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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1686**

In re the Marriage of:

Vitamin, petitioner,
Appellant,

vs.

Misha Gordin,
Respondent.

**Filed July 23, 2018
Affirmed as modified
Reilly, Judge**

Stearns County District Court
File No. 73-F6-05-005053

Christina L. Kilby, Bradford Law Office, Ltd., Hutchinson, Minnesota (for appellant)

Thomas E. Kramer, St. Cloud, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

The judgment dissolving the parties' marriage divided certain property. The district court later converted appellant-wife's interest in that property into a monetary award. Appellant-wife argues that the district court erred in determining the monetary value of her

property award by both relying on respondent-husband's valuation of the property and by further reducing her award below that valuation. We affirm as modified.

FACTS

Appellant Vitamin and respondent Misha Gordin divorced in 2008. Respondent is an artist, and some of his photographic works were deemed marital property. His works are categorized in named series, with each series consisting of a number of images. The series include: Shadows of a Dream, Shout, Crowd, New Crowd, Traces of Gravity Portfolios, Tomas, Doubt, Sheptun, and Fallen. An appraiser retained by appellant valued respondent's unsold images, including nonmarital images, at \$2,895,000. Respondent offered an estimate of \$638,000 for seven of the named series: Shout, Crowd, Doubt, New Crowd, Tomas, Sheptun, and Fallen. Respondent's estimate did not include images deemed to be of unsalable quality.

In an amended dissolution judgment, the district court awarded each party one half of the images from Doubt, New Crowd (minus certain nonmarital images), Tomas, Sheptun, and Fallen, however, some images, known as artist proofs, were awarded to the parties' two joint children and respondent's nonjoint child. Appellant was to receive one additional image for each artist proof given to the nonjoint child. The district court did not value or quantify the marital images.¹

¹ In a prior appeal, appellant unsuccessfully challenged the in-kind division of the marital images. *Vitamin v. Gordin*, No. A08-1565, 2009 WL 4251054, at *6-7 (Minn. App. Dec. 1, 2009).

Following entry of the amended dissolution judgment, disputes arose over the division of the images. Respondent proposed a method of division whereby the parties would take turns drawing from facedown images until all were selected. The district court adopted respondent's method. Appellant asserted that there were 554 images to be divided, and that she was entitled to 235 (accounting for artist proofs awarded to the children). Respondent claimed that there were 441 images to be divided. In October 2014, the district court ordered that respondent produce no less than 441 images for division.²

A division of the images occurred in October 2016. However, in May 2017, appellant moved for a monetary award in lieu of her share of images. She claimed that respondent failed to comply with the district court's requirements concerning the division. She requested \$656,035 based on the prior appraisal by her appraiser, but later reduced her request to \$581,419.25. Respondent claimed that the images were properly divided.

In September 2017, the district court converted appellant's interest in the marital images into a monetary award. The court found that respondent failed to present the minimum of 441 images for division; he brought only 330 images. The court noted a number of irregularities with the images presented by respondent for division. The court found that it was "no longer possible" to divide the marital images and that appellant "is entitled to some award in lieu of the actual marital [images]."

² Appellant again appealed. *Vitamin v. Gordin*, No. A14-1995, 2015 WL 7939770 (Minn. App. Dec. 7, 2015). She argued, in part, that the district court's October 2014 order impermissibly modified the dissolution judgment. *Id.* at *2-3. We affirmed the district court's order. *Id.* at *1, 4.

In determining appellant's award, the district court found that the prior appraisal provided the most complete inventory of marital images, but its valuation was inaccurate because it incorrectly assumed that all of respondent's images were of salable quality. The court noted that there had been no sales of marital images in the years following the amended dissolution judgment, and only minimal sales in the years preceding the judgment. The court found that the marital images obtained by appellant may have been damaged in the division, which may have impacted the value. The court stated that appellant bore some responsibility "for the unreasonable and lengthy delay that occurred before a division of the marital [images] was even attempted," and that the "delay has contributed to the fact that there may well be no current 'market' for [r]espondent's artwork." The court found that the monetary award would need to be discounted to account for the lump-sum payment and because appellant would not be required to pay for expenses associated with selling the images. The court adopted respondent's estimate and valued the marital images at the time of the dissolution at \$638,000, one half of which is \$319,000. The court then reduced appellant's award from \$319,000 to \$150,000.³ The court offered no basis in law for the reduction, but concluded that the facts supported the reduction. This appeal followed.

