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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0330**

In re the Marriage of:

Amy Jo Yurek, n/k/a Amy Jo Sellers, petitioner,
Respondent,

vs.

Michael Francis Yurek,
Appellant.

**Filed March 8, 2021
Affirmed
Cochran, Judge**

McLeod County District Court
File No. 43-FA-18-1400

Troy A. Scotting, Hutchinson, Minnesota (for respondent)

Brian M. Olsen, Cokato, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Jesson, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this marital-dissolution dispute, appellant-husband argues that the district court erred by (1) classifying the homestead as a partial marital asset, (2) awarding spousal maintenance to wife, and (3) placing a marital lien on the homestead. Respondent-wife

filed a cross-appeal, arguing that the district court erred by denying her request for need-based attorney fees. We affirm.

FACTS

Appellant-husband Michael Francis Yurek and respondent-wife Amy Jo Sellers married in 2000 and had one child together. The parties separated in May 2018, and wife petitioned to dissolve the marriage in August 2018. Based on the parties' stipulations, the district court entered a partial judgment and decree in March 2019 dissolving the marriage. The partial judgment and decree resolved certain issues, including custody of the minor child, while reserving other issues, including property division and spousal maintenance. The district court conducted a trial in October 2019 to consider the reserved issues. The following is a summary of the evidence presented at trial that is most relevant to the issues on appeal.

Homestead Farm

At the time of trial, husband and wife jointly owned a farm consisting of two parcels of farmland in Silver Lake, Minnesota, which totaled 109.5 acres and included a homestead. Husband grew up on the farm. The farm had been in his family for generations. Husband's father owned the farm until 1995 when he conveyed the farm to husband and husband's sister as tenants in common, while reserving a life estate for himself. The deed specified that husband and his sister each received a 50-percent interest. Husband and his father lived on the farm at the time of the transfer. Husband's sister lived on a neighboring property.

Wife first moved onto the farm in 1998, two years before she and husband married. Husband's father continued to live on the farm with them, and the three of them earned income off the farmland during the early years of husband and wife's marriage.

Husband's father passed away in 2001, extinguishing his life estate. Shortly thereafter, husband and wife bought husband's sister's half-interest in the farm for \$25,000. Husband later conveyed his half-interest in the farm to himself and wife as joint tenants. Both deeds were recorded in January 2002. Up until the dissolution, husband and wife owned the farm as joint tenants. Husband testified that when he signed the documents creating a joint tenancy in the farm, he did not intend to give half of the farm to wife but included his wife on the deeds in order to obtain loans against the property.

At the time that husband's father passed away in 2001, the farm was encumbered by liens amounting to roughly \$48,500 in loans. Husband and wife refinanced the debt and took out additional loans on the farm over the years. In 2002, they took out loans totaling \$95,000. Husband used the loan proceeds to pay off part of the previous loans on the farm, to pay his sister for her half-interest in the farm, and to pay for his father's funeral. The parties also obtained loans for \$23,000 in 2004 and \$252,500 in 2006, as well as a line of credit secured by the farm in 2007. At the time of the dissolution trial, there were two loans on the farm: one for \$187,782.44 through Compeer Financial, and one for \$80,298.98 through Wells Fargo. Husband testified that he was not currently living at the farm and had to stay in an apartment because of mold problems at the home. Wife had moved out of the farm in May 2019 and testified that she was living in a house that she and her sister inherited from their father.

Parties' Incomes and Expenses

The parties submitted evidence of their incomes and expenses. Husband testified that he worked 40 hours per week at \$19.51 per hour and that he frequently worked overtime. The district court received evidence of husband's most recent pay stubs. The pay stubs reflected that husband had earned \$53,677.42 in gross income in 2018 and \$40,661.98 to date in 2019 as of August, which, after accounting for taxes and other deductions, resulted in an annual net income of roughly \$30,500 in 2018 and \$25,000 as of August 2019.

