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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-0643**

In re the Marriage of:

Kelly John Brown, petitioner,  
Appellant,

vs.

Shawn Marie Brown,  
Respondent.

**Filed April 4, 2022  
Affirmed  
Jesson, Judge**

Hennepin County District Court  
File No. 27-FA-19-2311

John M. Jerabek, Tuft Lach, Jerabek & O'Connell, PLLC, Maplewood, Minnesota; and

Eric R. Parker, Johnson/Turner Legal, Forest Lake, Minnesota (for appellant)

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Considered and decided by Jesson, Presiding Judge; Bryan, Judge; and  
Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**JESSON**, Judge

After more than 20 years of marriage, appellant-husband petitioned for dissolution of his marriage to respondent-wife. And after almost two years of litigation, their case arrives here. Husband argues that the district court (1) should have awarded husband his

nonmarital interests in certain properties; (2) erred by ordering the sale of the parties' real property, thereby changing the properties' valuation dates; (3) made erroneous findings of fact that together do not support the award of spousal maintenance to wife; (4) erred by ordering him to secure his spousal-maintenance obligation with a life-insurance policy; (5) erred by deeming wife's post-valuation-date familial loan marital property; and (6) abused its discretion by awarding wife conduct-based and need-based attorney fees. We affirm.

## FACTS

Appellant-husband Kelly John Brown and respondent-wife Shawn Marie Brown married in 1992. Husband petitioned for dissolution in April 2019. The parties attended the initial case-management conference on June 10, 2019, which is the presumed valuation date for property-division purposes. Minn. Stat. § 518.58, subd. 1 (2020). After significant discovery conflicts and two attempted mediation sessions, the parties proceeded to trial in September 2020 on property and debt division, spousal maintenance, and attorney fees. The district court issued its findings of fact, conclusions of law, and order, and judgment and decree in February 2021. The following summarizes the facts relevant to the issues on appeal.

### *Real Property Division and Husband's Nonmarital Claims*

At the time of trial, the parties owned eight real properties. They did not stipulate to the value of any of those properties. Husband claimed a nonmarital interest in several properties, and he further claimed that the proceeds of refinancing and selling some properties in which he had a nonmarital interest were used to purchase or improve other

properties, so that his nonmarital interest carried over into those properties. The district court found that husband failed to establish a nonmarital interest in any of the properties by a preponderance of the evidence and therefore held that all the parties' real property was marital. It ordered the sale of seven of the parties' properties and that the proceeds be split evenly between them.

### *Spousal Maintenance*

Turning to spousal maintenance, husband is a manager at Wex, Inc. with a gross monthly income of \$13,333. He has earned an average of \$26,577.39 yearly in bonuses over the past four years. The district court found that, if the parties sell their real property and invest the proceeds and other liquid assets from the marital-property division, husband would likely earn approximately \$1,152.58 per month as investment income. Thus, the court set husband's income at \$16,701 per month.

Wife has an accounting associate degree and a tax specialist degree. She currently works as an office manager earning \$18 per hour. Her annual income in recent years was between \$34,372.62 and \$37,156. The court estimated that wife could earn approximately \$928 per month in investment income after the marital property division. It noted that wife would be awarded the parties' cattle but found that the cattle operation was not profitable and therefore declined to attribute any cattle-operation income to wife. Based on these factors, it estimated wife's income to be \$4,048 per month.

The district court found that husband's projected reasonable expenses after the property division—and after selling the properties for which husband had been paying mortgage, property tax, and other expenses—would be \$4,193 per month, whereas wife's

reasonable expenses would be \$5,040.14 per month. Because wife's reasonable expenses exceeded her estimated income, the district court found that wife adequately demonstrated her need for spousal maintenance. And after analyzing the statutory spousal-maintenance factors, it awarded wife \$992 per month in permanent spousal maintenance and an additional \$928 per month in temporary maintenance until the properties are sold.

#### *Life Insurance as Security for Spousal Maintenance*

The district court also found that, because wife has limited retirement or other financial resources, if husband dies and therefore stops paying spousal maintenance, wife will not have sufficient income to meet her expenses. It noted that husband already maintains two life-insurance policies totaling \$560,000 in coverage. It therefore ordered husband to maintain \$500,000 in life-insurance coverage with wife as sole beneficiary to secure his spousal-maintenance obligation.<sup>1</sup>

#### *Familial Loans*

The parties also dispute the district court's classification of familial loans that each party obtained after the presumptive valuation date. Because husband had begun withholding financial support from wife, wife took out a \$15,500 loan from her mother to pay monthly expenses. The district court determined that this loan was marital debt.

