**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A22-0879**

In re the Marriage of: Pamela Jo Pemberton, petitioner,
Respondent,

vs.

Stephen Blake Pemberton,
Appellant.

**Filed June 20, 2023**
**Affirmed in part, reversed in part, and remanded**
**Connolly, Judge**

Dakota County District Court
File No. 19AV-FA-19-27

Linda S.S. de Beer, De Beer & Associates, P.A., Lake Elmo, Minnesota (for respondent/cross-appellant)

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

**NONPRECEDENTIAL OPINION**

**CONNOLLY**, Judge

In this marital dissolution appeal, appellant/cross-respondent—Husband—challenges the district court's findings, arguing that that the district court (1) misvalued the marital home; (2) misvalued two family businesses; and (3) should have treated certain tax debt as marital debt. By notice of related appeal, respondent/cross-appellant—Wife—

argues that the district court (1) should have reserved spousal maintenance; (2) overstated Wife's income by assuming an excessively high rate of return on her property distribution and by assuming she would receive rental income on property that she did not intend to rent; (4) failed to award Wife a share of a marital business; (5) failed to compensate Wife for Husband's disposition of an interest in another marital business; (6) failed to account for Husband's liquidation of certain accounts; (7) should not have penalized Wife for not filing joint tax returns; and (8) failed to include Husband's Venmo account as a marital asset. Because the district court erred only by subtracting the cost of repairs from the appraised value of the marital home, we affirm in part, reverse in part, and remand.

## FACTS

Appellant/cross-respondent Stephen Blake Pemberton ("Husband") and respondent/cross-appellant Pamela Jo Pemberton ("Wife") married in 1977 and were both 65 years old at the time of the district court's judgment. During their marriage, they had four children, who are all now emancipated. The parties built a 6,000 square foot home in Apple Valley that has been their marital home since they were 28 years old.

During their marriage, Husband worked as a real estate agent; first through the real estate company S&P, Inc. Then, in 2018, he and the parties' son P.P. started a new real estate company named Pemberton Homes, Inc. Husband continued to operate S&P after starting Pemberton Homes.

At the beginning of their marriage, Wife worked as a real estate agent until they had children. Once they had children, Wife cared for the children and helped Husband with

the marketing for his real estate business. Wife's father died in 2012 and left her an inheritance that included a lakefront home in Arizona and certain investment accounts.

On November 18, 2019, the parties physically separated, and on January 3, 2020, Wife petitioned for the dissolution of their marriage. The parties tried the case to the district court in April, May, June, and July 2021. The parties agreed that the valuation date was December 31, 2019. On November 10, 2021, the district court issued its findings of fact, conclusions of law, and order for judgment. On January 3, 2022, Husband moved for amended findings, and on January 7, 2022, Wife moved for amending findings. On April 26, 2022, the district court amended some of its findings but declined to amend others. The following findings are at issue in this appeal.

In the original findings of fact, the district court awarded Wife $1,602,467 in marital assets and Husband $1,593,938. The district court found that Wife had $2,050,505 in non-marital assets, not including her lake home in Arizona, and Husband had $37,652. In its amended findings, the district court awarded Wife $1,602,467 in marital assets and Husband $1,712,938. The non-marital assets remained the same.

In its initial findings of fact, the district court awarded the marital home to Wife at a value of $67,980. The district court found that the fair market value of the home on the valuation date was $616,000, the property had an encumbrance of $416,320 in their joint names, and their equity was $199,680, but concluded that the property was "in need of significant repairs." The district court determined that the repairs reduced the equity by $131,700 and found that the "appraisals accurately reflect the condition of the properties as of the date of valuation." Husband moved to amend the findings, arguing that the district

court should not have subtracted the cost of repairs from the value of the home. The district court denied Husband's motion to amend that finding.

In Wife's proposed findings, she proposed that the district court award S&P to Husband for $119,000. In its initial findings, the district court found that it "ha[d] concern that the valuations of S&P and Pemberton Homes overlap to a significant degree, thereby resulting in duplicative valuations" and "decline[d] to include the valuation of S&P within the asset and debt division."

Wife and Husband moved to amend the findings. Wife argued that the district court should assign a value of $119,000 to S&P. She requested that a "mathematical computation be completed to provide [her] a sum of money from Husband to account for [her] share of," in part, S&P. Husband argued that the district court should waive any equalizer amount owed to Wife from Husband, in part, because of her "secure financial future with the award of marital assets outlined herein, as supplemented with her non-marital wealth." The district court amended its findings and awarded S&P to Husband with a value of $119,000 and found that "waiver of the equalizing payment by Husband to Wife is fair and equitable given the sizeable non-marital estate Wife has been awarded."

