

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1053**

In re the Marriage of:
Kristin Grace Logdahl, petitioner,
Respondent,

vs.

Roger Duane Logdahl,
Appellant.

**Filed August 22, 2022
Affirmed
Worke, Judge**

Itasca County District Court
File No. 31-FA-19-1996

Dar Nubson, Nubson Law Office, PLLC, Grand Rapids, Minnesota (for respondent)

Steven A. Nelson, International Falls, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this marital-dissolution matter, appellant-husband challenges the district court's denial of his motion to reopen the judgment and decree based on newly discovered evidence. We affirm.

FACTS

In June 2019, respondent-wife Kristin Grace Logdahl¹ petitioned for dissolution of her marriage to appellant-husband Roger Duane Logdahl.

On January 6, 2020, at a prehearing settlement conference, the district court began its equitable valuation and division of the parties' marital assets. Of these assets, the only issue on appeal is the value of a second home located in Gig Harbor, Washington (the Gig Harbor property). An amended judgment and decree was entered on June 24, 2020, awarding the Gig Harbor property to wife and properties located in Bigfork, Minnesota, to husband. The parties were required "to refinance their property to remove the other party from the respective mortgage by November 30, 2020, or sell the property."

In making its valuation of the Gig Harbor property, the district court considered evidence from both parties as to the estimated market value of the property. Husband's suggested value of the property was \$335,000, pursuant to an appraisal that was completed in October 2016. The property's assessed tax value for the tax period of 2017-2018 was listed as \$332,200. Wife's suggested value of the property was \$380,000 at the time of trial. The district court concluded that because the tax estimate was the closest in time to the valuation date, and that there was little deviation in the Gig Harbor property's value between tax periods 2016 and 2018, a value of \$332,000 was appropriate.

On November 25, 2020, wife moved for an extension of the district court's November 30 deadline to refinance or sell the Gig Harbor property. Husband requested

¹ Wife's legal name was changed to Kristin Grace, without a middle name.

that the district court deny wife's motion and adjust the valuation of the Gig Harbor property due to an increase in the property's value. Husband argued that the Gig Harbor property should be revalued to reflect what husband asserted was a significant increase in its value. A December 2020 appraisal of the Gig Harbor property made in connection with wife's attempts to refinance the property valued the Gig Harbor property at \$517,000.

Husband argued that the district court should reopen its judgment and decree to update its valuation of the Gig Harbor property based on newly discovered evidence. The district court determined that "[n]either party . . . raised an issue for the change in the valuation as a mistake, newly-discovered evidence, or fraud, which is required to reopen a [j]udgment and [d]ecree."

The district court granted wife's motion to extend the deadline to refinance or sell the Gig Harbor property to March 31, 2021, and denied husband's motion to reopen the judgment and decree. This appeal followed.

DECISION

Husband argues that the district court abused its discretion by denying his motion to reopen the judgment and decree to revalue the Gig Harbor property.

"Subject to the right of appeal, a dissolution judgment and decree is final when entered, unless in a timely motion a party establishes a statutory basis for reopening the judgment and decree." *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). This court will not reverse a district court's decision to deny a motion to reopen a judgment and decree except for an abuse of discretion. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022). The "district court abuses its discretion by making findings of fact that are

unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Id.* (quotation omitted). “The moving party bears the burden of establishing a basis to reopen the judgment and decree.” *Thompson*, 739 N.W.2d at 428. To meet this burden, “[t]he moving party must present more than merely a new set of circumstances or an unforeseen change of a known circumstance to reopen a judgment and decree.” *Id.* at 430-31.

Valuation date

A district court values “marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference, 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 (2020). District courts have “broad discretion in setting the marital property valuation date.” *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *rev. denied* (Minn. Oct. 15, 2002).

The district court’s valuation of property is a finding of fact and will not be set aside unless its valuation is clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (affording “broad deference” to the district court’s valuation of an asset because, generally, the valuation is an approximation). A district court’s “finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). In making this determination, we view “the record in the light most favorable to the [district] court’s findings.” *Id.* The district court is not required to be exact

“in the valuation of assets . . . 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).

