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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1416**

In the Marriage of:
Deborah J. Schmitt, petitioner,
Respondent,

vs.

Paul N. Schmitt,
Appellant.

**Filed June 10, 2019
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Stearns County District Court
File No. 73-FA-17-7172

Eric J. Glenz, Spooner & Glenz Law Offices, PLLC, Paynesville, Minnesota (for respondent)

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Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Klaphake, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

Deborah J. Schmitt and Paul N. Schmitt were married for 28 years before their marriage was dissolved. This appeal is concerned solely with the district court's division of the parties' real property and personal property and the district court's order that Paul make an equalization payment to Deborah to achieve a just and equitable division of their marital property. We conclude that the district court did not err with respect to most of the issues raised on appeal but erred with respect to two particular issues concerning the value of certain property and the amount of Paul's equalization payment. Therefore, we affirm in part, reverse in part, and remand.

FACTS

The parties were married in August 1990. They have three children, two of whom are now adults and one of whom will become an adult in the near future. The parties separated in July 2017, and Deborah petitioned for dissolution of the marriage in August 2017. Throughout the marriage, both Paul and Deborah worked as self-employed farmers. After the separation, Paul continued to operate the farm but reduced the scope of its operation. Deborah continued to perform some farm work for a short time after the separation and was working part-time as a cosmetologist at the time of trial.

In her petition, Deborah sought an award of spousal maintenance, but she did not pursue it at trial, and the district court did not award spousal maintenance. Most of the disputed issues concerned the division of the parties' property. The district court issued its dissolution decree in May 2018. The district court awarded Deborah property valued at

\$418,262, awarded Paul property valued at \$1,284,485, and ordered Paul to make an equalization payment of \$427,215. Paul moved for amended findings or a new trial. The district court ruled on Paul’s post-trial motion in August 2018, denying it in substantial part but granting it in small part and ordering an \$11,273 reduction in Paul’s equalization payment.

Paul filed a notice of appeal, and Deborah filed a notice of related appeal. We discuss the relevant facts below in conjunction with our discussion of the parties’ various arguments.

D E C I S I O N

“Upon a dissolution of a marriage . . . the [district] court shall make a just and equitable division of the marital property of the parties” after considering all relevant factors. Minn. Stat. § 518.58, subd. 1 (2018). These factors include “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.” *Id.*

In general, this court applies an abuse-of-discretion standard of review to a district court’s division of property in a marital dissolution. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). “We will affirm the trial court’s division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach.” *Id.* A district court abuses its discretion when dividing property if its findings of fact are not supported by the record or if it improperly applies the law. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court’s valuation of property is a finding of

fact, which we review for clear error. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

A. Homestead

The parties' homestead consists of three parcels of rural property totaling approximately 222 acres. Tract A is approximately 152 acres, Tract B is approximately 69 acres, and Tract C is approximately one acre.

The parties moved onto the homestead in January 1996 pursuant to a lease between Paul and his parents. The monthly rent was \$1,800 for the first two years and \$2,000 thereafter. The lease gave Paul an option to purchase the property with a credit of \$8,000 per year toward the purchase price, subject to certain conditions.

On January 5, 2004, the parties purchased the property from Paul's parents pursuant to a contract for deed. The purchase price was \$248,000, to be paid in monthly installments of \$2,000. The appraised value of the property at the time of the purchase was \$620,500, so the purchase price reflected a discount of \$372,500. The district court found that the discount on the purchase price was a gift to both Paul and Deborah and, thus, was a marital interest in the property.

The district court awarded Paul Tracts A and C, which it valued at \$874,313, and awarded Deborah Tract B, which it valued at \$287,904.

1. Discount on Purchase Price

Paul argues that the district court erred by finding that when his parents discounted the purchase price, they intended to make a gift to both him and Deborah, not to him alone,

and, thus, erred by finding that all of the parties' interest in the homestead is marital property.

"All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership." Minn. Stat. § 518.003, subd. 3b (2018). To overcome this presumption, "a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Property is nonmarital if it was acquired as a gift from a third party to only one spouse. Minn. Stat. § 518.003, subd. 3b(a). "The most important factor in determining whether a gift is marital or nonmarital is the donor's intent," which is demonstrated by the surrounding circumstances. *Olsen*, 562 N.W.2d at 800. This court applies a clear-error standard of review to a finding of fact concerning a donor's intent. *Id.*; see also *Antone*, 645 N.W.2d at 100.