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<sup>1</sup> This requirement was not in addition to maintaining husband's then-existing \$560,000 in coverage. Rather, it was a requirement that husband maintain at least \$500,000 in coverage going forward.

Husband took out a \$40,000 loan from his mother and a \$50,000 loan from his brother. Both loans were for payment of expenses. The district court found that these loans were nonmarital debt.

### *Attorney Fees*

Finally, the district court awarded wife conduct-based and need-based attorney fees. To support the conduct-based fee award, it found that husband violated the court's July 2020 order that he provide outstanding discovery responses by the deadline imposed by the court. And to support the need-based fee award, the district court found that husband could contribute to wife's attorney fees and that wife could not pay them on her own.

Husband appeals.

## **DECISION**

### **I. The district court did not err by concluding that husband failed to prove that he had a nonmarital interest in any of the real properties.**

Husband argues that the district court should have awarded him nonmarital interests in five of the properties owned by the parties: the Sheridan property, cabin property, Connors Lake property, Devil's Lake property, and vacation rental property.<sup>2</sup>

We review the district court's distribution of property for an abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). But whether property is marital or nonmarital is a question of law that we review de novo. *Id.* And we review the district court's underlying findings of fact for clear error. *Id.*

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<sup>2</sup> At the time of trial, the parties owned three additional properties but neither party claimed a nonmarital interest in any of those properties. We therefore do not discuss them here.

With certain exceptions, marital property includes all property acquired by the parties or either of them during their marriage and before the valuation date. Minn. Stat. § 518.003, subd. 3b (2020). Property acquired by either spouse during a marriage is presumptively marital. *Antone*, 645 N.W.2d at 100-01. A party claiming a nonmarital property interest has the burden of demonstrating that interest by a preponderance of the evidence to overcome this presumption. *Id.*; *see also* Minn. Stat. § 518.003, subd. 3b. Nonmarital property includes property acquired by one spouse before the marriage. Minn. Stat. § 518.003, subd. 3b(b).

In order to meet the burden of proving a nonmarital interest, a party must keep nonmarital property separate from marital property or, if commingled, the nonmarital property must be readily traceable. *Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993); *see also Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). If the party claiming nonmarital property cannot show that it was invested in a readily traceable asset, the property should be classified as marital property. *Id.* But strict, detailed tracing is not required, and credible testimony alone may be sufficient to trace a nonmarital interest. *Doering v. Doering*, 385 N.W.2d 387, 390-91 (Minn. App. 1986). Whether a nonmarital interest was adequately traced is a question of fact that we review for clear error. *Olsen*, 562 N.W.2d at 800.

We begin by observing that husband's arguments as to the cabin, Connors Lake, Devil's Lake, and vacation-rental properties hinge on whether he adequately proved the existence or extent of his nonmarital interests in the Sheridan property and two additional, now-sold properties: the Thomas and Elliot properties. We therefore first address whether

the district court properly determined that husband failed to prove that he has a nonmarital interest in the Sheridan, Thomas, and Elliot properties.

The district court's framework for considering husband's nonmarital claims began with a credibility assessment. It found that husband's nonmarital claims appeared to be "manufactured post hoc" when dissolution became clear. And it therefore declined to credit husband's testimony regarding his nonmarital claims unless that testimony was corroborated by credible documentation. We defer to the district court's credibility determinations, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988), and thus review husband's arguments regarding each property to determine whether the court's corroboration assessments are supported by the record.

#### *Sheridan Property*

We turn first to the Sheridan property. Husband purchased the Sheridan property in July 1991 before the parties married. The district court found credible husband's expert's calculation of husband's original nonmarital interest in the Sheridan property as 26.5% of its value. Husband obtained an appraisal stating that Sheridan's value at the valuation date was \$512,000, 26.5% of which is \$135,680. Husband argues that the district court erred by not awarding him this amount as his nonmarital interest in the Sheridan property.

