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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0317**

In re the Marriage of:
Cynthia A. Linnerooth, petitioner,
Respondent,

vs.

Gerald R. Linnerooth,
Appellant.

**Filed January 21, 2020
Affirmed
Worke, Judge**

Crow Wing County District Court
File No. 18-FA-17-3525

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Gregory J. Lange, Charpentier & Lange, Brainerd, Minnesota (for respondent)

Stephen M. Lindlof, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

WORKE, Judge

In this dissolution matter, husband argues that the district court (1) made findings of fact that are not supported by the record, (2) chose an incorrect valuation date, (3) misvalued property, (4) failed to recognize his nonmarital interests in certain assets,

(5) should have invaded wife's nonmarital property to accomplish an equitable property division, and (6) should have awarded him attorney fees. We affirm.

FACTS

In August 2017, respondent-wife Cynthia A. Linnerooth petitioned for dissolution of her marriage to appellant-husband Gerald R. Linnerooth. The parties were married in 1989, but separated in 2007. In her petition, wife sought a limited number of personal items and her retirement accounts. Husband requested, among other things, permanent spousal maintenance, a portion of wife's nonmarital property, and contribution to his attorney fees.

At trial, wife testified that she is 66 years old. She has been employed since 1970, and is currently employed by the state, earning \$22.13 per hour, and an additional 65 cents per hour for a shift differential. Wife testified that she planned to retire at the conclusion of the dissolution matter. Wife testified that she contributed to the state-retirement and deferred-compensation plans prior to the marriage. Wife testified that she has medical and dental insurance through the state, which also covers husband. She testified that when she retires, she will no longer have this insurance and will have to secure new coverage.

Wife testified that in 1991, the parties purchased a parcel of land for \$4,500 and built the marital home. In 1997, the parties had a mortgage on the home for \$60,000. In 2007, the mortgage had a balance of \$27,613.32, and the marital equity in the home was approximately \$188,000. Wife testified that in December 2007, she and the parties' two sons, then teenagers, moved out of the home and she never again contributed to it financially.

Wife testified that after she moved out, she lived on her own until she moved in with her mother in 2013. Wife does not pay rent to her mother. Wife testified that her mother is 90 years old, and after her mother passes away, her mother's house will be sold and any proceeds will be split among wife and her siblings. At that time, wife will have to obtain new housing.

Wife testified that she waited nearly ten years to file the dissolution petition because she was busy supporting herself and the parties' sons. Wife testified that husband did not pay her support, child or otherwise, nor did he ever request financial assistance from her. She stated that since the separation, the parties never lived together, did not support each other financially, had their own financial accounts, and had little common debt. Wife testified that the only financial tie the parties had following their separation was filing joint tax returns, which they did until 2012 based on advice from their tax preparer.

Wife testified that the parties had a "modest standard of living," and lived "paycheck to paycheck." Wife testified that she used a credit card during the marriage for larger purchases, including furniture, a trailer, an air compressor, and a snow blower. Although the credit card was wife's financial obligation, she was in possession of only one piece of furniture purchased with the credit card. In 2007, the card had a \$16,000 balance. Following the separation, the parties took out a second mortgage to pay off the balance. Wife then paid off the second mortgage.

Husband testified that he lost his job in March 2007. Husband then sought medical treatment because he experienced dizzy spells and underwent surgery for pressure on his brain. Husband collected unemployment benefits. When his benefits ran out, he applied

for social security disability benefits. Although his application was initially denied, husband was eventually approved and he received an initial lump-sum payment of approximately \$41,000, and then monthly payments of \$1,134.90. Husband testified that before he received the lump-sum payment, he supported himself with his savings and his 401(k). When he received his lump-sum payment, he redeposited it into his 401(k).

Husband testified that he has no debt. He will receive \$224 per month from his pension when he reaches age 65 in February 2019. Husband testified that he will take home \$1,773 per month from social security after Medicare deducts \$134. In 2017, husband received a \$74,000 inheritance. Husband also testified that he earned income for several years by harvesting wild rice.

Husband testified that the appraised value of the home is \$155,000, which is lower than it should be because he has been unable to maintain it the past ten years. Husband testified that he contributed \$10,500 in nonmarital assets to build the home. Although husband was involved in building the home, he testified that he cannot do repairs because he is “disorganized” as a result of his brain injury. He also testified that his “pride” prevents him from contacting a program in the community that could assist him.

