an already-married man. This should be a rhetorical question: When a woman learns that the man she married two years earlier was then, and is still, legally married to a different woman, hasn't she also learned that her own marriage is not valid? The majority does not treat this question as rhetorical. And to my dismay, it answers, *No*. I respectfully dissent.

The putative-spouse analysis pivots on the simple word, "until." The statute reads, "Any person who has cohabited with another to whom the person is not legally married in the good faith belief that the person was married to the other is a putative spouse *until* knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights." Minn. Stat. § 518.055 (2016). The word "until" directs how a putative-spouse analysis goes. Courts ask first whether the alleged putative spouse originally had a good-faith belief that she was legally married. If yes, courts ask second whether she ever learned that her marriage was not legal. That is, a person who is not legally married but who, in good faith, believes she *is* legally married, gets putative-spouse privileges only until she learns that her marriage was not legal.

For the sake of this dissent, I will assume that Tamara Fonoti was Mace Fonoti's putative spouse initially despite Mace's ongoing marriage to Beulah Fonoti. But to be clear, the record raises serious doubt that Tamara could have *ever* been Mace's putative spouse. Their romance began when both were married to others, and Mace never told Tamara he divorced his wife. Asked about Mace's marital status up to the time of the 1989 marriage,

Tamara replied, “He told me that Beulah was going to take care of it.” By “it,” she was referring to a divorce. So when Tamara married Mace, she merely hoped that Mace was, at some point *in the future*, “going to” dissolve his extant marriage. And over the years she knew he never divorced, asking him several times to “take care of it” and knowing that he never did. This presents a separate ground for dissent that needs no further development.

As for the main reason for my dissent, I can assume that Tamara was Mace’s putative spouse for two years despite Mace’s marriage to Beulah. Even if Tamara somehow fit the definition of “putative spouse” for the first two years of the supposed marriage based on a good-faith belief that Mace had actually “take[n] care of” his divorce with Beulah Fonoti before the ceremony, the undisputed evidence presents an “until” moment that ended this putative-spouse status. That moment came in 1991, two years into the presumed marriage. Tamara did not testify merely that Beulah called and *claimed* to still be married to Mace, as the majority suggests; under questioning by her own attorney Tamara testified that she “learned” that Mace’s “prior marriage had not been dissolved” and she said she learned this “a couple of years after” her 1989 marriage ceremony. The majority also does not mention Tamara’s next and even more dispositive admission, but the admission activates the statute’s “until” phrase. Tamara’s testimony on cross-examination establishes absolutely and unequivocally that she also knew that, because of Mace’s failure to divorce Beulah, Mace was still married to Beulah at the time he participated in the marriage ceremony with Tamara:

Q: So, Ms. Fonoti, just to be clear, you discovered that Mr. Fonoti was still married to [Beulah Fonoti] two years into your marriage, correct?

A: Correct.

Back to my rhetorical question: Once Tamara learned that the man she supposedly married two years earlier had been at the time, and was still, already legally married to another, didn't she simultaneously learn that her putative marriage was not valid? Yes, under Minnesota law. First, Mace's marriage to Tamara was prohibited by law. In Minnesota, "a civil marriage entered into before the dissolution of an earlier civil marriage of one of the parties" is "prohibited." Minn. Stat. § 517.03, subd. 1(1) (2016). Second, despite the district court's implicit finding that Tamara did not "subjectively" know that she could not become legally married to an already-married man, she had constructive knowledge of this fact by operation of law. This is because "everyone is presumed to know the law." *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 778 (Minn. 2004). So at the moment two years into Tamara's purported marriage to Mace when Tamara *actually knew* that Mace was still married to Beulah, she also *constructively knew* that her "marriage entered into before the dissolution of" Mace's earlier marriage was prohibited by law, and so she *necessarily knew* that she was not legally married to Mace. Under this straightforward application of Minnesota law, the moment Tamara possessed this knowledge was the moment she ceased to be Mace's putative spouse. And because she is neither Mace's legal spouse nor his putative spouse, the district court has no statutory grounds to order Mace to pay her spousal maintenance.

The majority reaches a different conclusion by two legal errors. First, it refuses to apply the presumption that everyone knows the law. Second, it relies wrongly on the fact that Mace and Tamara held themselves out as a married couple for years.

