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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0660**

In re the Marriage of:

Tracie Kay Fowler, petitioner,
Respondent,

vs.

Erwin James Fowler, III,
Appellant.

**Filed August 12, 2024
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-FA-21-219

Tifanne E.E. Wolter, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for respondent)

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this appeal from an amended dissolution judgment and decree, appellant argues that the district court abused its discretion in (1) awarding respondent a nonmarital interest in a chiropractic business, (2) dividing the marital property and debt, and (3) denying him spousal maintenance. We affirm.

FACTS

In 1991, appellant Erwin James Fowler, III (husband) married respondent Tracie Kay Fowler (wife). In 2021, wife petitioned to dissolve the marriage. Both parties were represented by counsel during the ensuing dissolution trial.

In October 2022, the district court filed a judgment and decree denying husband's request for spousal maintenance, apportioning the marital debts, and awarding each party 50% of a chiropractic business, which the court concluded was marital property. In its findings concerning the chiropractic business, the district court found that wife's aunt gave wife "a gift" of \$12,500, "which was to be used towards the purchase price of the business."

Wife moved for amended findings, arguing, in part, that she had a nonmarital interest of 50% in the chiropractic business based on the district court's findings concerning her aunt's gift of \$12,500. Husband filed a responsive motion but failed to timely serve wife. As a result, the district court declined to consider husband's responsive motion. The district court issued an order amending the judgment and decree and awarded wife a 50% nonmarital interest in the chiropractic business.

Husband appeals.

DECISION

I.

Husband contends that the district court abused its discretion by awarding wife a 50% nonmarital interest in the chiropractic business.

A district court has broad discretion in dividing property in a marital dissolution and will not be overturned unless it abused that discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court abuses its discretion “if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record.” *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). On appeal from a judgment, if there have been no posttrial motions, appellate review is limited to “whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976); *see Benson v. City of Little Falls*, 379 N.W.2d 711, 713 (Minn. App. 1986) (applying *Gruenhagen*).

“Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court’s underlying findings of fact.” *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). When reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, (4) do not reconcile conflicting evidence, and (5) are not required to “go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. . . . [A]n 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.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations and citation omitted); see *Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a family-law appeal), *rev. denied* (Minn. Feb. 28, 2024).

“All property obtained by either spouse during the marriage is presumed to be marital property, regardless of the form of ownership.” *Olsen*, 562 N.W.2d at 800. “To overcome the presumption that property is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital.” *Id.* Nonmarital property includes property acquired as a gift made by a third party to one spouse but not to the other. *Id.* “For nonmarital property to maintain its nonmarital status, it must either be kept separate from marital property or, if commingled with marital property, be readily traceable.” *Id.*

In its order amending the judgment and decree, the district court found that the chiropractic business was acquired during the marriage, but it determined that wife had rebutted the presumption that the business was marital property because she proved that she “received 50% of the money to purchase the business as a gift to her alone,” that is, she, but not husband, received the aunt’s gift of \$12,500, which she used to purchase the business.

Husband’s challenge is limited to the district court’s determination that the payment from wife’s aunt was a gift solely to wife. First, he asserts that wife’s evidence was insufficient, as a matter of law, to rebut the marital-property presumption. Specifically, he argues that the aunt’s intent was a crucial determination, intent cannot be proved with

circumstantial evidence, and wife presented no direct evidence of the aunt's intent, i.e., testimony or an affidavit from wife's aunt.

A donor's intent in making a gift is a fact question. *Id.* In *Oehler v. Falstrom*, the supreme court stated that "intent can be inferred from the circumstances surrounding [a] gift" and concluded in that case that there was "ample *circumstantial evidence* to support a finding of the requisite donative intent to make a gift." 160 N.W.2d 403, 405 (Minn. 1968) (emphasis added). More recently, in *Olsen*, the supreme court stated that "[d]onative intent is demonstrated by the surrounding circumstances, including the form of the transfer." 562 N.W.2d at 800. We therefore reject husband's argument that donative intent cannot be proved circumstantially in this case.