In its November 2021 findings, the district court found that the parties owned 75% of Pemberton Homes and P.P. owned 25%. The district court awarded Husband the 75% interest in Pemberton Homes at a value of $235,000. Both parties moved to amend these findings. The district court denied their motions and did not amend the value of Pemberton Homes.

In 2018 and 2019, Wife chose to file her taxes separately, which resulted in increased tax liability for both parties. In its initial findings, the district court did not include this additional amount in its allocation of assets. The district court also found that, for 2020, Wife would be responsible for any increased tax costs resulting from her filing separately, but that if the parties filed a joint tax return, they would split the tax liability or tax refund equally. Both parties moved to amend these findings. For the 2020 filing, the district court declined to delete the original finding but offered Wife the choice of an alternative: "to have the parties separate and paid tax obligations added together, divided by two, and shared equally."

In its initial findings, the district court declined to award spousal maintenance to Wife "because she has sufficient property to provide for her reasonable needs considering the standard of living established during the marriage." In her motion for amended findings, Wife requested that the district court reserve spousal maintenance. The district court declined to amend the finding and did not reserve maintenance.

In its decision to not grant spousal maintenance, the district court considered Wife's assets and sources of income, applying a 4% rate of return to Wife's investments to calculate her income. Wife moved to amend this finding and argued that the district court should apply her accounts' historical average rate of return of 1.71%. The district court denied her request.

The district court also found that Wife could use her non-marital home in Arizona to generate income by renting it "or selling it and investing the proceeds from the sale" and found that her "position, that she needs substantial maintenance and will not utilize her

nonmarital second home to generate any income, is unreasonable considering the marital standard of living." Wife requested that the district court amend these findings. The district court denied Wife's motion.

In its initial findings, the district court found that the parties own "Husband's E*TRADE Investment *7582, with a value of $1,988 as of December 31, 2019" and "Husband's Wells Fargo IRA, #1737, with a value of $31,714, which he liquidated on or about January 24, 2019" but did not assign a value to Husband's Venmo account. Wife moved to amend these findings, and the district court denied Wife's motion as to these findings.

Husband appealed, and Wife filed a notice of related appeal.

## DECISION

### *Appellant/Cross-Respondent's Issues*

"A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court abuses its discretion in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellate courts "will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach." *Antone*, 645 N.W.2d at 100.

This court will not reverse the district court's valuation of an asset unless it is clearly erroneous. *Hertz v. Hertz*, 229 N.W.2d 42, 44 (Minn. 1975). And the district court's

findings of fact will not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01. Findings of fact are clearly erroneous if we are "left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). We give "deference to the district court's opportunity to evaluate witness credibility." *Id.* And we "view[] the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). If there is reasonable evidence to support the district court's findings, we will not disturb them. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

## I. The district court erred by awarding Wife the marital home at a value of $67,980.

Husband argues that the district court erred by deducting the cost of repairs from the appraised value of the home when assigning value to the marital home. Wife argues that Husband takes this position for the first time on appeal because, at trial, he argued that the need for repairs decreased the value of their rental properties. But this is not a rental property. And in Husband's proposed findings of fact, he proposed that the district court award Wife the marital home at a value of $616,000 and find that the net equity is $157,561 with a cost-of-sale discount. Husband thus did not raise this issue for the first time on appeal.

Husband argues that the district court's finding that the need for repairs reduces the value of the home is clearly erroneous because the condition of the home, including any need for repairs, was considered by the appraiser when appraising the home. We agree. Here, the appraiser determined that the home was valued at $616,000 on the appraisal date

of August 7, 2019. The appraiser noted that this was the home's value "as is," and noted that "[t]he subject has been taken care of well, had some updating, but could use some updating, and overall is deemed in average/good condition." The district court determined that the appraisal "was not conducted by an inspector" but that the "appraisals accurately reflect the condition of the properties as of the date of valuation." But the district court then found that "there is independent evidentiary support for the repairs needed on the marital home, and thus will reduce the equity by $131,700 to account for those repairs." This contradicts the district court's statement that the "as-is" appraised value reflected the condition of the home. Many of the proposed repairs are conditions that would have been visible when the appraiser saw the house, such as a new roof, gutters, and carpet.