On August 28, 2018, the district court filed the judgment and decree. The district court found that the parties separated on December 1, 2007, and that it was “fair and equitable” to use this date as the valuation date. The district court awarded husband the homestead and his retirement accounts. The district court awarded wife her retirement accounts. The district court concluded that neither party would receive spousal

maintenance, and that each would be responsible for their own attorney fees. Husband moved for amended findings, which the district court denied. This appeal followed.

DECISION

Spousal maintenance

Husband first argues that the district court should have awarded him permanent spousal maintenance. A district court may award maintenance if, in light of the marital standard of living, the spouse seeking maintenance “lacks sufficient property . . . to provide for [his] reasonable needs,” or is otherwise “unable to provide adequate self-support.” Minn. Stat. § 518.552, subd. 1 (2018); *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of maintenance requires a showing of need). A district court has broad discretion in deciding whether to award maintenance, and its decision will not be disturbed absent an abuse of that discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses its discretion by making factual findings that are unsupported by the evidence, misapplying the law, or “rendering a decision that is against logic and the facts on record.” *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016) (quotation omitted). This court will not disturb findings of fact unless they are clearly erroneous. *Id.*

In considering the appropriateness of a spousal-maintenance award, the district court must consider all relevant statutory factors, including the (1) financial resources of the party seeking maintenance and his ability to meet his needs independently; (2) time required for the party seeking maintenance to acquire education or training to find appropriate employment; (3) marital standard of living; (4) length of the marriage and, in the case of a homemaker, the length of the absence from employment; (5) loss of

employment opportunities and benefits foregone by the party seeking maintenance; (6) age and health of the party seeking maintenance; (7) ability of the spouse from whom maintenance is sought to meet her needs and the needs of the spouse requesting maintenance; and (8) contribution of each party to the acquisition and preservation of marital property and the contribution of a spouse as a homemaker. Minn. Stat. § 518.552, subd. 2 (2018).

Husband claims that the most relevant factors are the first—his lack of resources and inability to meet his needs; the sixth—his age and permanent disability; and the seventh—wife’s ability to meet both parties’ needs.

In evaluating whether husband was able to meet his needs independently, the district court determined that husband will receive \$1,997.56 monthly, but found his claimed monthly expenses of \$2,399 “troubl[ing]” and not “credible.” *See Haefele v. Haefele*, 621 N.W.2d 758, 763 (Minn. App. 2001) (stating that we give due deference to a district court’s evaluation of evidence, because it is in the best position to weigh evidence and make credibility determinations), *review denied* (Minn. Feb. 21, 2001). The district court found that husband submitted duplicative expenses. The district court also found that husband was awarded marital property valued at \$100,000 more than that awarded to wife. Husband received his retirement accounts, his inheritance, the home, and all of the items in the home (including those purchased by wife).

Additionally, husband has been meeting his needs independently over the past ten years. Husband claims that he spent money only to meet his basic needs and that he should now have a budget that includes a new vehicle, home repairs, savings, vacations, and

insurance. But wife testified that the parties had a modest standard of living and lived paycheck to paycheck. Husband did not contradict wife's testimony.

The district court appropriately found that husband is disabled and it was unaware of any suitable employment he could pursue. But the district court noted that husband has not had any kind of occupational therapy to address his issues and has not looked into any resources to assist him. The district court also found that husband has earned income harvesting wild rice since his disability.

Finally, the district court did find that wife would be able to meet her needs and husband's needs. But "[n]o single factor is dispositive." *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). Based on the marital standard of living, and the fact that the parties have been living financially independent of each other for nearly ten years, the district court properly exercised its broad discretion in denying husband's request for spousal maintenance.

Valuation date

Husband argues that the district court erred in choosing 2007 as the valuation date. Husband claims that the district court should have used February 28, 2018, the date of the prehearing settlement conference. We review the district court's choice of a valuation date for an abuse of discretion. *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002). There is no abuse of discretion when the district court's factual findings regarding its choice of a valuation date are supported by the record and its decision has "an acceptable basis in fact and principle." *Id.* at 719-20 (quotation omitted).

“The court shall value marital assets for purposes of division . . . as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable.” Minn. Stat. § 518.58, subd. 1 (2018). Here, the district court made specific findings that the separation date was fair and equitable. The district court found that the parties lived “independent and separate lives” since they separated, had minimal contact, were separated in their daily lives, and that neither was affected by the benefit nor detriment of the other.

