STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1492

In re the Marriage of: Kathleen Marie Tiedke,
nka Kathleen Marie Freitag, petitioner,
Respondent,

vs.

Alex Lee Tiedke,
Appellant.

Filed August 5, 2019
Affirmed in part, reversed in part, and remanded
Johnson, Judge

Anoka County District Court
File No. 02-FA-16-440

Kristen C. Bullock, Bullock Law, PLLC, St. Paul, Minnesota (for respondent)

Gary A. Debele, Messerli & Kramer, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly, Judge.

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

JOHNSON, Judge

Kathleen Marie Freitag and Alex Lee Tiedke were married for approximately four years before their marriage was dissolved. This appeal is concerned primarily with the district court's division of the parties' property. We conclude that the district court did not err in its valuation and division of the parties' interests in personal property and two

residential rental properties, but that the district court erred in its valuation and division of the parties' interests in two other residential rental properties. We also conclude that the district court erred by awarding conduct-based attorney fees to Freitag. We further conclude that the district court did not err by denying Freitag's request to reserve the issue of spousal maintenance. Therefore, we affirm in part, reverse in part, and remand.

FACTS

Tiedke and Freitag met in March 2010, began cohabitating in December 2011, and were married in November 2013. They separated in January 2016. Freitag filed a petition for dissolution of the marriage in March 2016, and Tiedke filed an answer and counter-petition for dissolution one week later. The parties have no children together.

Both parties appear to be hard-working, industrious, and productive. Tiedke has been employed as an automotive mechanic and in auto-body repair shops. On his own time, he has earned additional income by buying damaged vehicles, repairing them, and selling them for a profit. In addition, he has earned additional income from residential rental properties, typically after buying homes in distressed conditions and renovating them. Similarly, Freitag has worked as a self-employed property manager, and she has earned additional income from real-estate broker commissions, residential rental properties, and dog grooming.

The parties' mutual interest in residential rental properties is the source of a number of the disputed issues in this appeal. At various times before they were married, the parties collaborated in various ways in the acquisition, renovation, and renting of four residential properties, in addition to maintaining properties they had acquired individually before their

relationship. They also acquired, renovated, and rented two additional residential properties during their marriage. The parties generally did not enter into written agreements to govern their enterprise, did not attempt to identify and maintain their respective interests in the properties, and did not consistently maintain accounting records for the properties. Consequently, the task of valuing and dividing their respective property interests in this dissolution action was relatively complicated. Tiedke employed a financial expert who prepared written appraisals of all of the parties' residential properties, which were introduced into evidence upon the parties' agreement. The parties' detailed financial evidence guided the district court to an extent. Yet some issues remained in dispute.

The district court presided over a two-day trial in August 2017. The parties agreed that the valuation date would be August 24, 2016. The parties stipulated to the admissibility of Freitag's and Tiedke's numerous exhibits. Freitag testified on her own behalf and called three additional witnesses, and Tiedke testified without calling additional witnesses. In February 2018, the district court filed a 63-page judgment and decree. Both parties filed motions for amended findings. In August 2018, the district court denied the parties' motions with respect to the issues that have been raised on appeal, although the district court *sua sponte* made amended findings relevant to the real property issues raised on appeal, and the district court filed an amended judgment and decree. Tiedke appeals, and Freitag cross-appeals by way of a notice of related appeal.

D E C I S I O N

I. Division of Real Property

Tiedke first argues that the district court erred in its identification and division of the parties' interests in certain real property.

"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 several factors. Minn. Stat. § 518.58, subd. 1 (2018). These factors include "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.* "An equitable division of marital property is not necessarily an equal division." *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). "A trial court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). Consequently, this court "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 in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984); *see also Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005).

At the time of trial, the parties collectively owned 10 residential properties. Only four are at issue in this appeal: the properties described by the parties as the Ramsey, Buchanan, James, and Aldrich properties. These four properties were acquired during the

parties' relationship but before they were married. Title to the Ramsey, Buchanan, and James properties is in Tiedke's name; title to the Aldrich property is in both parties' names. At trial, the parties agreed on the value of each property as of the date of their marriage and the valuation date. But they disagreed about the extent of their respective interests in the four properties and how those property interests should be divided.

