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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0579**

In re the Marriage of:

Nicole Marie Knewtson, n/k/a Nicole Marie Campbell,
Appellant,

vs.

Adam Christopher Knewtson,
Respondent.

**Filed February 22, 2021
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Faribault County District Court
File No. 22-FA-16-476

Jacob M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota
(for appellant)

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Considered and decided by Frisch, Presiding Judge; Hooten, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this marital-dissolution appeal from the district court's judgment and decree following a trial on property issues, appellant/cross-respondent Nicole Marie Campbell and respondent/cross-appellant Adam Christopher Knewtson each make a number of

challenges. Together, the parties' challenges raise eight issues—specifically, that the district court (1) should have awarded Campbell a larger nonmarital interest in the marital homestead, (2) should have awarded Campbell a larger nonmarital interest in the parties' farm property, (3) misidentified debt incurred by Campbell to her father as a nonmarital debt, (4) misclassified as marital debt certain cash advances that Campbell borrowed against her nonmarital interests in two life-insurance policies, (5) should have allowed Knewtson additional discovery, (6) erred in valuing Knewtson's business and related assets, (7) abused its discretion regarding the award of attorney fees, (8) and erred in the classification and allocation of rent on the farm property. We affirm the district court on all issues except the issue of rent from the farm property. As to that item, we reverse and remand to the district court.

FACTS

Campbell and Knewtson were married in 1996, and remained married for 22 years. The parties have two children; one was 17 years old at the time of trial, and the other was emancipated. The parties separated in May 2016, and Campbell petitioned for dissolution of marriage in August 2016. After the parties resolved many issues in the dissolution, the district court held a bench trial in June 2019 on property issues, including the division of the parties' homestead, their farm property and its rent, marital debts, and Knewtson's business. The district court, by its initial order and its amended orders following posttrial motions, determined and awarded nonmarital property, divided the parties' marital property and debt, and directed Knewtson to pay Campbell an equalization payment of \$75,729.48.

The homestead

In 1994, Campbell's father, S.C., signed a deed transferring the homestead to Campbell. In 1996, four days before Campbell married Knewtson, Campbell executed a \$60,000 demand note in favor of Campbell's mother and S.C. for the homestead. The note required Campbell to pay both principal and interest payments.

On January 14, 1997, Campbell's mother and S.C. forgave \$15,000 of the demand note in writing. That same day, S.C. created a document titled, "Plan for Nicole House Loan." The document showed a \$60,000 total, the \$15,000 gift, and the remaining \$45,000 at 6.5% interest. It also included projected annual gifts over the following years and a comment that the note would be paid in full on January 1, 2000. But the document also contains handwritten changes to the listed amounts.

Almost a year later, "Plan for Nicole House Loan" was replaced by "Nicole House Loan (revised 1/1/98)." The revised house loan plan identified the \$60,000 loan, the \$15,000 gift, and the balance due of \$45,000. It listed a \$10,000 principal payment to be made on January 1, 1998 (the same date as the revised plan) and three additional \$10,000 principal payments and one \$5,000 payment to be paid over the succeeding four years. All of the scheduled payment dates were during Campbell and Knewtson's marriage. Campbell testified that she did not make any principal payments to S.C., and Knewtson testified that he did not make any principal payments to S.C. Yet the revised loan plan contains one handwritten note stating, "Pd. Ch 1-13-98," and a second handwritten note stating, "Pd In full 1-13-98." In addition, a satisfaction of mortgage was executed on February 20, 2002 and filed with the county recorder.

At trial, S.C. testified that he intended to gift the homestead to Campbell. He stated that “Plan for Nicole House Loan” included gift language, which showed his intent to gift Campbell the maximum amount allowed under gift-tax laws. He also stated that the “Nicole House Loan (revised 1/1/98)” was still a part of his gifting plan even if there was no gift language included in it other than the \$15,000 gift. S.C. did not produce any gift documentation for the rest of the payments listed on the revised house loan plan. The district court found S.C.’s testimony that he had gifted the homestead not credible.

K.T., a home appraiser engaged by Campbell, testified at trial. In her report, K.T. valued the homestead at \$139,000. She listed several improvements, including a new picture window in the living room, new windows, a gas water heater, a dishwasher, a new faucet, a remodeled kitchen, new hardwood flooring, and a refinished basement with new dry-walling and flooring. All of the listed improvements were completed during the marriage. During her trial testimony, K.T. stated that some of the improvements that she listed under the improvements category in her report would more properly be considered “general maintenance.” The district court determined that the installation of a new picture window, the kitchen remodel, and the installation of new hardwood flooring were significant projects and properly categorized as improvements. The district court also identified the construction of a gazebo as an improvement, although the gazebo was built by S.C. before he transferred the homestead to Campbell. The district court adopted the appraiser’s valuation of \$139,000.

