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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1263**

In re the Marriage of: Kathy Marie Fowler, petitioner,
Respondent,

vs.
Jeffrey Allen Fowler,
Appellant.

**Filed June 13, 2022
Affirmed
Ross, Judge**

Fillmore County District Court
File No. 23-FA-19-432

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Amber Lamers, Dittrich & Lamers, P.A., Rochester, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Ross,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A judgment and decree dissolving the marriage of Jeffrey and Kathy Fowler awarded the couple's farmland and toy tractors to Jeffrey and declined to add the proceeds of a previously issued cashier's check to the marital estate. In this cross-appeal, Jeffrey challenges the district court's refusal to consider the future tax consequences that would arise from his later selling the farmland. And Kathy argues that the district court should

have awarded her half the farmland, half the value of the cashier's check, and toy tractors belonging to the parties' deceased son. Because the district court did not abuse its discretion in any of the challenged decisions, we affirm.

FACTS

Kathy Fowler petitioned the district court in 2019 to dissolve her 44-year marriage to Jeffrey Fowler. The district court issued a judgment and decree dissolving the marriage and dividing the marital property. At issue in this appeal are the district court's division and valuation of the couple's farmland, a jointly issued cashier's check, and toy tractors that belonged to one or both of the parties' two sons, one of whom is deceased.

Farmland

The district court heard testimony about the parties' competing interests in their marital farmland. They had purchased five agricultural properties during the marriage. Their surviving adult son, Matthew, owns agricultural property adjacent to the parties' property. Matthew and Jeffrey farmed the properties together; they used the same equipment and crop-storage facilities, jointly purchased seed and fertilizer, and sold the crops together. Jeffrey asked the district court to allocate all the land to him and a cash equalizer to Kathy, an arrangement that would allow him to continue farming with Matthew and to eventually sell all the land to Matthew in three to five years after the divorce. He asked the district court to adjust the property's value downward to account for about \$1.1 million he would have to pay as a capital gains tax when he conveys the land to Matthew. Kathy asked the district court to divide the real property evenly between the

parties, an arrangement that would allow her to use her portion as an investment to augment her retirement income.

The district court found that the farm operation could not survive dividing the land, awarding Jeffrey all of it and ordering an equalizer payment to Kathy. It found Jeffrey's future sale uncertain, and it therefore valued the land without any reduction for a capital gains tax.

Cashier's Check

The district court also received evidence about the parties' competing interests in a five-year-old cashier's check. The parties had redeemed a certificate of deposit in 2014, resulting in a \$250,290.54 cashier's check issued in both parties' names but not cashed or deposited. Jeffrey, unaware that Kathy continued to hold the check and believing that it was lost, had it reissued. He deposited it into the couple's joint bank account, and he later moved the funds to an account bearing his name only. During the divorce proceedings, Kathy moved the district court to order that the funds be held in trust. Jeffrey opposed Kathy's motion, submitting an affidavit stating that all the funds had been in his account since they were transferred there, attaching a September 2020 bank statement with a balance of \$412,908.07. Based on Jeffrey's assurance, Kathy withdrew her motion. But during the divorce trial, she learned that, before Jeffrey executed his affidavit and after he transferred the funds to his separate account, his account held only \$160,919.06. Jeffrey acknowledged that his affidavit was not accurate, testifying that some of the funds likely went to operational costs for the parties' farm and that the balance remained in his bank account.

Kathy asked the district court to divide the proceeds from the cashier's check equally between the parties by adding its face value of \$250,290.54 to the marital-estate calculation. The district court declined. It credited Jeffrey's testimony, finding that all the funds from the check were accounted for either as expenses Jeffrey had paid for the parties' farm operation or as funds remaining as marital property in one of his bank accounts.

Toy Tractors

The couple's children collected toy tractors when they were young. Some allegedly belonged to Matthew and others to their deceased son, Christopher. Jeffrey asked the district court to award him all the toys and Kathy asked only for those that had belonged to Christopher. The district court awarded all the toys to Jeffrey, finding that they belonged to Matthew. The district court also indicated that Jeffrey should allow Kathy to have items of sentimental value to her.

Jeffrey appealed, and Kathy filed a notice of related appeal.

DECISION

Jeffrey raises one issue on appeal. Kathy raises three. Jeffrey argues that the district court should have reduced its farm valuation to account for the capital gains tax that would result from a future sale. Kathy argues that the district court should have divided the land between the parties, added the face value of the cashier's check to calculate the marital estate and awarded her half the funds, and awarded her the toys that belonged to Christopher. None of these arguments persuades us to reverse the district court's decision.

