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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0418**

In re the Marriage of:

Renee Caroline McGeary, petitioner,
Respondent,

vs.

John Patrick McGeary,
Appellant.

**Filed April 8, 2024
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-FA-21-1857

Kathryn M. Lammers, Courtney Latcham, Carlo E. Faccini, Heimerl & Lammers, LLC,
Minnetonka, Minnesota (for respondent)

Jason C. Brown, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant John Patrick McGeary (husband) challenges the property division following a marriage-dissolution trial, arguing that the district court abused its discretion by (1) awarding respondent Renee Caroline McGeary (wife) a greater portion of the parties' retirement accounts because husband improperly disposed of marital assets, (2) ordering husband to reimburse wife for child-related expenses she incurred while the dissolution proceeding was pending, and (3) requiring the parties to replenish their children's college savings accounts. We affirm.

FACTS

The parties married in March 2003 and have three joint children. Wife commenced this dissolution proceeding in October 2021, and the parties separated six months later. In January 2023, the district court dissolved the marriage following a three-day trial during which husband represented himself.

While the dissolution was pending, the parties sold their Blaine home, netting approximately \$272,858. Wife had used nonmarital funds for the down payment and earnest money, giving her a nonmarital interest of \$46,152 in the home. The parties agreed to a preliminary disbursement of the remaining home-sale proceeds in the amount of \$30,000 per party.

The parties' assets also included various retirement accounts.¹ At trial, wife sought an unequal distribution of the parties' marital interests in these accounts, arguing, among other things, that husband wasted marital assets by poorly investing \$200,000 in a nuclear energy deal.² The district court agreed, concluding that wife is entitled to "an unequal distribution of the retirement funds to make her whole."

Husband lost his job in 2018. Due to his unemployment and other financial hardships, wife paid \$49,029 for expenses related to the children. And she withdrew \$37,834 from the children's college savings accounts to pay their tuition at a private high school. At the time of trial, there was outstanding tuition debt in the amount of \$15,104.

The district court determined that the parties were equally responsible for those expenses (totaling \$101,967) and ordered that they be deducted from the home-sale proceeds before dividing the remaining proceeds between the parties. After deducting wife's nonmarital interest and the parties' joint marital debts from the home-sale proceeds, the remaining proceeds were to be disbursed equally between the parties in the amount of \$34,869 per party. Husband's share was further reduced to \$5,912 to account for payments wife made solely for husband's benefit during the dissolution proceeding.

Husband appeals.

¹ Both parties had nonmarital retirement accounts, which are not at issue in this appeal.

² Neither party states when husband made the investment or identifies it by name. But they agree that husband invested in nuclear energy and lost approximately \$200,000.

DECISION

When dissolving a marriage, “the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property.” Minn. Stat. § 518.58, subd. 1 (2022). “An equitable division of marital property is not necessarily an equal division.” *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999). But the division must be based on “equitable considerations” and “the particular facts of each case.” *Southwell v. Southwell*, 413 N.W.2d 580, 583 (Minn. App. 1987) (quotation omitted).

A district court has “broad discretion in evaluating and dividing property,” and we will not set aside its property division absent an 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.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). We will not disturb a district court’s findings of fact unless they are clearly erroneous. *Bissell v. Bissell*, 191 N.W.2d 425, 427 (Minn. 1971) (citing Minn. R. Civ. P. 52.01).

Under the clear-error standard of review, we evaluate the evidence in a light favorable to the district court’s findings. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). In doing so, we do not reweigh the evidence, engage in fact-finding, or reconcile conflicting evidence. *Id.* at 221-22. “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.

Husband challenges three aspects of the property division, arguing that the district court abused its discretion by (1) awarding wife a greater portion of the parties’ retirement accounts because he wasted marital assets, (2) ordering him to reimburse wife for child-related expenses, and (3) requiring the parties to replenish the children’s college savings accounts. We address each argument in turn.

I. The district court did not abuse its discretion by making an unequal division of the parties’ retirement accounts.

During a marriage, both spouses are presumed to have made substantial contributions to acquiring income and property. Minn. Stat. § 518.58, subd. 1. When dividing parties’ assets and debts, a district court must “consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property.” *Id.*

Marital property includes “property, real or personal . . . acquired by the parties . . . during the existence of the marriage.” Minn. Stat. § 518.003, subd. 3b (2022). Property acquired by a spouse during a marriage is presumed to be marital unless it falls within an enumerated exception for nonmarital property. *Id.*; see *Gill v. Gill*, 919 N.W.2d 297, 302-03 (Minn. 2018) (“We have interpreted nonmarital property narrowly because the [l]egislature created only five enumerated exceptions to the expansive definition of what constitutes marital property.” (quotations omitted)). Nonmarital property includes “property real or personal, acquired by either spouse” that “is acquired before the

marriage,” or “is acquired in exchange for or is the increase in value” of nonmarital property. Minn. Stat. § 518.003, subd. 3b.