The district court determined that the appropriate valuation date was the prehearing settlement conference—January 6, 2020. *See* Minn. Stat. § 518.58, subd. 1 (providing that the date of the prehearing settlement conference is the valuation date absent an agreement by the parties or specific findings made by the district court that a different valuation date is appropriate). The parties made no agreement, nor did the district court make specific findings, that another date was required; therefore, the district court was within its “broad discretion” to choose the date of the pretrial hearing as the valuation date. *See Grigsby*, 648 N.W.2d at 720.

Husband argues that the district court abused its discretion by refusing to consider newly discovered evidence that the Gig Harbor property substantially increased in value after the valuation date. The district court noted that the “clear intent” of section 518.58, subdivision 1, “is to provide the [c]ourt a tool to be able to address the change in valuation from the date of valuation to the date it makes an [o]rder distributing the marital property.” *See Vitamin v. Gordin*, No. A17-1686, 2018 WL 3520825, at *4, n.7 (Minn. App. July 23, 2018) (questioning “whether the ‘final distribution’ referenced in Minn. Stat. § 518.58, subd. 1, is the amended dissolution judgment that divided the parties’ property or the district court’s order converting appellant’s interest . . . into a monetary award”).

It is within the district court’s discretion to adjust its valuation of an asset prior to the final distribution of that asset. *See* Minn. Stat. § 518.58, subd. 1. “If there is a substantial change in value of an asset between the date of valuation and the final

distribution the [district] court may adjust the valuation of that asset as necessary to effect an equitable distribution.” *Id.* The use of the term “may” in subdivision 1 is permissive, giving the district court authority to adjust its valuation of an asset “as necessary to effect an equitable distribution.” *Id.*; *see also* Minn. Stat. § 645.44, subd. 15 (2020) (stating that “[m]ay” is permissive”). Thus, Minn. Stat. § 518.58, subd. 1, does not require the district court to adjust its valuation of an asset.

Even when the value of an asset is subject to market fluctuations, as is the case here, it is still within the district court’s broad discretion to set the valuation date. *See Grigsby*, 648 N.W.2d at 720; *see also Tagg v. Tagg*, No. A13-1962, 2014 WL 1407791, at *5 (Minn. App. Apr. 14, 2014) (stating that based on section 518.145, subdivision 1, “distribution” of real property becomes “final” when judgment and decree is entered). The final distribution of the Gig Harbor property occurred on June 24, 2020. If the district court were to exercise its discretion by revaluing the property before distribution, husband could have done so before June 24, under Minn. Stat. § 518.58, subd. 1.

Newly discovered evidence

Husband argues that the district court abused its discretion by failing to consider the post-decision appraisal of the Gig Harbor property as newly discovered evidence. In support of his argument, husband relies on *Bender*, which states that “newly discovered evidence can consist of post-decision evidence.” 971 N.W.2d at 266. The district court denied husband’s motion to reopen the judgment and decree, determining that “[n]either party [had] raised an issue for the change in the valuation as a mistake, newly-discovered evidence, or fraud, which is required to reopen a [j]udgment and [d]ecree.” We consider

whether the district court abused its discretion by concluding that the post-decision appraisal of the Gig Harbor property was not newly discovered evidence.

Under Minn. Stat. § 518.145, subd. 2(2) (2020), the district court may grant a party's timely motion to reopen a judgment and decree based on "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Rules of Civil Procedure, rule 59.03."² Section 518.145, subdivision 2, provides the "sole relief from the judgment and decree." *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997).

In *Bender*, appellant-mother challenged the district court's order denying her motion to reopen the district court's child-support order (years after judgment and decree), based on newly discovered post-decision evidence that her adult son was found eligible for Social Security disability payments. 971 N.W.2d at 261. The supreme court concluded that the "district courts, in exercising their discretion in weighing whether post-decision evidence is newly discovered evidence that justifies relief . . . are guided by the timing requirements of section 518.145 and the standard rules concerning newly discovered evidence." *Id.* at 266.

Bender emphasized the portion of section 518.145 that allows the district court to reopen a judgment "as may be just." *Id.* at 263. *Bender* makes clear that the supreme court decision in *Swanson* did not create a "bright-line rule" prohibiting courts from considering

² Minn. R. Civ. P. 59.03 (providing that "notice of motion for a new trial shall be served within 30 days after a general verdict or service of notice by a party of the filing of the decision or order").

post-decision evidence as newly discovered evidence. *Id.* at 266 (citing *Swanson v. Williams*, 228 N.W.2d 860, 862 (Minn. 1975)).