Husband further testified that he earned additional income from the farm and that he expected the annual net income on the farm to be around \$22,000 per year. Much of this income came by renting out the farmland. He indicated that he received about \$19,500 in rental income in 2018 and \$18,000 in 2019 but that he expected the rental income to be greater in 2020. Husband testified that he used all of the farm rental income to cover the Compeer Financial loan payments.

Husband introduced evidence showing that his average monthly expenses totaled \$3,280. This amount included a \$600 child-support obligation, plus an additional \$120 in arrearages, for a total of \$720 per month in child-support expenses. Husband's monthly expenses also included \$500 in attorney fees, although husband testified that he was not paying that full amount at the time of trial. When pressed on cross-examination, husband indicated that he could probably meet his needs if he cut his expenses down to about \$1,600 per month.

Wife testified that she is disabled due to a back injury and was receiving \$790 per month in Social Security disability income (after a Medicare deduction) at the time of trial. She also was receiving \$600 per month in child support (not including arrearage payments) and \$213 per month as a child benefit for Social Security, for a total monthly income of \$1,603. Wife submitted evidence of her monthly expenses totaling \$2,445. Her expenses included \$100 per month in attorney fees. Wife testified that, after her separation, she was unable to meet her monthly expenses and relied on her friends and church to meet many of her everyday needs.

District Court's Order

The district court issued its findings of fact, conclusions of law, and order entering judgment and decree in January 2020. The district court determined that the farm was partially marital property and partially nonmarital property. The district court noted that husband owned a 50-percent interest in the farm before the marriage, and husband and wife jointly owned the farm after they married. Because the property was subject to a loan of \$48,000 prior to the marriage, the district court calculated husband's nonmarital equity in the farm to be 45.5 percent. The district court based its calculation on the formula set forth in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981).

The district court awarded the farm to husband subject to a marital lien in the amount of \$95,117.88 in favor of wife. The lien accounted for wife's share of the marital equity in the property and an equalization payment. The district court ordered that, if husband failed to pay the lien by refinancing the existing loans on the farm, husband would be required to sell the farm to pay off the lien.

The district court also awarded permanent spousal maintenance to wife. It found that wife's claimed monthly expenses of \$2,445 were reasonable. Based on her income, including child support, the district court calculated that wife had a shortcoming of roughly \$550 to \$750 per month.¹ Relying on husband's August 2019 pay stub, the district court determined that husband's income was \$3,172 per month (after deductions for taxes and other expenses) and that he had \$800 to \$1,100 in discretionary income depending on his overtime hours. The district court therefore ordered husband to pay wife \$600 per month in permanent spousal maintenance.

Finally, the district court denied wife's request for attorney fees. It found that wife had shown that she was in need of attorney fees but that husband did not have the means to pay wife's attorney fees in light of his other obligations, including spousal maintenance and child support.

The parties appeal from the district court's order.

DECISION

Husband challenges three aspects of the district court's order: (1) the district court's finding that the farm is partially a marital asset, (2) the district court's award of spousal maintenance to wife, and (3) the district court's placement of a marital lien on the farm. In her cross-appeal, wife challenges the district court's denial of her request for attorney fees. We address each argument in turn.

¹ We note that the district court's math is off slightly. Based on the evidence the district court relied on, wife's shortcoming is even greater.

I. The district court did not clearly err by classifying the homestead farm as a partial marital asset.

Husband argues that the district court erred by finding the homestead farm to be part marital and part nonmarital property. Husband maintains that the district court should have classified the entire farm as husband's nonmarital property. We are not persuaded.