The district court concluded that Campbell had a \$15,000 nonmarital interest in the homestead based on the documented \$15,000 gift. The district court also determined that

the increase in the home's value was all marital property because it could not determine how much of the increase in value was due to market forces rather than improvements during the marriage.

The farm property and rent

Campbell and Knewtson bought a 40-acre parcel of farmland in 1998 for \$68,000. Campbell used \$20,000 of her nonmarital funds for the initial down payment. On November 6, 2017, the farm property's value was appraised at \$315,000.

When the parties bought the farm property, it had poor drainage, so Knewtson installed drainage tile. Knewtson then rented the farm property to his father, W.K., from 2013 to 2018 for roughly \$10,000 per year. Knewtson rented the farm property in 2019 to another third party, J.M., for \$9,600.

In its initial order, the district court awarded the farm to Knewtson, at its appraised value of \$315,000 less \$20,000 for Campbell's nonmarital interest. The district court treated all of the increase in the farm's value as marital property because Campbell had failed to establish how much of the increase in value was due to market forces rather than tiling. The district court's initial order also directed that the farm-property rent would be "imputed to [Knewtson] as income and used to set the child support obligations."

Following posttrial motions, the district court amended its findings to award both parties an equal share of the marital portion of the farm and an equal share of the rent. The amended equalization chart reflects a \$20,000 award on each party's side for their share of the farm-property rent.

Apportionment of debt relating to life insurance policies

During the marriage, Campbell borrowed against two life insurance policies to pay for marital expenses. One policy (Sun Life policy) was a whole life insurance policy that was established by her parents before her marriage, for which Campbell was a joint beneficiary and trustee. The other life insurance policy (Northwestern Mutual policy), also established before her marriage, insured Campbell's life and named her children as beneficiaries. Campbell borrowed against the Sun Life policy over eight years and owes \$69,000 to restore the policy. Campbell borrowed against the Northwestern Mutual policy over five years and owes \$40,335.59 to restore that policy.

At trial, Campbell could not detail how the money was spent but said that she imagined that she spent it on family expenses. The district court found her testimony credible and concluded that the repayment amounts under the policies were marital debts because Campbell spent the money on family expenses. The district court assigned the marital debt of \$109,335.59 to Campbell.

Campbell loan

In 2015, Campbell signed a promissory note (Campbell loan) to S.C. for \$6,000. Campbell testified that she used \$2,500 from the Campbell loan to pay off a personal IRA obligation. The district court determined that, because Campbell used part of the Campbell loan to pay for a nonmarital asset, only \$3,500 of the Campbell loan is marital debt. The district court assigned the Campbell loan debt to Campbell.

Advantage Seed LLC

Advantage Seed LLC is a genetic licensing company formed by Knewtson in 2006. Knewtson is the owner and sole employee. S.D., a business appraiser engaged by Campbell for purposes of this action, performed a valuation of Advantage Seed. In his report and testimony, S.D. valued Advantage Seed at \$15,000.

To arrive at this value, S.D. used the discounted cash flow method. He projected Advantage Seed's future cash flow by averaging relevant financial numbers over time,¹ including officer compensation. He then added the value of any excess assets² that Advantage Seed owned and subtracted from the total any debts Advantage Seed had incurred.

As to Advantage Seed's officer compensation, S.D. stated that he could not identify any documentation that Knewtson received compensation every year. He found that officer compensation was paid in varying amounts in 2013, 2014, and 2015 and that no compensation was paid in 2016. He therefore averaged all four years' compensation to arrive at a normalized annual compensation of \$13,682.

The district court found S.D.'s appraisal to be credible and awarded Advantage Seed to Knewtson at the appraised value of \$15,000. It also awarded Knewtson a truck scale, a

¹ One appraisal method is to average the financial numbers produced by a small business to determine a "normalized entry." This method is used for small businesses because those businesses are highly likely to have more substantial "peaks and valleys" in their financial statements.

² An excess asset is any asset that is not used to generate the company's cash flow but is still owned by the company.

seed cleaner, and a 2014 Chevy Tahoe truck. The district court found that the truck scale was not an excess asset of Advantage Seed, that the seed cleaner's value was questionable because of the cost to remove it from Advantage Seed's building, and that the 2014 truck was included in Advantage Seed's value and that Campbell's nonmarital interest in the 2014 truck was accounted for elsewhere in the property division.

Discovery requests and attorney fees

The district court found that both parties contributed to the length of the litigation and that both parties delayed discovery, noting that both parties had brought several motions to compel discovery. The district court ordered no need-based or conduct-based attorney fees, but it did mandate that Knewtson pay Campbell \$1,684.50 in attorney fees for her successful motion to compel discovery and that Campbell pay Knewtson \$3,083 in attorney fees for his successful motions to compel discovery.

