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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1421**

In re the Marriage of:
Jerry Arthur McDonald, petitioner,
Appellant,

vs.

Donna Arnela McDonald,
n/k/a Donna Arnela Rosenblad,
Respondent.

**Filed December 4, 2023
Affirmed in part, reversed in part, and remanded
Worke, Judge**

Fillmore County District Court
File No. 23-FA-21-170

Thomas R. Braun, Tammy L. Shefelbine, Bruce K. Piotrowski, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

In this marriage-dissolution appeal, appellant-husband challenges the district court's (1) classification of assets as marital or nonmarital, (2) division of marital property, and (3) valuation of marital property. Because we agree with the district court's valuation

of the marital home, determination that wife had a nonmarital interest in that home, and determination of wife's other nonmarital interests in property, we affirm in part. But because the district court erred in its determination of the value of other marital accounts of husband, we also reverse in part and remand.

FACTS

Appellant Jerry Arthur McDonald (husband) and respondent Donna Arnela Rosenblad¹ (wife) married in March 2019 and separated in February 2021. Before their marriage, each party owned a home. Husband's home later became the marital home. Wife sold her home and deposited the proceeds (\$109,719.52) into a joint account of the parties.

Before the marriage, husband opened three investment accounts and a Thrift Savings Plan (TSP) retirement account. Husband was also obligated to make child-support payments for a nonjoint child until December 2019. And in May 2019, husband received \$10,000 from wife's mother to purchase a motorcycle. Wife's mother asserted that the \$10,000 was a loan that husband was expected to repay.

In the proceedings to dissolve the parties' marriage, they agreed that, when they married, the marital home was worth \$370,000 and had an outstanding mortgage of \$262,827.63. The value of the marital home on the valuation date and the extent of each party's nonmarital interest therein were contested, however.

¹ Formerly Donna Arnela McDonald.

After a trial, on August 23, 2022, the district court entered a judgment dissolving the parties' marriage. In the judgment, the district court found that, when the parties married, the marital home had a market value of \$370,000 and an outstanding mortgage of \$262,827.63, meaning that husband's nonmarital equity in the home when the parties married was \$107,172.37, or about 28.965505%. The district court also found that on the valuation date, the marital home had a market value of \$510,000 and an outstanding mortgage of \$263,546.96²; husband's nonmarital interest in the home was \$107,172.37; and wife's nonmarital interest was \$66,740. Husband was awarded title to the marital home.

Regarding other matters, the district court:

1. Ruled that the sum of the current balances of husband's investment accounts was \$201,571.24. Husband's aggregate nonmarital interest in those accounts was \$145,005, and the remaining marital interest was approximately \$56,566.
2. Ruled that the current value of husband's TSP was \$199,133. Husband's nonmarital interest was \$159,791 and the remaining marital interest was \$39,342.
3. Ruled that during the marriage, the parties made a \$2,000 overpayment of husband's child-support obligation, to which husband was entitled to the full repayment.
4. Acknowledged that awarding husband title to the motorcycle and marital home awarded him assets in which wife had nonmarital interests of \$10,000 and \$66,740, respectively.

² The increase to the outstanding mortgage from the date of marriage to the valuation date was the result of the parties' refinancing of the marital home in December 2020.

5. Ruled that an equitable division of the parties' marital property required an equal division of that property.

6. Ruled that given its division of the parties' assets, husband was directed to make a \$156,083.09 payment to wife to account for her nonmarital interests in assets awarded to husband (\$76,740) and the amount necessary to otherwise equalize the division of marital property (\$79,343.09).

This appeal followed.

DECISION³

Marital home

We reject husband's argument that the district court's valuation of the marital home fails to account for the improvements made during the marriage.