“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 (2020). Nonmarital property includes property acquired by either spouse before the marriage. *Id.*, subd. 3b(b). It also includes property acquired before, during, or after marriage, which is “acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse.” *Id.*, subd. 3b(a). For a party to overcome the presumption that property acquired during the marriage is marital, the party must prove that the property is nonmarital by a preponderance of the evidence. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Whether property is marital or nonmarital is a question of law, which we review de novo. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). We defer to the district court's underlying factual findings and will not set them aside unless they are clearly erroneous. *Id.*

The record supports the district court's finding that husband had both a marital and a nonmarital interest in the farm. Husband obtained a 50-percent interest in the farm in 1995 when his father conveyed the property to him and his sister as tenants in common. This interest is nonmarital because it was acquired before the marriage. In 2001, during

the marriage, husband and wife jointly bought the remaining half-interest in the property from husband's sister. This 50-percent interest is presumptively marital. *See* Minn. Stat. § 518.003, subd. 3b. Husband bore the burden at trial to rebut the presumption that this 50-percent interest is marital property. *See Olsen*, 562 N.W.2d at 800. We agree with the district court that husband failed to rebut this presumption. There is no basis in the record to conclude that this 50-percent interest in the farm that the parties jointly acquired after marriage is nonmarital property.²

Husband, however, argues that the farm should be classified as entirely nonmarital property because the property has belonged to his family for generations and he did not intend to give wife an interest in the property when they executed the deeds for the property. He maintains that wife was named as a joint tenant on the deeds because the bank required husband and wife to jointly own the property in order to obtain financing. He cites *Montgomery v. Montgomery* for the proposition that the transfer of property from one party's individual ownership before the marriage to a joint tenancy during the marriage does not automatically change the property from nonmarital to marital. 358 N.W.2d 169, 172 (Minn. App. 1984). *Montgomery* does not support husband's position. In *Montgomery*, one party owned a 100-percent interest in the property and then transferred

² At oral argument, husband suggested that this 50-percent interest should be classified as nonmarital property because he obtained it from husband's sister as a gift that was intended to keep the farm in the family. Husband did not raise this argument to the district court, and we generally do not consider theories raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We also note that the record does not support this theory. Although the parties may have bought husband's sister's 50-percent interest for a low price, the record does not show that husband's sister's interest was intended as a gift to husband alone, as opposed to both husband and wife.

it to a joint tenancy during the marriage. *Id.* at 171. This court concluded that the property acquired before marriage did not lose its nonmarital character based on the change in title. *Id.* at 172. Here, in contrast, husband owned only a 50-percent interest in the farm before the marriage, which he transferred to a joint tenancy during the marriage. *Montgomery* instructs that husband's nonmarital interest did not lose its nonmarital character merely as a result of the change in title. But *Montgomery* does not support husband's position that his 50-percent pre-marriage ownership interest blossomed into a 100-percent *nonmarital* interest when it was transferred to a joint tenancy.

The district court's determination that there is a marital interest in the farm correctly recognizes that husband and wife jointly bought a 50-percent interest in the farm from husband's sister during the marriage.³ The district court did not err by finding the homestead farm to be partially marital property.

II. The district court did not abuse its discretion by awarding spousal maintenance to wife.

Husband argues that the district court improperly awarded spousal maintenance to wife. We review a district court's award of spousal maintenance for an abuse of discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). We review a district court's factual findings underlying a spousal-maintenance award for clear error. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009).

³ Based on this determination, the district court calculated husband's nonmarital equity interest in the farm to be 45.5 percent using the formula set forth in *Schmitz*, 309 N.W.2d at 750. Husband does not challenge the district court's application of the *Schmitz* formula to his nonmarital interest. He only argues the farm is entirely nonmarital property.

Spousal maintenance is governed by Minnesota Statutes section 518.552 (2020). A district court may grant spousal maintenance if it finds that the spouse seeking maintenance satisfies one of two requirements: (1) she “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”; or (2) she “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. If spousal maintenance is appropriate, the district court must determine the amount and period of time for the maintenance award “as the court deems just, without regard to marital misconduct,” and it must consider several factors. *Id.*, subd. 2. The weighing of the factors essentially requires the district court to conduct “a balancing of the recipient’s need against the obligor’s ability to pay.” *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (citing *Erlandson*, 318 N.W.2d at 39-40); *see also Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (noting that the purpose of spousal maintenance is “to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances”).