After trial, the district court found as follows: The Ramsey property was purchased in November 2010 for $61,250 with funds provided by Tiedke. Freitag acted as the property manager for the property. Between the date of purchase and the date of the parties' marriage, Freitag invested approximately 337 hours of labor to improve the property. Tiedke gave Freitag the first six months of rent payments received from the property, totaling $7,650. As of the date of marriage, the net equity in the property was $84,609. Between the date of marriage and the valuation date, Freitag invested approximately 30 hours of labor in the property. As of the valuation date, the net equity had increased to $118,841. The property generated gross rental income of $98,665 from the date of purchase through August 2017. The district court awarded the Ramsey property to Tiedke, subject to all encumbrances. The district court determined that Tiedke has a non-marital interest of $61,250, which is the purchase price of the property, and that the parties have an equal marital interest in the remaining $57,591 of net equity in the property.

The Buchanan property was purchased in December 2010 for $25,000 with funds provided by Tiedke. Between the date of purchase and the date of the parties' marriage, Freitag invested approximately 942 hours of labor to improve the property. Tiedke gave Freitag the first 12 months of rent payments, which she used to pay the mortgage on the

home where the parties then lived together. As of the date of marriage, the net equity in the property was $68,951. Between the date of marriage and the valuation date, Freitag invested zero hours of labor in the property. As of the valuation date, the net equity had increased to $98,415. The property generated gross rental income of $87,000 from the date of purchase through August 2017. The district court awarded the Buchanan property to Tiedke, subject to all encumbrances. The district court determined that Tiedke has a non-marital interest of $25,000, which is the purchase price of the property, and that the parties have an equal marital interest in the remaining $73,415 of net equity in the property.

The James property was purchased in July 2012 for $40,696 with proceeds derived from the parties' joint enterprise. Between the date of purchase and the date of the parties' marriage, Freitag invested approximately 228 hours of labor to improve the property. As of the date of marriage, the net equity in the property was $90,000. Between the date of marriage and the valuation date, Freitag invested zero hours of labor in the property. As of the valuation date, the net equity had increased to $110,000. The property generated gross rental income of $68,400 from the date of purchase through August 2017. The district court awarded the James property to Tiedke, subject to all encumbrances. The district court determined that the parties have an equal marital interest in the $110,000 of net equity in the property.

The Aldrich property was purchased in September 2013 for $41,500 with funds that the parties contributed in approximately equal parts. Freitag invested approximately 204 hours of labor in the property. As of the valuation date, the net equity in the property was $110,000. The property generated gross rental income of $49,089 from the date of

purchase through August 2017, which was deposited into Tiedke's checking account. The district court awarded the Aldrich property to Freitag, subject to all encumbrances. The district court determined that the parties have an equal marital interest in the $110,000 of net equity in the property.

The total value of Tiedke's non-marital interests in these four properties, both on the date of marriage and the valuation date, awarded is $86,250. The total value of the parties' marital interests in these four properties is $351,006 on the date of valuation, of which $241,006 is assigned to Tiedke and $110,000 is assigned to Freitag. The district court ultimately divided the parties' marital interests in these four properties evenly.

A. Jurisdictional Bar

Tiedke first argues that the district court erred by not applying Minnesota's so-called anti-palimony statutes to limit Freitag's interest in the parties' real property. His argument is based on the following statutes:

> **513.075 Cohabitation; Property and Financial Agreements.**
>
> If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if:
>
> (1) the contract is written and signed by the parties; and
>
> (2) enforcement is sought after termination of the relationship.

> **513.076 Necessity of Contract.**
>
> Unless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.

Minn. Stat. §§ 513.075-.076 (2018).

