STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0482

In re the Marriage of: Praveen Prabhakaran, petitioner,
Respondent,

vs.

Vadivazhaghi Kannan,
Appellant.

Filed January 29, 2018
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-FA-14-4939

Bridget R. Landry, Cordell & Cordell, P.C., Edina, Minnesota (for respondent)

Jennifer M. Macaulay, Macaulay Law Offices, Ltd., St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant-wife Vadivazhaghi Kannan (wife) argues that the district court (1) abused its discretion in admitting as admissible hearsay respondent-husband Praveen Prabhakaran's (husband) valuation of marital India properties; (2) erred in adopting husband's comparative market analysis (CMA) as evidence of the value of the parties'

home; (3) abused its discretion by denying wife's claim for the reservation of spousal maintenance; (4) erred in determining that the parties received a loan from wife's brother for $30,000, which had been repaid in full; and (5) abused its discretion in awarding conduct-based attorney fees to husband. We affirm.

FACTS

In 1995, the parties married in Chennai, India. In 2004, husband had an opportunity with his current employer in the United States. The family moved to the United States in January of 2004 on husband's H1-B visa and purchased a townhome in Plymouth, Minnesota. In 2005, the parties purchased an apartment in Arun, Chennai, India (Arun apartment) and in 2006, the parties purchased a vacant parcel of land in Padappai, India (Padappai land). In 2007, the parties purchased a second home located in Plymouth for $425,000.

In July of 2014, husband served wife with a summons and petition for marriage dissolution. In August of 2014, wife transferred the two India properties, both in her name at the time, to her mother, in violation of Minn. Stat. § 518.58, subd. 1a (2016), which prohibits a party from transferring a marital asset without the consent of the other party during the pendency of a marriage-dissolution action.

The district court determined the parties' marital debts after a hearing in February of 2016 and held a trial in July of 2016. In its well-written and comprehensive post-trial findings of fact, conclusions of law, and judgment and decree of November 9, 2016, the district court found that wife's conduct "unreasonably contributed to the length and expense of the proceedings," and reserved the amount of conduct-based attorney fees in

favor of husband for an amount to be determined based on husband's itemization of fees incurred. In December of 2016, wife filed her first notice of appeal with this court. In January of 2017, the district court filed amended findings of fact and conclusions of law granting conduct-based attorney fees to husband in the amount of $28,453.84 based on wife's conduct. In March of 2017, wife filed her second notice of appeal. We dismissed wife's first appeal as premature. We review wife's second appeal.

D E C I S I O N

I. Appellate review of wife's hearsay objection is precluded.

Wife argues that the district court abused its discretion when it admitted husband's valuation of the India properties as admissible hearsay under the business-records and residual exceptions. We disagree.

Evidentiary rulings are subject to appellant review "only if there has been a motion for a new trial in which such matters have been assigned as error." *Satuer v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). In *Alpha Real Estate Co. v. Delta Dental Plan*, the supreme court "observed that a 'general demarcation line' could be drawn between the assignment of errors that require a post-trial motion, referring to rulings of the district court that reside within the court's discretion, and substantive questions of law that we review de novo." *Continental Retail, LLC v. Cty. of Hennepin*, 801 N.W.2d 395, 399 (Minn. 2011) (quoting *Alpha Real Estate*, 664 N.W.2d 303, 310-11 (Minn. 2003)). Thus, evidentiary rulings made at trial must be assigned as error in a motion for a new trial or amended findings in order to properly preserve an objection for appellate review. *Continental Retail*,

801 N.W.2d at 399 (citing *Sauter*, 389 N.W.2d at 201). Wife's failure to bring such a motion precludes appellate review. *Sauter*, 389 N.W.2d at 202.

Applying *Sauter* and *Alpha Real Estate*, we conclude that the evidentiary ruling that wife challenges is a matter that required a motion for a new trial to preserve it for appellate review. Because wife did not move for a new trial based on the district court's hearsay ruling, her challenge to the ruling is not properly before this court on appeal.