To support its determination that husband failed to carry his burden of demonstrating a current nonmarital interest in Sheridan, the district court made the following findings: husband purchased the Sheridan property in contemplation of marrying wife; husband did not establish the origin of the funds used for a down payment on

Sheridan; the parties' treatment of their properties before and during their marriage suggested that they intended the properties to be part of a marital estate; and the parties made improvements of an unknown value to Sheridan during the marriage.

The record shows that husband purchased Sheridan before marrying wife. Yet the parties did not identify—nor are we aware of—any authority for the district court's assumption that purchasing property *in contemplation* of marriage is a factor in the marital property assessment. But as the district court acknowledged that husband at one point had a nonmarital interest in Sheridan, consideration of this “in contemplation” fact does not upend the court's ultimate determination.

This is particularly so when husband, who carries the burden to establish his nonmarital interest, failed to show that no improvements were made to Sheridan during the marriage. Wife's testimony and the parties' tax returns, to the contrary, show that improvements were made. And improvements made during the marriage are presumed to be marital property. *Dorweiler v. Dorweiler*, 413 N.W.2d 572, 576 (Minn. App. 1987). To calculate a party's remaining nonmarital interest in an improved property, the district court must (1) divide the initial nonmarital interest by the purchase price; (2) subtract the cost of repairs and improvements from the current value of the property, thereby determining the increase in value attributable solely to appreciation; and (3) multiply the appreciated value of the property by the ratio of nonmarital property to purchase price. *Id.* Thus, improvements may reduce a party's nonmarital interest. But here, husband provided no calculations to show whether or the extent to which that occurred.

In sum, the district court implicitly found that husband failed to adequately trace his nonmarital interest, which finding is not clearly erroneous. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (indicating that fact findings may be implicit). Accordingly, the district court did not err by concluding that husband failed to prove his nonmarital interest in Sheridan by a preponderance of the evidence.

Because we conclude that husband failed to prove his nonmarital interest in Sheridan, his tracing of that interest to other properties also fails. He asserts that the proceeds of refinancing Sheridan in 2016 funded the down payment on the vacation-rental property. But proceeds of refinancing are marital unless the cash taken out exceeds the marital equity in the property. *See Antone*, 645 N.W.2d at 103-04. And husband provided no documentation that the 2016 refinancing drew from nonmarital funds. Indeed, husband's expert's report that the 2016 refinancing drew from nonmarital funds rested on husband's recollection alone, and, as noted above, the district court found husband's testimony not credible unless corroborated by documentation. *See Sefkow*, 427 N.W.2d at 210 (noting that we defer to district court credibility determinations). Further, the record reflects that all the proceeds from the 2016 refinancing were put in the parties' joint bank account approximately four months before the parties made the down payment on the vacation-rental property. Thus, any nonmarital funds were commingled with marital funds and are not traceable from a nonmarital source or to a nonmarital interest. *Wopata*, 498 N.W.2d at 484; *Prahl v. Prahl*, 627 N.W.2d 698, 705 (Minn. App. 2001) (stating that nonmarital asset commingled with marital asset may lose nonmarital status if not traceable to nonmarital source).

The district court's finding that husband failed to adequately trace his nonmarital interest in Sheridan to the vacation-rental property is not clearly erroneous.

*Thomas Property*

We turn next to the Thomas property. Husband asserts that he had \$31,250 (25%) in nonmarital equity in the Thomas property in 1991 which grew to \$43,287 (32.9%) in nonmarital equity by the time of the 1992 marriage. He bases these calculations on the following: he insured the Thomas property for \$125,000 in 1991 and refinanced the property that year, taking out a \$93,750 loan. Thus, he asserts that he had \$31,250, or 25%, in nonmarital equity in the property ( $\$125,000 - \$93,750 = \$31,250$  and  $\$31,250 / \$125,000 = 25\%$ ). Husband's expert calculated the property's value at the time of the marriage in 1992 as \$131,729 based on an assumed 3% annual increase drawn from the Minneapolis Home Price Index. The expert also determined that the mortgage at the time of the marriage was \$88,442 based on the amortization schedule for the property. Thus, husband asserts \$43,287 (32.9%) in nonmarital equity at the time of the marriage ( $\$131,729 - \$88,442 = \$43,287$  and  $\$43,287 / \$131,729 = 32.9\%$ ). He contends the district court should have accepted his nonmarital claim and that it would have carried over into other properties, the acquisition of which was funded by the proceeds of refinancing and selling the Thomas property.