Campbell appeals, and Knewtson cross-appeals.

DECISION

With three exceptions, we address separately each issue raised by each party, beginning with issues raised by Campbell on her appeal and then turning to issues raised by Knewtson on his cross-appeal. The three exceptions concern the district court's determinations regarding Advantage Seed's valuation, attorney fees, and rent from the farm property. Because both parties raise challenges on these three topics, we address the parties' arguments on these three topics together.

I. Homestead

Campbell argues that the district court erred by rejecting her claim of a greater nonmarital interest in the homestead, beyond the \$15,000 gift from her parents. Specifically, she contends that the district court erred by (1) finding that Campbell failed to prove that S.C. gifted her the full \$60,000 of the homestead's mortgage, and (2) determining that all of the appreciation of the homestead's value is marital property.

In reviewing a district court's determinations regarding whether property is marital or nonmarital, appellate courts defer to the district court's underlying findings of fact unless they are clearly erroneous but review de novo the legal question of whether property is marital or nonmarital. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). A finding of fact is clearly erroneous if the reviewing court is "left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

All property obtained by either spouse during the marriage, regardless of the form of ownership, is presumed to be marital property. *Kerr v. Kerr*, 770 N.W.2d 567, 569 (Minn. App. 2009). To overcome this presumption, the party asserting a nonmarital claim must demonstrate by a preponderance of the evidence that the property is nonmarital. *Id.* Nonmarital property includes property acquired by a spouse during the marriage as a gift from a third party to one spouse only. Minn. Stat. § 518.003, subd. 3b(a) (2018).

Property can have "both marital and nonmarital aspects." *Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981). "When nonmarital and marital property are commingled, the nonmarital investment may lose that character unless it can be readily traced." *Wiegers*

v. Wiegers, 467 N.W.2d 342, 344 (Minn. App. 1991). “Whether a nonmarital interest has been traced is also a question of fact.” *Kerr*, 770 N.W.2d at 571.

A. The \$60,000 homestead loan

Campbell argues that the district court clearly erred by not finding that the homestead was, in its entirety, a gift to her from S.C. Because the other elements of a gift are not at issue here, whether this homestead was a gift to Campbell depends on S.C.’s donative intent. *See Olsen*, 562 N.W.2d at 800 (addressing requirements for a valid inter vivos gift). S.C.’s donative intent may be inferred from the circumstances, including the form of the transfer. *Id.* Question of intent are fact questions, and we defer to the district court’s findings of fact unless those findings are clearly erroneous. *Id.*

The district court found that S.C.’s testimony was “not sufficiently credible to establish that the remaining \$45,000 of the \$60,000 satisfaction of the mortgage was gifted to [Campbell] from her parents as a non-marital gift.” Generally, appellate courts defer to the district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Moreover, this finding is supported by the record. S.C. provided documentation establishing that he forgave \$15,000 of the \$60,000 mortgage as a nonmarital gift to Campbell. But the district court found not credible S.C.’s testimony that the remaining \$45,000 interest was also a gift to Campbell. S.C. only made vague assertions that he gifted money to Campbell and that she paid the mortgage back with that gifted money. S.C. did not provide any documents to support this claim.

But Campbell asserts that trial testimony established that there were no principal payments made on the \$60,000 mortgage and thus no marital equity was created during the

marriage by the parties paying down the mortgage. We again defer to the district court's underlying findings of fact. *Id.* The district court found that “[t]here were princip[al] payments made on the mortgage in at least 1998 and the mortgage was paid in full during the marriage.” This finding is supported by the record. “Nicole House Loan (Revised 1/1/98)” sets forth the repayment plan for the \$60,000 promissory note. The plan lists specific “principal payments” to be paid from 1998 through 2002 and makes no mention of “gifts.” The plan reflects that the first principal payment in the amount of \$10,000 was paid in 1998, and the last principal payment in the amount of \$5,000 was to be paid in 2002. Handwritten notes on the plan reflect that the loan was paid, and a satisfaction of mortgage was executed. Although Campbell said she did not make principal payments and Knewtson said that he did not make them, this testimony conflicts with the documentary evidence presented to the court. Given the conflicting testimonial and documentary evidence, the district court did not clearly err by determining that principal payments were, in fact, made.