In essence, sections 513.075 and 513.076 prevent a person who lived with another person outside of marriage "from receiving the legal rights conferred upon married couples." *In re Estate of Palmen*, 588 N.W.2d 493, 496 (Minn. 1999). But the supreme court has interpreted the statutes narrowly. The statutes "do not operate to automatically divest unmarried couples living together of all legal remedies" against each other. *Id.* Indeed, the statutes apply "only when the '*sole* consideration for a contract between cohabiting parties is their contemplation of sexual relations . . . out of wedlock.'" *Id.* at 495 (quoting *In re Estate of Eriksen*, 337 N.W.2d 671, 674 (Minn. 1983)). Furthermore, the statutes do not apply if "one party is merely seeking to 'preserve and protect [his or] her own property' and is not 'seek[ing] to assert any rights in the property of a cohabitant.'" *Id.* (alteration in original) (quoting *Eriksen*, 337 N.W.2d at 674). "If the claimant can establish that his or her claim is based on an agreement supported by consideration independent of the couple's living together in contemplation of sexual relations out of wedlock or that he or she is seeking to protect his or her own property and is not seeking to assert any rights in the property of a cohabitant, the statutes do not operate to bar the

claim." *Id.* at 496 (quotations omitted). An agreement supported by independent consideration need not be in writing and may be either express or implied. *See id.* at 495-496.

In this case, Tiedke argued in the district court that there was no jurisdiction to consider Freitag's claims to interests in the four properties to the extent that those interests arose before the parties' marriage and that jurisdiction was limited to Freitag's argument for an award of property interests that arose after the parties were married. The district court rejected Tiedke's argument on the ground that Tiedke and Freitag had an implied agreement to share the profits of their joint enterprise. The district found that Tiedke "primarily invested money" and Freitag "primarily invested labor" and that the "overwhelming majority of appreciation" in the value of the properties occurred before the parties' marriage, when Freitag was improving the properties through her labor.

On appeal, Tiedke contends that, because the parties did not have a written agreement concerning the four properties, Freitag's claims to property interests in the four properties should be barred by the so-called anti-palimony statutes. In response, Freitag contends that her claims are not barred by the so-called anti-palimony statutes because they are not based on cohabitation in contemplation of sexual relations but, rather, on the existence of an implied agreement arising from a business partnership between the parties.

The evidentiary record supports the district court's decision to not apply the statutes. The district court found that the parties were engaged in a joint venture of purchasing, renovating, and renting out the four properties. That finding is not clearly erroneous. Freitag testified that she participated substantially in the acquisition, renovation, and

management of the four properties, and she introduced exhibits, including photographs, her calendar, signed leases, permitting paperwork, and eviction-related documents to corroborate her testimony. She testified that the four properties were a joint venture with Tiedke and that she would not have performed work on them without a financial benefit. The district court found that testimony to be credible. The facts of this case are quite different from a situation in which "the '*sole* consideration for a contract between cohabiting parties is their contemplation of sexual relations . . . out of wedlock.'" *Id.* at 495 (quoting *Eriksen*, 337 N.W.2d at 674). Furthermore, this case is similar to *Palmen*, in which the party asserting a claim had "shared in the expense and labor" of the construction of a log cabin, and the supreme court reasoned that the statutes did not bar her claim because she was seeking "to recover her direct contributions to the construction of the log cabin" and was not asserting a claim "based on her living together with Palmen in contemplation of sexual relations out of wedlock." *Id.* at 495-96 (quotation omitted).

Thus, the district court did not err by ruling that the so-called anti-palimony statutes do not bar Freitag from asserting a claim to property interests in the four residential rental properties that the parties acquired before their marriage.

B. Real Property Award

Tiedke argues in the alternative that the district court erred in its distribution of the parties' respective interests in the four residential rental properties. He asserts that the district court misapplied the formula set forth in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981), and erroneously awarded Freitag interests in his non-marital real property.

To the extent that the district court awarded marital equity in the properties to Freitag, Tiedke asserts that the award was inequitable and unfair.