Although the district court acknowledged that it is likely that husband had a nonmarital interest in the Thomas property, it concluded that husband failed to establish the original extent of that nonmarital interest by a preponderance of the evidence. It found the documentation relied on by husband and his expert suspect. The record—and our

deference to the district court's credibility determinations—supports that finding. *See Sefkow*, 427 N.W.2d at 210. The purchase agreement for the property is absent from the record; thus, the extent of husband's down payment and the original value of the property is unknown. The only evidence of the property's value in 1991 is that husband insured it for \$125,000. There is no evidence of the property's value at the time of the marriage—the expert assumed a 3% annual increase starting from the insured value in 1991. Further, even if husband had a nonmarital interest in the Thomas property, his calculations about the present value of that interest failed to account for improvements that the record shows were made. *See Dorweiler*, 413 N.W.2d at 576 (noting that improvements made during marriage are presumed to be marital).

The district court did not clearly err by finding husband's tracing insufficient, and it therefore did not err by concluding that husband failed to establish the extent of his nonmarital interest in the Thomas property.

#### *Elliot Property*

We next address the Elliot property, which wife owned with her first husband. Husband claims a nonmarital interest in the Elliot property, asserting that he bought out wife's first husband's interest in that property by payment of \$7,250 and that he spent nonmarital funds from his retirement account and 3M stock sales on improvements to the Elliot property.

But, as the district court found, husband provided no evidence, aside from the fact that his income exceeded wife's income at the time of her prior divorce, showing that he paid wife's first husband's settlement. And husband failed to establish that no other

financial resources were available to wife to provide the settlement payment. The district court did not err by concluding that husband failed to establish a nonmarital interest based on the settlement payment.

As for husband's claimed nonmarital improvements, we again note that improvements made during a marriage are presumed to be marital property. *Dorweiler*, 413 N.W.2d at 576. Husband testified that the improvements took place between 1991 and 1993. But he provided no receipts or other documentation of the improvements or his alleged time frame. And although husband withdrew funds from his retirement account and sold stock before and early in the parties' marriage, he provided no documentation to show that those funds went to improvements for the Elliot property. *Cf. Nash v. Nash*, 388 N.W.2d 777, 781 (Minn. App. 1986) (crediting wife's tracing when she received an inheritance and produced receipts for home improvements made two weeks after receiving inheritance), *rev. denied* (Minn. Aug. 20, 1986). Further, husband worked at 3M during the first few years of the marriage and participated in a stock-purchase program. Because some retirement withdrawals and stock sales occurred during the marriage, it is possible that some of the withdrawn funds or sold stocks that allegedly funded improvements were acquired during the marriage and were therefore marital property. Finally, the parties refinanced the Elliot property several times, including in 1994, 1997, 2000, and 2002, the proceeds of which could have been used for improvements.<sup>3</sup>

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<sup>3</sup> Husband testified that these refinances were used for other purposes, such as for the parties' cabin property. But he provided no documentation for this assertion.

In light of this evidence, and recalling again that we defer to the district court's finding that husband's testimony is not credible unless corroborated by documentation, *Sefkow*, 427 N.W.2d at 210, we conclude the district court did not err by determining that husband failed to establish a nonmarital interest in the Elliot property.

*Cabin, Connors Lake, Devil's Lake, and Vacation Rental Properties*

Finally, because we conclude that husband failed to demonstrate the existence or extent of his nonmarital interests in the Sheridan, Thomas, and Elliot properties, we accordingly conclude that the district court did not err by rejecting husband's claim of nonmarital interests in the remaining properties to the extent that those claims are based on tracing from husband's purported nonmarital interests in the Sheridan, Thomas, and Elliot properties.

But husband presents an additional argument based on non-real-property-related nonmarital funds. He asserts that he contributed money from a nonmarital Schwab account towards the cabin property. He acknowledges that he furnished no documentation of withdrawing money from a Schwab account for this purpose. Further, he failed to provide any tracing as to the origin of the Schwab account funds. Given the district court's finding that husband's testimony was not credible unless corroborated by documentary evidence, this argument also fails.

**II. The district court properly ordered the sale of the real properties.**

Husband next argues that the district court abused its discretion by ordering the sale of the parties' real property, effectively changing the valuation date of those properties.