In support of his argument, Paul points to the 1996 lease, which he alone signed and which gave him alone an option to purchase the homestead, with a credit of \$8,000 per year of occupancy. But Paul and Deborah actually purchased the property pursuant to the 2004 contract for deed, which provided them with a much larger discount and did not make any reference to the annual credit mentioned in Paul's lease. The contract for deed is contemporaneous with the parties' acquisition of the property and, thus, more probative of Paul's parents' intent. Paul also points to his mother's unsigned will, which would have given him an option to purchase the homestead. The district court noted that the will, which was drafted in 1995, was unsigned and that its probative value was "far outweighed by the

2004 contract for deed.” Paul further points to his father’s affidavit, which states that the gift was meant for Paul alone. The district court stated that the affidavit was not persuasive because it “was clearly prepared in anticipation of trial.” This court must defer to such a credibility determination. See *Straus v. Straus*, 94 N.W.2d 679, 680 (Minn. 1959); *DeRosier v. Utility Sys. of America, Inc.*, 780 N.W.2d 1, 5 (Minn. App. 2010).

The district court did not err by relying on the contract for deed instead of other evidence introduced by Paul, by finding that Paul’s parents intended to give a discount on the purchase price to both Paul and Deborah, and by finding that the homestead is entirely marital property.

2. Award of Tract B

Paul argues that the district court erred by awarding Tract B to Deborah. At trial, Deborah testified that her “main career” during the marriage was milking cows. She also testified that, at the time of trial, she was working as a cosmetologist but was unable to work more than four hours per day due to an eye injury. Deborah asked the district court to award her Tract B so that she could rent it out and receive rental income to supplement her part-time earned income. The district court granted Deborah’s request.

Paul contends that the district court erred by awarding Tract B to Deborah on the ground that he is engaged in farming and she is not. He contends that his receipt of only some of the homestead has reduced his “ability to make a living through farming” because 152 acres is “hardly enough to support a farmer.” Paul contends further that there are “other, better ways of insuring that [Deborah] would have sufficient resources to protect her income,” such as awarding him the land and increasing his equalization payment

accordingly. The district court's award is based on Deborah's testimony that awarding her Tract B would allow her to supplement her part-time earned income with consistent rental income from the land. The district court's award of Tract B to Deborah has "an acceptable basis in fact and principle" and, thus, is not an abuse of discretion. *See Antone*, 645 N.W.2d at 100.

Paul also contends that the district court erred by awarding Tract B to Deborah on the ground that, when the dissolution decree was filed, title to the property was held by his father, a nonparty. He cites *Sammons v. Sammons*, 642 N.W.2d 450 (Minn. App. 2002), for the proposition that a district court may not divide marital property in a way that affects a nonparty's property rights. *See id.* at 457. But Paul's father held only a security interest in the property; equitable title to the property was in the contract-for-deed vendees, Paul and Deborah. *See In re Petition of S.R.A., Inc.*, 18 N.W.2d 442, 450 (Minn. 1945). In addition, Paul's parents agreed in the contract for deed to deliver a warranty deed upon the final payment, which was due in August 2018. In the dissolution decree, which was issued in May 2018, the district court ordered Paul to make the remaining payments on the contract for deed, at which point Paul's father would be contractually obligated to deliver the warranty deed to the parties. Assuming that Paul and his father complied with the obligations imposed on them, the district court's award of Tract B to Deborah did not affect Paul's father's property rights in any way.

Thus, the district court did not err by awarding Tract B to Deborah.

B. Life Insurance Policies

The parties owned four life-insurance policies, which insured the lives of Paul, Deborah, Paul's father, and Paul's mother. The district court found that all four policies are marital property. The district court awarded the policy insuring Deborah's life to her and awarded the other policies to Paul. The parties agreed on the values of three of the policies. But the parties disputed the value of the policy insuring the life of Paul's mother, who passed away 22 days after the valuation date of September 1, 2017. Paul received the death benefit of \$100,000, which accumulated interest after he deposited the funds in a bank account. The district court stated that the evidence was "unclear" as to the value of the policy on the valuation date but ultimately found the value to be \$40,000 after "[t]aking into account the evidence presented and insured's apparent state of health at that time."