"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). Non-marital property may include "property real or personal, acquired by either spouse . . . before the marriage." Minn. Stat. § 518.003, subd. 3b(b). Whether property is marital or non-marital is a question of law that this court reviews *de novo*. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). But we defer to the district court's underlying findings of fact unless they are clearly erroneous. *Olsen*, 562 N.W.2d at 800.

In *Schmitz*, the supreme court established a formula for apportioning marital and non-marital interests in property acquired during a marriage with non-marital funds. *See* 309 N.W.2d at 750. The formula also applies to property acquired before the marriage. *Antone*, 645 N.W.2d at 102. The *Schmitz* formula "recognizes that the increase in the value of the property acquired before the marriage—that is, the net equity at the time of the marriage—is nonmarital property." *Id.* at 103. The formula does not apply to an increase in value of the property during the marriage attributable to improvements made by the parties. *Dorweiler v. Dorweiler*, 413 N.W.2d 572, 575-76 (Minn. App. 1987); *see also Faus v. Faus*, 319 N.W.2d 408, 412 (Minn. 1982). "Improvements made by the parties [during the marriage] are presumed to be marital property." *Dorweiler*, 413 N.W.2d at 576.

The district court first determined the value of the parties' non-marital interests in the four properties. The district court determined that Tiedke had non-marital interests, totaling $86,250, in the Ramsey and Buchanan properties based on his provision of the funds to purchase those properties. The district court determined that neither party had a non-marital interest in the James and Aldrich properties because those properties had either been purchased with funds from the parties' joint enterprise or the parties had split the purchase price evenly between them. The district court then evenly divided the remaining net equity in the four properties based on its findings that the parties had an implied agreement "to share in the equity and profits of the investment properties" and that the "overwhelming majority of appreciation" in the properties occurred between their dates of purchase and the parties' date of marriage, when Freitag was making improvements to the properties.

Tiedke contends that the district court erred by concluding that Freitag was entitled to a share of the increase in the net equity of the four properties based on her labor and property management efforts because she was paid for her services and because she did not introduce evidence showing what portion of the increase in the value of the properties was attributable to her improvement efforts. The district court's finding that the parties had an implied agreement to share in the profits of these properties is not clearly erroneous. The record reflects that, based on the parties' shared interest in acquiring, renovating, and renting residential properties, the parties jointly entered into such an enterprise with respect to these properties. The district court found Freitag's testimony that the parties agreed to share the profits to be credible, and we defer to that determination.

Tiedke also asserts that, because financing for improvements to the properties can be traced to non-marital funds, he is entitled to a greater share of the net equity. The district court's finding that Freitag's receipt of $25,400 in rent payments on two of the properties and work performed by Tiedke at her separately-owned properties was not commensurate with the improvements and property management services she provided also is not clearly erroneous. The record reflects that Freitag invested a total of 1,741 hours of labor in the four properties while Tiedke primarily provided funds to purchase the materials for the improvements. The district court did not clearly err by assigning equal values to the parties' respective labor and monetary investments in improving the properties.

Tiedke is, however, under *Schmitz*, entitled to a greater share of the net equity in the Ramsey and Buchanan properties. By not applying *Schmitz*, the district court did not recognize the pro-rata appreciation of Tiedke's non-marital interests in those two properties. *See* 309 N.W.2d at 750. The district court erred by not applying *Schmitz*. The district court's error does not affect the James and Aldrich properties because Tiedke did not have a non-marital interest in those two properties. Thus, we reverse this part of the district court's decree and remand for reconsideration of the division of the parties' interests in the Ramsey and Buchanan properties according to the *Schmitz* formula.

II. Division of Personal Property

Tiedke also argues that the district court erred in its valuation and division of some of the parties' personal property.

