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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1609**

In re the Marriage of: Randy James Hildebrandt, petitioner,
Appellant,

vs.

Tracy Jean Hildebrandt,
Respondent.

**Filed August 31, 2020
Affirmed
Florey, Judge**

Ramsey County District Court
File No. 62-FA-17-213

Robert A. Manson, Robert A. Manson, PA, Roseville, Minnesota (for appellant)

James D. Capra, James D. Capra, Inc., St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Florey, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this appeal from a dissolution of marriage, appellant-husband argues that the district court should have ruled that respondent-wife improperly disposed of marital assets by gambling and failing to make mortgage payments on the family home. We affirm.

FACTS

Appellant Randy Hildebrandt and respondent Tracy Hildebrandt were married in 1994. The parties have four children. In 2011, appellant stopped working and began receiving long-term disability (LTD). Appellant's LTD payments were terminated in November 2016 and reinstated in February 2018.

Appellant and respondent have been separated since January 17, 2017. On January 20, 2017, a domestic-abuse order was issued against appellant on respondent's behalf. Appellant filed a petition for divorce on January 31, 2017. The parties co-own a house in Maplewood, Minnesota. Appellant has not lived in the family home since the order for protection was issued in January 2017. As of March 23, 2017, the mortgage balance was \$185,761.81. Following a period of delinquent payments, the parties signed a loan modification in December 2017 that increased the outstanding mortgage to \$230,700.98. By order dated April 3, 2018, respondent was given sole and exclusive occupancy of the home; the issue of continued mortgage-payment responsibility was not addressed. No mortgage payments were made by respondent or appellant in 2018. The home subsequently went into foreclosure.

In March 2019, following a three-day trial, the district court issued its findings of fact, conclusions of law, order for judgment, judgment and decree. At trial, appellant argued that respondent dissipated marital assets by gambling and failing to pay the mortgage on the family home. The district court concluded that appellant did not meet his burden of establishing that respondent dissipated marital assets while the dissolution of the marriage was pending. The court found that there was no way to ascertain which party was

“more responsible” for the gambling expenditures based on the testimony and joint-account statements submitted at trial. The court further noted that it could not adequately consider respondent’s expenditures after the parties’ separation in January 2017 because appellant failed to provide his own bank statements during this same time period. The district court ultimately concluded that, because neither party paid the mortgage throughout 2018, they should share in the resulting loss of home equity.

Appellant moved for amendment of the district court’s findings of fact, conclusions of law, and order, or in the alternative a new trial. Following a May 2019 hearing, the district court denied appellant’s motion. This appeal follows.

D E C I S I O N

Parties to a dissolution owe each other “a fiduciary duty . . . for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets.” Minn. Stat. § 518.58, subd. 1a (2018). If the court finds that one party to a marriage improperly disposed of marital assets during the pendency of the dissolution, the district court shall attribute the dissipated assets to the party who “transferred, encumbered, concealed, or disposed of” them. *Id.*

Under Minnesota statute, dissipation occurs when “a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life.” *Id.*; see, e.g., *Baker v. Baker*, 753 N.W.2d 644, 653 (Minn. 2008) (quoting the statute when describing the test for dissipation). The statute establishes a four-

element test for determining whether dissipation has occurred: (1) a transfer or disposition of marital assets; (2) without the other party's consent; (3) "in contemplation of commencing, or during the pendency of, the current dissolution . . . proceeding"; and (4) the transfer or disposition was not "in the usual course of business or for the necessities of life." Minn. Stat. § 518.58, subd. 1a.

Whether a party has dissipated marital assets is a question of fact. See Minn. Stat. § 518.58, subd. 1a ("If the court *finds* . . ." (emphasis added)). Appellate courts review a district court's factual findings for clear error, viewing the evidence in the light most favorable to the district court's findings and reversing only if the record "requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Appellant argues that respondent dissipated marital assets, in violation of Minn. Stat. § 518.58, subd. 1a, during the pendency of the divorce proceeding in 2017 and 2018 when she "gambled away up to \$38,631.18, but failed to maintain the homestead mortgage at a time that she was the only one with income." He contends that such "frivolous spending" lead to a loss of \$44,939 in equity in the home, thereby significantly dissipating the value of this martial property. Appellant also claims that respondent "excessively" gambled and withdrew "a substantial amount" of funds at casinos in 2014, 2015, and 2016.

As an initial matter, we observe that the fiduciary obligation regarding the dissipation of martial assets is triggered when a party contemplates dissolving his or her marriage, and continues while dissolution proceedings are pending. See Minn. Stat. § 518.58, subd. 1a. Here, the parties separated in January 17, 2017, and a domestic-abuse

order was issued against appellant three days later. Appellant filed for divorce shortly thereafter. Appellant's arguments regarding respondent's gambling activities throughout the years of their marriage, prior to the parties' separation and subsequent divorce proceedings, are misplaced.

Appellant argues that the district court's finding that neither party made mortgage payments and should therefore share in the resulting loss of equity is "clearly erroneous inasmuch as it intimates that [a]ppellant could have paid the mortgage during a time that he had no income." Appellant emphasizes that, while he "had no financial resources" during the time period when mortgage payments stopped, "not only did [r]espondent have the income to make the payment, but she frivolously spent the money on gambling instead of the mortgage payment."

Although appellant's LTD benefits were suspended for part of the period of the mortgage nonpayment, his benefits were reinstated in February 2018. At the time of his benefit reinstatement, appellant also received a lump sum payment for over one year of past unpaid benefits. Yet, like respondent, appellant made no mortgage payments throughout 2018. Moreover, there is no evidence that the parties' joint contractual obligation regarding regular mortgage payments changed from a shared responsibility to that of respondent alone. Both parties were signatories as the "borrower" on the original mortgage in 2006, and both parties signed the refinancing documents in December 2017. We note that appellant's LTD was reinstated less than two months after he signed the refinancing documents, whereby he re-acknowledged this joint obligation.

While respondent was granted sole and exclusive occupancy of the family home in April 2018, the district court's order was silent on the continuing mortgage obligation; thus, the parties' joint responsibility to make monthly payments as co-mortgagees remained unaltered. Neither party made the required payments. As respondent observed, "[t]he parties' delinquency on this obligation was in every sense a joint venture," and the district court did not clearly err in finding that they should share in the resulting loss of equity in the home.

Affirmed.