D E C I S I O N

Generally, a district court "may not modify a division of property after the original judgment has been entered and the time for appeal has expired." *Erickson v. Erickson*, 452

³ The actual amount awarded was \$148,000 based upon an offset not relevant to this appeal.

N.W.2d 253, 255 (Minn. App. 1990); *see* Minn. Stat. § 518.145, subd. 1 (2016). However, a district court “may issue appropriate orders implementing or enforcing the provisions of a dissolution decree” and “clarify and construe a divorce judgment so long as it does not change the parties’ substantive rights.” *Potter v. Potter*, 471 N.W.2d 113, 114 (Minn. App. 1991). This includes the ability to convert an interest from goods to cash in order to fairly implement a dissolution judgment. *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985).

The parties agree that the district court was permitted to convert appellant’s interest in the marital images into a monetary award. What is at issue is the amount awarded by the district court. Appellant raises two primary arguments. She asserts that the district court erred by relying on respondent’s valuation rather than the appraisal offered by her appraiser, and she argues that the district court erred by further reducing her award below that valuation. We address each issue in turn.

I. The district court did not err by adopting respondent’s valuation, but did err by failing to subtract the nonmarital portion from that valuation.

A district court’s valuation of an asset is a finding of fact and an appellate court will not set it aside unless it is clearly erroneous. *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975). “[V]aluation is necessarily an approximation in many cases, and it is only necessary that the value arrived at lies within a reasonable range of figures.” *Id.*

Because the original in-kind division of the images did not occur, the district court was faced with the difficult task of determining the value of the marital images nearly a decade after the dissolution. The court arrived at its \$150,000 award by first adopting

respondent's estimate of \$638,000 as the value of the marital images.⁴ The court found respondent's valuation to be more accurate than the appraiser's valuation. Parties are presumptively competent to testify to the value of their assets. *Bury v. Bury*, 416 N.W.2d 133, 136 (Minn. App. 1987). Further, the opinions of experts "are only advisory, and the fact-finder may weigh such evidence in the light of all the facts and opinions presented to it and draw its own conclusions." *Rainforest Cafe, Inc. v. Wis. Inv. Bd.*, 677 N.W.2d 443, 451 (Minn. App. 2004) (quotation omitted); see *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) ("Because the district court, as the factfinder, is charged with reconciling conflicting evidence, the fact that the record might support findings other than those made by the district court does not show that the court's findings are defective." (quotation omitted)). We discern no error in the district court's decision to rely on respondent's estimate to determine the value of the marital images.⁵

⁴ Respondent's estimate is contained in an exhibit submitted at trial, exhibit 30. Although a copy of exhibit 30 no longer exists in the court file, appellant included a copy in her addendum, and both parties rely upon that copy for purposes of their arguments. For purposes of our review, we therefore rely upon the copy of exhibit 30 contained in appellant's addendum. See *Crystal Beach Bay Ass'n v. County of Koochiching*, 309 Minn. 52, 56-57, 243 N.W.2d 40, 43 (1976).

⁵ Respondent's estimate did not include artist proofs. Appellant was entitled to an additional image for each artist proof awarded to respondent's nonjoint child. Adopting respondent's estimate and awarding appellant half of that estimate arguably fails to account for the additional images appellant is entitled to under the aforementioned scheme. However, under the circumstances of this case—including but not limited to the number of artist proofs relative to the total number of images—half of respondent's estimate provides a reasonable approximation of value for appellant's marital images. See *Hertz*, 304 Minn. at 145, 229 N.W.2d at 44; cf. *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis error).

Appellant argues that respondent's estimate covered too few images. The district court found that respondent's estimate provided a fairer valuation because it contained estimates for only the images of salable quality, and the appraisal's estimate was inaccurate because it included unfinished and damaged images. Respondent's estimate effectively valued the unfinished and damaged images at \$0. Again, we discern no error.

However, respondent's estimate covered both marital and nonmarital images. The estimate included valuations for nonmarital images from the series Shout, Crowd, and New Crowd. The district court failed to subtract the value of these nonmarital images when determining the value of appellant's award of the marital images. Further, the district court failed to make any of the findings of fact that, under Minn. Stat. § 518.58, subd. 2 (2016), would allow the district court to divide respondent's nonmarital property. Therefore, the district court erred in awarding appellant a share of respondent's nonmarital property. The marital images in respondent's estimate total only \$356,650, not \$638,000.⁶ Based upon the district court's valuation method, appellant's one-half share of the marital images is \$178,325, not \$319,000.