Second, husband asserts that wife's evidence was insufficient to rebut the marital-property presumption under Minn. Stat. § 518.003, subd. 3b (2022), because her testimony did not precisely align with the statutory standard. Under that statute, nonmarital property includes personal property "acquired by either spouse before, during, or after the existence of their marriage, which . . . is acquired as a gift . . . made by a third party to one but not to the other spouse." Minn. Stat. § 518.003, subd. 3b. Husband complains that wife did not testify that the gift was to her and to her alone. Husband provides no authority indicating that evidence is insufficient to rebut the marital-property presumption if the evidence expressly addresses the "to one [spouse]" portion of the statute and not the "but not to the other spouse" portion. Moreover, implicit in the idea that a gift is to one spouse, is the idea that it is not, in fact, a gift to the other spouse.

Husband relies on *Olsen*, in which the supreme court found that the wife had not rebutted the presumption of marital property. 562 N.W.2d at 801. The supreme court, in *Olsen*, reasoned that “[n]either [the wife] nor [the uncle], however, ever stated that [the uncle] intended to give the property to [the wife] *but not* to [the husband]. In fact, neither [the wife] nor [the uncle] was ever asked that question during the dissolution proceedings.” *Id.* at 800. Husband argues that this case is like *Olsen* because wife never testified to, nor was she asked about, her aunt’s intent to exclude husband.

While we agree that this case is like *Olsen*, in that wife did not explicitly testify that her aunt’s gift was “not to [husband],” we note that, in *Olsen*, the absence of such testimony was only one of several circumstances that supported the supreme court’s conclusion that the wife had not rebutted the marital-property presumption. *Id.* at 800-01. Another key circumstance was the form of the transaction. *Id.* at 801. The contested real property was transferred from the uncle to the husband and the wife as joint tenants, and the uncle “acknowledged that he knew that if [the wife] died, [the husband] would own the property outright.” *Id.* at 799. Additionally, the uncle “filed a federal gift tax return,” which stated that the “transfer of land was to [the husband] and [the wife], one-half interest to each.” *Id.* Similar evidence of intent to transfer to both spouses is lacking in this case.

Finally, husband argues that “[w]hen the evidence leaves open the possibility that the gift was meant to assist the family unit as a whole, it is insufficient to rebut the presumption of marital property.” He relies on *Pulsifer v. Pulsifer*, No. A15-0457, 2015 WL 9437613 (Minn. App. Dec. 28, 2015), which is a nonprecedential opinion from this court. Nonprecedential opinions are not binding authority; at best, such opinions are

persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993). *Pulsifer* is not persuasive because in that case there was evidence that the gifts were intended to assist the family unit as a whole. See 2015 WL 9437613, at *1-2 (“[Donor] testified that, when she gave the gifts, she was ‘hoping [the parties would] pay down their mortgage.’”). There is no similar testimony in this case.

Here, the record shows that wife entered into a purchase agreement for the chiropractic business on April 8, 2016, and the parties paid \$12,500 towards the purchase price at that time. On September 13, 2016, wife’s aunt transferred her \$12,500. Wife’s aunt did not testify. But wife testified as follows:

Q: And so did your aunt provide for one-half of the purchase price to your office?

A: Yes, she voluntarily said, I want to help *you* with that. I want *you* to have that. And so after we had initiated the sale and put the first half -- paid for the first half, she then came forward and offered and wanted to give this to *me* as a gift.

Q: And page 65 shows the receipt of that wire transfer on the same day of September 13, 2016, into your account; correct?

A: Yes.

Q: And this is into your business account . . . ?

A: Yes, that’s what I see.

Q: And then just less than a week later . . . there was a check made out and a transfer out of the account for that same amount, 12,500?

A: Yes, being paid to . . . [the] previous owner.

Q: Are you requesting the [c]ourt allocate 50 percent of the business value as a premarital [sic] asset?

A: Yes.

(Emphasis added.) Consistent with wife’s testimony, the bank statement from wife’s aunt states that the outgoing transfer went to “TRACIE FOWLER.”

Wife’s testimony showed that (1) her aunt wanted to help her alone, (2) her aunt intended that the \$12,500 be used for the purchase of the business, and (3) wife followed through with her aunt’s wish that the money be used for the purchase of the business. Husband did not present any evidence to counter wife’s testimony regarding the aunt’s intent. On this record, the evidence was sufficient to support the district court’s finding that the aunt intended the payment to be a gift solely to wife.

