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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0597**

In re the Marriage of: Melissa Leigh Brinkman, petitioner,
Respondent,

and

Robert Michael Brinkman,
Appellant.

**Filed February 22, 2021
Affirmed in part, reversed in part, and remanded
Florey, Judge**

Olmsted County District Court
File No. 55-FA-18-7780

Thomas R. Braun, Restovich Braun & Associates, Rochester, Minnesota (for respondent)

Jill I. Frieders, O'Brien & Wolf, LLP, Rochester, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

On appeal from the dissolution of the parties' marriage, appellant husband argues that the district court (1) undervalued respondent wife's interest in a business when it excessively discounted the value of that interest; (2) misidentified the extent of the nonmarital interest in the business; (3) misidentified the nonmarital extent of the increase in the appreciation of the value of wife's interest in the business; and (4) should not have treated certain acquisitions by the partnership occurring during the marriage as nonmarital.

Because we determine the district court did not clearly err in either its valuation or classification of the wife's shares, we affirm the district court on these issues. But because we determine the district court abused its discretion by discounting the appreciation of wife's shares and erred in its calculation of the marital and nonmarital value of wife's interest in the partnership's acquisitions, we reverse and remand to the district court for further proceedings.

FACTS

The parties married in 1997, and separated in 2018. In 1999, Respondent Melissa Brinkman (wife) used marital funds to purchase 21 shares of her family's business, Custom Communications (CCI). Between 2007 and 2012, wife's parents gifted to her, but not to her husband Appellant Robert Brinkman (husband), another 224.8 shares of CCI as part of the parents' estate planning. Wife holds a 27.15 percent ownership interest in CCI.

Between 1999 and 2003, wife's parents gifted her, but not husband, a 16 percent ownership interest in the Johnson Family Limited Partnership (the partnership). After wife's parents gifted her the ownership interest in the partnership, the partnership acquired an adjacent lot and additional assets. CCI leases real property from the partnership, and the partnership's only income is the rent it receives from CCI. Wife's share of that income was reinvested in the partnership, and the partnership used those funds to pay her share of the mortgage on its real estate. That mortgage was paid off in 2015.

In district court, the parties' experts agreed that, to accurately reflect the value of a minority interest in a business to a potential buyer, the valuation of that interest should reflect discounts for both lack of control and lack of marketability. The parties' experts

also agreed that the respective discounts for CCI and the partnership should be the same, but they disagreed on the extent of those discounts. Husband's expert asserted that the discounts for lack of control and lack of marketability should be 14.4 percent and 12.5 percent, respectively. Wife's expert asserted that these discounts should be 20 percent and 30 percent, respectively.

Based in part on evidence from husband's expert, the district court initially valued CCI at approximately \$9.9 million, making each of CCI's 905.22 shares initially worth \$10,940, and wife's 21 marital shares initially worth \$229,740. The district court then applied the 20 percent discount for lack of control and the 30 percent discount for lack of marketability suggested by wife's expert and found the actual value of the 21 marital shares of CCI to be \$128,654.40.

The district court also ruled that at least some of the appreciation in the value of wife's 224.8 nonmarital shares of CCI occurring during the marriage was marital property. Recognizing that it was not presented with a "realistic valuation [of CCI] at the time of the gifts" of the shares to wife, the district court determined it could "make a reasonably accurate estimate of share values for those years by extrapolating from the information" it had. The district court then used the rate of increase in company value from 2014 to 2016 to estimate CCI's value in the prior years for which such data was not available, ultimately finding that the wife's nonmarital CCI shares appreciated by \$479,323.86 during the marriage.

Because the appreciation of the nonmarital shares was not attributed solely to wife's efforts but also to the collective effort of her family and their CCI employees, the district

court determined that it “would result in an inequitable windfall to [husband]” if the entirety of the appreciation of the value of wife’s CCI shares occurring during the marriage was treated as marital property. Therefore, the district court concluded it was “fair and reasonable, for purposes of making an equitable division of the parties’ [marital] property, to attribute one-half (\$239,661.92) of the total appreciation of the gifted shares to the marital efforts of [wife] at CCI.” The district court then also applied the 20 percent lack-of-control discount and the 30 percent lack-of-marketability discount to reflect wife’s minority-shareholder status, which resulted in \$134,210.68 of the appreciation in value of wife’s CCI shares occurring during the marriage being treated as marital property.