A. Checking Account

Tiedke argues that the district court overstated the value of his Spire checking account because, on the valuation date, it included approximately $9,700 in security deposits, which he was obligated or will be obligated to return to tenants. The district court considered Tiedke's argument but found that he "provided no evidence to support his allegation" that some of the funds were attributable to security deposits. Tiedke contends that the district court disregarded his testimony, in which he stated that the checking account includes $9,700 in security deposits, and six leases that required six tenants to provide security deposits. But Tiedke's checking-account statements do not show deposits on dates that correspond to the dates the leases were signed or in amounts that correspond to the leases, and it is unclear whether later deposits are security deposits or monthly rental payments. Thus, the district court did not clearly err by not subtracting $9,700 from the balance of Tiedke's Spire checking account when determining its value.

B. Vehicles

Tiedke also argues that the district court erred by including two vehicles—a 2016 Camaro and a 2017 Silverado—in the marital estate and by overstating the value of the vehicles.

Tiedke purchased the Camaro in October 2016, after the valuation date, for $51,848, of which $28,846 was financed with a loan. At trial, Freitag traced the funds used to acquire this vehicle back to Tiedke's ownership of a 2016 Traverse that was purchased before the valuation date for $29,287, after rebates, with insurance proceeds and the

proceeds of a loan. After the valuation date, Tiedke repaired the Traverse and traded it for the Camaro, receiving a trade-in allowance of approximately $30,000.

Tiedke purchased the 2017 Silverado in March 2017, after the valuation date, for $44,662. At trial, Freitag traced the funds used to acquire this vehicle back to the parties' ownership of a 2014 Cruze before the valuation date. After the valuation date, Tiedke sold the Cruze for $10,000 and used the proceeds to buy a 2013 Silverado for $10,762, which he later traded in for the 2017 Silverado, receiving a trade-in allowance of $24,000, using approximately $10,000 in rebates, and financing the remaining $11,286 with a loan, which he paid off two months later with the proceeds from a previously-filed insurance claim on the vehicle. When disclosing his marital assets, Tiedke assigned $0 in value to both the Traverse and the Camaro and $10,000 in marital value to the Cruze but did not include the 2013 Silverado or the 2017 Silverado.

At trial, Tiedke argued that the Camaro and the 2017 Silverado should be considered non-marital property because he purchased them after the valuation date. The district court rejected his argument. The district court determined that Tiedke's sale of the Cruze and trade-in of the Traverse without Freitag's consent constituted dissipation. The district court found that $23,002 was "a fair return on the trade-in of the Traverse" based on the purchase price of the Camaro less the loan and that $44,662 was the value of the 2017 Silverado, which had no encumbrances, and that both are marital assets.

The record supports the district court's findings of fact concerning the Camaro and the 2017 Silverado. The predecessors of the vehicles (the Traverse and the Cruze) were acquired by the parties after their marriage and before the valuation date and, thus, are

presumed to be marital property. *See* Minn. Stat. § 518.003, subd. 3b. It is necessary to account for them in some way. Freitag traced the subsequent history of the two vehicles in Tiedke's possession on the valuation date to the Camaro and 2017 Silverado with a combination of several exhibits, the testimony of witnesses who purchased the Traverse and the Cruze, the testimony of Tiedke's supervisor, and Tiedke's own testimony. Thus, the district court did not clearly err by including the vehicles in the marital estate.

Tiedke also contends the district court erred by determining that he dissipated marital assets. He contends that he sold, traded, or bought the vehicles in the ordinary course of business. If

> a party to a marriage, without consent of the other party, has . . . during the pendency of, the current dissolution . . . transferred . . . or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer . . . or disposal not occurred.

Minn. Stat. § 518.58, subd. 1a (2018). "In compensating a party under this section, the court, in dividing the marital property, may impute the entire value of an asset and a fair return on the asset to the party who transferred . . . or disposed of it." *Id.* In his financial disclosure statement, Tiedke mentioned his employment at a Chevrolet dealership and mentioned his wages from that job and his income from rental properties, but he did not mention a business that trades automobiles. He testified that a business he previously operated, A&G Auto, had not been in existence since he met Freitag. In light of that evidence, the district court did not err by not invoking the usual-course-of-business exception to the dissipation rule.

