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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1368**

In re the Marriage of:
Daniel Chaim Tennebaum, petitioner,
Appellant,

vs.

Tara Ajit Deshpande,
Respondent.

**Filed August 14, 2023
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-FA-19-8540

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Minnesota (for appellant)

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Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Halbrooks,
Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from a marriage-dissolution judgment and decree, appellant challenges the district court's valuation of marital property and award of spousal

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

maintenance. Because the district court's valuation of marital property and maintenance award were within its discretion, we affirm.

FACTS

Appellant Daniel Chaim Tennebaum and respondent Tara Ajit Deshpande met in India in 1999. In 2001, they married and moved to Boston for Tennebaum to attend business school. In 2006, they moved back to India when India Capital, an asset-management company specializing in Indian companies, hired Tennebaum to open an office and build a research team in India.

In 2017, Tennebaum became a shareholder of India Capital.¹ At the end of 2020, he owned 55% of the company, with the right to acquire up to 75% of the company by December 2022, for an established share price. In 2019, the parties separated. Tennebaum moved to Minneapolis while Deshpande continued to live in India. That December, Tennebaum petitioned for dissolution of the marriage.

A seven-day trial occurred between November 2021 and February 2022. The trial focused on two issues: valuation of India Capital and Tennebaum's interest in the company, and spousal maintenance. Both parties called numerous witnesses, including experts on business valuation and property division. The district court entered a judgment and decree dissolving the marriage and ordering Tennebaum to pay Deshpande a property settlement

¹ India Capital is two separate but related companies, and Tennebaum owns his interest through a multi-layered structure of business entities. The parties treat India Capital as a single company and Tennebaum's interest as personal. We do also.

equalizer of \$2,209,056 and permanent spousal maintenance of \$5,250 per month. Neither party made posttrial motions. Tennebaum appeals.

DECISION

I. Property Valuation

The 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 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.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). Appellate courts will not overturn 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.

“Determining the specific value of an asset is a finding of fact,” which an appellate court will not “set aside unless clearly erroneous on the record as a whole.” *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (quotation omitted). Under clear-error review, appellate courts “view the evidence in a light favorable to the findings” and “will not conclude that a factfinder clearly erred unless, on the entire evidence, [the appellate court is] left with a definite and firm conviction that a mistake has been committed.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations omitted); *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). Clear-error review does not allow an appellate court to reweigh evidence or reconcile conflicting evidence, even if it would have found “the facts to be different if it determined them in the first

instance.” *Kenney*, 963 N.W.2d at 221-22; *Vangsness*, 607 N.W.2d at 474. Similarly, appellate courts give great deference to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

When it dissolves a marriage, the district court “shall make a just and equitable division of the marital property of the parties.” Minn. Stat § 518.58, subd. 1 (2022). When this requires division of an asset, the district court has three options: (1) divide the asset; (2) order sale of the asset and division of the proceeds; or (3) “determine the value of the asset, order distribution of the entire asset to one of the parties, and order 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). The third method, which the district court employed here, is functionally “a forced sale by one spouse to the other in which the court sets the selling price and the terms of payment.” *Id.* at 188-89.

Valuation of a business, particularly a closely held business, “is an art, influenced by various subtle and subjective factors.” *Id.* at 189-90. The district court must consider the relevant factors, 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 (quoting Rev. Rul. 59-60, 1959-1 C.B. 237, 238-39). In addition to the relevant factors, a “sound valuation” also applies “common sense, sound and informed judgment, and reasonableness to the process of ‘weighing those facts and determining their aggregate significance.’” *Id.* (quoting Rev. Rul. 59-60, 1959-1 C.B. 237, 238).

The district court thoroughly considered the eight factors noted by *Nardini*. And, following the facts emphasized by the parties’ experts, the district court considered the credibility of the parties’ competing valuation experts related to factors one (the nature and history of the business) and four (the business’ earning capacity). Tennebaum’s expert valued his interest in India Capital at \$138,418. Deshpande’s expert valued Tennebaum’s interest in India Capital at \$5,067,804.