A district court's valuation of property is a finding of fact. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). Appellate courts will not set aside a finding of fact unless the finding is clearly erroneous. Minn. R. Civ. P. 52.01; *see Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (applying rule 52.01 in family-law appeal). The clear-error standard of review "is a review of the record to confirm that evidence exists to support the

³ Husband notes that the district court adopted wife's proposed judgment with what he asserts are minimal changes, and that a district court's adoption of proposed findings verbatim is disfavored. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 572 (1985); *Pooley v. Pooley*, 979 N.W.2d 867, 878 (Minn. 2022). The district court, however, did not adopt the proposed judgment verbatim. Further, husband makes no effort to identify an actual error in the district court's process of adopting the proposed judgment. Therefore, we do not address this issue. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (noting that error is "never" presumed on appeal); *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022) (stating that appellate courts "cannot presume error by the district court"); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (citing *Loth*).

decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted). When applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Thus,

an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court’s duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. at 222 (quotations omitted); *see Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in family-law appeal); *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (discussing clear-error standard of review).

Here, in valuing the marital home at \$510,000, the district court found that, but for \$59,237.60 spent during the marriage to improve the marital home, its value would be “approximately \$443,260,” or \$66,740 less. In making these findings, the district court stated that its valuation was supported by the fact that the parties made the improvements, noted that the experts of both parties opined that “the parties did not waste money on the improvements,” recognized that husband’s \$430,000 suggested value would mean that the increase in value during the marriage would be less than what the record showed was the

average increase in the value of comparable homes over the same period of time, and explicitly stated that husband's suggested value was "less credible" while wife's suggested value was "more credible and better supported by the underlying circumstances." Given our clear-error standard of review, and particularly our deference to the district court's credibility determinations, *see Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988), we cannot say husband has shown that the district court clearly erred in valuing the marital home at \$510,000.

The district court ruled that wife's nonmarital interest in the marital home was \$66,740 based on its finding that \$59,237.60 of the improvement costs were paid with proceeds from the sale of wife's premarital home, and that these improvements accounted for about \$66,740 of the \$139,280.67 increase in the value of the home during the marriage. Noting that the proceeds from the sale of wife's nonmarital home were deposited into a joint account, husband challenges the district court's determination that wife traced her nonmarital interest.

Depositing nonmarital funds into a joint account does not cause the nonmarital funds to lose their nonmarital character if those funds can be traced. *Nash v. Nash*, 388 N.W.2d 777, 781 (Minn. App. 1986), *rev. denied* (Minn. Aug. 20, 1986); *Prahl v. Prahl*, 627 N.W.2d 698, 705 (Minn. App. 2001). If the district court accepts the relevant testimony, the tracing of nonmarital interest can be accomplished based solely on otherwise undocumented testimony. *Doering v. Doering*, 385 N.W.2d 387, 390-91 (Minn. App. 1986). "Whether a nonmarital interest has been traced is . . . a question of fact" reviewed

for clear error. *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2001); Minn. R. Civ. P. 52.01.

Here, the district court explicitly acknowledged that wife's proceeds were deposited into a joint account, and still found that wife traced a nonmarital interest into the marital home. Viewing this record in the light most favorable to that finding, and particularly, the district court's consideration of the funds going into and out of the joint account, we cannot say that husband showed that the finding that wife traced a nonmarital interest into the home is clearly erroneous. Additionally, we reject husband's assertion that *Crosby v. Crosby* supports his claim that wife did not trace a nonmarital interest into the marital home. 587 N.W.2d 292, 296-97 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999). *Crosby* simply affirms the district court's finding that tracing did not occur in that case. *See id.* Lack of clear error in *Crosby* does not show its existence in this case.

Marital and nonmarital interests in the home

Husband challenges the district court's calculation of the amounts of the parties' marital and nonmarital interests in the marital home. Husband notes that the district court did not apply the *Schmitz* formula to the \$510,000 value of the marital home to calculate his nonmarital interest. *See Schmitz v. Schmitz*, 309 N.W.2d 748, 750 (Minn. 1981) (addressing calculation of nonmarital interest in asset that changed in value during marriage); *Antone v. Antone*, 645 N.W.2d 96, 101-04 (Minn. 2002) (discussing application of *Schmitz* formula in different contexts). While it does not appear that the district court

used the *Schmitz* formula, we reject husband's assertion that the district court should have applied the *Schmitz* formula to the entire \$510,000 value of the marital home.