“Upon a dissolution of a marriage . . . the [district] court shall make a just and equitable division of the marital property of the parties.” Minn. Stat. § 518.58 (2020). The court may do so by ordering (1) division of the assets in-kind, (2) sale of the assets and division of the proceeds of the sale, or (3) “distribution of the entire asset to one of the parties, and order[ing] the recipient to pay to the other spouse a just and equitable share of the value of the asset.” *Nardini v. Nardini*, 414 N.W.2d 184, 188 (Minn. 1987). In valuing the parties’ assets, the district court usually must use “the day of the initially scheduled prehearing settlement conference [as the valuation date], unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable.” Minn. Stat. § 518.58, subd. 1.

In determining this issue, we note that the district court has broad discretion in dividing marital property and we will not overturn the district court’s decision absent an abuse of discretion. *Antone*, 645 N.W.2d at 100. Likewise, we review the district court’s choice of a valuation date for an abuse of discretion. *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *rev. denied* (Minn. Oct. 15, 2002). There is no abuse of discretion when the district court’s factual findings regarding its choice of a valuation date are supported by the record and its decision has “an acceptable basis in fact and principle.” *Id.* at 719-20 (quotation omitted).

Here, the district court found that the parties disagreed on the value of the properties as well as their dispositions. Accordingly, the district court was well within its discretion

to order the sale of the properties. *See Nardini*, 414 N.W.2d at 188 (stating that ordering sale of asset is permissible when parties disagree on asset value).<sup>4</sup>

We also note that, when the district court determines that selling property is the proper resolution in a dissolution property dispute, it need not value the properties unless for purposes such as estimating the total value of the marital estate at the time of the district court's decision. Instead, the value of the properties will be determined by the fair market value at the time of sale, which is unknown to all parties and the district court until the sale actually occurs.

Turning to whether ordering the sale of the properties impermissibly altered the valuation date, we observe that the district court properly found that the valuation date was June 10, 2019, the date of the initial case-management conference. For purposes of considering the marital estate as a whole, it estimated that the aggregate value of the properties was \$844,000, reflecting the average of the parties' respective aggregate valuations of \$830,500 and \$857,500. By selecting a valuation resting between the parties' valuations, which were based on the June 10, 2019 valuation date, the district court valued the properties as of the presumptive valuation date and did not impermissibly alter that date. *See Hertz v. Hertz*, 229 N.W.2d 42, 44 (Minn. 1975) (stating that factfinder's

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<sup>4</sup> Although we agree with husband that the district court's finding that the COVID-19 pandemic affected the properties' values is clearly erroneous because it is not based on any evidence in the record, we nevertheless affirm on this issue because evidence in the record supports the district court's other findings that support its decision. *See Minn. R. Civ. P. 61* (requiring courts to ignore harmless error).

valuation should stand if it is “within the limits of credible estimates made by competent witnesses”).<sup>5</sup>

### **III. The record supports the district court’s award of permanent spousal maintenance to wife.**

Husband next asserts that the district court’s factual findings as to spousal maintenance are clearly erroneous and do not support its award of permanent spousal maintenance.

We review a district court’s spousal-maintenance decision for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion if it makes findings that are unsupported by the evidence, misapplies the law, or reaches a conclusion “that is against logic and the facts on record.” *Id.* We review the district court’s findings of fact for clear error. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). Findings are clearly erroneous if they are “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (quotation omitted).

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<sup>5</sup> Husband also objects to the district court’s determination of the aggregate value of the properties, rather than their individual values. But he fails to point to any harm to him as a result of the court’s approach. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error); *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that error without prejudice is not grounds to reverse). Nor does he cite to any authority requiring the district court to value each individual piece of property instead of aggregating the values. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (stating that an argument based on mere assertion without citation to authority is forfeited), *rev. denied* (Minn. Apr. 26, 2017). Thus, not only has husband forfeited this argument under *Scheffler*, but also any error is not reversible under rule 61 and *Loth*.

Husband does not challenge the threshold issue of whether wife adequately demonstrated her need for spousal maintenance. *See* Minn. Stat. § 518.552, subd. 1 (2020) (stating circumstances under which spousal maintenance may be awarded); *Curtis v. Curtis*, 887 N.W.2d 249, 251-52 (Minn. 2016). Instead, husband challenges only the district court's consideration of the eight statutory factors used to determine the duration and amount of spousal maintenance. Minn. Stat. § 518.552, subd. 2 (2020) (listing factors). In weighing the eight factors, the district court must balance the payor's ability to pay against the recipient's need. *Prahl*, 627 N.W.2d at 702. We address the eight factors in turn.