The district court found that the opinion as to India Capital’s value from Tennebaum’s expert had “little evidentiary weight” because it was based on a single year, 2019, rather than a range of years, as Deshpande’s expert considered. And, the district court found additional weaknesses with Tennebaum’s expert’s opinion: by looking only at 2019, a year in which no performance fees were earned, it ignored the nearly \$14 million in performance fees earned over the preceding four years; it used an “arbitrary 2% profit margin” to calculate an operating income for 2019 that was less than one-tenth of the average operating income from 2015 to 2019; it assumed that no future performance fees would be earned after 2019 despite performance fees being earned in 2021; and it did not

account for why Tennebaum's dividend in 2019 was more than nine times greater than what he proposed the company was worth. Instead, the district court found the valuation by Deshpande's expert "much more thorough and logical," and adopted his valuation of India Capital and Tennebaum's interest in the company, which included his right to purchase additional company shares up to 75% ownership.

Tennebaum argues that the valuation, which was adopted from Deshpande's expert, is clearly erroneous because it failed to account for the value of his personal goodwill, disregarded the purportedly arms-length transaction when he negotiated his share-purchase price in 2017, and mistakenly valued his right to purchase additional shares as an option. We are not persuaded.

First, Tennebaum correctly notes that personal goodwill should be excluded from the divisible value of a marital asset. *See Rogers v. Rogers*, 296 N.W.2d 849, 853 (Minn. 1980) (stating that failing to discount the value of a business by the value of the party's continued services assumes the party "will continue to contribute his talents and services [and] is, essentially, to capitalize [the party]"). But the district court carefully considered the potential for Tennebaum's personal goodwill as part of its valuation. The district court found that "the record casts doubt on the theory that India Capital has significant value based on [Tennebaum]'s personal goodwill" and cited several supporting facts, which the record confirms. The district court noted that the company's founder had brought in the majority of new investors since 2017; another employee was being groomed to eventually take over management; many employees of the eight-person firm would be "tough to replace"; and, with approved bonuses, three employees would receive compensation in

2021 greater than Tennebaum's salary. Moreover, Tennebaum points to nothing in the record that explains how much of the company's value was due to his personal goodwill, only that his expert included personal goodwill in his valuation. On this record, the district court's failure to assign a value to Tennebaum's personal goodwill was not clearly erroneous. *Cf. 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) (citing this aspect of *Eisenschenk*).

Second, and contrary to Tennebaum's argument, the district court considered Tennebaum's 2017 share-purchase price in its analysis of the seventh *Nardini* factor—listing as a relevant factor "[s]ales of the stock and the size of the block of the stock to be valued." *Nardini*, 414 N.W.2d at 190. But the district court did not find this price to be an accurate reflection of the actual value of India Capital. This finding is based on testimony from Tennebaum's valuation expert explaining that stock sales to employees often involve a "sweetheart deal" as well as testimony from the company's founder that he needed to provide Tennebaum equity to prevent him from being "poach[ed]" by other companies. Tennebaum provides no authority for the proposition that actual sales of company stock must carry special weight in the valuation of a closely held company, and we see no clear error in the district court's decision to give less weight to this factor.

Third, Tennebaum’s contention that the district court misvalued his right to purchase additional shares of the company is, in effect, a disguised attack on the credibility finding of the district court. Deshpande’s expert valued Tennebaum’s stock-purchase right at \$1,651,304, and the district court adopted this valuation as part of its overall finding that the valuation by Deshpande’s expert was “much more thorough and logical.” We generally defer to the district court’s credibility determinations and see no reason to do otherwise here.² *Sefkow*, 427 N.W.2d at 210; *Alam*, 764 N.W.2d at 89.

In sum, we discern no clear error in the district court’s valuation of India Capital and Tennebaum’s interest. Moreover, the valuation is based on weighing the evidence presented by competing experts and assessing their credibility, and we defer to the district court’s weighing of the evidence and credibility determinations. *Vangsnness*, 607 N.W.2d at 474-75; *Sefkow*, 427 N.W.2d at 210.