Whether increases in the value of nonmarital property during the marriage are nonmarital turns on the distinction between active and passive appreciation. *Baker v. Baker*, 753 N.W.2d 644, 650 (Minn. 2008). Active appreciation of a retirement account constitutes marital property because it results from a spouse’s efforts during the marriage, for example, by adding funds from earnings or other sources to the account. *Id.* In contrast, passive appreciation of a retirement account does not constitute marital property because it results from changes in market conditions or inflation that occur without anyone’s effort. *Id.* The burden of proof lies with the party seeking to establish that the appreciated value of a nonmarital account is nonmarital property. *See id.* at 649-50.

Determining whether property is marital or nonmarital presents a question of law, which we review de novo. *Gill*, 919 N.W.2d at 301. But a district court’s underlying findings of fact will not be disturbed unless they are clearly erroneous. *Id.*

At the time of trial, the parties’ marital retirement accounts had a combined balance of \$724,343.59. The district court assigned to wife approximately 65% of the accounts (\$472,613.37) and assigned to husband approximately 35% (\$251,730.22). The district court found that husband’s “\$200,000 loss related to his investment in nuclear energy” constituted “waste during the marriage,” justifying an unequal division of the parties’ retirement accounts in favor of wife.

Husband contends that the district court clearly erred by finding that he wasted a marital asset and abused its discretion by relying on this finding to justify an unequal

division of the parties' retirement accounts. His arguments require us to determine, first, whether the \$200,000 he lost in a poor investment was a marital asset and, second, whether husband failed to preserve it.³

A. Husband did not meet his burden to establish that the \$200,000 he lost in the poor investment was his nonmarital property.

Husband argues that the record does not support the district court's finding that the \$200,000 he admittedly lost in the nuclear investment was a marital asset. We are not persuaded.

At trial, the parties offered statements from two of husband's retirement accounts: (1) a Fair Isaac 401(k) retirement account, opened before the parties' marriage, into which husband placed the proceeds from the sale of the home he owned prior to the marriage; and (2) a Bluestem Fidelity 401(k) retirement account, which husband opened when he changed jobs. Based on the account statements and related testimony, the district court found that husband

did not passively sit on non-marital investments and allow them to accrue, but actively managed and moved his funds using his marital efforts. [Husband's evidence] fail[ed] to document a passive investment, but rather shows money moving in and out of accounts over twenty years.

³ We note that the parties and the district court framed the issue in terms of marital "waste." We decline to do so. "Waste" is an antiquated term; the issue here is more appropriately viewed as failure to preserve marital assets. *See* Minn. Stat. § 518.58, subd. 1; *cf. id.*, subd. 1a (2022) (addressing transfer, encumbrance, concealment, and improper disposition of marital assets). To that extent, we agree with husband that the district court committed legal error by analyzing his poor investment loss as dissipation of an asset. But for the reasons explained below, this error is harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) ("[W]e will not reverse a correct decision simply because it is based on incorrect reasons.").

The record supports these findings.

Husband produced three Fair Isaac account statements. The first, from February 2003, predated the marriage and shows a beginning balance of \$8,934.31 and a small decrease in value due to market changes. The second, from February 2006, shows a beginning balance of \$63,487.16, contributions from husband (\$653.37) and from husband's employer (\$174.23), and a change in market value (subtracting \$1,132.17). And the third, reflecting February through March 2006, shows a beginning balance of \$63,487.16, contributions from husband (\$2,613.48) and his employer (\$696.92), a rollover contribution of approximately \$192,332; and a change in market value (adding \$206.18). The statements do not identify the source of the \$192,332 rollover, and no testimony was offered to explain it. In short, the Fair Isaac account statements show funds being added to and moving through the account during the marriage.

The parties also produced several of husband's Bluestem Fidelity account statements. One statement shows how the account funds increased from December 31, 2011, to December 30, 2021. That statement shows a beginning balance of \$20,462.31, contributions from husband (\$110,333.32) and from husband's employer (\$29,405.77), a change in market value (adding \$90,588.37), and an ending balance of \$250,108.03. A later statement, from April through June 2022, indicates a beginning balance of \$1.75, a contribution of \$221,084.67, and an ending balance of \$221,174.72.