Indeed, if Wife performs these repairs, the improvements will likely add value to the property, making it worth more than the $616,000 as-is appraised value. *See Stromberg v. Stromberg*, 397 N.W.2d 396, 401 (Minn. App. 1986) (stating that it was reasonable for the district court to conclude that the improvements added to the value of the property); *see also Maher v. Maher*, No. C5-94-2398, 1995 WL 321296, at *1 (Minn. App. May 30, 1995) (noting that the appraised value was "a value which assumed that the property would be sold 'as is'").

Wife contends that the evidence does not demonstrate that the repairs existed at the time of appraisal or that the appraiser considered the need for repairs. But the appraiser did note that the house was not in perfect condition because it "could use some updating," and was "in average/good condition." It is unlikely that $131,700 in repairs came about in the year between the appraisal and the repairs estimate. Wife also argues that Husband did

not offer an updated appraisal or other evidence to contradict the repair estimate. Husband did not need to prove that the repair estimate was wrong, because he does not dispute that repairs need to be done; instead, he argues that the appraisal accounted for repairs that may need to be done. The record shows that the district court erred by deducting the cost of repairs because the appraisal reflected the value of the home in its condition on the date of valuation; thus, the district court's finding is clearly erroneous.

## II. The district court did not err by valuing S&P at $119,000.

Husband argues that the district court's decision to assign value to S&P was clearly erroneous because it "is an impermissible double counting." Husband's argument is not persuasive. Husband contends that S&P derives all of its income from Pemberton Homes, and therefore, S&P's revenue was already accounted for in the valuation of Pemberton Homes. In its amended findings, the district court assigned a value of $119,000 to S&P, finding "[t]he credible evidence in this case, namely the two formal business valuations conducted by Expert Kiwus reflect there is value in both S&P and Pemberton Homes." The district court noted that

> Expert Harjes did not perform a formal business valuation in this case. To the extent he commented on business valuations those comments were of a general nature and not specific to S&P or Pemberton Homes, as he had not been engaged to perform formal business valuations as to those businesses. Accordingly, S&P is assigned a value of $119,000 consistent with the analysis of Expert Kiwus.

Here, the record supports the district court's finding. Expert Kiwus's report acknowledged that S&P was "a holding company of sorts to collect Mr. Pemberton's share of commissions earned by Pemberton Homes." He then concluded that the value of S&P

was $140,000 and applied a 15% lack of marketability discount because there is no ready market for the sale of an interest, concluding that the fair market value of Husband's interest was $119,000. At trial, Expert Kiwus testified that S&P had receivables beyond Husband's income. He testified that, on the date of valuation, Husband also owed S&P money and that the receivables were not only from Husband. Expert Kiwus determined that there was value in both S&P and Pemberton Homes, and thus the evidence presented supports the district court's conclusion, and its finding was not clearly erroneous. *Fletcher*, 589 N.W.2d at 101 (stating that an appellate court should not disturb the district court's finding of fact if there is reasonable evidence to support those findings).

Husband contends that Expert Harjes was correct in stating that the district court should have used the asset valuation approach. But the district court found that the "credible evidence" reflected value in both entities and determined that Expert Harjes did not perform a formal business valuation. This court will not second guess the district court's credibility determination. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations).

Husband also contends that Expert Kiwus's report conflicted with Minnesota law because it did not consider Husband's importance in the company nor did it consider goodwill, citing *Rogers v. Rogers*, 296 N.W.2d 849, 851 (Minn. 1980) (concluding there was a "defect" in an expert's opinion because he failed to consider the president of a corporation's value to that corporation). Because Husband raises this theory for the first time on appeal, the district court did not address it below. Husband did argue that goodwill is not a marital asset to be included in the divisible marital estate, but did not make that

argument regarding S&P. In his proposed findings, Husband proposed that the district court adopt Expert Kiwus's asset approach estimate for S&P. Because Husband raised this argument for the first time on appeal, and the district court did not consider it, the question is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court generally will only review issues "presented and considered by the [district] court in deciding the matter before it").

## III. The district court did not err when it valued the marital share in Pemberton Homes at $235,000.

Husband contends that the district court erred in its valuation of Pemberton Homes because the district court's analysis did not address or use the factors discussed in *Nardini v. Nardini*, 414 N.W.2d 184, 189-90 (Minn. 1987), did not address personal goodwill, and did not account for Husband's importance in the business. Husband's arguments fail.