“[T]he *Schmitz* formula applies only to the appreciation of property not attributable to improvements made by the parties.” *Dorweiler v. Dorweiler*, 413 N.W.2d 572, 575 (Minn. App. 1987). Here, it is undisputed that the marital home was improved during the marriage. Further, above, we affirmed the district court's finding that, because the improvements were paid for using wife's nonmarital proceeds, wife traced a nonmarital interest into the marital home. Thus, while there is a presumption that improvements made to an asset during a marriage are marital, *Dorweiler*, 413 N.W.2d at 576, here, wife rebutted that presumption. As a result, each party has a nonmarital interest in the marital home.⁴

Generally, when improvements made to a home during a marriage increase that home's value, a

[p]roper [*Schmitz*] calculation of [a] current nonmarital interest in the homestead requires that the court first divide [the] nonmarital contribution to the downpayment by the purchase price of the house. Next, the cost of repairs and improvements must be subtracted from the current value of the house . . . to determine the increase in value of the property due solely to appreciation. Finally, the net appreciated value of the house must be multiplied by the ratio of nonmarital net equity to the purchase price . . . to determine [the] nonmarital interest in the homestead.

⁴ We note that, here, because the improvements made to the marital home required the parties to take an active role to increase the value of the home, the *Dorweiler* formula must be applied before the *Schmitz* formula can be applied, because the *Schmitz* formula contemplates the passive increase in value to the marital home through appreciation caused solely by an increase to the market.

Id. (citation omitted). Additionally, here, during their marriage, the parties refinanced the marital home, increasing the balance due on the mortgage. How the district court accounted for the increased mortgage balance is also less than clear, as is whether the equity borrowed against in the refinancing process was marital or nonmarital (and if nonmarital, whose nonmarital interest). Therefore, we remand for the district court to recalculate the extent of the parties' marital and nonmarital interests in the marital home using the *Schmitz* formula, account for the improvements (*Dorweiler* formula), and account for the increased mortgage balance.⁵

Property division

Husband challenges parts of the district court's property division involving certain investment accounts, a retirement account, a motorcycle, certain debts, and the refund of a child-support overpayment. Generally, marital property is "property, real or personal, . . . acquired by the parties, or either of them, to a dissolution . . . at any time during the existence of the marriage relation between them . . . but prior to the date of valuation" Minn. Stat. § 518.003, subd. 3b (2022). Assets acquired during a marriage by either spouse are presumed to be marital. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). A spouse claiming a nonmarital interest in an asset presumed marital can prove the

⁵ We note that while we are remanding for recalculation of the various interests in the marital home, we appreciate the detail in the district court's order on this point. Nothing in this opinion should be construed as an expression of this court's opinion on what the resolution of the remanded calculations should be. On remand, on this issue, the district court shall have discretion to reopen the record as it deems necessary, if it believes that additional information is needed to perform the *Schmitz* calculations.

claimed nonmarital interest by a preponderance of the evidence. *Id.* Nonmarital property is property acquired by a spouse which

- (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;
- (b) is acquired before the marriage;
- (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);
- (d) is acquired by a spouse after the valuation date; or
- (e) is excluded by a valid antenuptial contract.

Minn. Stat. § 518.003, subd. 3b. Appellate courts review de novo whether property is marital or nonmarital but will not alter a district court's underlying finding of fact unless that finding is clearly erroneous. *Olsen*, 562 N.W.2d at 800.

Investment accounts

The district court ruled that husband's nonmarital interest in the relevant investment accounts was about \$147,005, and that the remaining \$56,566 in those accounts was marital property. Husband asserts that the \$56,566 was passive appreciation of the investment accounts, and therefore his nonmarital property. Generally, appreciation of an investment account during a marriage is marital if it arises from active management but is nonmarital if the appreciation is passive due to, for example, inflation or market conditions. *Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008).

Here, husband created the investment accounts before the marriage. During the marriage, he made no contributions to, received no payments from, received dividends from, made no withdrawals from, did not borrow against, and did not otherwise personally manage the accounts. In *Baker*, an account manager testified that he and his employees had discretion to invest the relevant funds, and that the respondent's involvement was

“[v]ery passive.” *Id.* at 648. That record showed that the respondent ordered a single trade while the account was open, the respondent neither withdrew funds nor received distributions, and all investment returns were reinvested. *Id.* The supreme court ruled that the respondent’s use of a financial institution meant that he did not need to devote much marital effort to managing the funds; hence, the appreciation of the account was passive. *Id.* at 652-53. The facts here mimic those in *Baker*. Because passive appreciation is nonmarital, we reverse the district court’s determination that the appreciation of husband’s investment accounts was marital property.