Because the parties paid down the mortgage during the marriage, those payments created marital equity in the homestead. *See Antone v. Antone*, 645 N.W.2d 96, 103 (Minn. 2002) (concluding that marital equity was created in property from use of marital funds to pay down the mortgage during the marriage). The parties were married in 1996, the principal payments began in 1998, and the mortgage was paid in full in 2002. Because the payments were made during the marriage, the presumption is that they were made with marital funds. Minn. Stat. § 518.003, subd. 3b (2018). It was incumbent upon Campbell, as the party claiming a nonmarital interest, to show that the mortgage was paid down with

nonmarital funds. *See Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993). The district court did not err by finding that she failed to meet that burden. Given the vague and, as the district court found, not credible testimony of S.C., the district court did not err by determining that Campbell failed to show that the principal payments were readily traceable to nonmarital funds. *See id.*

B. Appreciation in value of the homestead

Campbell argues the district court erred by not finding that she had a nonmarital interest in the appreciation in value of the homestead. She claims that all of the appreciation is her nonmarital property because the full \$60,000 paid for the homestead was a gift, but we have rejected that contention above. In the alternative, she argues that the district court erred by not determining her proportional nonmarital interest in the increase in value of the homestead. We address that argument.

Increases in the value of nonmarital property attributable to inflation or to market forces retain their nonmarital character. *Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008). District courts use the *Schmitz* formula to determine marital and nonmarital interests in the appreciation of properties acquired before marriage. *Antone*, 645 N.W.2d at 100 (citing *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981)). Under that formula,

[t]he present value of a nonmarital asset used in the acquisition of marital property is the proportion the net equity or contribution at the time of acquisition bore to the value of the property at the time of purchase multiplied by the value of the property at the time of separation. The remainder of equity increase is characterized as marital property

Id. at 102 (quoting *Brown v. Brown*, 316 N.W.2d 552, 553 (Minn. 1982)). “However, the *Schmitz* formula applies only to the appreciation of property not attributable to improvements made by the parties. Improvements made by the parties are presumed to be marital property.” *Dorweiler v. Dorweiler*, 413 N.W.2d 572, 575-76 (Minn. App. 1987) (citation omitted).

The district court found that the parties made improvements to the property through their joint efforts, and that Campbell failed to establish how much of the homestead’s increase in value was due to market forces rather than the marital improvements. The district court therefore treated all of the increase in the home’s value as marital.

Campbell argues that the district court clearly erred by finding that the improvements were marital. She maintains that the trial testimony proved that any improvements to the homestead were either not attributable to joint efforts or should otherwise be considered routine maintenance not responsible for appreciation. And, she argues, even if some projects are improvements, the district court clearly erred by including improvements that were made before the marriage, and which, therefore were her nonmarital property.

We conclude that the district court’s findings are supported by the record. Improvements to property constitute marital property if they are attributable to the parties’ efforts. *Faus v. Faus*, 319 N.W.2d 408, 412 (Minn. 1982). The evidence supports the determination that Campbell’s efforts are properly considered marital efforts, even if her father also contributed to the improvements, because the efforts are attributable to her.

In addition, the record supports the determination that the improvements were not mere maintenance that had no effect on the increase in value of the homestead. The district court found that the installation of a new picture window, a kitchen remodel, and the installation of new hardwood flooring were improvements. Trial testimony supported the determination that those improvements would positively affect value. Moreover, the district court did not base its determination on things that the appraiser considered “general maintenance,” like a new gas water heater.

Campbell asserts that the district court incorrectly considered the gazebo a joint-efforts improvement to the property because the gazebo was constructed before the marriage. But, even if, on appeal, a complaining party shows that the district court committed an error, this court will not reverse unless the error is prejudicial. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of Minn. R. Civ. P. 61); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (“Although error may exist, unless the error is prejudicial, no grounds exist for reversal.”). Campbell may indeed be correct that the gazebo was built before the marriage. But Campbell failed to show any prejudice arising from the error because she did not provide any evidence regarding what, if any, increase in the value of the home is attributable to the installation of the gazebo; thus, she failed to show that she was prejudiced by the error.

Moreover, the district court determined that it could not perform a *Schmitz* calculation because Campbell failed to provide the necessary financial information on which to base the calculations, including nonmarital equity at the time of the marriage. *See*

Senske v. Senske, 644 N.W.2d 838, 841-42 (Minn. App. 2002) (concluding that *Schmitz* calculation does not apply where there is no identifiable portion of equity that can be traced to a nonmarital source). The district court found that it “only received credible evidence regarding a ‘mortgage deed’ and promissory note for \$60,000 executed just days before the marriage” but “no evidence as to [Campbell’s] non-marital equity in the home at the time of marriage, which is necessary for the *Schmitz* calculation.” On this record, the district court did not err by not performing a *Schmitz* calculation.

In sum, the district court did not err by determining that Campbell had a \$15,000 nonmarital interest in the homestead and the remaining interests in the homestead were marital.