II. The district court did not err in adopting husband's CMA as evidence of the value of the parties' home.

Wife argues that the district court erred in adopting husband's CMA because it was insufficient evidence of the price of the second home located in Plymouth. Wife's argument lacks merit.

The district court is afforded broad discretion in making valuation decisions. *Wopata v. Wopata*, 498 N.W.2d 478, 485 (Minn. App. 1993). However, the valuation must be supported by either clear documentary or testimonial evidence or by comprehensive findings issued by the district court. *Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 766 (Minn. 1983). The district court's findings of fact relative to the issue of valuation will not be set aside unless clearly erroneous. *Wopata*, 498 N.W.2d at 485.

At trial, husband presented testimony and evidence from a real-estate agent with over 15 years of experience selling homes in the Plymouth area. The real-estate agent testified that the value of homes increased between 2015 and 2016, raising the home's value from its purchase-price of $425,000 to $448,000. Husband also provided CMAs that provided values for the home.

At trial, wife argued that the home is worth $383,910. Wife's valuation was based on a comparison of tax-market values and sale prices of comparable homes and calculating a likely sale price of the home, assuming it would also be sold for the same percentage under its tax-market value. The district court found that the real-estate agent credibly testified that he and other real-estate professionals do not rely on tax-market values because they are typically low and do not provide useful information regarding likely sales prices.

The district court's valuation decision is supported by sufficient, clear documentary evidence and the real-estate agent's testimonial evidence, as well as extensive comprehensive findings. *See Ronnkvist*, 331 N.W.2d at 766. Wife has not met her burden to show that the district court erred in weighing the evidence and making credibility determinations.

III. The district court did not abuse its discretion in determining that a reservation of spousal maintenance was not warranted.

Wife argues that the district court abused its discretion in refusing to reserve the issue of spousal maintenance for a future time because her employment was tenuous at the time. We are not persuaded.

District courts have broad discretion in deciding whether to reserve maintenance. *Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). A district court abuses this discretion if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 2020 (Minn. 1997) (quoting *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). Findings

of fact concerning spousal maintenance must be upheld unless they are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see* Minn. R. Civ. P. 52.01.

Spousal maintenance is "an award made in a dissolution . . . proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2014). A district court

> may grant a maintenance order for either spouse if it finds that the spouse seeking maintenance:
>
> (a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or
>
> (b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment . . . .

Minn. Stat. § 518.552, subd. 1 (2014); *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (noting that an award of maintenance requires a showing of need, even if the statute is otherwise satisfied). The maintenance statute lists non-exclusive factors that courts consider when crafting maintenance orders. *Lee v. Lee*, 775 N.W.2d 631, 636 (Minn. 2009); *see* Minn. Stat. § 518.552, subd. 2. "[N]o single statutory factor for determining the type or amount of maintenance is dispositive." *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). A district court must balance the financial needs of the spouse seeking maintenance and his or her ability to meet those needs against the financial condition of the spouse from whom the maintenance is sought. *See Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

Here, the district court found that wife owns sufficient property and has sufficient income to support herself at the standard of living established during the marriage. It also found that wife is able to provide adequate self-support based on the factors outlined in Minn. Stat. § 518.552, subds. 1, 2.

Wife was not authorized to work in the United States until 2010 because of her immigration status. Once authorized, wife started an IT company and tutored children until 2012. She then worked as an IT contractor until March 2015. She received unemployment income until July 2015. From July 2015 to January 2016, she worked as an IT contractor earning $48.00 per hour. In June of 2016 she began a contract position under a seven-month contract-to-hire, where she earned $55.00 per hour.

During trial in July 2016, wife worked under contract and earned $9,526.00 per month, nearly equal to husband's monthly income of $9,636.00. The district court awarded her $868.00 in monthly child support. She was awarded an equitable distribution of the marital estate. Wife has a post-secondary education and is not in need of any additional education or training. She received additional certifications since the parties' separation that have increased her employability in the IT field. Based on the record, we discern no abuse of the district court's broad discretion.