"There is, of course, no universal formula for determining the value of a closely held business. No matter how experienced and objective the appraiser, the valuation of a business is an art, influenced by various subtle and subjective factors." *Nardini*, 414 N.W.2d at 189-90. The district court should consider factors other than the book value when determining the value of a closely held business, such as the following:

> 1. The nature of the business and the history of the enterprise from its inception.
> 2. The economic outlook in general and the condition and outlook of the specific industry in particular.
> 3. The book value of the stock and the financial condition of the business.
> 4. The earning capacity of the company.
> 5. The dividend-paying capacity.
> 6. Whether or not the enterprise has goodwill or other intangible value.

> 7. Sales of the stock and the size of the block of the stock to be valued.
> 8. The market price of stocks of corporations engaged in the same or a similar line of business having their stocks traded in a free and open market.

*Id.* at 190.

Here, the district court found that the 75% marital share of Pemberton Homes was valued at $235,000 and awarded that interest to Husband. The district court relied on Expert Kiwus's report in which Expert Kiwus noted that he considered the eight *Nardini* factors in performing the appraisal. The district court found that "Expert Kiwus used both the income and market approaches with equal weight, again concluding the asset approach would not produce an accurate value and considering the *Nardini* factors." *Nardini* does not require the district court or its experts to consider these factors, it simply suggests that the court consider these as well as factors beyond the book value of a business. *See Nielsen v. Nielsen*, No. C2-95-2367, 1996 WL 438800, at *1 (Minn. App. Aug. 6, 1996) (affirming a business valuation where an "expert noted in his valuation report that he had considered all eight *Nardini* factors," noting that "*Nardini* does not require specific findings on all the factors"). Husband contends that Expert Kiwus also did not address personal goodwill. But goodwill is one of the *Nardini* factors, and Expert Kiwus did consider it.

Husband also contends that Expert Kiwus did not account for Husband's importance when assigning value to Pemberton Homes. The "key man" approach applies to companies with individuals who perform "highly personal or unique services from which the entire business income is derived." *Nemitz v. Nemitz*, 376 N.W.2d 243, 247 (Minn. App. 1985). In *Nemitz*, this court affirmed the district court's conclusion that the appellant, who was a

partner in a business that provided management and instructional services to colleges, was not a key person. *Id.* This court concluded that the company, even without the appellant, could be sold as a business. *Id.*

Here, Husband did not perform unique services for Pemberton Homes. Husband's job at Pemberton Homes is to sell real estate and step in to address compliance issues. Husband testified that P.P. recruits the realtors, and that Husband has no role in recruiting realtors. P.P. oversees the operations team, the marketing team, the inside-sales-team, and the sales team at Pemberton Homes. The record does not support a key-man reduction in its value because Husband does not "perform[] highly personal or unique services from which the entire business income is derived." *Id.*

Husband also argues that the comparable sales in Expert Kiwus's report did not support the valuation. Expert Kiwus stated that the value under the market approach was $381,000, and the value under the income approach was $355,000. Expert Kiwus gave equal weight to the income and market approaches and applied a 15% lack of marketability discount to the 75% share, concluding that the 75% interest was worth $235,000. Even if the comparable sales do not support the market approach value, the valuation the district court assigned to Pemberton Homes falls within the limits of Expert Kiwus's estimate based on the income approach. Therefore, the district court did not clearly err in adopting Expert Kiwus's proposed value for Pemberton Homes. *See Balogh v. Balogh*, 356 N.W.2d 307, 310 (Minn. App. 1984) (stating "the market valuation determined by the trier of fact should be sustained if it falls within the limits of credible estimates made by competent witnesses" (quotation omitted)).

## IV. The district court did not abuse its discretion by not accounting for the costs from Wife's decision to file her 2018 and 2019 taxes separately.

The district court "shall make a just and equitable division of the marital property." Minn. Stat. § 518.58 (2022). Marital debt is marital property. *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *rev. denied* (Minn. May 29, 1986). On review of the district court's division of debt, this court reviews the debt division for an abuse of discretion and must affirm "if it has an acceptable basis in fact and principle, even though this court may have taken a different approach." *Bliss v. Bliss*, 493 N.W.2d 583, 587 (Minn. App. 1992), *rev. denied.* (Minn. Feb. 12, 1993).