II. Farm Property

Campbell also contends that the district court erred by not applying the *Schmitz* formula to her \$20,000 nonmarital down payment on the farm property. She contends that, because her nonmarital down payment constituted around 29% of the purchase price of the farm property, she was entitled to approximately 29% of the farm property’s increase in value at the time of separation. *See Schmitz*, 309 N.W.2d at 750. An increase in value of nonmarital property due to passive appreciation from market forces retains its nonmarital character, while active appreciation through marital efforts does not. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 853 (Minn. 2003).

The district court determined that it could not apply the *Schmitz* calculation to Campbell’s interest in the farm property because Campbell had not offered any evidence of the impact of the installation of drain tile on the appreciation in value of the farm. The

district court explained that the increase in the farm property's value is attributable to both passive appreciation—market forces—and active appreciation—the drain tile installation. It concluded that, by not providing sufficient evidence distinguishing how much value can be attributed to each type of appreciation, Campbell failed to meet her burden to trace her nonmarital interest in the farm property. *See Wopata*, 498 N.W.2d at 484.

The district court's determination is supported by the record. At trial, the farm-property appraiser testified that he did not investigate the specific reasons for the difference between the purchase price and the current appraised value of the farm property. He stated that the increase in its value could be from a variety of factors, including the drain tile as well as market forces such as an increase in land value or grain prices. But neither the appraiser's testimony nor his report established the amount of the farm property's value that resulted from the drain tile or from market forces. The district court did not clearly err by declining to perform a *Schmitz* calculation because it did not have enough financial information to do so. Because Campbell failed to meet her burden, the district court did not abuse its discretion by awarding Campbell only her initial \$20,000 down payment for the farm property as nonmarital property.

III. Campbell Loan

Campbell asserts that the district court erred by concluding that \$3,500 of the \$6,000 Campbell loan constituted marital debt and the remaining \$2,500 was nonmarital debt to be paid solely by Campbell. As to the \$2,500, the district court determined that Campbell used that money to pay income taxes generated by a nonmarital asset. This finding is not clearly erroneous. Campbell testified that she withdrew \$2,500 from her nonmarital IRA

account and then used \$2,500 from the Campbell loan to replenish the \$2,500 taken from her nonmarital IRA. The district court did not abuse its discretion by concluding that \$2,500 of the Campbell loan is nonmarital debt, allocated to Campbell.

We now turn our attention to Knewtson's cross-appeal.

IV. Cash-Value Insurance Advances

On cross-appeal, Knewtson challenges the district court's finding of \$109,335.59 in marital debt based on funds that Campbell borrowed against two nonmarital life insurance policies and spent on marital expenses. He argues that (1) as a matter of law, the advances were not loans from the insurance companies to Campbell, and (2) in any event, it is inequitable to hold him accountable for the secret actions that Campbell took in borrowing against the policies. Alternatively, Knewtson argues that if Campbell's insurance policy withdrawals are marital debts, the district court clearly erred by finding that the Northwestern Mutual policy debt was \$40,335.59 rather than \$30,030.

As to the first argument—whether the advances were loans—the issue is not whether the advances from Campbell's nonmarital assets were loans from the insurance company to Campbell; rather, the issue is whether the advances were loans from Campbell of her nonmarital assets to the marital estate. Whether the advances were loans from Campbell to the marital estate (and thus marital debts) turns on Campbell's donative intent. *See Olsen*, 562 N.W.2d at 800. If she intended the advances as gifts to the marital estate, then the marital estate is not liable for the debts. *See id.* If she intended the advances as loans to the marital estate, then the marital estate is liable for the debts. *See id.* As to the advances from both policies, Knewtson failed to address whether the district court clearly

erred by finding that the advances were loans from Campbell to the marital estate, rather than gifts. Because the burden to show error on appeal is on Knewtson regarding this question, and because he failed in that burden, we affirm the district court's order. *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011) (citing *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975)).

As to Knewtson's second argument, that the treatment of the advances as marital debts is, in any event, inequitable, we conclude that the district court acted within its broad discretion in dividing the marital debts. It is uncontested that Campbell used the cash advances from the life insurance policies to pay family expenses. The district may consider "all relevant factors" in the exercise of its discretion in dividing marital property. Minn. Stat. § 518.58, subd. 1 (2018); *Antone*, 645 N.W.2d at 100.

As to Knewtson's final argument, we find it unpersuasive. The district court found Campbell's testimony that she borrowed \$30,030 against her Northwestern Mutual policy both credible and corroborated by Northwestern Mutual loan statements. The record supports the district court's determination of what is owing. It reflects that Campbell withdrew three advances totaling \$30,030. And it also reflects that, as with loans, Campbell's advances accrued interest and that the full repayment amounts to \$40,335.59.