*A. Wife's Financial Resources*

With regard to this factor, husband asserts that the district court clearly erred by finding that wife has not earned income from the cattle operation and that the cattle operation was not profitable. But wife testified that she received no income from the cattle operation in 2019 or 2020. The district court implicitly found wife's testimony about the profitability of the cattle credible. *See Pechovnik*, 765 N.W.2d at 99 (indicating that such findings may be implicit). And the parties' tax returns show that the cattle operation resulted in a net loss each year from 2015 to 2018. The record supports the district court's finding that the cattle operation provided no income to wife.<sup>6</sup>

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<sup>6</sup> Husband notes that income, revenue, and profit are different. We agree. And although the terminology used by the parties and the district court in this case may have caused some confusion, we observe that wife's testimony and the evidence in the record show that, each year, the parties paid more money for the cattle and their care than the money the cattle brought in. Thus, the record supports the district court's determination that no income is attributable to wife based on the cattle operation.

*B. Time Necessary to Acquire Additional Employment Training and Probability of Wife's becoming Self-Supporting*

Husband next argues that the district court's analysis on this factor is not supported by the record. But the district court's order acknowledges wife's educational performance, secondary degrees, and employment capacity and extensively discusses those factors. And the district court agreed with husband's expert that wife was appropriately employed given her qualifications. We discern no error in the district court's analysis.

Husband also asserts that the court failed to address whether wife's skills were outdated. But the district court addressed this factor by finding that wife does not need a period of re-education because she is appropriately employed based on her education, experience, and earnings history.

*C. Standard of Living Established During Marriage*

Husband appears to argue that the district court erred by finding that the parties had a middle-to-high standard of living. But the district court's findings are based on testimony in the record about the parties' lifestyle, which included purchasing real property, purchasing vehicles and cattle to assist retirement goals, taking road trips, and obtaining medical care and other necessities without worrying about cost. The district court also noted the parties' aggregate monthly income.

Still, husband points to the district court's finding that the parties lacked sufficient income to meet their monthly expenses. But husband provided no evidence that any shortfall impacted the parties' standard of living. Thus, the district court's finding as to the marital standard of living is not clearly erroneous.

*D. Duration of Marriage and any Absence of Wife from the Workforce due to Homemaking Efforts*

With regard to this factor, husband appears to allege that the district court found that wife's employment opportunities were permanently diminished due to the marriage. But the district court did not find that wife's employment opportunities were permanently diminished. Rather, the court noted that wife stayed at home to care for the parties' children for a time but also worked nights and weekends in various part-time jobs over the years. It also credited wife's testimony that her career took a backseat to husband's career. And the court acknowledged that wife obtained an associate degree and worked full time later in the marriage. These findings are not clearly erroneous.

*E. Employment Opportunities Forgone by Wife*

Husband next contends that the district court's finding that wife sacrificed her earnings, seniority, and other employment opportunities to enable husband to work full time is clearly erroneous. But the record shows that, while husband worked full-time, wife stayed at home with the children and worked part-time jobs until obtaining an associate's degree and returning to full-time work after about 20 years of marriage. And wife accumulated only \$40,179 in retirement assets by age 56. Based on these facts, the district court's finding that wife lost some earnings, seniority, retirement benefits, and other employment opportunities is not clearly erroneous.

*F. Age and Physical and Emotional Condition of Wife*

Husband appears to argue that the district court should have considered his age (65) and health under this factor. But this factor requires that the district court consider only

the age and condition of the person seeking maintenance. *See* Minn. Stat. § 518.552, subd. 2(f). The district court found that wife is 56 years old and does not have physical or emotional conditions that impact her ability to work, and husband does not contest these findings.

*G. Husband's Ability to Meet His Own Needs while Meeting Wife's Needs*

Husband disputes whether he can meet his own needs while contributing to wife's needs. He asserts that his job is in jeopardy, he plans to retire next year, and his health inhibits his ability to work. But husband provided no documentation of his health issues or of his job insecurity. Instead, the record shows that husband remains gainfully employed. And the district court's order includes a detailed exploration of the parties' respective incomes and expenses based on the parties' testimony and evidentiary submissions.<sup>7</sup> Because the district court's finding that husband can meet his own needs while supporting wife is supported in the record, it is not clearly erroneous.