Tiedke further contends that the district court erred by overvaluing the two vehicles. He contends that the district court should have used their actual purchase prices after rebates and discounts, not the dealership's sticker prices. Specifically, he asserts that the district court should have valued the Traverse at $0 because it had $18,000 in damages when he purchased it for $17,139. He also asserts that the district court should have valued the Silverado at $0 because the $44,662 sticker price was covered by a $10,000 rebate, a $24,000 trade-in allowance, and a $12,000 insurance check. But it was within the district court's discretion to impute the value of the vehicles based on Tiedke's dissipation, and the values found are supported by evidence in the record. Thus, the district court did not clearly err in its valuation of Tiedke's vehicles.

C. Credit Card Debt

Tiedke also argues that the district court erred by finding that Freitag's credit-card debt is a marital debt on the ground that the debt was incurred after the valuation date. "Debt is apportionable as part of the marital property settlement," but a district court is not required to apportion marital debts. *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). "The division of marital debts is treated in the same manner as division of assets." *Id.*

The district court found that Freitag had $17,088 in marital debt due to her use of three credit cards before the valuation date. The district court reasoned that the debt was presumed to be marital debt unless Tiedke proved otherwise and that Tiedke did not provide any documentation to support his assertions that Freitag typically paid her credit-card bill every month and had no debt when they separated. The record supports the district

court's reasoning. Statements for one credit card show that Freitag did not incur any charges after August 16, 2016. Statements for another credit card show the balance of Freitag's transactions through the valuation date to be nearly identical to the district court's valuation. Statements for a third credit card show no accrued interest and only one charge from January 2016. Accordingly, the district court reasonably found that the total balance on the three credit cards (less a non-marital expense on one card) as of the valuation date was marital debt. *See Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979) (stating value must be within "reasonable range of figures"). Thus, the district court did not clearly err in its treatment of the credit-card debt.

D. Income Tax Liability

Tiedke also argues that the district court erred by not equally dividing an additional income-tax liability arising from the fact that Freitag filed her 2015 taxes as "married, filing separately." Tiedke earlier moved to compel Freitag to file a joint tax return with him and to equally divide the tax liability, and the district court denied the motion. Tiedke renewed his request to equally divide the tax liability at trial, and the district court again denied it.

On appeal, Tiedke contends that he should be given credit in the equalizer payment for an $8,259 difference between his actual tax liability and the tax liability he would have had if the parties had filed jointly. Tiedke introduced into evidence his 2015 tax return, Freitag's 2015 tax return, and a hypothetical joint 2015 tax return. Freitag had the hypothetical tax return reviewed by a CPA, who found at least one error. Tiedke then corrected the hypothetical tax return, but the preparer did not have access to all of Freitag's financial information. The documents, considered as a whole, do not clearly prove the

difference in tax liability between the two types of returns alleged by Tiedke. For that reason, the district court did not err by not requiring the parties to equally divide additional tax liability.

III. Attorney Fees

Tiedke last argues that the district court erred by awarding Freitag $20,000 in conduct-based attorney fees.

In a proceeding under chapter 518 or chapter 518A of the Minnesota Statutes, a district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding," if certain conditions are present. Minn. Stat. § 518.14, subd. 1 (2018). The attorney fees described in the first sentence of this statute typically are called "need-based fees." *See Geske v. Marcolina*, 624 N.W.2d 813, 816-17 (Minn. App. 2001). The same statute also provides, "Nothing in this section or section 518A.735 precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. The attorney fees described in the second sentence of the statute typically are called "conduct-based fees." *See Geske*, 624 N.W.2d at 818-19. A 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). This court applies an abuse-of-discretion standard of review to a district court's

award of attorney fees. *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).[1]

The district court awarded $20,000 in conduct-based attorney fees to Freitag based on Tiedke's "flagrant dissipation of marital assets" and "unreasonable position as to property valuation." The district court reasoned that Tiedke "unreasonably contributed to the length" of the dissolution proceedings by trading vehicles and that, as a result, Freitag was forced to subpoena Tiedke's supervisor and gather other evidence to trace the vehicles. The district court also reasoned that Tiedke's "refusal to even consider the possibility that the Anti-Palimony statute was not applicable to this matter significantly increased [Freitag's] costs and the time devoted to preparation for trial and trial."