In sum, the marital estate benefited from the money borrowed from both life insurance policies and is therefore liable for the total amount owed. The district court's treatment of the \$109,335.59 in marital debt based on the cash advances was not an abuse of discretion.

V. Discovery

Knewtonson asserts that the district court erred by denying discovery on how Campbell's insurance policy withdrawals were spent. The district court has wide discretion in granting or denying discovery requests, and we will not disturb the district court's order absent a clear abuse of discretion. *See In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). In reviewing the district court's order, we are limited to "determining whether the district court made findings unsupported by the evidence or [improperly applied] the law." *See id.* Minnesota favors liberal discovery in civil proceedings; therefore, courts construe the discovery rules broadly. *Id.* Generally, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Minn. R. Civ. P. 26.02(b).

The district court summarily denied Knewtonson's discovery requests, stating, "[I]t is highly unlikely that there would remain a physical record of every purchase made with the money from the loans." The district court did not abuse its discretion by refusing to allow further discovery. It was not unreasonable for the district court to conclude that documentation of mundane family expenses paid via the loans over eight years is unlikely. Moreover, the district court found Campbell's testimony that she spent it on family expenses is credible. The district court did not abuse its discretion by determining that further discovery was unnecessary.

Next, we address the three areas in which Campbell's appeal and Knewtonson's cross-appeal overlap: Advantage Seed and its associated assets, attorney fees, and the farm-property rent.

VI. Advantage Seed

Both parties challenge the district court's determinations related to Advantage Seed and associated assets.

A district court's valuation of an item of property is a finding of fact, and it will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). To successfully challenge a district court's findings of fact, "the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Id.* Even so, "valuation is necessarily an approximation in many cases, and it is only necessary that the value arrived at lies within a reasonable range of figures." *Hertz v. Hertz*, 229 N.W.2d 42, 44 (Minn. 1975). Thus, we will not reverse the fact-finder's valuation if it falls within a range of credible estimates made by competent witnesses. *Id.*

A. Knewtson's cross-appeal

The district court adopted the appraiser's valuation of the business at \$15,000. Knewtson argues that the district court improperly inflated the value of business in three ways: by removing officer compensation from Advantage Seed's expenses, by failing to establish the existence of a market for the business, and by failing to apply a key-person discount.

1. Officer compensation

Knewton argues that the appraisal adopted by the district court “eliminated deductions for historical officer compensation,” thus inflating the value of the company by making its net income appear to be higher. He contends that the appraiser was “[g]aming officer compensation.” But S.D.’s testimony and report reflects that he did not eliminate historical officer compensation. Instead, he averaged Knewton’s compensation over the four-year period from 2013 to 2016, finding an average annual compensation of \$13,682. He then normalized the historical income statement by making a credit or a debit in each year to arrive at an officer-compensation amount of \$13,682 for each of the four years. The district court found that S.D.’s method of valuing Advantage Seed, which included normalized annual officer compensation, was credible, and that finding is supported by the record.

2. Establishing the existence of a market

Knewton also claims that S.D. failed to establish a market for Advantage Seed’s business and that, without a market, the company has no value. The district court stated during trial that “[S.D.’s] purpose was not to look for a market . . . [but] to give a valuation.” Knewton has cited no authority holding that an appraiser needs to establish the existence of a market for an income-method valuation. He therefore has not shown that the district court’s finding crediting the appraisal was clearly erroneous. *See Horodenski*, 804 N.W.2d at 372 (“But error is not presumed on appeal, and the burden of showing error rests on the party asserting it.”).

3. Key-person discount

Lastly, Knewtson asserts that the district court erred by failing to apply a key-person discount to Advantage Seed's value. He argues that he is key to the business because he is the sole owner and employee of the business and the business enjoyed financial advantages from its relationship with Knewtson's father that it would not receive with another owner. Thus, he contends, the value of the business must be discounted to account for his role.

The valuation of a business must account for the owner's importance to the business. *Rogers v. Rogers*, 296 N.W.2d 849, 853 (Minn. 1980). Typically, a key person "performs highly personal or unique services from which the entire business income is derived." *Nemitz v. Nemitz*, 376 N.W.2d 243, 247 (Minn. App. 1985), *review denied* (Minn. Dec. 30, 1985).

In *Nelson v. Nelson*, we rejected the district court's 30% key-person discount as too low where the owner was the only fee-generating professional in the company and was the only certified test balancing engineer in Minnesota. 411 N.W.2d 868, 875 (Minn. App. 1987). In *Nemitz*, we affirmed the district court's conclusion that the appellant, who was a partner in a business that provided management and instructional services to colleges, was not a key person. 376 N.W.2d at 245, 247. In that case, "[t]he college system would be saleable as a business even without appellant in his role, according to his own experts. The business could be sold and appellant could remain an active employee or consultant or he could change careers." *Id.* at 247.