II. Spousal Maintenance

Spousal maintenance is “an award . . . of payments from the future income or earnings of one spouse for the support and maintenance of the other.” Minn. Stat. § 518.003, subd. 3a (2022). The district court may award maintenance if the requesting

² Tennebaum specifically takes issue with Deshpande’s expert’s use of the Black-Scholes model, which was developed in the 1970s to value publicly traded stock options. Darren K. Oglesby, *Valuing Stock Options in the Marital Context: Speculate, Agree, or Wait and See?*, 20 J. Am. Acad. Matrim. Laws. 39, 42-47 (2006) (discussing the Black-Scholes model). However, as we explained, we defer to the district court’s credibility finding as to the expert’s valuation, and we note that Tennebaum cites no binding authority to support his objection to the use of this model, and the sources he does cite acknowledge that the Black-Scholes model “has a number of variations.” *Chammah v. Chammah*, No. FA 95145944S, 1997 WL 414404, at *6 (Conn. Super. Ct. July 11, 1997).

spouse cannot self-support through earned and investment income, with consideration given to the standard of living established during the marriage. Minn. Stat. § 518.552, subd. 1 (2022); *Schmidt v. Schmidt*, 964 N.W.2d 221, 226 (Minn. App. 2021).

The district court “has broad discretion in deciding whether to award maintenance.” *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021) (quoting *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016)). “A district court’s determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous.” *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). Generally, “[a] district court cannot require a maintenance-seeking spouse to invade the principal of their marital property for self-support.” *Honke*, 960 N.W.2d at 268.

The district court imputed to Deshpande \$30,000 in annual employment income and adopted her expert’s calculation that she would annually receive \$172,800 from her investment property. The district court further found that Deshpande had reasonable monthly expenses of \$17,697 (\$212,364 per year). After adjusting her projected income for taxes, the district court awarded Deshpande \$5,250 per month (\$63,000 per year) in permanent spousal maintenance.

Tennebaum argues that the district court abused its discretion because it “manufactured a need for maintenance by understating [Deshpande’s] investment income and overstating her expenses.” He contends that the district court made three clearly erroneous findings: (1) that Deshpande would deplete a high-yielding account to purchase a home and, as a result, lose the income from the account; (2) an artificially low interest rate for Deshpande’s investments; and (3) a standard of living established during the

marriage based on “speculative expenses derived from deficit spending and unsupported guesses about the future.” We address each argument in turn.

Disposition of Assets

The district court found credible Deshpande’s assertion that she intended to purchase a home and concluded that it “should be allowed” for several reasons: it was consistent with the history of home ownership during the marriage, it aligned with Tennebaum’s plan to purchase a home, it lowered Deshpande’s monthly budget, and it reduced her financial exposure to market volatility. The district court found Deshpande’s plan to liquidate a particular asset to fund the home purchase reasonable because she “will receive a tax benefit by using her non-marital stock interest to invest in a residence, thereby avoiding substantial tax on capital gains.”

Because “each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties,” the district court has broad discretion in determining what income assets can produce. *Curtis*, 887 N.W.2d at 254 (quotation omitted). Important factors for the district court to consider include the nature of the asset, particularly its liquidity; the spouse’s age and needs; and the tax consequences of requiring the maintenance-seeking spouse to reallocate assets. *Id.* at 254-55.

Tennebaum argues that the district court “created need” by accepting Deshpande’s plan to liquidate a high-yielding asset to purchase a home. He contends that this plan violated Deshpande’s obligation to make prudent investments to meet her needs and was speculative.