The record supports the district court’s finding that wife is in need of spousal maintenance. Wife testified that she received \$790 per month in Social Security disability, \$213 as a Social Security child benefit, and \$600 in child support. These amounts total \$1,603 in monthly income. Wife submitted evidence of her monthly expenses as \$2,445, which the district court found reasonable. As a result, wife’s monthly income is \$842 less

than her monthly expenses. The district court's award of \$600 per month in permanent spousal maintenance is an appropriate amount to meet much of wife's need.

Regarding husband's ability to pay spousal maintenance, the district court found that husband's monthly income was about \$3,172. This amount is supported by husband's most recent pay stub from August 2019, which shows husband's net income for the year to date (after adjusting for taxes, deductions, and benefits). The district court also found that husband had "discretionary income of \$800.00–\$1,100.00 depending on the amount of overtime hours he works." As such, the district court implicitly found husband's reasonable monthly expenses to be between \$2,072 and \$2,372 ($\$3,172 - (\$800 \text{ to } \$1,100) = (\$2,072 \text{ to } \$2,372)$). This figure is lower than husband's claimed monthly expenses of \$3,280. Although the district court did not specifically explain which of husband's claimed monthly expenses it was rejecting, or exactly how it arrived at the amount of husband's discretionary income, we believe that the amount is adequately supported by the record for two reasons.

First, husband testified that he could meet his needs with less than his claimed monthly expenses. He acknowledged on cross-examination that he could probably cut his expenses down to about \$1,600 per month. While the district court rejected husband's testimony on this exact amount as not credible, the testimony supports the district court's implicit finding that husband could have reasonable monthly expenses between \$2,072 and \$2,372. Second, husband testified that he worked "a lot of overtime," and his August 2019 pay stub showed that he worked a substantial amount of overtime that year. The district court accounted for this fact when determining husband's discretionary income,

recognizing that husband's income varied "depending on the amount of overtime hours he works." The fluctuating nature of husband's income due to his overtime hours, coupled with his testimony confirming his ability to cut back on his claimed monthly expenses, sufficiently supports the district court's finding that husband had sufficient discretionary income to pay \$600 per month in permanent spousal maintenance. When setting the spousal-maintenance award, the district court properly considered both wife's need and husband's ability to pay, and the district court's findings on both matters are supported by the record.

Husband also argues that the district court erred when setting the maintenance award because it did not consider the property awarded to wife in the dissolution, including the funds that she will receive from the marital lien against the homestead. In determining an award of spousal maintenance, one of the statutory maintenance factors that the court considers is the financial resources of the party seeking maintenance, including marital property awarded to that party. Minn. Stat. § 518.552, subd. 2(a); *see also Fink v. Fink*, 366 N.W.2d 340, 342 (Minn. App. 1985) (explaining that courts' consideration of a spouse's financial resources under this factor includes "income generated by liquid assets"). Here, none of the assets awarded to wife in the dissolution are income-producing. The only significant property awarded to wife other than the proceeds of the marital lien are her nonmarital home and her car, both of which she needs and is not expected to sell. And, wife's expenses will exceed her income by \$242 per month *even with* the spousal maintenance award of \$600 per month. Thus, wife will likely be required to use the proceeds of the marital lien to cover her living expenses. Because wife will have to invade

the principal of the marital lien proceeds in order to meet her needs, we see no abuse of discretion by the district court not considering wife's property award when setting the maintenance award.

Finally, husband insists that the spousal-maintenance award was unfair because wife's spending habits caused the parties to incur extensive credit-card debt during the marriage, while he was frugal with their finances. But husband cites no authority for the position that a spouse should be awarded less spousal maintenance due to alleged irresponsible spending habits during the marriage. The district court is not permitted to consider "marital misconduct" when setting spousal maintenance. Minn. Stat. § 518.552, subd. 2. The only statutory maintenance factor that would be relevant to this consideration is "the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property." *Id.*, subd. 2(h). Although the district court did not expressly consider this factor, it properly considered wife's need and husband's ability to pay, as explained above. Husband's argument regarding wife's spending habits is without merit.