This case is more like *Nemitz* than like *Nelson*. Here, like in *Nemitz*, Knewtson's services are not unique. The record includes evidence that, although Knewtson is the sole

employee of Advantage Seed, the services he provides to the business are not so specialized and it would not be difficult to find another owner familiar with licensing genetic traits who could find growers and sell the seed to producers. As to the argument of reduced expenses because of the relationship between Advantage Seed and Knewtson's father, the district court found lacking the evidence regarding the fair value of those expenses or how they might change the business's value. The record supports the district court's finding that a key-person discount was not required.

B. Campbell's appeal

Campbell argues the district court erred by awarding the truck scale, the seed cleaner, and the 2014 truck to Knewtson as part of the business rather than adding those items into Advantage Seed's value as excess assets.

1. Truck scale

Campbell maintains that the truck scale was only used for 15% of Advantage Seed's business, and so \$6,457 should be added into Advantage Seed's value. The district court's valuation of the truck scale is a finding of fact, and we do not disturb findings of fact unless the findings are "manifestly and palpably contrary to the evidence as a whole." *In re S.G.*, 828 N.W.2d 118, 127 (Minn. 2013) (quotation omitted).

The district court's finding that the truck scale is not an excess asset is supported by the record. S.D. testified that he found nothing that suggested that the truck scale was used for any other purpose than the business. Campbell does not point to any support in the record that the truck scale was used only 15% for Advantage Seed. We thus conclude that

Campbell has failed to meet her burden of showing error. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464 (Minn. 1944) (stating that error is never presumed on appeal).

2. Seed cleaner

Campbell next contends that the seed cleaner was never used so its entire value, \$18,000, should be added into Advantage Seed's value as an excess asset. The district court awarded the seed cleaner to Knewton as part of the business and assigned no value to it. The district court's valuation of the seed cleaner is a finding of fact that we will not overturn provided that it falls with a range of credible estimates made by competent witnesses. *See Hertz*, 229 N.W.2d at 44 (“[A] valuation is necessarily an approximation in many cases, and it is only necessary that the value arrived at lies within a reasonable range of figures.”).

Here, the district court's valuation is not clearly erroneous. At trial, the appraiser first testified that the seed cleaner's value is \$18,000. But the appraiser then testified that the seed cleaner's market value was questionable because it is attached to Advantage Seed's floor and would require extensive manpower to dismantle it and move it. Therefore, the cost to dismantle and move the seed cleaner may exceed any \$18,000 proceeds from a sale. Campbell does not challenge the credibility of the equipment appraiser's testimony; rather she argues that the district should have relied on the highest value the equipment appraiser testified to. A valuation is an approximation, and the district court only needed to arrive at a value within a reasonable range of figures. *See id.* Because Campbell does not argue that \$0 is unreasonable, not credible, or not made by a competent witness, she has not established that the district court clearly erred in its determination of the seed cleaner's value.

3. 2014 truck

Campbell finally maintains that the 2014 truck should be considered an excess asset and its value should be added to Advantage Seed's \$15,000 value. But the record reflects that the truck was considered an excess asset. In S.D.'s report, the 2014 truck is included as an excess asset. It was thus accounted for in S.D.'s \$15,000 valuation of the business. The district court also found that Campbell had a nonmarital interest in the 2014 truck because she had used her life insurance cash advances to pay for the truck's down payment, and observed that it considered that nonmarital interest when allocating the marital debt from those advances. The district court did not abuse its discretion.

VII. Attorney Fees

Campbell argues in her appeal that the district court erred by awarding what she asserts were conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2018), to Knewton. In his cross-appeal, Knewton asserts that the district court erred by declining to award him certain other conduct-based attorney fees.

A. Campbell's appeal

Campbell argues that the district court abused its discretion by awarding \$1,583 in conduct-based attorney fees against her under Minn. Stat. § 518.14, subd. 1. She contends that the district court acted inconsistently with its own determination that "both parties have contributed to the length of this case" and that "neither side shall be awarded conduct based attorney fees."

But, contrary to Campbell's assertion, the district court did not award conduct-based attorney fees against Campbell pursuant to section 518.14. Rather, it awarded attorney fees

against her under Minn. R. Civ. P. 37.01 to compensate Knewtson for his expenses in bringing a successful motion to compel discovery. Rule 37.01(d) provides that the district court may require the losing party on a motion to compel discovery to pay the moving party's reasonable expenses in making the motion, including attorney fees. Appellate courts review the award of attorney fees under rule 37 for an abuse of discretion. *Bowman v. Bowman*, 493 N.W.2d 141, 146 (Minn. App. 1992).