We first address Kathy’s farmland-division argument. The district court must divide the marital property of a divorcing couple justly and equitably. Minn. Stat. § 518.58, subd. 1 (2020). This duty involves discretion, and we therefore review a district court’s decision dividing property for an abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). The district court kept the agricultural property intact to preserve its continued operation as a functioning farm—a discretionary consideration we have long recognized as appropriate. *Koenen v. Koenen*, 413 N.W.2d 280, 282 (Minn. App. 1987). And Jeffrey’s testimony, which the district court credited, supports its finding that splitting the land would diminish or destroy the farming operation. Jeffrey testified that he could not feasibly replace the excised acreage by acquiring other land in part because of the proximity of the various parcels he farmed. Kathy does not explain why the district court’s approach constitutes an abuse of discretion except to contend that the decision served to benefit Matthew inappropriately because he is not a party to the proceedings. *See Melamed v. Melamed*, 286 N.W.2d 716, 718 (Minn. 1979) (reversing a district court’s decision awarding the divorcing couple’s children a remainder interest to a condominium). Her contention fails because the district court awarded nothing to Matthew; it awarded the property only to Jeffrey in a manner that facilitated the continuation of Jeffrey’s farming operation as it had been functioning for years. The decree confers no property to Matthew and does not depend on his ever receiving any property.

II

We reject Jeffrey’s capital-gains-tax argument. He contends that the district court should have reduced the value of the farmland awarded to him to account for the capital

gains tax he will have to pay when he eventually sells the land. We review a district court’s decision whether to consider future tax consequences when dividing marital property for an abuse of discretion. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001); *see also Schmidt v. Schmidt*, 964 N.W.2d 221, 232 (Minn. App. 2021) (addressing a district court’s consideration of capital gains taxes). It is true that, if a district court’s decision essentially requires a spouse to sell assets and the record adequately addresses the consequences of that sale, the district court should consider the tax consequences. *Curtis v. Curtis*, 887 N.W.2d 249, 255–56 (Minn. 2016). But the district court is “not required to speculate about what either or both of the spouses may possibly do” and should avoid “engraft[ing] on the division further adjustments reflecting situations based on theory rather than fact.” *Aaron v. Aaron*, 281 N.W.2d 150, 153 (Minn. 1979) (quotation omitted). Although Jeffrey testified that he plans to sell the land to Matthew and an expert opined about the tax consequences of doing so, various circumstances render the plan merely speculative and uncertain. First, the district court did not order a sale. Next, the potential sale was temporally distant—three to five years in the future. Also, Jeffrey offered no evidence of a purchase agreement or even an agreed-upon price. And finally, it is unclear whether Matthew would ever purchase the property, as Jeffrey testified that a sale would occur only “as Matthew sees that he can afford it.” Under these circumstances, we cannot say that the district court abused its discretion by refusing to reduce the value of the land by a hypothetical capital gains tax resulting from a sale that may never occur.

III

We likewise see no abuse of discretion in the district court's declining to add the face value of the cashier's check to the marital-property valuation and award Kathy half. It is true that parties to a marital dissolution owe each other a fiduciary duty not to dissipate marital assets. Minn. Stat. § 518.58, subd. 1a (2020). But a party does not improperly dissipate marital assets by using them "in the usual course of business or for the necessities of life," *id.*, and the district court credited Jeffrey's testimony that some of the funds were used for the family farming operation and that the balance remained in one of his bank accounts constituting a marital asset.

And we cannot say that the finding that the check funds were already included in the valuation was clearly erroneous. Kathy accurately asserts that Jeffrey provided no documentary evidence tracing the funds from the cashier's check into his account. But we have emphasized that, if believed, oral testimony can be sufficient to trace a nonmarital interest. *Doering v. Doering*, 385 N.W.2d 387, 391 (Minn. App. 1986). And Kathy likewise produced no documentary evidence to support her belief that not all the funds are accounted for or that Jeffrey spent any of them outside the usual course of the family business or for non-necessities. We do not intend to diminish Kathy's concern that Jeffrey included inaccurate information in his affidavit addressing the check. But the district court weighed Jeffrey's credibility and reached its findings of fact fully aware of the affidavit's inaccuracy. We are simply in no position on appeal to reweigh the relevant evidence or to make our own credibility assessment.

IV

Kathy challenges the district court's order awarding Jeffrey all the toy tractors. Jeffrey testified that the toys belonged to Matthew. By contrast, Kathy testified that some belonged to Christopher. The district court's findings are not altogether clear. On one hand, it found that "the toys ultimately belong to Matthew Fowler," and it awarded them to Jeffrey because of an apparent strain in the relationship between Matthew and Kathy. But the district court also expressed its desire that the parties address the issue of sentimental objects amicably and that Jeffrey willingly allow Kathy to have "items of sentimental value that belonged to their deceased son." We interpret the district court's language to mean that it found that the disputed toys belonged to Matthew, but that any other items in Jeffrey's possession belonging to Christopher should be shared between the parties. Because the district court appears to have found that none of the toy tractors in dispute belonged to Christopher, we cannot say that it abused its discretion by not awarding them to Kathy. We observe that the dispute on this issue raises the question of whether the toys, which the court found to "belong to Matthew," are even marital property subject to the district court's jurisdiction in the dissolution proceeding. But neither party raised this concern in the district court or on appeal, and so we do not address it. More important, given the potential ambiguity in the order as it regards the issue (and given its apparent emotional importance to the parties), we also observe that either party may seek clarification, and the district court may clarify its decision, so long as its resulting order "serves only to express more accurately the thoughts which the original judgment intended to convey." *Hanson v. Hanson*, 379 N.W.2d 230, 232 (Minn. App. 1985).

Affirmed.