The majority fails to apply the legal presumption that everyone knows that she cannot marry a married man. It does so under the notion that we consider subjective rather than objective knowledge under the putative-spouse statute. The majority's approach implies that presumed knowledge is objective knowledge. It is not. The difference between subjective knowledge and objective knowledge is the difference between being held responsible for what you actually know and being held responsible for what a hypothetical, reasonable person should have known. See *Choa Yang Xiong v. Su Xiong*, 800 N.W.2d 187, 191-92 (Minn. App. 2011) (citing *Bahr v. Capella Univ.*, 788 N.W.2d 76, 82 (Minn. 2010)), *review denied* (Aug. 16, 2011). That everyone is presumed to know the law requires courts to impute knowledge of the law to each person, just as if she actually knows the law subjectively. Presuming knowledge is not holding a person responsible for what she should know; it is relieving others of having to prove some element of what she actually knows. This has been so for a very, very long time. See *B.F. Jenness v. Sch. Dist. No. 31, Washington Cty*, 12 Minn. 448, 449, 12 Gil. 337, 345 (1867) ("Every person is presumed to know the law, and is bound at his peril to take notice of the public statutes; it must be supposed, therefore, the plaintiff knew"). The majority affirms only by relying on inapposite cases and flatly refusing to apply this cornerstone of Minnesota jurisprudence.

The sole Minnesota subjective-knowledge case relied on by the majority is also inapposite. It does not involve the situation here, where the alleged putative spouse learned that a prior marriage existed through the time of the later marriage ceremony. Instead, in *Xiong*, a 16-year-old Laotian refugee who had difficulty understanding English participated in a Hmong cultural marriage ceremony and, years later, obtained a marriage

license but never registered it to obtain a marriage certificate. *Xiong*, 800 N.W.2d at 188-89. When the couple received their license, they stood before a governmental official, raised their hands to swear an oath, and were handed an official document that the young woman's husband told her had officially consummated the marriage. *Id.* That case did not involve two people who held a marriage ceremony and then came to know, as Tamara admitted she came to know, that one of them was not divorced and remained married to another person.

Although this situation was not addressed in *Xiong* or any other Minnesota case, it has been addressed in two of the three states that, like Minnesota, have adopted section 209 of the Uniform Marriage and Divorce Act as their putative-spouse statute. See Christopher L. Blakesley, *The Putative Marriage Doctrine*, 60 Tul. L. Rev. 1, 16–17 (1985). Of the three other states that have adopted the act, one (Montana) has not apparently had occasion to apply the presumption that everyone knows the law to this situation. But both of the others (Illinois and Colorado) have applied the presumption by imputing knowledge of the law—specifically, knowledge that one cannot be legally married if either partner was married to another at the time of the ceremony—to a person claiming to have a good-faith belief in the legality of a later marriage.

Both of those courts impute knowledge of the law in the exact way the presumption should apply here. The Colorado Court of Appeals, for example, rejected a defendant's claim of putative-spouse status this way: "It is undisputed that throughout the period of his cohabitation" with a woman with whom the defendant had participated in a marriage ceremony without having been divorced from his wife, the "defendant knew that he was in

fact married to another person. *This undisputed fact negates any good faith belief*” that the later marriage was legal. *People v. McGuire*, 751 P.2d 1011, 1012 (Colo. App. 1987) (emphasis added). And in a case involving a woman who, like Tamara Fonoti, continued in a supposed marriage for more than 25 years, the Illinois Supreme Court rejected the woman’s putative-spouse claim this way: “[P]laintiff acquired no such rights [as a putative spouse], since the evidence discloses that she knew [that the] deceased and defendant had not been divorced *and was thus aware* that the marriage between her and the deceased was not legal.” *Daniels v. Ret. Bd. of Policeman’s Annuity & Benefit Fund*, 435 N.E.2d 1276, 1280 (Ill. 1982) (emphasis added). Minnesota’s presumption requires the same approach and compels the same result.

The majority’s second legal error is relying exclusively on the evidence that Mace and Tamara often held themselves out as being married in various documents—contracting to buy property together, filing tax returns together, and so on. At most, this evidence has some bearing on the first question raised by the putative-spouse statute, which is whether Tamara subjectively believed she was legally married as she began her marriage. But it does nothing to answer the critical second question, which is whether, at some point after Tamara developed a good-faith belief that she was legally married to Mace, she acquired knowledge that she was not legally married to him. The evidence that Mace and Tamara signed documents expressing themselves as a married couple is wholly irrelevant to this second question. Once Tamara acquired the knowledge in 1991 that Mace was still married to Beulah, her previous good-faith belief that she was legally married ended along with her status as a putative spouse, and that status could be restored only by some marriage-

creating event, like a wedding. The couple's joint documents holding themselves out as married are not marriage-creating events. At most they are marriage-representing events. They are incapable of restoring Tamara as a putative spouse under the statute, regardless of how numerous they may be.

In sum, I believe that one incontrovertible and unambiguous fact resolves this dispute: Tamara discovered two years after she married Mace that Mace was still married to Beulah and had been so married at the time of Tamara and Mace's ceremony. This revelation ended any claimed right to spousal maintenance as a putative spouse because, as a matter of law and of common sense, every person knows she cannot consummate a legal marriage to an already-married man. We should reverse.