The district court also found that the appreciation in value of wife’s nonmarital partnership interest occurring during the marriage was the result of marital efforts, while her 16 percent interest was nonmarital. The district court concluded that “an equitable division of the parties’ property requires a marital-interest calculation based on the rule established in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981).” Applying the *Schmitz* rule to wife’s 16 percent ownership in the partnership assets, the district court determined that \$238,401 was marital appreciation. When making this calculation, the district court discounted the marital value of the adjacent lot and other assets the partnership had acquired since the marriage to proportionately reflect wife’s interest in the partnership. Because the marital interest is in a family partnership and wife is a minority shareholder, the district court again found that the value was appropriately discounted 20 percent for lack of control and 30 percent for lack of marketability. Applying these discounts, the

district court determined that the marital appreciation value of wife's shares in the partnership was \$133,505.

Husband appeals.

DECISION

I. The district court did not clearly err in its valuation of wife's marital and nonmarital shares in CCI.

Husband challenges the district court's valuation of the CCI shares, arguing the district court improperly discounted wife's shares by using a 20 percent lack-of-control discount and a 30 percent lack-of-marketability discount and should have based its valuation on the record presented to the court, rather than extrapolations from that record. We reject these arguments.

A district court's valuation of property is a finding of fact, which will not be set aside unless the valuation is clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). A finding of fact is clearly erroneous if the reviewing court, when viewing the entire record in the light most favorable to the district court's findings and deferring—as it must—to the district court's credibility determinations, is left with the definite and firm conviction that a mistake has been made. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000). When making this assessment, an appellate court must be mindful that “[i]t is not the province of [an appellate court] to reconcile conflicting evidence.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). As a result, merely showing “[t]hat the record might support findings other than those made by the [district] court does not show that the [district] court's findings are defective.” *Vangness*, 607

N.W.2d at 474. Thus, to successfully challenge a district court's finding of fact, the party challenging the finding

must show that despite viewing th[e] evidence in the light most favorable to the [district] court's findings (and accounting for an appellate court's deference to a [district] court's credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made. Only if these conditions are met, that is, only if the findings are "clearly erroneous," does it become relevant that the record might support findings other than those that the [district] court made.

Vangsness, 607 N.W.2d at 474. Thus, generally, appellate courts do not require the district court to be exact in its finding of the valuation of an asset; "it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979). More specifically, the supreme court has acknowledged both that "[t]here is . . . no universal formula for determining the value of a closely held business," and that there is "difficulty and . . . imprecision of valuing a closely held corporation" *Nardini v. Nardini*, 414 N.W.2d 184, 189 (Minn. 1987).

Here, the district court made thorough findings on its valuation determinations and included detailed descriptions of the methodologies it used to discount the value of wife's interest in CCI. Regarding husband's argument that the district court misapplied the lack-of-control and lack-of-marketability discounts, we note that wife's appraiser testified both that because wife does not own a controlling interest in CCI, a 20 percent lack-of-control discount was appropriate and that a 30 percent lack-of-marketability discount was also appropriate "to reflect the fact that a minority interest in a privately held business is not readily marketable." The record also contains significant amounts of additional testimony

regarding the propriety of applying these types of discounts, and the propriety of the amounts of the discounts to be applied, as well as extensive exhibits on the issue of valuation. Our review of the record on these matters leads us to conclude that the district court could have, depending on how it viewed the record presented to it, reached any of several resolutions of how much to discount wife's interest in CCI, including the resolution it actually reached. Therefore, given our deferential standard of review of these matters, we must conclude that husband has not shown that the district court clearly erred in resolving the matter as it did. *See Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951) (stating that the function of "an appellate court does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings," and an appellate court's "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings"); *Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying this aspect of *Wilson* in family law case), *review denied* (Minn. Apr. 17, 2018).

Husband also argues that the district court should not have "extrapolate[d]," "assume[d]," and used "conjecture" to determine the value of the CCI shares. Specifically, husband contends that none of the estimates of the value of the CCI shares provided to the district court were credible, and therefore the district court's findings are not supported by any evidence and are clearly erroneous. Appellate courts, however, defer to a district court's determinations of witness credibility, even if those determinations are implicit. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (credibility determinations); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (implicit credibility

determinations). Here, the district court's adoption of certain positions presented at trial shows that it deemed those positions credible. Additionally, the district court's extensive memorandum unpacking and explaining its calculations are consistent with each other and with the portions of the record it, at least implicitly, found credible, including aspects of the valuations submitted by husband's appraiser. On this record, the district court's approach was reasonable and supported by the evidence. Therefore, husband has not shown that the district court clearly erred in estimating the value of the CCI shares.