II.

Husband contends that the district court abused its discretion in dividing the marital property and debt. Specifically, he challenges the district court’s valuation of the chiropractic business at \$50,000 to \$60,000 and its determination that 40% of wife’s student-loan debt was marital debt. We address each argument in turn.

A. *Valuation of Chiropractic Business*

The district court’s valuation of an asset is a finding of fact, which “shall not be set aside unless clearly erroneous on the record as a whole.” *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001) (quotation omitted). “[V]aluation is necessarily an approximation in many cases.” *Id.* (quotation omitted). “Accordingly, the value arrived at by the [district] court need only fall within a reasonable range of figures.” *Id.* (quotation omitted).

The parties purchased the chiropractic business in 2016 for approximately \$25,000. The business utilized a membership-fee structure rather than the typical fee-for-service structure. The purchase price consisted of a 60-member client list and \$2,500 worth of

equipment. At the time of trial, the business had 180 members, but as found by the district court, wife's business costs had also increased since the time of the purchase. In the judgment and decree, the district court valued the business at between \$50,000 and \$60,000. In its order amending the judgment and decree, the district court valued the business at \$55,000.

The district court based its valuation on wife's testimony. Wife testified that a buyer "might be willing to pay" \$50,000 to \$60,000 for the business, and she noted that she might have difficulty selling the business based on its unusual membership-fee structure. Husband did not testify as to the value of the business or meaningfully cross-examine wife as to her valuation estimate, and neither party obtained an expert business valuation.

Wife's testimony constitutes record evidence supporting the district court's valuation. While membership had tripled, a valuation of \$55,000 is reasonable given the increased costs and the business's unusual membership-fee structure. The district court did not clearly err in its valuation.

Husband argues that the gross receipts from the business doubled between 2017 and 2021, and the income tripled in that time. But husband did not present any competing evidence at trial concerning the exact valuation of the business. "On appeal, a party cannot complain about a district court's failure to rule in [his] 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." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003). Even accepting husband's figures, the valuation of \$55,000 is not unreasonable, as it accounts

for more than a doubling in valuation. And we will not reweigh evidence on appeal, even if the facts might support a different result. See *Kenney*, 963 N.W.2d at 221-22 (stating that appellate courts may not find facts “even if the court would find the facts to be different if it determined them in the first instance”).

Husband also argues that wife’s tax returns “show that [w]ife’s guess” as to valuation “was based on a false assumption about her expenses.” But the district court implicitly found wife’s testimony regarding her increased expenses credible. We defer to the district court’s credibility determination. See *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that it is not the appellate court’s function to reweigh evidence, find facts, or assess credibility); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (deferring to a district court’s implicit credibility determination). And once again, husband did not offer any competing evidence concerning the business’s valuation, which had an unusual membership-fee structure. On this record, the district court did not clearly err in valuing the chiropractic business at \$55,000 based on wife’s testimony.

B. Student Loan Debt Allocation

In the allocation and division of marital property, debts are treated the same as assets. *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. App. 1984). Again, a district court has broad discretion in dividing marital property, and we review such decisions for an abuse of discretion. *Antone*, 645 N.W.2d at 100. When dividing debts, a district court should be guided by equitable considerations. *O’Donnell v. O’Donnell*, 412 N.W.2d 394, 396 (Minn. App. 1987). We will affirm the district court’s property division if the court

had “an acceptable basis in fact and principle.” *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

Wife attended college and chiropractic school from 1997 to 2003, during the marriage. The parties had \$228,481 in student-loan debt “under [wife’s] name.” Wife’s student loans were “maximized” each year so that the parties could live off the loans; 60% went towards wife’s books and tuition, and 40% went towards household expenses. The district court deemed 40% of the student-loan debt as marital debt and 60% as wife’s nonmarital debt.