The district court’s findings show that it carefully considered the unique facts and circumstances of the case. *See id.* (explaining that the facts and circumstances specific to the parties are important for the district court to consider when determining what income assets can produce). The district court determined that it was reasonable for Deshpande to purchase a home and liquidate a high-yielding asset to fund the purchase for several reasons, including that she would avoid “substantial” capital gains tax, the asset was a “non-liquid account with a low level of realized income,” homeownership would give her greater financial security and reduce her monthly expenses, and the parties had owned homes in Boston and Manhattan during the marriage. Additionally, the district court credited Deshpande’s testimony that she planned to purchase a home. Tennebaum’s assertion that the purchase was speculative is an attack on the district court’s credibility determination, to which we defer. *Sefkow*, 427 N.W.2d at 210; *Alam*, 764 N.W.2d at 89.

The district court’s judgment makes clear that its determination was based on the unique facts and circumstances of the parties. Tennebaum does not contend that the factual underpinnings of the district court order are unsupported by the record, and we conclude that the district court’s determination logically considered the tax and stability benefits of Deshpande’s plan to purchase a home.

Rate of Return

The district court applied a 4% rate of return to calculate Deshpande’s investment income, based on the testimony and analysis from Deshpande’s expert. Tennebaum argues that this rate is clearly erroneous because it “disregarded [Deshpande’s] highest-yielding portfolios” and ignored the higher rate she had historically achieved.

The district court adopted the rate of return and analysis of Deshpande's expert, whom it found credible. We do not generally interfere with the district court's credibility determinations. *Sefkow*, 427 N.W.2d at 210; *Alam*, 764 N.W.2d at 89. Moreover, the district court's analysis belies Tennebaum's claims. As discussed above, the district court's approval of Deshpande's plan to purchase a home was within its discretion. It naturally follows that the high-yielding asset liquidated to purchase the home would not contribute to the investment income available to Deshpande, a fact which the district court took into consideration when analyzing the rates calculated by the competing experts.

With respect to the rate of return Deshpande historically earned on her investments, Tennebaum's expert calculated a rate of 9.89%. The district court discredited Tennebaum's expert because his calculation "was weighted over a 10-year period, including years prior to [Deshpande's] ownership of the stock," and it was "not certain" that the expert considered the impact of capital gains tax. In contrast, the district court credited Deshpande's expert because he analyzed her "actual investment income from 2018 through 2021" to reach a rate of 4.835% before accounting for inflation. Then the expert concluded that a 4% rate would be appropriate. This rate, Deshpande's expert opined, was commonly used by experts in Minnesota while noting that it was "fairly generous" in light of India's high inflation rate and declining rates of return on income-generating deposits. Thus, contrary to Tennebaum's argument, the district court did consider Deshpande's historical returns. And, the rate the district court chose is based on which expert it found credible, a finding to which we defer. *Sefkow*, 427 N.W.2d at 210; *Alam*, 764 N.W.2d at 89.

Standard of Living

Tennebaum argues that the district court clearly erred by basing Deshpande's reasonable monthly costs on "at least two speculative expenses"—the cost of purchasing a home and a \$2,500-per-month allowance for "furniture and appliances." We are not persuaded.

First, as discussed above, the district court's finding that Deshpande would purchase a home is based on a credibility determination, to which we defer, and additional findings regarding why it is reasonable for Deshpande to purchase a home. *Sefkow*, 427 N.W.2d at 210; *Alam*, 764 N.W.2d at 89. Moreover, because Deshpande did not plan to finance the purchase, the home purchase would *reduce* her monthly expenses by eliminating mortgage or rent payments and negatively impact only the assets she had available to generate income.

Second, Tennebaum's argument that the \$2,500 award for "furniture and appliances" is speculative misrepresents the district court's finding. The court found this expense category to include "*merchandise*, appliances, and furniture." (Emphasis added.) Deshpande's four-year spending report includes art, designer shoes, watches, bags, and accessories in the "merchandise" category, not just furniture and appliances. Moreover, the district court reduced this expense from the \$4,732 Deshpande requested. And, Tennebaum does not challenge any other specific aspect of the district court's determination of Deshpande's reasonable monthly expenses, which the district court noted

were “almost exactly one-half of the marital monthly after-tax cash flow determined by the Court.”

Affirmed.