In 2018 and 2019, Wife chose to file her taxes separately, and the district court did not include any increased costs due to Wife's filing separately in its allocation of assets. Husband contends that Wife's decision to file her 2018 and 2019 taxes as married filing separately caused Husband to owe more in taxes than he would have if they had filed jointly and that it was an abuse of discretion to not account for this "marital debt." We disagree.

The district court has broad discretion when making property divisions, including tax liabilities. *Hedelius v. Hedelius*, 361 N.W.2d 421, 424 (Minn. App. 1985). In *Hedelius*, a spouse's tax liabilities increased because he filed separately. *Id.* The district court refused to consider the tax consequences of filing separately because the consequences were speculative. *Id.* We affirmed the district court's decision, noting that "[s]imply because they would have been better off had they filed jointly rather than separately . . . does not justify reversal." *Id.*

Here, the district court properly exercised its discretion by not dividing the excess tax liabilities. Wife testified that she filed separately because Husband "has done some things financially that [she did not] agree with nor did [she] ever know what was going on," and she "did not want to be responsible for any audits if [she] signed a marital income tax [return], and [she] wanted to be on [her] own with [her] own honest way of doing things." The district court found Wife's "explanation reasonable and credible, particularly after viewing the exhibits and hearing the testimony offered at trial." "An equitable division of marital property is not necessarily an equal division." *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005) (quotation omitted). The district court did require Wife to either file jointly in 2020 or split the costs of filing separately with Husband. The district court exercised its discretion to come to a compromise on the taxes, and "[s]imply because they would have been better off had they filed jointly rather than separately . . . does not justify reversal." *See Hedelius*, 361 N.W.2d at 424.

***Respondent/Cross-Appellant's Issues***

**I. Spousal Maintenance**

An appellate court reviews a district court's original award of maintenance for an abuse of the district court's broad discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law or if it resolves the question in a manner that is contrary to logic and the facts on record. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

**a. The district court did not abuse its discretion by not reserving spousal maintenance.**

Reservation of spousal maintenance allows the district court to address changes in a party's situation if and when those changes arise. *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). A district court "may reserve jurisdiction of the issue of maintenance for determination at a later date." Minn. Stat. § 518A.27, subd. 1 (2022). We review the district court's decision on whether to reserve the issue of spousal maintenance for an abuse of discretion. *Prahl*, 627 N.W.2d at 703.

Wife contends that she "does not have sufficient assets nor does she have the ability to support herself" and that "a spouse cannot be expected to support him or herself after the marriage by spending her share of the marital property," citing *Curtis*. Wife's argument is unpersuasive. In *Curtis*, the district court found that the wife had sufficient assets because she could reinvest her assets in income-producing investments and that the expected return was more than enough to cover her monthly expenses. *Curtis*, 887 N.W.2d at 252. The supreme court noted that a district court may not "require a maintenance-seeking spouse to invade the principal of the property [awarded to a spouse seeking maintenance] to pay living expenses." *Id.* at 254 (quotation omitted). The supreme court stated that this maxim does not require the district court to assume that the distributed property will forever remain in the same form. *Id.* The supreme court considered factors such as whether the asset was liquid, the spouse's age, and how the asset was invested during the marriage and concluded that the district court did not abuse its discretion when it considered the income-earning potential of the wife's assets. *Id.* at 254-55.

Here, the district court declined to reserve maintenance because "the circumstances of the parties are known and not subject to change in a manner typical of cases where spousal maintenance is reserved, for example, due to illness of either or both parties." The district court reduced Wife's claimed monthly budget of $17,108 to $14,218 but found that this budget "remain[ed] excessive when considered as a whole and in the context of two people nearing retirement age." The district court found that Wife's property "is in the form of income-generating assets," including investment accounts, retirement assets, and nonmarital residences. The district court awarded Wife four rental properties, which Expert Harjes projected could generate income of $15,155 per year. The district court also awarded her marital and nonmarital accounts valued at $2,860,496 and found that these accounts could generate approximately $114,419 in income annually before taxes. The district court acknowledged that she is also at the age where she could receive social security benefits. Unlike *Curtis*, the district court is not expecting her to invade her principal. The record supports the district court's finding that Wife has many different income producing assets to support her reasonable needs.