*H. Parties' Respective Contributions to Marital Estate*

Turning to the final factor, husband notes that he contributed to building the marital estate. The district court found that both parties contributed. This finding is not clearly erroneous in light of record evidence regarding husband's full-time work, wife caring for the parties' children and working part-time, and the parties' joint efforts to manage their real property.

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<sup>7</sup> Further, the district court noted that husband will be able to move to modify spousal maintenance if his income substantially decreases for some reason.

In sum, the district court's findings as to the spousal-maintenance factors are supported by the record. Those findings establish that, based on her projected income, even including her portion of the divided marital property, wife cannot meet her needs at the marital standard of living. And the amount of maintenance that the district court awarded corresponds with the amount wife needs to make up her projected budget shortfall. The district court therefore did not abuse its discretion by ordering husband to pay \$992 per month in permanent spousal maintenance.

**IV. The district court did not abuse its discretion by ordering husband to maintain a life-insurance policy in order to secure his spousal-maintenance obligation.**

Husband argues that a \$500,000 life-insurance-policy requirement exceeds the amount of spousal maintenance wife would receive and that the district court failed to make the required findings before ordering him to secure his spousal-maintenance obligation.

We first note that husband did not challenge the propriety of the security requirement. Instead, he challenges only the amount of security the district court required. The district court has discretion to determine how much security is justified. Minn. Stat. § 518A.71 (2020); *Kampf*, 732 N.W.2d at 635. In determining how much security to require, the district court should consider the maintenance-recipient's age, education, vocational experience, and employment prospects, *Kampf*, 732 N.W.2d at 635, as well as the insurability and the cost of life insurance to the person paying maintenance, *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009). There is no requirement that "security be strictly equivalent to the [spousal-maintenance] obligation . . . . The [district] court must simply

make a reasonable award.” *Head v. Metro. Life Ins. Co.*, 449 N.W.2d 449, 453 (Minn. App. 1989).<sup>8</sup>

Here, the district court recounted wife’s financial, educational, and employment situation and found that she would “be in financial hardship” without spousal maintenance from husband. Although it did not explicitly find that husband is insurable and can pay for insurance, it implicitly made those findings when it noted that husband already had two life-insurance policies totaling \$560,000 in coverage. *See Prahl*, 627 N.W.2d at 703 (recognizing that requisite findings may be implicitly addressed). And although wife’s monthly investment income from a \$500,000 policy payout could exceed the awarded monthly maintenance, we note that such excess is not unreasonable or out of step with the parties’ marital standard of living, which the district court found to be a middle to high standard. In sum, the district court’s findings are supported by the record, and it did not abuse its discretion by ordering that husband maintain life insurance in the amount of \$500,000 to secure his spousal-maintenance obligation.

**V. The district court did not err by concluding that wife’s familial debt was marital.**

Husband asserts that the district court erred by treating wife’s familial loan as marital when it treated his familial loans as nonmarital.

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<sup>8</sup> We observe that the purpose of spousal maintenance is to put both parties as close to the marital standard of living as is equitable under the circumstances. *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (citing Minn. Stat. § 518.552, subd. 1(a), (b), 2(c) (2002)). To the extent that security is part of a spousal-maintenance award, some symmetry between the amount of security required and the marital standard of living is warranted.

We review the district court's classification of property as marital or nonmarital de novo but defer to the district court's underlying findings of fact. *Antone*, 645 N.W.2d at 100; *Keithahn v. Keithahn*, 392 N.W.2d 8, 10 (Minn. App. 1987). Expenses incurred after the presumptive valuation date are usually nonmarital. Minn. Stat. § 518.003, subd. 3b. However, the district court has authority to remedy a party's unfair dealings with marital property. *See, e.g.*, Minn. Stat. § 518.58, subd. 1a (stating that if a party unfairly transfers or conceals marital assets, the court may compensate the other party accordingly). The district court may consider whether one party controls and withholds the parties' assets, forcing the other to borrow to meet expenses, in determining whether post-separation debts should be classified as marital or nonmarital. *See Keithahn*, 392 N.W.2d at 10.