In *Swanson*, the supreme court stated that “[g]enerally, to be newly discovered evidence within the meaning of [r]ule 60.02(2) evidence must have been in existence at the time of trial but not known to the party at the time. This would not include expert testimony procured following trial.” 228 N.W.2d at 862 (quotation marks and citation omitted); *see Bender*, 971 N.W.2d at 263 (stating that “[b]ecause [r]ule 60.02 and section 518.145 are virtually identical, [appellate courts] use cases evaluating [r]ule 60.02 when addressing the application of section 518.145” (quotation marks omitted)). Following *Bender*, this statement is to now be construed as a general rule and not a universal prohibition on the use of post-decision evidence to justify reopening a judgment. 971 N.W.2d at 266.

The post-*Bender* rule allows the district court to reopen a judgment, upon a party’s timely motion, if the moving party shows: (1) the newly discovered evidence was not discoverable, by the exercise of reasonable diligence, before the relevant proceeding; (2) the evidence is relevant and admissible; and (3) the evidence is not cumulative, contradictory, or impeaching, and will likely affect the outcome of the case. *Id.* “Whether these factors have been met is within the [district] court’s sound discretion.” *Id.* at 263. To be considered timely, the party’s motion must be made “within a reasonable time, and . . . not more than one year after the judgment and decree . . . was entered.” Minn. Stat. § 518.145, subd. 2.

Bender noted a distinction between this court’s opinion in *Kozak v. Weis*, 348 N.W.2d 798 (Minn. App. 1984), and cases reciting a universal prohibition on the use of

post-decision evidence to reopen a judgment. 971 N.W.2d at 265 n.6 (stating that *Kozak v. Weis* “is more factually analogous to *Swanson*” than cases applying *Swanson* to universally prohibit the use on post-decision evidence).³

In *Kozak*, the appellant challenged the district court’s order denying his motion for amended findings or a new trial. 348 N.W.2d at 800. Kozak argued that a post-decision land survey should have been considered newly discovered evidence to establish the reputed property boundary. *Id.* at 802. This court noted that “[c]ontact[ing] of the expert, surveying of the land, and establishment of the reputed boundary . . . were all accomplished after trial” when “exercise of the same diligence prior to trial may have produced a competent survey and established the boundary line.” *Id.* at 803. This court, in affirming the district court, determined that the evidence was not newly discovered. *Id.*

Husband’s post-decision appraisal is analogous to the post-decision survey in *Kozak*, in that nothing precluded husband from conducting an appraisal of the Gig Harbor property prior to the valuation date. Here, both parties agreed to the district court’s valuation date. Prior to the valuation date, each party offered an estimate of the value of the Gig Harbor property. Neither party had the property appraised in preparation for trial. The district court valued the Gig Harbor property based on the tax valuation from the

³ *E.g., Life Clinic PA v. Anderson*, No. A20-1377, 2021 WL 2201477, at *2 (Minn. App. June 1, 2021) (applying *Swanson* to emails sent post-decision, and concluding that because the emails were not in existence at the time of the underlying proceeding, the emails were not newly discovered evidence); *Adams v. Adams*, No. A17-1526, 2018 WL 4201173, at *2 (Minn. App. Sept. 4, 2018) (applying *Swanson* to party’s post-decision lay-off, and concluding that lay-off was not considered newly discovered evidence).

previous year. Thus, the exception to the *Bender*-factors for post-decision newly discovered evidence does not apply to husband's post-decision appraisal.

Husband fails to explain why the expert evidence could not have been procured prior to the valuation date. Applying *Bender* to post-decision expert evidence that—by the exercise of reasonable diligence—could have been discovered before the valuation date could foreseeably encourage gamesmanship from parties seeking a more favorable judgment through post-decision expert evidence.

Based on our reading of the relevant caselaw, we do not agree with husband that the post-decision appraisal of the Gig Harbor property represents the post-decision newly discovered evidence considered in *Bender*; therefore, we conclude that the district court did not abuse its discretion by denying husband's motion to reopen the judgment and decree. The value of marital assets has been determined on the valuation date; husband is bound by the judgment and decree and is not entitled to a second bite at the apple.

Affirmed.