Wife also argues that the district court should have reserved jurisdiction over spousal maintenance because, if Husband's appeal is successful, "it is foreseeable that she may need maintenance in the future if her property award is not fully provided to her." Wife does not cite caselaw to demonstrate that this is an abuse of the district court's discretion. *See Minn. Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v.*

*Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). Thus, the district court did not abuse its discretion by not reserving spousal maintenance.

**b. The district court did not abuse its discretion by referencing Wife's Arizona property in its spousal maintenance decision.**

A "[district] court may grant a maintenance order for either spouse if it finds that the spouse seeking maintenance lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage." Minn. Stat. § 518.552, subd.1(a) (2022). An award of "[spousal] maintenance depends on a showing of need." *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989).

Wife contends that the district court abused its discretion by "considering speculative rental income from [her] Arizona property." The record does not support Wife's argument. The district court explicitly stated that it did not consider rental income from the Arizona home when making its spousal maintenance decision. In its decision to not grant spousal maintenance, the district court noted that Wife "could generate additional income by either renting her non-marital home in Arizona or selling it and investing the proceeds from the sale" and found that "Wife's position, that she needs substantial maintenance and will not utilize her nonmarital second home to generate any income, is unreasonable considering the marital standard of living." But the district court found that it "[was] not requiring Wife to sell the Arizona home or to rent it, but is simply recognizing that those options exist, and Wife is choosing not to take them." Because the district court

did not factor in the rental income for Wife's Arizona home when making its spousal maintenance decision, it did not abuse its discretion.

Even if it had considered Wife's property when making its decision, the district court did not abuse its discretion. It was not an abuse of discretion for the district court to consider Wife's property when deciding whether to award spousal maintenance. *See* Minn. Stat. § 518.552, subd.1(a).

**c. The district court did not err by assigning a 4% rate of return to Wife's assets.**

"[T]he value arrived at by the trial court need only fall "within a reasonable range of figures." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). "Appellate [courts] set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility." *Goldman*, 748 N.W.2d at 284.

Wife argues that the district court's finding that her investments would have a 4% rate of return was not supported by the record because it was "purely speculative" and "ha[d] no relation to these particular parties, their specific investments, or their historical investment decisions." We are not persuaded. The district court adopted the 4% rate of return that Expert Harjes suggested, finding that it "more accurately reflected the total value of this asset" even though the benefit was partly unrealized. At trial, Expert Harjes testified that the 4% "represents an overall investment return. It's not exclusive of an income return but an overall return on assets if a person is invested in a diverse portfolio, and it's a common rate of return to look at on a sustainable basis." The district court did not clearly err by adopting the rate of return that an expert testified is commonly used. *See*

*Sefkow*, 427 N.W.2d at 210 (stating that appellate courts will not second guess district court credibility determinations).

Wife points to Expert Kiwus's report stating that the rate of return on her accounts ranged from 1.23% to 2.37% from 2014 to 2019. But we will not reverse the district court's findings unless clearly erroneous, and "[t]hat the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness*, 607 N.W.2d at 474.

Wife also contends that to achieve this rate of return, she would need to sell investments and reinvest in other assets, which would "reduce her investments by capital gains." In *Maurer*, 623 N.W.2d at 608, the supreme court considered whether the district court must consider tax liability. *Mauer* determined that the district court had discretion to consider tax consequences, but that it should not consider them if doing so would be speculative. *Maurer*, 623 N.W.2d at 607-08. Here, Wife acknowledges that "neither expert proposed, considered, or calculated" this capital gains exposure. Therefore, any finding the district court would make on this record as to tax consequences would have been speculative. *See also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that "[o]n appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question"), *rev. denied* (Minn. Nov. 25, 2003); *Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (quoting this proposition of *Eisenschenk*).

Wife also contends that this finding forces her to use her share of the marital property in violation of the rule laid out in *Curtis*. The district court in *Curtis* found that the wife could exchange her assets for higher-yield investments. *Curtis*, 887 N.W.2d at 251. As we previously discussed, in *Curtis*, our supreme court noted that a district court need not "assume that the distributed property will forever remain in the same form." *Id.* at 254.

Here, the district court did not find that Wife must reallocate her assets or that she must use her property to pay living expenses. The district court adopted a rate of return that this expert commonly applies to these portfolios. Like the court in *Curtis*, the district court was not requited to assume that the property would forever remain in the same form. *Id.* Thus, the district court's use of the 4% rate of return was not erroneous.