Deborah argues that the district court erred by valuing that policy at \$40,000 instead of the amount of the death benefit. She relies on a statute that provides, "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 (emphasis added). The statutory language indicates that the district court had discretion to adjust the value of the policy upward based on the death of Paul's mother after the valuation date. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). Deborah does not explain exactly why the district court abused its discretion and does not cite any caselaw indicating that the absence of an upward adjustment is an abuse of discretion. Deborah does not argue that the value should be a different amount between \$40,000 and \$100,000. In light of the

statute and the evidence in the record, Deborah has not established that the district court abused its discretion by not adjusting the value of the policy to reflect the increase in value that occurred after the valuation date.

C. Crops and Cattle

The parties grew corn, soybeans, alfalfa, and oats on their farm during the marriage. They also raised livestock and owned 205 head of cattle at the time of their separation. Deborah argues that the district court erred in its treatment of these assets.

1. Crops

In the dissolution decree, which was filed in May 2018 based on evidence introduced at trial in March 2018, the district court found that Deborah and Paul had received \$28,766 and \$18,230, respectively, in proceeds from the sale of harvested grain and in grain that had been “banked” but not yet sold. The district court also found that the “balance of the 2017 corn crop has been used for feed or is still stored on the property.” The district court also found that “the stored crops and the proceeds received from sales have been fairly and equally divided between the parties.”

Deborah argues that the district court erred in two ways: first, by “double-counting” the assets awarded to her because her proceeds from grain sales are reflected in the balances of the bank accounts that were awarded to her, and, second, by not assigning any value to the parties’ 2017 corn crop, which she asserts “is stored on the farm and controlled by” Paul.

Deborah’s first argument concerning crops is without merit because the district court did not double-count property awarded to her in the manner she describes. This is so

because the district court did not account at all for either party's proceeds from grain sales. The district court found that the total value of all personal property awarded to Deborah is \$130,358. This amount is the sum of the values of a vehicle (\$3,000), her bank accounts (\$28,796), her life insurance policy (\$25,500), her stock (\$66,435), and her IRA account (\$6,627).

Deborah's second argument concerning crops also fails. The district court implicitly valued the crops that were stored on the farm at \$10,536. That is the difference between the proceeds received by Deborah (\$28,766) and the proceeds received by Paul (\$18,230). We interpret the district court's order to place that value on the stored grain based on the district court's statement that "the stored crops and the proceeds received from sales have been fairly and equally divided between the parties." The district court's implied finding is not clearly erroneous in light of the nature of the property at issue and an evidentiary record that is less than clear on this issue. It was unnecessary for the district court to include the value of the stored grain in the calculation of the total value of the property awarded to Paul because the crops were evenly divided and because the district court did not include the proceeds from crop sales in either party's total property award.

Thus, the district court did not clearly err in its findings concerning the parties' crops.

2. Cattle

The district court found that the parties owned 205 head of cattle at the time of their separation and that 46 head of cattle remained on the farm. The district court valued the 46 head of cattle at \$10,000 and awarded them to Paul.

Deborah first argues that the district court erred by finding that only 46 head of cattle remained on the farm and by finding the per-head value of the cattle to be too low. The district court's finding of the number of cattle apparently is based on Paul's testimony that "about 45, 46" heifers remained on the farm. Paul did not testify to the number of steers or calves. Deborah testified that approximately 120 cattle remained on the farm. She did not distinguish between heifers, steers, and calves. Given conflicting evidence, the district court did not clearly err by finding that 46 head of cattle remained on the farm.

Deborah also argues that the district court erred by finding that the value of the 46 head of cattle was only \$10,000. The district court did not explain how it arrived at that value. The district court's finding implies that each cow is worth \$217. Deborah points out that exhibit 38, which was introduced by Paul, values heifers at between \$600 and \$1,000 per head. That appears to be the only evidence in the record concerning the per-head value of heifers. Paul does not attempt to justify the district court's finding in his reply brief. Thus, the district court clearly erred by finding that the 46 heifers awarded to Paul are valued at \$10,000. The parties' arguments on appeal and our independent review indicate that the lowest value of 46 heifers that is supported by the evidentiary record is \$27,600.

D. Farm Equipment and Machinery

The district court found that the parties owned farm equipment and machinery with an appraised value of \$266,640. Included in that amount is equipment and machinery worth \$80,790 that the parties purchased from Paul's parents in 2004 for \$1. The district court found that the equipment and machinery that was purchased from Paul's parents for

only \$1 was a gift to Paul alone in the amount of \$80,790 and, thus, that Paul has a nonmarital interest of that amount in the property. The district court awarded Paul all of the farm equipment and machinery, including the marital interest, which was valued at \$185,850.