Baker guides our analysis as to whether the \$192,332 rolled into the Fair Isaac account in 2006 is husband's nonmarital property. In *Baker*, our supreme court concluded that the appreciation of Baker's nonmarital retirement funds remained nonmarital property,

reasoning that Baker’s retention of investment advisors and managers, minimal exercise of his authority to direct investments, and failure to make any withdrawals from the account demonstrated that Baker had not personally managed the account. 753 N.W.2d at 652-53. Because the increased value of Baker’s nonmarital retirement accounts reflected passive appreciation, that appreciation did not generate marital funds. *Id.*

The facts here support a different determination for several reasons. First, husband did not retain professionals to manage his retirement accounts. Second, the account statements show both husband and his employer deposited funds into the accounts during the parties’ marriage. Third, although husband denied ever withdrawing money from his Fair Isaac account, he admitted that he used his premarital home-sale proceeds—which were originally held in his Fair Isaac account—to invest in nuclear energy. In short, the record supports the district court’s finding that husband “actively managed and moved his funds using marital efforts,” making the accounts marital property.⁴

⁴ We note that the parties framed the issue to the district court in terms of waste and appreciation. And the district court understandably addressed the parties’ issues as presented. On appeal, although husband challenges the district court’s “dissipation” analysis, neither party directly challenges the district court’s implied reliance on *Baker* in determining that husband’s entire Fair Isaac account is marital property. For three reasons, we will not alter that analysis here. First, caselaw weighs against this court analyzing the issue differently on appeal. See *Annis v. Annis*, 84 N.W.2d 256, 262-63 (Minn. 1957) (stating that “[t]he general rule . . . is that litigants are bound in this court by the theory or theories, however erroneous or improvident, upon which the action was actually tried below”); *Blakey v. Jones*, 997 N.W.2d 67, 72 (Minn. 2023) (citing *Annis*). Second, “[w]hether a nonmarital interest has been traced is . . . a question of fact.” *Kerr v. Kerr*, 770 N.W.2d 567, 571 (Minn. App. 2009). And appellate courts do not find facts. *Kenney*, 963 N.W.2d at 221. Third, “[w]hen nonmarital and marital property are commingled, the nonmarital investment may lose that character unless it can be readily traced.” *Wiegers v. Wiegers*, 467 N.W.2d 342, 344 (Minn. App. 1991); see *Baker*, 753 N.W.2d at 653 (noting this aspect of *Wiegers*). Here, the record is devoid of evidence explaining how or when

On this record, the district court did not clearly err by impliedly determining that husband failed to meet his burden to show that his retirement accounts were nonmarital. Because they are marital property, any failure to preserve them is a circumstance that the district court was allowed to consider when dividing the parties' marital property. We turn next to that issue.

B. The record supports an unequal distribution of the parties' retirement accounts because husband failed to preserve a marital asset.

To ensure a just and equitable division of marital property, the district court must consider all relevant factors, including each party's contribution to the "acquisition, preservation, depreciation or appreciation in the amount or value of the marital property." Minn. Stat. § 518.58, subd. 1; *see Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005) (explaining that the district court may consider a party's contribution to preserving family land when dividing marital property). The district court need not be exact in its valuation of assets; "it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979). A district court's valuation of particular property is a finding of fact that we will not set aside unless it is clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

husband invested funds he admitted came from his Fair Isaac account. Therefore, even if this court tried to review the point de novo or remanded it to the district court, the same result would be reached. *See Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993) (holding that husband failed to prove that funds he brought into the marriage were nonmarital when the record was "devoid" of any explanation of where the premarital funds went but suggested that they were commingled with marital funds).

Husband asserts that even if the \$192,332 he rolled into the Fair Isaac account constitutes marital property, the record does not support the district court's finding that he used it as part of the \$200,000 he invested in nuclear energy.⁵ We are not persuaded.

It is undisputed that husband lost \$200,000 in a poor investment. It is undisputed that wife did not consent to the \$200,000 investment, and there is no evidence that she had any prior knowledge of the investment. And it is undisputed that wife did not have access to the retirement account from which husband withdrew the \$200,000. Due to her lack of access, wife admitted she could not be certain how husband used the funds. But based on husband's history of making poor investments, she testified that the \$200,000 that had been in husband's retirement account no longer existed. The district court accepted wife's testimony.