## II. The district court did not abuse its discretion by not awarding Wife a share of the value of S&P.

The district court has broad discretion in the division of property. *Olness v. Olness*, 364 N.W.2d 912, 914 (Minn. App. 1985). The division of marital property must be equitable, but it need not be equal. *Id.*

Wife argues that the district court abused its discretion by not awarding Wife a share of the value of S&P. Wife's argument is unpersuasive. After the district court found that S&P had no independent value, Wife moved to amend the findings and argued that the district court should assign a value of $119,000 to S&P. She requested that a "mathematical computation be completed to provide [her] a sum of money from Husband to account for [what would be her] share of," in part, S&P.

Here, the district court awarded Wife $1,602,467 in marital assets and Husband $1,712,938. The district court found that Wife had $2,050,505 in non-marital assets, not including her lake home in Arizona, and Husband had $37,652. The district court found that "waiver of the equalizing payment by Husband to Wife is fair and equitable given the sizeable non-marital estate Wife has been awarded." The record shows that Wife had far more non-marital assets than Husband, and Wife does not point to evidence to show that this distribution is inequitable.

Wife asserts that the district court "failed to correct the mathematical calculation" in its amended findings. Wife points to the district court's finding where it stated that it would "amend the marital balance sheet by adding the $119,000 value of S&P to the balance sheet in its Amended Decree." Wife contends that this finding shows that the district court intended to "correct the resulting math to give Wife her marital share." But the district court did amend the marital balance sheet by adding the value of S&P, and it made a finding on why waiver of the equalizing payment was fair and equitable. Therefore, the district court did not abuse its discretion by finding that waiver of an equalizing payment was fair and equitable. *See Olness*, 364 N.W.2d at 914.

## III. The district court did not clearly err by finding that the parties owned 75% of Pemberton Homes.

Wife contends that "Husband created Pemberton Homes as part of divorce planning and as a means to transfer his successful business to his son and avoid personal income." The record does not support this assertion. The district court found that "Wife's analysis is inconsistent with the credible evidence provided by P.P. that he and Husband brought

together the business operations of S&P and Pemberton Companies in the form of Pemberton Homes." P.P. testified that he started talking with Husband about going into business together because the two of them were running parallel businesses and it made sense to join forces to create a larger company. P.P. testified that they split the ownership because at the time he could not get credit. Husband did not "give away" a marital asset, instead he formed a new company and agreed with P.P. that he would own 75% and P.P. would own 25%.

Wife contends that "Husband had a fiduciary duty to Wife when he unilaterally transferred the business of S&P to Pemberton Homes and agreed to give away 25%." But the record demonstrates that Husband was not transferring his business to Pemberton Homes; he was partnering up with his son. Before partnering with Husband, P.P.'s real estate business was improving, and he was at the point of hiring more employees and agents. The record supports the district courts findings, and thus the district court did not clearly err. *See Goldman*, 748 N.W.2d at 284 (noting that findings of fact are clearly erroneous if appellate courts are "left with the definite and firm conviction that a mistake has been made" (quotation omitted)).

## IV. The district court did not err by not accounting for Husband's liquidation of an investment account.

Wife argues that the district court "failed to hold Husband accountable for dissipating a retirement and an investment account and using the funds for non-marital

purposes."[1] Wife contends that the district court failed to account for statements that show that Husband withdrew $11,556.65 from a marital E*TRADE investment account on September 26, 2019, and $11,349.17 from the E*TRADE account on November 14, 2019, which left a balance of $1,988 by the date of valuation.

In Wife's proposed findings, she proposed the following finding: "The parties are owners of the following marital financial accounts . . . Husband's E*TRADE Investment *7582, with a value of $1,988 as of December 31, 2019. Expert Kiwus and Expert Harjes both agree on this value." The district court adopted Wife's proposed finding. Wife moved to amend the district court's finding, arguing that the finding was not supported by the record. The district court denied Wife's motion because "[t]his was not the position Wife took at trial, nor the position Wife advocated in her Proposed Findings of Fact." The district court did not abuse its discretion by denying Wife's motion to amend because "an issue first raised in a post-trial motion is not raised in a timely fashion." *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002).