1. Nonmarital Interest

Deborah argues that the district court erred by finding that Paul has a nonmarital interest of \$80,790 in the equipment and machinery on the ground that the equipment and machinery was not received as a gift but, rather, was purchased by the parties for consideration using marital funds.

The same principles that govern the discount in the purchase price of homestead also govern this issue. *See supra* part A.1. Property is nonmarital if it is acquired as a gift made by a third party to one spouse but not the other spouse. Minn. Stat. § 518.003, subd. 3b(a). “The most important factor in determining whether a gift is marital or nonmarital is the donor’s intent,” which is demonstrated by the surrounding circumstances. *Olsen*, 562 N.W.2d at 800. In this case, the record supports the district court’s finding that Paul’s parents intended the transfer of the farm equipment and machinery to be a gift to him alone. The property was appraised at \$80,790, yet Paul’s parents conveyed it for only \$1. In addition, Paul testified that his father told him in 2004 that the equipment and machinery was a gift to him. Furthermore, the bill of sale identifies Paul as the sole recipient of the property; Deborah’s name does not appear on the document. Thus, the district court did not clearly err by finding that Paul has a nonmarital interest of \$80,790 in farm equipment and machinery.

2. Tax Consequences

Paul argues that the district court erred by valuing the farm equipment and machinery without considering the tax consequences that he would incur if he were to sell it. He asserts that the decree essentially requires him to sell the equipment and machinery, at which time he will be “liable for all the capital gains on the machinery sale.”

“[I]t is within the trial court’s discretion to consider the tax consequences of its award.” *Aaron v. Aaron*, 281 N.W.2d 150, 153 (Minn. 1979). However, “A trial court need consider ‘only those tax consequences that arise from the distribution itself’ and need not speculate as to ‘the possible tax consequences of either party’s future dealings with the property.’” *Salstrom v. Salstrom*, 404 N.W.2d 848, 853 (Minn. App. 1987) (quoting *Aaron*, 281 N.W.2d at 153). A district court may not consider the tax consequences of a transaction if it “must speculate because the evidence is lacking or nonspecific.” *O’Brien v. O’Brien*, 343 N.W.2d 850, 854 (Minn. 1984).

As an initial matter, the dissolution decree does not require Paul to sell the farm equipment and machinery. At a pre-trial hearing, the parties’ attorneys indicated that the parties no longer needed the farm equipment and machinery and acknowledged the parties’ mutual interest in selling the equipment and machinery before trial as a way of simplifying the proceedings. But Paul testified at trial that he had not yet sold the equipment and machinery. At the hearing on Paul’s post-trial motion, Deborah’s attorney informed the district court that he still had not sold it. The district court stated in its order on Paul’s post-trial motion, “It was apparent at trial the parties either agreed, or [Paul] had unilaterally decided, that the pretrial sale of the farm equipment and equal division of proceeds was not

going to occur.” But the district court did not require Paul to sell the equipment and machinery.

In his motion for amended findings, Paul argued that the district court should order the sale of the farm equipment and machinery and that the parties should split the proceeds of the sale so that he alone would not be “responsible for all the tax consequences of the sale.” In its post-trial order, the district court declined to amend its findings and stated that “[n]o evidence was offered regarding the tax consequences of the division.” Paul contends on appeal that “all the evidence that was needed for a tax analysis had been provided to the court—the likely value of the machinery and the desire of both parties to sell it.” But more evidence (such as the tax basis of the \$185,850 marital interest) is necessary to determine the likelihood that Paul would incur a capital gain and to calculate the amount of any capital gains tax. In any event, Paul cannot establish that the district court was required to consider the tax consequences of its award of farm equipment and machinery in light of the fact that tax consequences do not necessarily arise from the *distribution of the property itself* and the need to speculate about future events. *See Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984); *O’Brien*, 343 N.W.2d at 854; *Aaron*, 281 N.W.2d at 153; *Salstrom*, 404 N.W.2d at 853. Thus, the district court did not abuse its discretion by not considering the tax consequences of its award of farm equipment and machinery.

E. Bank Accounts

In the dissolution decree, the district court awarded two bank accounts to each party. The value of Deborah’s bank accounts is \$28,796; the value of Paul’s bank accounts is \$82,510.