II. The district court did not err in its determination of the marital and nonmarital nature of the gifted CCI shares.

Husband next argues that the district court erred by not requiring wife to prove that her CCI shares were nonmarital. Whether property is marital or nonmarital is a legal question that appellate courts review de novo, though we give deference to the district court's underlying findings of fact. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003). It is presumed that all property acquired by the spouses during their marriage is marital property. *Id.*; Minn. Stat. §518.003, subd. 3b (2018). A spouse asserting that property acquired during the marriage is nonmarital “must demonstrate by a preponderance of the evidence that the property is nonmarital.” *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Nonmarital property may include “property real or personal, acquired by either spouse during the marriage, which is acquired as a gift, bequest, devise, or inheritance made by a third party to one but not to the other spouse.” Minn. Stat. § 518.003, subd. 3b.

Here, husband testified that the CCI shares were gifted to wife and were not marital. In light of husband's admission, wife's duty to overcome the marital-property presumption was not triggered. *See* Minn. Stat. § 518.003, subd. 3b(a). To rule otherwise would require the parties to litigate, and the district court to decide, matters that were not actually at issue in the district court. We decline to impose such a requirement. We also reject husband's argument that wife did not provide sufficient evidence for the district court to address the marital or nonmarital nature of the shares. The record includes testimony from husband, wife, and wife's father addressing the nature of the gifted shares. This testimony is sufficient to support a determination that the CCI shares are wife's nonmarital property. Husband has not shown that the findings of fact underlying the district court's determination that the CCI shares are wife's nonmarital property are clearly erroneous. Therefore, we affirm that determination.

III. The district court erred by discounting the appreciation of wife's CCI shares.

Husband next argues that the district court erred by discounting the marital value of the appreciation of wife's CCI shares by 50 percent. The Minnesota Supreme Court has divided the increase in the value of nonmarital property into active and passive appreciation, depending on why the appreciation occurred. *Gottsacker*, 664 N.W.2d at 853. "Active appreciation is marital property while passive appreciation is nonmarital."

Id. Thus,

[i]f the interest is classified as "appreciation," or an increase in the value of the nonmarital asset, it too is nonmarital unless it is classified as "active appreciation" because it is the result of marital effort. If the interest is "income" from the nonmarital asset, it is marital income.

Id.

Here, the district court determined, and the parties do not contest, that the appreciation of the CCI shares was marital. The district court also determined, and the parties do not contest, that Mr. Brinkman made “a substantial contribution to Ms. Brinkman’s work at CCI.” But because appreciation of the value of the shares was attributable to not only Ms. Brinkman but also other family members and CCI’s staff, the district court concluded that “to treat it as solely attributable to Ms. Brinkman’s efforts would result in an inequitable windfall to Mr. Brinkman.” We disagree.

Because, as the district court found, the appreciation of the value of the CCI shares is the result of marital effort, we determine the appreciation of wife’s CCI shares is properly classified as “active appreciation;” and as such, the appreciation of wife’s CCI shares are a marital asset. *Gottsacker*, 664 N.W.2d at 854. Because the appreciation of wife’s marital CCI shares is a marital asset, we determine the district court erred by discounting the value of the marital appreciation of wife’s shares in CCI by 50 percent. Therefore, we reverse and remand to the district court to recalculate the value of wife’s CCI shares without applying this discount.

IV. The district court erred in its calculation of the extent of wife’s marital and nonmarital interest in the partnership shares in the adjacent lot and assets acquired after the marriage.

Husband argues that the district court erred in determining the value of wife’s nonmarital interest in the partnership, arguing that there can be no nonmarital portion of the appreciation of the value of wife’s interest in the adjacent lot and other assets acquired

by the partnership during the marriage. Husband also argues the district court erred again by applying the 20 percent lack-of-control discount and the 30 percent lack-of-marketability discount to the wife's interest in the partnership

In *Schmitz*, the Minnesota Supreme Court established a formula for apportioning marital and nonmarital interests in property acquired during a marriage with nonmarital funds. See *Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981). 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.” *Antone v. Antone*, 645 N.W.2d 96, 103 (Minn. 2002). The *Schmitz* formula has been summarized by the Minnesota Supreme Court as follows:

The 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 and is distributed according to Minn.Stat. § 518.58 (1980).