Tiedke contends that he had "a good-faith, factual and legal basis for [his] handling of the motor vehicles in question" and that he had "legitimate concerns that [Freitag] was seeking an interest in [his] pre-marital property, assets and income based on her cohabitation with him prior to the marriage." We question whether the conduct on which the fee award is based was unreasonable. More importantly, we see nothing in the record to indicate that Tiedke's conduct "contribute[d] to the length or expense of the proceeding" in a way that caused Freitag to incur an additional $20,000 in attorney fees. Minn. Stat. § 518.14, subd. 1. We have carefully reviewed the invoices of Freitag's attorney and can

[1]Neither party has questioned whether section 518.14 provides a substantive basis for an award of conduct-based fees. For purposes of this appeal, the court assumes without deciding that the statute does so. *Cf. Anderson v. Anderson*, No. A16-2006, order at 3 (Minn. Aug. 6, 2018); *id.* at D-1 (Gildea, C.J., dissenting); *see also Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019).

identify only three time entries, resulting in fees of less than $1,000, that relate to Tiedke's trading of vehicles or his assertion of an anti-palimony argument. Thus, the district court erred by awarding conduct-based attorney fees to Freitag.

IV. Reservation of Spousal Maintenance

In her cross-appeal, Freitag argues that the district court erred by denying her post-trial motion to reserve the issue of spousal maintenance.

If a district court does not award spousal maintenance, "it may reserve jurisdiction of the issue of maintenance for determination at a later date." Minn. Stat. § 518A.27, subd. 1 (2018). Reservation of jurisdiction allows a district court to "later assess and address future changes in one party's situation as those changes arise, without prematurely burdening the other party." *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). If a district court does not award spousal maintenance and does not reserve jurisdiction over the issue, the district court may not amend its decision and award spousal maintenance at a later date. *See Berger v. Berger*, 242 N.W.2d 836, 837 (Minn. 1976). For that reason, reservation of maintenance may be appropriate if there is uncertainty concerning the ability of the spouse seeking maintenance to continue to support himself or herself. *See id.*; *see also Wopata v. Wopata*, 498 N.W.2d 478, 485-86 (Minn. App. 1993); *Van de Loo v. Van de Loo*, 346 N.W.2d 173, 178 (Minn. App. 1984). This court applies an abuse-of-discretion standard of review to a district court's decision not to reserve jurisdiction over the issue of spousal maintenance. *See Berger*, 242 N.W.2d at 837; *Eckert v. Eckert*, 216 N.W.2d 837, 839 (Minn. 1974).

Freitag contends that, at trial, she requested spousal maintenance "in the event that she was not awarded sufficient property to meet her reasonable needs as she is dependent upon the income received from the investment properties." The district court denied her request. After trial, Freitag requested that the district court reserve the issue of spousal maintenance pending appeal.

In its judgment and decree, the district court stated that Freitag's request for spousal maintenance would "not survive" even if it had not awarded investment properties to Freitag because she was "fully able to provide for herself prior to her marriage," "has remained in the same home she shared with her previous husband throughout the parties' relationship," and is "an able-bodied person with self-proclaimed expertise in property management." The district court's finding that Freitag is able to provide adequate self-support is not clearly erroneous. Freitag did not introduce any evidence of health concerns or other similar circumstances that would indicate that there is uncertainty concerning her ability to continue to support herself. This court's reversal and remand with respect to the Ramsey and Buchanan properties is limited in scope and value and, thus, does not require reconsideration of Freitag's request.

Thus, the district court did not err by denying Freitag's post-trial motion to reserve the issue of spousal maintenance.

Affirmed in part, reversed in part, and remanded.