We therefore conclude that the district court did not abuse its discretion by awarding wife \$600 in permanent spousal maintenance.

III. The district court did not abuse its discretion by placing a marital lien on the homestead farm.

Husband argues that the district court erred by ordering a marital lien to be placed on the homestead farm. We disagree.

A marital lien is a method of distributing property in a marital-dissolution proceeding. *Bakken v. Helgeson*, 785 N.W.2d 791, 794 (Minn. App. 2010). We review a district court's lien arrangements when dividing property for an abuse of discretion. *See Rohling v. Rohling*, 379 N.W.2d 519, 522-23 (Minn. 1986) (holding that the district court's award of the homestead to one party subject to an equitable lien in favor of the other party was proper because it had "an acceptable basis in fact and principle" (quotation omitted)).

Here, the district court awarded the homestead to husband and placed a marital lien on the property in favor of wife. The lien was in the amount of \$95,117.88, which accounted for wife's share of the marital equity interest in the property and an equalization payment. The purpose of the lien was to ensure that wife would be paid for her marital equity interest in the homestead and that she would receive her equalization payment.

We conclude that this was an appropriate way for the district court to secure wife's payment. Husband has not demonstrated that the lien arrangement was improper. He reiterates his arguments that wife engaged in unchecked spending during the marriage and was responsible for increasing the marital debts. Again, husband cites no authority supporting the proposition that wife's spending during the marriage renders the district court's method of securing wife's payment improper. We discern no abuse of discretion in the district court's lien arrangement.

IV. The district court did not abuse its discretion by denying wife's request for need-based attorney fees.

In her cross-appeal, wife argues that the district court abused its discretion by denying her request for need-based attorney fees. The district court found that wife was in

need of attorney fees but determined that husband did not have the means to pay them. We conclude that the district court did not abuse its discretion when it determined that husband lacked the means to pay wife's attorney fees.

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 it finds that three elements are met: (1) “that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding”; (2) that the party from whom fees are sought “has the means to pay them”; and (3) that the party seeking fees “does not have the means to pay them.” Minn. Stat. § 518.14, subd. 1 (2020). We review a district court's decision of whether to award attorney fees for an abuse of discretion. *Kielley v. Kielley*, 674 N.W.2d 770, 780 (Minn. App. 2004). A district court abuses its discretion if its decision is contrary to logic or the facts in the record. *Id.* at 775.

Wife argues that the district court abused its discretion by finding that husband did not have the means to pay wife's attorney fees. The district court found that husband had discretionary income between \$800 and \$1,100 per month. Using these numbers, husband still has some money left over after accounting for his \$600 spousal-maintenance payment. The district court expressly considered this situation, but it chose not to award all of husband's discretionary income to wife as spousal maintenance because it wanted to ensure that husband could refinance the farm loans to remove wife's name and that he could pay wife her portion of marital assets. In denying wife's request for attorney fees, the district court reasoned, “considering [husband's] income, his obligations which include child

support and spousal maintenance, and the significant amount of debt he is receiving through these proceedings, [husband] does not have the means to pay [wife's] attorney fees.” We conclude that, on this record, the district court acted within its discretion by determining that husband would need to rely on some of his discretionary income in order to pay his other debts and obligations.

The record supports the district court's findings regarding husband's obligations. In addition to ordering husband to pay child support and spousal maintenance, the district court awarded husband \$18,845.81 in marital debts as well as two outstanding loans on the farm (Compeer and Wells Fargo). Wife, in contrast, was awarded only \$11,921.87 in marital debts. In awarding husband the homestead farm, the district court placed a marital lien of \$95,117.88 on the farm that will be paid to wife when the farm is sold if husband does not pay the amount by refinancing the loans on the farm. In light of husband's existing obligations, including child support, spousal maintenance, and loan payments, the record supports the district court's finding that husband would be unable to pay wife's attorney fees in addition to those obligations.

For this reason, the district court did not abuse its discretion by denying wife's request for attorney fees on the basis that husband lacked the means to pay the attorney fees.

Affirmed.