Nardini v. Nardini, 414 N.W.2d 184, 191 (Minn. 1987) (citing *Brown v. Brown*, 316 N.W.2d 552, 553 (Minn.1982)).

Here, in determining the marital interest in the value of wife's shares in the partnership, the district court found that the appreciation in value of wife's nonmarital partnership interest was the result of marital efforts. Therefore, the district court concluded that the *Schmitz* “formula” should determine the extent of the marital and nonmarital interests in the partnership shares. See *Schmitz*, 309 N.W.2d at 748; see also *Nardini*, 414 N.W.2d at 191.

Husband concedes that the district court properly determined that “the *Schmitz* formula [was] appropriate to determine [the parties’] marital and [wife’s] non-marital interest in the Partnership.” But husband contends the district court misapplied the *Schmitz* formula by determining that the marital portion of the appreciation of the value of the wife’s interest in the adjacent lot and other assets that were acquired during the marriage were only partially marital. We agree.

In applying the *Schmitz* formula, the district court correctly determined the following: that wife was given a 16 percent ownership interest in the partnership’s then \$320,000 equity in a property with a total value of \$1,325,000; that wife’s 16 percent share of the equity—the dollar value of that original “nonmarital asset”—was \$51,200 ($0.16 \times \$320,000 = \$51,200$), or 24.15 percent of the total value ($0.16 \times \$1,325,000 = \$212,000$; $\$51,200 / \$212,000 = 0.2415$); that since that gift was made, the partnership is now worth \$1,835,300; that the partnership has acquired an adjacent lot with equity of \$92,672, as well as other assets worth \$36,438; and that the total value of the partnership is now \$1,964,410.

The district court found that the adjacent lot and other assets that were acquired during the marriage were 24.15 percent nonmarital, reflecting the wife’s proportionate ownership in the partnership’s original value. Thus, the district court further concluded that 75.85 percent—the remainder value of the adjacent lot and other assets—was marital. In distinguishing between the marital and nonmarital interests in these assets, the district court erred because there cannot be a nonmarital portion in the appreciation of the wife’s interest in the value of the adjacent lot and other assets because they were acquired during

the marriage and paid for with marital income, and therefore, are marital property. *See e.g. Gottsacker*, 664 N.W.2d at 853 (presuming that all property acquired during the marriage is marital property); *see also* Minn. Stat. § 518.003, subd. 3b. We determine that the marital portion of wife’s interest in the partnership and its acquired assets should be calculated according to the *Schmitz* rule as follows: a 75.85 percent of the current value of the property —\$1,835,300—should be added to the values of the adjacent lot and other assets. Sixteen percent of the sum of these values represents the marital share of the wife’s interest in the partnership and the acquired adjacent lot and other assets $((0.7585 \times \$1,835,300) + \$92,672 + \$36,438 = \$1,521,185.05 \times 0.16 = \$243,390)$. Wife’s nonmarital portion, then, is 16 percent of the remainder—wife’s 24.15 percent nonmarital interest in the partnership’s equity—of the total value of the property $((0.2415 \times \$1,835,300) \times 0.16 = \$70,916)$.¹

Finally, while husband again argues that the 20 percent lack-of-control discount and the 30 percent lack-of-marketability discount applied by the district court were too aggressive, we disagree for the same reasoning set forth above.

¹ We note that the difference between our determination and the district court’s determination is only \$4,989.00, which is arguably de minimis given that it only represents a fraction of a percent of the total marital estate in this case; however, because this issue was raised and briefed by the parties and in the interest of completeness, we determine it is prudent to provide resolution. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn.App.1985) (refusing to remand for a de minimis error in child support); *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690 n.1, 694 (Minn. App. 2010).

We reverse and remand to the district court to re-apply the *Schmitz* formula without discounting the value of the appreciation of the wife's interest in the adjacent lot and other assets acquired by the partnership during the marriage.

Affirmed in part, reversed in part, and remanded.