Husband argues that the district court clearly erred in its finding that 60% of wife’s loans went to school expenses and 40% went to household expenses. Wife testified that she paid \$5,000 per trimester for chiropractic-school tuition, that she paid for 12 trimesters, and that she had total book costs of \$3,600, for a total cost of \$63,600. Wife testified that she borrowed \$106,102 for chiropractic school, and thus, “60 percent of [her] student loans was spent on tuition and books.” The district court found wife’s testimony credible, and the record therefore supports the district court’s finding that 60% of wife’s loans went to school expenses and 40% went to household expenses.

Husband relies on *Tasker v. Tasker*, 395 N.W.2d 100 (Minn. App. 1986), and argues that “the marital estate received little benefit from [w]ife’s education.” In *Tasker*, this court concluded that the district court did not abuse its discretion in apportioning to husband his student-loan debt because he was mostly unemployed after receiving his education and wife therefore received little benefit from his education. 395 N.W.2d at 105.

Here, the record shows that the student-loan debt benefitted the marriage. The district court accepted wife’s testimony that she borrowed “the maximum” in student loans to “use towards [the] family” and that 40% of the loans, in fact, went towards “the family.” Wife also testified that she graduated from chiropractic school in 2003 and worked for many years during the marriage as a chiropractor. Therefore, under *Tasker*, the district court conceivably could have deemed *more* of wife’s student-loan debt as marital debt. Indeed, wife argues that all debt incurred during the marriage is presumed to be marital and that husband had the burden to rebut that presumption if he did not want any of the educational debt treated as marital. See *Olsen*, 562 N.W.2d at 800 (stating that assets obtained during the marriage are presumed to be marital); *Dahlberg*, 358 N.W.2d at 80 (stating that debts are treated the same as assets). Yet husband, in his testimony, made no meaningful attempt to prove it was not marital debt and did not challenge the 40/60 split that wife described. We discern no error in the district court’s resulting debt allocation.

Husband argues that the district court erred by failing to apply—*sua sponte*—an analysis used by the Kentucky Court of Appeals. See *Van Bussum v. Van Bussum*, 728 S.W.2d 538, 539 (Ky. Ct. App. 1987) (stating that “a professional degree cannot be considered marital property” and holding that “the debt attendant to the acquisition of a nonmarital asset must be borne by the party who will reap the benefit from it”). Husband argues that “[t]he district court erred by failing to consider the enhanced value of [w]ife’s professional degree when allocating 40% of the student loan debt to marital property.” Husband conceded at oral argument that he did not make this argument in district court and that the approach has never been adopted in Minnesota. We do not consider husband’s

novel legal theory for the first time on appeal. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally may consider only issues raised to and considered by the district court).

In sum, we discern no error in the district court’s division of the student-loan debt.

III.

Husband contends that the district court abused its discretion by not awarding him spousal maintenance. Specifically, he challenges the district court’s findings that he had no need for maintenance and that wife had no ability to pay.

Spousal maintenance is “an award made in a dissolution or legal separation proceeding 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); see also *Honke v. Honke*, 960 N.W.2d 261, 266 (Minn. 2021) (“These awards are based on the notion that the marital relationship involves an economic partnership in which the spouses equally share the burdens and responsibilities of both marriage and dissolution.” (quotation omitted)). “District courts have broad discretion regarding spousal maintenance and an award will only be reversed on appeal if the court abused its discretion.” *Honke*, 960 N.W.2d at 265 (quotations omitted). “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) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). “Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous.” *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); see *Peterka v.*

Peterka, 675 N.W.2d 353, 357 (Minn. App. 2004) (stating that an income determination is a finding of fact).

If a party requests spousal maintenance, the district court must address whether the spouse seeking spousal maintenance established a need for maintenance under Minn. Stat. § 518.552, subd. 1 (2022). *Honke*, 960 N.W.2d at 266; *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of spousal maintenance requires a showing of need). If a party shows a need for maintenance, the district court may award spousal maintenance “in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors.” Minn. Stat. § 518.552, subd. 2 (2022) (listing eight relevant factors).