Knewtson moved to compel production of the report of Campbell's expert witness S.D., the appraiser of Seed Advantage. The district court granted that motion. Campbell maintains that her late response to Knewtson's discovery request was due to S.D.'s untimeliness and that she should not be penalized for S.D.'s error. We are unpersuaded. The record reflects that the district court extended the discovery deadline by two months to accommodate Campbell and that she still failed to produce the requested discovery within that extension. The district court did not abuse its discretion by holding Campbell accountable for the actions of her retained expert.

B. Knewtson's cross-appeal

Knewtson contends that the district court abused its discretion by not awarding him conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1. He asserts that Campbell delayed proceedings and increased the expense of litigation.

This court has interpreted section 518.14 to provide a basis for an award of conduct-based attorney fees. *See, e.g., Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295-96 (Minn.

App. 2007).³ Whether to award conduct-based attorney fees generally depends on “the impact a party’s behavior has had on the costs of the litigation.” *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991); see *Gales v. Gales*, 553 N.W.2d 416, 423 (Minn. 1996) (citing this aspect of *Dabrowski*). We review such awards for an abuse of discretion. *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), review denied (Minn. Feb. 21, 2001).

The district court determined that both parties contributed to the length of this litigation. This finding is supported by the record. The record reflects that both parties were slow to provide documents and respond to requests. Both parties brought successful motions to compel discovery. Thus, both parties caused some delay. On this record, the district court did not abuse its discretion by declining to award Knewtson conduct-based attorney fees under section 518.14.

VIII. Farm Property’s Rent

Both Campbell and Knewtson challenge the district court’s allocation of the farm property’s rent. Campbell argues that the district court erred by placing \$20,000 of the farm property rent on her side of the equalization chart because, she contends, the district court effectively attributed rent to her that she never received. Knewtson, on the other hand, maintains that the district court erred by allocating any post-valuation-date farm-property rent to Campbell because that rent is statutorily his nonmarital property.

³ Neither party has questioned whether section 518.14 provides a substantive basis for an award of conduct-based attorney fees. For purposes of this appeal, we assume without deciding that the statute does so. *Cf. Anderson v. Anderson*, No. A16-2006 (Minn. Aug. 6, 2018) (order). See also *Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019).

The district court determined that \$40,000 in rent for the years 2016 through 2019 constituted marital property and, on its equalization chart, awarded each party \$20,000. The valuation date in this action, however, was in 2017—roughly halfway into the four-year period. Thus, half the farm rent that the district court treated as marital property was received after the valuation date.

We agree with Campbell that the half of the farm rent received before the valuation date is marital property. Property acquired before the valuation date is presumptively marital property. Minn. Stat. §§ 518.003, subd. 3b, .58, subd. 1a (2018). But we disagree with Campbell that she did not receive, and therefore should be awarded, the pre-valuation-date farm rent. The district court made no finding, and the parties do not argue, that Knewton transferred, encumbered, or concealed the pre-valuation rent. Minn. Stat. § 518.58, subd. 1a. Thus, the pre-valuation-date farm rent was accounted for in the remaining allocation of marital property. Because the rent was already accounted for, we conclude that the district court erred by including the pre-valuation-date rent as a separate item in the equalization chart. Accordingly, each party's award for farm rent on the equalization chart should be reduced by \$10,000 to account for this error.

But we agree with Knewton that the farm rent received after the valuation date is nonmarital property. *See* Minn. Stat. § 518.003, subd. 3b(d) (2018) (stating that property acquired after the valuation date is nonmarital property). While the district court has broad discretion to equitably divide marital property, it may not divide nonmarital property absent findings under Minn. Stat. § 518.58, subd. 2 (2018). Here, there were no findings, and the parties do not argue, that findings under section 518.58 subdivision 2 are appropriate.

Because the equalization chart lists and distributes only marital property, the district court clearly erred by including the remaining \$20,000 of nonmarital rent divided between the parties in the chart.

We disagree, however, with Knewtson's argument that he is entitled to all of the nonmarital rent. In its amended order, the district court equally divided the farm property between the two parties. As a result, Campbell has a one-half nonmarital interest in the post-valuation-date farm rent. Yet nothing in the record shows that Campbell received her \$10,000 in nonmarital rent. We therefore conclude that the district court erred not only by including \$20,000 in nonmarital post-valuation-date rent in the equalization chart, but also by failing to order Knewtson to pay Campbell her \$10,000 in nonmarital post-valuation-date rent.

We reverse and remand to the district court for further proceedings consistent with this opinion. The district court may reopen the record at its discretion.⁴

Affirmed in part, reversed in part, and remanded.

⁴ Knewtson argues that the district court erred by not considering the impact of the district court's treatment of farm rent on his child-support obligation. His claim to entitlement to a retroactive adjustment of child support should be directed to the district court.