IV. The district court did not err in determining that the loan received from wife's brother was for $30,000 and that the entire principal had been retired.

Wife argues that the district court erred in concluding that the parties previously owed a marital debt to wife's brother for $30,000, that the debt had been paid in full, and that wife did not carry her burden of proving the existence of further debts because the

district court did not have personal jurisdiction over wife's brother, and therefore could not adjudicate his interests in the loan. Wife's argument is misguided.

"Whether personal jurisdiction exists is a question of law, which we review de novo." *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016) (quotation omitted), *cert. denied*, 137 S. Ct. 1331 (2017).

Here, wife argues that in a dissolution proceeding, a district court lacks personal jurisdiction over a nonparty and cannot adjudicate a nonparty's property rights. She makes this assertion based on our decision in *Danielson v. Danielson*, 721 N.W.2d 335, 339-40 (Minn. App. 2006). The *Danielson* court held that, in marriage dissolutions involving third-party interests, the district court may: (1) exclude the asset from the property division as omitted property and amend the division after the resolution of any third-party disputes based on the various interests in the asset; (2) award each party a percentage interest in whatever may later be determined to be the marital interest in the asset; or (3) include the asset in the property division, "recognizing that if a nonparty is later determined to have an interest in the asset, the dissolution judgment may be reopened and adjusted under Minn. Stat. § 518.145, subd. 2." *Danielson*, 721 N.W.2d at 339-340. "[W]hatever method a district court selects . . . [it] is required to make sufficient findings of fact and conclusions of law to explain its decision." *Id.*

The district court exercised the third option, finding that, at one point, the parties owed wife's brother $30,000, but that the parties satisfied that debt, did not owe wife's brother anything further, and that the property division could later be reopened for amendment. The district court sufficiently explained its decision. Nevertheless, wife

argues that the district court should have adopted option one and foregone its marital-debt calculations. However, it is plain from the *Danielson* holding that the district court may "select" an option and is not bound to one in particular. Wife has not satisfied her burden to show that the district court erred in making its calculations of the previous amount of debt owed to wife's brother.

V. The district court did not abuse its discretion in awarding conduct-based attorney fees to husband.

Wife argues that the district court abused its discretion in awarding husband $28,453.84 in conduct-based attorney fees. We are not persuaded.

A district court may award attorney fees against a party who "unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2016). The party moving for conduct-based attorney fees "has the burden to show that the conduct of the other party unreasonably contributed to the length or expense of the proceeding." *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). We review a district court's award of conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

Conduct-based attorney fees are warranted when a party takes "duplicitous and disingenuous" positions that lengthen and increase the expense of the proceedings. *Redmond v. Redmond*, 594 N.W.2d 272, 276 (Minn. App. 1999). Under the law, "[a] motion for conduct-based attorney fees may be based on the opposing party's pursuit of frivolous or bad-faith claims." *Baertsch*, 886 N.W.2d at 239.

Here, the district court found that wife contributed to the length and expense of the litigation for five reasons: (1) wife's transfer of the India properties to her mother after she had been served with the dissolution of marriage; (2) wife's frequent retention of new counsel; (3) wife falsely increasing the amount allegedly owed to her brother and falsely claiming additional alleged debts owed to her parents; (4) wife falsely alleging that husband had business interests and earned additional income outside of his W-2 wages; and (5) wife's counsel's assertions during husband's closing arguments that referenced exhibits that were not properly admitted into evidence.

Wife focuses solely on her retention of new counsel. She argues that it is fair and reasonable for a party to retain seven attorneys in a divorce proceeding. The district court found that, with each new counsel retained, husband incurred costs in repeating conversations with wife's new counsel and was forced to duplicate work, including the participation in multiple alternative-dispute-resolution sessions. The record supports the district court's finding. Wife has not met her burden in showing that the district court abused its discretion in awarding conduct-based attorney fees to husband.

Affirmed.