Here, both parties took out loans from family members after the presumptive valuation date. But wife incurred her debt to meet monthly expenses in part because husband stopped financial support to her (with the exception of paying the mortgage and utilities on certain properties) and closed the parties' joint bank accounts. Husband does not dispute that he closed the joint accounts. Nor does he dispute that he stopped providing other financial support to wife. In contrast, although husband's debts were also incurred to meet expenses, there is no evidence that he incurred them because wife unfairly concealed or transferred marital assets.<sup>9</sup> These facts justify the district court's disparate treatment of the parties' respective familial loans. Thus, the district court did not err by

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<sup>9</sup> Husband also testified that he used portions of the loans to pay attorney fees associated with the dissolution proceeding.

concluding that wife's familial debt was marital while husband's familial debt was nonmarital.

**VI. The district court did not abuse its discretion by awarding wife conduct-based and need-based attorney fees.**

Turning finally to the issue of attorney fees, husband first argues that the district court's award of conduct-based attorney fees is unjustified, asserting that the court failed to list the deficient discovery, he provided the requested discovery as soon as he could, wife withheld documents, and wife caused delay in obtaining property appraisals by refusing to agree to neutral appraisers.

Minnesota statutes section 518.14 (2020) (the attorney-fee statute) governs awards of attorney fees in family law cases. "Nothing in [the attorney-fee statute] . . . precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. The party moving for conduct-based attorney fees has the burden to show that the other party's conduct unreasonably contributed to the length or expense of the proceeding. *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). We review conduct-based fee awards for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

Here, the district court referred to its prior order requiring husband to produce discovery as well as wife's subsequent submissions outlining the outstanding discovery. Thus, contrary to husband's assertion, the district court stated the information that husband failed to provide. And the district court implicitly found husband's testimony about the

reasons for delays in providing discovery and obtaining appraisals not credible. *See Pechovnik*, 765 N.W.2d at 99. Further, wife provided reasonable responses—which the district court apparently credited—to husband’s allegations that she caused the appraisal delay and destroyed documents.<sup>10</sup> We defer to these credibility determinations. *Id.*; *Sefkow*, 427 N.W.2d at 210. The district court therefore did not abuse its discretion by awarding conduct-based attorney fees to wife.

Husband also argues that the district court erred by awarding wife \$40,000 in need-based attorney fees.

The district court “shall” award need-based attorney fees if it finds

- (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, costs, and disbursements are sought has the means to pay them; and
- (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1. We review a district court’s award of need-based fees for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). Although conclusory findings on the statutory factors do not support a need-based fee award, a lack of specific findings is not fatal if the district court’s order “reasonably implies” that it

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<sup>10</sup> Wife stated that she could not afford an appraisal, and she denied destroying documents. She stated that she provided documents to husband via the parties’ respective attorneys and told husband that he could come to the parties’ cabin to collect documents so long as he notified her beforehand so that she could be absent.

considered the relevant factors and if “the district court was familiar with the history of the case and had access to the parties’ financial records.” *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001) (quotations omitted).

Here, the district court found that wife incurred the fees for a good-faith assertion of her rights, a finding that husband does not challenge and is supported by the record. It found that husband can contribute to wife’s fees based on the property division and his income.<sup>11</sup> Even if that finding is conclusory, the district court’s order shows that it was familiar with the record and the parties’ respective financial positions as evidenced by its extensive findings regarding the parties’ incomes and expenses. *See Geske*, 624 N.W.2d at 817. Finally, the district court found that wife cannot pay her fees because she lacked access to marital funds and earns \$37,000 per year. These findings are supported by the record. Thus, the district court did not abuse its discretion by awarding wife need-based fees.

Still, husband points to various evidence showing that he is in debt to family, must service the parties’ debt, and must make payments on the parties’ real property to argue that he lacks the ability to pay need-based fees for wife. The district court knew of this evidence but determined that husband nevertheless has the ability to pay. Further, because the district court ordered the parties to sell the real property, husband’s property-related expenses will eventually terminate. Our review is for an abuse of discretion, and we

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<sup>11</sup> Husband erroneously states that the district court found he could pay based on the property division. He fails to acknowledge that the district court also considered his income in finding that he has the ability to pay.

discern no reason to conclude that the district court abused its discretion in determining that husband has the ability to contribute need-based attorney fees to wife.

**Affirmed.**