II. The district court erred by reducing appellant's award.

Appellant next argues that the district court erred by further reducing her award below the value of the images at the time of the dissolution. The court offered only factual

⁶ Respondent's estimate valued the Doubt series at \$112,150; the Tomas series at \$53,250; the Sheptun series at \$66,000; and the Fallen series at \$0, because no final salable images were produced. Additionally, based on respondent's estimate, the value of the marital portion of New Crowd is \$125,250. This renders a total estimated value of \$356,650 for the marital images.

reasons for the reduction: (1) there was no definitive list of marital images; (2) there was a lack of sales of respondent's images since the dissolution; (3) appellant would not be required to pay for expenses associated with selling the images and would receive a lump sum; (4) there was potential damage to the images caused by appellant; (5) there was a general lack of evidence, as previously admitted exhibits were no longer in the file; and (6) appellant contributed to the delay in her award.

A district court may implement the provisions of a dissolution judgment, so long as the parties' substantive rights are not altered. *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011). A party's substantive rights are altered if the order implementing the dissolution judgment decreases the party's share of marital property. *Id.* Here, the district court's reduction of appellant's award effectively decreased her share of marital property. *See Ulrich v. Ulrich*, 400 N.W.2d 213, 218-19 (Minn. App. 1987) (concluding that district court's order, which reduced the value of marital property, "therefore affect[ed] the division of property" and constituted an impermissible modification); *see also Potter*, 471 N.W.2d at 114 (concluding that postdissolution order was permissible because it did not affect value of property interest and husband would "receive neither more nor less than under the original decree"). The reduction of appellant's award constituted an impermissible modification of the amended dissolution judgment.

District courts do have discretion to adjust valuations and valuation dates to effectuate an equitable distribution. *Bender v. Bender*, 671 N.W.2d 602, 605-06 (Minn. App. 2003). Here, the district court valued the marital images "at the time of the dissolution." "If there is a substantial change in value of an asset between the date of

valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.” Minn. Stat. § 518.58, subd. 1 (2016). While the district court failed to offer any basis in law for its reduction of appellant’s award, it could be argued that the reduction was a valuation adjustment under Minn. Stat. § 518.58, subd. 1.⁷ However, even assuming that Minn. Stat. § 518.58, subd. 1, is applicable, a valuation adjustment is unsupported by the record.

District courts have broad discretion in the valuation of an asset, but that discretion is not unlimited, and the valuation “should be supported by either clear documentary or testimonial evidence or by comprehensive findings.” *Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 766 (Minn. 1983). The district court’s reasons for drastically reducing appellant’s award are largely speculative, and the amount of the reduction is arbitrary. As the district court found in the amended dissolution judgment, “it would be pure speculation” to attempt to account for the illiquid market for respondent’s images.

In summary, the district court did not err by adopting respondent’s valuation, but did err by failing to subtract the nonmarital portion from that valuation. The reduction of appellant’s award below that valuation constituted an impermissible modification, and to the degree that the reduction was possible under Minn. Stat. § 518.58, subd. 1, the district

⁷ Under the circumstances presented in this case, it is unclear whether the “final distribution” referenced in Minn. Stat. § 518.58, subd. 1, is the amended dissolution judgment that divided the parties’ property or the district court’s order converting appellant’s interest in the marital images into a monetary award. If the final distribution is the amended dissolution judgment, then the discretion to adjust valuation afforded under Minn. Stat. § 518.58, subd. 1, would be inapplicable because there would then be no “substantial change” in the value of the marital images between the valuation date and the distribution date.

court's findings, and the record underlying those findings, do not support such an adjustment. Appellant is entitled to \$178,325 for her share of the marital images.⁸

Affirmed as modified.

⁸ The district court's order of September 2017 included a \$2,000 offset, which reduced appellant's award by \$2,000. The order also instructed respondent to pay appellant within 120 days. Therefore, appellant is entitled to payment of \$176,325 within 120 days from the final decision in this matter. See Minn. R. Civ. App. P. 136.02 (discussing entry of judgment following an appellate decision).