In his motion for amended findings, Paul asked the district court to reduce the finding of the value of one of the bank accounts awarded to him by \$17,225 on the ground that he used the bank account to pay marital debts between the valuation date of September 1, 2017, and December 2017, when he withdrew the balance and closed the account. The district court granted his request in part and ordered that Paul's equalization payment be reduced by \$11,273 to account for marital expenses for property taxes, joint taxes, and farming expenses.

1. Adjustment for Payment of Marital Debts

Deborah argues that the district court erred by adjusting Paul's equalization payment to account for his claim that he used one of the bank accounts awarded to him to pay marital debts. She contends that there is no evidence in the record to support the district court's adjustment because Paul did not introduce any evidence of such payments, either at trial or in connection with his motion for amended findings.

“[A] motion for amended findings must be based on the record previously submitted to the district court, and the district court ‘may neither go outside the record, nor consider new evidence’ when addressing the motion.” *Cook v. Arimitsu*, 907 N.W.2d 233, 237 (Minn. App. 2018) (quoting *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 651 (Minn. 1974)), *review denied* (Minn. Apr. 17, 2018). Deborah is correct that Paul did not introduce any evidence at trial that he used the bank account to pay \$17,225 in marital debts between September and December 2017. He made that claim for the first time in his post-trial motion. But he did not introduce any evidence of such payments; he relied only on his attorney's assertion in a memorandum of law. Even if Paul had offered additional

evidence, it would not have been admissible on a motion for amended findings. *See id.* In his reply brief, Paul does not point to any evidence in the record that supports the district court's adjustment. Thus, the district court clearly erred by reducing Paul's equalization payment by \$11,273 without any evidence in the record to support its finding that Paul used the bank account to pay marital debts.

2. Denial of Additional Adjustments

Paul argues briefly that the district court erred by not adjusting his equalization payment further to account for certain marital debts that he purportedly paid using one of the bank accounts that was awarded to him. It appears that Paul refers to the difference between the \$17,225 adjustment he requested in his post-trial motion and the \$11,273 that the district court gave him. He does not elaborate on the reasons why the district court erred by not making a larger adjustment. In any event, because we have concluded that there is no evidence in the record that Paul made the payments claimed, there is no evidentiary basis for the increased adjustment that he seeks on appeal.

F. Equalization Payment

As stated above, the district court awarded Deborah property valued at \$418,262, awarded Paul property valued at \$1,284,485, and ordered Paul to make an equalization payment to Deborah in the amount of \$427,215, which later was reduced by \$11,273 on Paul's post-trial motion. The district court ordered Paul to pay Deborah \$50,000 upon entry of judgment and the remainder within six months. The district court also ordered that any unpaid balance after six months would be subject to interest at a rate authorized by statute. *See* Minn. Stat. § 549.09 (2018).

Paul argues that the district court erred by ordering an equalization payment that he presently is unable to make. He asserts that he is unlikely to be able to obtain a secured loan to make the required payments. He contends that the district court “should have considered his resources and structured a payment plan which was realistic.” He does not cite any caselaw indicating that the equalization payment is an abuse of discretion. The amount of the equalization payment is simply half the difference between the values of the property awarded to each party. The required payment is approximately one-third of the value of the property awarded to Paul. Given the district court’s various property awards and the values assigned to those assets, the district court had little choice but to order an equalization payment in order to “make a just and equitable division of the marital property of the parties.” *See* Minn. Stat. § 518.58, subd. 1. Thus, the district court did not abuse its discretion for the reasons argued by Paul when it ordered an equalization payment.

In sum, the district court erred in two ways: by finding that the value of the cattle awarded to Paul is \$10,000, *see supra* part C.2., and by reducing Paul’s equalization payment by \$11,273, *see supra* part E.1. Accordingly, we remand the case to the district court for further proceedings on those two issues. On remand, the district court first shall increase Paul’s equalization payment by \$11,273 to correct the erroneous reduction in the order granting in part Paul’s motion for amended findings. The district court then shall amend its findings concerning the value of the cattle awarded to Paul in light of the evidence presented at trial. After the district court increases the value of the cattle awarded

to Paul, the district court then shall increase Paul's equalization payment further by half of the increase in the value of the cattle awarded to Paul.

Affirmed in part, reversed in part, and remanded.