Retirement account

Before the marriage, husband borrowed \$9,338.37 from his TSP. During the marriage, wife’s nonmarital funds were used to repay the TSP. The district court included the repaid amount in the marital portion of the TSP. To account for the use of wife’s nonmarital funds to repay husband’s nonmarital debt, the district court included \$9,338.37 in husband’s property-equalization payment. Husband seems to argue that doing so constitutes “double dipping” because the district court included the repayment in the marital portion of the TSP. We see no reversible error. Using wife’s nonmarital funds to repay husband’s nonmarital debt decreased wife’s nonmarital property by the amount of the repayment. The district court’s inclusion of the repayment in the marital share of the TSP (instead of giving wife a nonmarital interest in the TSP) artificially increased the marital estate by the amount of the repayment. Because the district court equally divided the marital estate, wife received half of that artificial increase. Thus, any “double dipping” is limited to half of the \$9,338.37 included in the property-equalization payment. In the

context of this marital estate, an error of that size is de minimis. And appellate courts ignore de minimis errors. *Risk ex rel. Estate of Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010); *Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009).

Motorcycle

Husband challenges the district court's award to wife of a \$10,000 nonmarital interest in a motorcycle. The district court based this award on its finding that wife used nonmarital funds to repay her mother the \$10,000 loan to husband to purchase his motorcycle. The crux of husband's argument seems to be that the district court clearly erred in finding that the loan from wife's mother was to husband to buy the motorcycle, rather than to the parties to pay living expenses. While husband's argument cites evidence that he asserts supports his view of the matter, he misapprehends the standard of review.

The question on appeal is *not* whether the record *could* support the findings husband wanted the district court to make—it is whether the evidence *does* support the findings that the district court *did* make. *See Kenney*, 963 N.W.2d at 223 (“When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” (quotation omitted)); *Vangsness*, 607 N.W.2d at 474 (“That the record might support findings other than those made by the [district] court does not show that the court's findings are defective.”). An argument that simply cites evidence that *could* support findings that differ from those made by the district court does not identify the evidence that *supports* the findings that the district court made. Nor does it explain why, when we are required to view that evidence in the

light most favorable to the findings of the district court, that those findings are *clearly* erroneous. *See Kenney*, 963 N.W.2d at 221. Thus, challenging a district court’s findings of fact by simply marshalling evidence that could support findings that differ from those made by the district court is an inadequate way to challenge those findings. Here, there is evidence to support the district court’s findings and husband has not attempted to show how, given that evidence, that the district court’s findings are clearly erroneous. Therefore, our inquiry on this point is done. *See id.* at 222 (“[A]n appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court.” (quotation omitted)).

Child-support overpayment

Noting that husband’s \$2,000 child-support overpayment occurred during the marriage, the district court ruled that the debt owed by the support recipient was marital property, awarded it to husband, and compensated wife accordingly. Husband challenges the award to him of the full amount, arguing that recovery of those funds is unlikely. Husband’s argument amounts to a challenge to the district court’s valuation of the support recipient’s debt. As noted, a district court’s valuation of property is a factual determination reviewed for clear error. *See Maurer*, 623 N.W.2d at 606. Husband has not shown the district court’s valuation of this item of property to be clearly erroneous.

In sum, we (1) affirm the district court’s valuation of the marital home, determination that wife had a nonmarital interest in that home, treatment of the TSP, award to wife of a \$10,000 interest in the motorcycle, and treatment of the child-support overpayment; (2) reverse the district court’s identification of the amounts of the marital

and nonmarital interests in the marital home, and determination that the appreciation of the relevant investment accounts was marital property; and (3) remand for the district court to recalculate the marital and nonmarital interests in the marital home, and make any adjustments to the property equalization payment it deems necessary to achieve an equitable distribution of the parties' marital property. The district court shall have discretion to reopen the record if it deems it necessary to do so in determining the equalization adjustment based on its calculations of the parties' interests.

Affirmed in part, reversed in part, and remanded.