Other evidence is consistent with wife's testimony that husband used funds from his retirement account to make the \$200,000 investment. The March 31, 2007 Fair Isaac statement reveals an account balance of approximately \$223,000. Husband testified that he moved his retirement funds from the Fair Isaac account to the existing Bluestem Fidelity retirement account when he changed jobs. But the first Bluestem Fidelity account statement, dated October 31, 2010, shows a beginning balance of \$0. When asked where the \$223,000 in the Fair Isaac account went, husband could not provide an answer. Rather,

⁵ Husband also takes issue with the district court's finding that he gambled "thousands of dollars in single days," arguing that "[g]ambling losses in the thousands" are de minimis because he earned approximately \$176,000 per year from 2007 to 2017. We need not decide this issue because we read the district court's order to say that it based the unequal division of the parties' retirement funds on its finding that husband lost \$200,000 in the nuclear investment.

he testified that the Fair Isaac account was either closed or empty and that he was not hiding money anywhere, as he had disclosed all of his assets.

The district court was well within its discretion to rely on wife's un rebutted testimony as to husband's poor investing habits and the value of the funds he lost. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to the district court's credibility determinations); *Doering v. Doering*, 385 N.W.2d 387, 390-91 (Minn. App. 1986) (holding that the district court did not err by determining value of property based on a party's testimony). That testimony, coupled with husband's candid acknowledgment that he invested the \$200,000 poorly, amply support a determination that husband failed to preserve a marital asset.

While the district court adopted the parties' characterization of the loss occasioned by husband's poor investment as waste of marital assets, its order notes that the law requires courts to consider each spouse's efforts to preserve marital property when dividing marital assets and debts. On this record, we are convinced that if the district court had grounded its division of marital property on the correct standard—Minn. Stat. § 518.58, subd. 1—it would have reached the same decision. And “we will not reverse a correct decision simply because it is based on incorrect reasons.” *Katz*, 408 N.W.2d at 839; *see also Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand a child-custody matter when “the files, the record, and the [district] court's findings, [show that] on remand the [district] court would undoubtedly make findings that comport with the statutory language” and reach the same result).

In sum, the district court did not clearly err by finding that husband failed to preserve \$200,000 in marital assets. And we discern no abuse of discretion by the district court in awarding wife a greater portion of the parties' retirement accounts on that basis.

II. The district court did not abuse its discretion by ordering wife to be reimbursed from the home-sale proceeds for child-related expenses she paid during the pendency of the proceedings.

Husband next contends that the district court abused its discretion by ordering him to reimburse wife for all—not half—of the expenses she paid to meet the children's needs during the dissolution proceeding. This argument is unavailing.

In its order, the district court determined that the parties are jointly responsible for the \$49,029.35 in child-related expenses. Husband does not challenge that decision. Because wife paid the expenses in full, the district court ordered that she be repaid *out of the home-sale proceeds*. Accordingly, wife is made whole. But she shares responsibility for these expenses equally with husband because there is \$49,029.35 less in sale proceeds to distribute between the two of them. Put another way, each party's distribution is reduced by \$24,514.68—half of the undisputed child-related expenses. We see no abuse of discretion by the district court.

III. The district court did not abuse its discretion by ordering the parties to jointly replenish the children's college savings accounts.

When the district court's division of marital property "reflects consideration of the minor children's ages and circumstances," including their best interests, "it will be upheld as a proper exercise of the trial court's discretion." *Schuck v. Schuck*, 390 N.W.2d 2, 4 (Minn. App. 1986). Husband argues that the district court abused its discretion by ordering the parties to replenish the children's college savings accounts in the amount wife withdrew

from them because the funds were used for their intended purpose—to pay education-related costs—and the children did not contribute to the accounts. We are not persuaded.

At trial, wife testified that due to the parties' financial struggles and husband's unemployment, she was forced to withdraw funds from their children's accounts to pay for their private high-school tuition. Wife argued that "[i]t would be in the children's best interests if [the funds] could be replenished" by the parties. The district court agreed with wife and determined "that it is fair and just that the marital debt" include "the funds withdrawn from [the] children's accounts" because "the accounts [were] created for the benefit of the[] children." Because the accounts were directed toward funding the children's college tuition, and wife used them to instead pay for the children's high-school tuition, we conclude that the district court was well within its discretion to order the parties to jointly replenish the children's accounts as being in the children's best interests. *See id.* (affirming the district court's refusal to order a directed sale of the parties' homestead because the record as a whole demonstrated that doing so would not be in the children's best interests).

Affirmed.