The district court concluded that husband could meet his needs because he had an imputed gross annual income of \$83,552 and monthly expenses of \$3,927. Husband cites *Maurer v. Maurer*, arguing that a “district court may not impute income unless the party was voluntarily under employed in bad faith.” 607 N.W.2d 176, 180 (Minn. App. 2000), *rev’d on other grounds*, 623 N.W.2d 604 (Minn. 2001). But more recently, in *Passolt v. Passolt*, this court held that a district court “may consider a maintenance recipient’s prospective ability to become fully or partially self-supporting without making a finding that the recipient has acted in bad faith to remain unemployed or underemployed,” and this court specifically addressed *Maurer* and explained its limited scope. 804 N.W.2d 18, 19, 24 (Minn. App. 2011), *rev. denied* (Minn. Nov. 15, 2011). We therefore reject husband’s argument.

Husband asserts that the district court applied an “over-optimistic view” of his ability to earn. In imputing husband’s income, the district court found that husband had 2021 income totaling \$83,552, which consisted of \$44,714 in real estate gross sales, \$11,400 from employment as a property manager, and \$31,201 in wages, for a total of \$87,315, minus \$3,763 for business expenses. The district court noted that during eight months in 2021, husband sold four homes in Minnesota and two homes in Wisconsin, and his gross sales for those eight months “were approximately the same as the entire year of gross sales in 2020.” The record supports the district court’s findings regarding husband’s prospective income.

Husband challenges the district court’s finding that he had business expenses of only \$3,763. He argues that the district court “made no allowance for auto expenses, even though most of those real estate sales were in Wisconsin and required significant travel.” Husband is incorrect that most of his real-estate sales were in Wisconsin. In 2021, he had four sales in Minnesota and two in Wisconsin. As for husband’s auto expenses, the district court effectively concluded that husband’s claimed auto expenses were not credible. We defer to a district court’s credibility determinations. *See Sefkow*, 427 N.W.2d at 210; *Pechovnik*, 765 N.W.2d at 99.

Husband also challenges the district court’s findings on wife’s ability to pay maintenance, arguing that wife’s expert based her cash flow on her 2021 income of over \$150,000, subtracted from it her subchapter S passthrough income (\$15,515), and failed to add passthrough distributions (\$4,864). Husband argues that the passthrough income and

distributions are “her income which she could take if she so desired, and there is no reason why it should not be part of her available cash flow for maintenance purposes.”

The expert’s report, which the district court effectively adopted, lists total income of \$151,267. In calculating wife’s after-tax cash flow, the report subtracts passthrough income of \$15,515, and adds a passthrough distribution of \$4,864. Husband is therefore incorrect that the expert failed to add passthrough distributions. As to passthrough income, husband never raised this issue below or presented evidence to contest the expert’s determination. Again, a party cannot complain about a district court’s failure to rule in his favor if that party failed to provide the district court with evidence regarding the issue. *Eisenschenk*, 668 N.W.2d at 243. Additionally, we do not presume error; husband has the burden to show that the district court erred in adopting the expert’s opinion, and he has failed to meet that burden. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975).

Lastly, husband challenges the district court’s after-tax-cash-flow calculation for wife because it deducts child support, and the parties agreed that neither would pay child support. We agree that the district court erred in this regard. However, this adjustment would add only \$245 per month to wife’s income, and under the correct calculation, wife’s monthly cash flow would exceed her monthly expenses by less than \$100. We have previously held that we will not reverse and remand where the district court’s error was de minimis or where the appellant failed to show that the error was substantially prejudicial. *See, e.g., Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (stating that a district court’s failure to account for \$400 in value of land was a de minimis error),

rev. denied (Minn. Nov. 16, 2010); *Duffney v. Duffney*, 625 N.W.2d 839, 843 (Minn. App. 2001) (holding that understating father’s monthly income by \$20 to \$25 was “de minimis and does not warrant a remand”). Because any error by the district court in including child support payments in calculating wife’s cash flow for purposes of maintenance was de minimis, we decline to remand.

In sum, the evidence was sufficient to support the district court’s findings and conclusion that wife’s aunt intended the \$12,500 payment to be a gift solely to wife, and the district court therefore did not err in awarding wife a nonmarital interest in the chiropractic business. Additionally, the district court did not err in its valuation of the chiropractic business or in its division of the student-loan debt. Finally, the district court did not abuse its discretion in declining to award husband spousal maintenance.

Affirmed.