## V. The district court did not abuse its discretion by giving Wife a choice to file 2020 taxes jointly or separately.

Wife contends that the district court abused its discretion by making her responsible for increased taxes if she chose to file separately for 2020. We disagree. "[T]he [district]

[1] Wife asserts that the district court erred by not accounting for Husband's "marital Wells Fargo IRA with a value of $31,714 which he liquidated on or about January 23, 2019." Husband responds that the district court did account for Husband's liquidation of the Wells Fargo IRA. The district court found that the parties had an interest in "Husband's Wells Fargo IRA, #1737, with a value of $31,714, which he liquidated on or about January 24, 2019." In her reply brief, Wife concedes that "[H]usband is correct that the liquidated account was allocated to him by the [district] court."

court shall make a just and equitable division of the marital property." Minn. Stat. § 518.58, subd. 1 (2022). "The division of marital debts is treated in the same manner as division of assets." *Justis*, 384 N.W.2d at 889. This court will affirm the district court's division of property "if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Antone*, 645 N.W.2d at 100. We review the district court's division of property for an abuse of discretion. *Id.*

The district court found that, if she decided to file her taxes separately for 2020, Wife would be responsible for the additional costs but that if they "decide[d] to file a joint tax return, the parties shall equally be responsible for any tax liability or shall equally divide any tax refund(s)." Wife moved to amend this finding. The district court declined to amend but offered Wife the choice of an alternative:

> In the alternative, Wife may choose to have the parties share in their 2020 tax obligations as determined by their respective accountants/tax preparers and reflected on filed tax returns (and not amended thereafter without prior notice to the other party and provision of the draft amended return) provided by June 30, 2022. In other words, Wife may elect to have the parties separate and paid tax obligations added together, divided by two, and shared equally. Any payment owed by one party to the other to equalize the tax obligation is due to the other party within 7 days of the other providing proof of payment and filing of the tax return. If the party who owes the other for the tax obligation fails to pay the tax equalizing payment to the other party, the party to whom funds are owed funds may file a lien (in the unsatisfied amount) on any real property owned by the other, as set forth by affidavit filed in accordance with law.

Wife contends that this alternative either forces her to be exposed to "possible tax fraud" by filing jointly with Husband or "financially penalizes Wife for filing a separate

tax return from Husband if she does not wish to join in his unverified tax inputs provided to the accountant." The district court's alternative is not a "penalty"; the district court found that if the parties filed jointly, they would share responsibility for any tax liability or equally divide any tax refunds, and that if Wife decided to file separately, the tax liabilities would be added together and the two would share equal responsibility. Indeed, the district court has the authority to order a spouse "to file a joint tax return in order to avoid an unnecessary tax burden." *Theroux v. Boehmler*, 410 N.W.2d 354, 356 (Minn. App. 1987). Here, the district court gave Wife a choice to file jointly or separately, and in either scenario, the district court determined that the tax responsibility for 2020 should be shared equally. Thus, the district court properly exercised its discretion in equitably splitting the marital debts. *See Antone*, 645 N.W.2d at 100.

## VI. The district court did not clearly err when it found that there was insufficient evidence of the value of Husband's Venmo account.

Wife argues that the district court abused its discretion by not including Husband's Venmo[2] account in the division of marital property. We disagree. The district court found that "the value of the Venmo account as of the date of valuation is not known, and the Court declines to assign a value."

Wife contends that "Husband had a duty to supply information to make a full and accurate disclosure of his assets," citing *Bollenbach v. Bollenbach*, 175 N.W.2d 148 (Minn. 1970). In *Bollenbach*, the supreme court noted that a failure to make a full and accurate

[2] Venmo is a smart-phone application that people use to send money to each other. When someone receives a payment, it will sit in their Venmo account until they transfer the money to their bank.

disclosure of their assets and liabilities "justifies inferences adverse to the party who conceals or evades." *Bollenbach*, 175 N.W.2d at 155. But here, the parties agree that Husband testified that his Venmo account did not have a balance on the valuation date. Neither party introduced evidence to show that the Venmo account had $9,418 on the valuation date. Indeed, $9,418 out of a property division of over $3 million is de minimis and does not warrant a remand. *See Duffney v. Duffney*, 625 N.W.2d 839, 843 (Minn. App. 2001) (concluding that a de minimis error does not warrant a remand). Thus, the district court's conclusion that there was insufficient evidence of the value in the Venmo account at the time of valuation to assign a value was not clearly erroneous.

Therefore, we affirm in part, reverse in part, and remand to the district court for the purpose of eliminating the $131,700 deduction for repairs from the valuation of the marital home.

**Affirmed in part, reversed in part, and remanded.**