Wife testified that since the separation, the parties never lived together, did not support each other financially, had few common debts, took care of their own day-to-day costs, and had their own financial accounts. Wife’s testimony supports the district court’s findings. And husband did not contradict wife’s testimony. Husband’s only testimony regarding the fairness of the valuation date related to wife’s pension, which he “was always planning on.” Based on the record, the district court did not abuse its discretion by choosing a valuation date because its factual findings are supported by the record and its decision has an acceptable basis in fact and principle.

Husband also argues that even if the valuation date was appropriate, the district court should have “adjust[ed] the valuation of [an asset that had a substantial change in value] to effect an equitable distribution.” *See id.* Husband claims that the district court should have adjusted two assets awarded to him that decreased in value by \$154,000. First, husband was awarded the home, which had an appraised value significantly less than comparables. But the district court found that husband was “solely responsible for the

depreciation in the value of the home [because] [h]e has not properly cared for the home.” Husband admitted that the house is in need of significant repairs and that he did not care for it in the past ten years. Husband also claims that his roll-over IRA lost \$13,000 in value and that he was forced to withdraw from this account to support himself. But husband testified that he paid back his 401(k) with his lump-sum social security disability payment. The statutory language here is permissive—the district court “may” adjust valuation. *See id.*; *see also* Minn. Stat. § 645.44, subds. 1, 15 (2018) (stating that the word “[m]ay,” when used in Minnesota Statutes, means “permissive”). Thus, the district court did not abuse its discretion in declining to adjust the date for valuing these assets.

Valuation of property

Husband next argues that the district court erred in assigning a marital value to wife’s pension. The district court’s valuation of an item of property is a finding of fact, and it will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). An appellate court does not require the district court to 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).

Wife’s expert determined that the marital value of wife’s retirement account, on the valuation date, was \$155,147. The expert’s report was admitted into evidence and husband did not object. The district court awarded wife her retirement account as it awarded husband his retirement account. As of the valuation date, husband’s 401(k) had a value of \$127,382.86.

Husband claims that the district court should have used an approach explained in *Janssen v. Janssen*, for pensions that are not mature because they contain contingencies on the payment of benefits. 331 N.W.2d 752, 756 (Minn. 1983). While *Janssen* recognizes an approach to assigning a marital value to a pension, a district court may exercise its discretion in assigning a value. Here, the district court did not abuse its discretion by assigning the value determined by wife's expert, and unchallenged by husband at trial.

Nonmarital interests

Husband also argues that the district court erred in failing to factor his two nonmarital interests in the home into the property division, and in failing to find that his Vanguard Roth IRA was nonmarital.

Husband claims that he was not credited for the \$10,485 he contributed to the home or the \$27,613.32 that was remaining on the mortgage that he paid off. The district court found that in December 2007, the home was valued at \$226,100 and that the mortgage balance was \$27,613.32. Husband was awarded the home, at its December 2007 value, despite wife's marital interest in the home. Wife was not awarded any interest in the home; thus, husband received his nonmarital contribution.

Husband also claims that he was not credited for paying off the \$27,613.32 mortgage. But wife also requested to be credited for paying off the marital credit-card debt, which she did pay off in the amount of \$16,269.01. Most of the items purchased with the credit card remain with husband. Thus, any disparity does not render the division unfair. See *Digatono v. Digatono*, 414 N.W.2d 498, 502 (Minn. App. 1987) (stating that a

district court does not abuse its discretion when the division of debt is just and equitable), *review denied* (Minn. Jan. 15, 1988).

Husband also argues that the district court failed to find that his Vanguard Roth IRA account, with a value of \$18,612.73, was nonmarital property. But even if the district court included this \$18,612.73 in the marital-property division, it found that husband was awarded “approximately \$100,000 more than” wife in the marital-property division. Therefore, there is nothing inequitable for us to correct.

Wife’s nonmarital property

Husband next argues that the district court abused its discretion by failing to invade wife’s nonmarital assets so that husband received a portion of her pension. Husband argues that given the fact that he is disabled, his income is less than \$2,000 per month and inadequate to meet his needs, and the fact that wife has income over and above her needs, the district court abused its discretion by failing to award him a large portion of wife’s nonmarital pension.

Husband argues that it is the “directive” of section 518.58 that the district court award him a portion of wife’s pension. However, the statute provides that “[*i*]f the court finds that either spouse’s resources or property, including the spouse’s portion of the marital property . . . are so inadequate . . . the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded [as nonmarital property] . . . to prevent [an] unfair hardship.” Minn. Stat. § 518.58, subd. 2 (2018) (emphasis added). The district court did not make such a finding. Rather, the district court found that husband was awarded marital property “valued at approximately \$100,000 more than the property

awarded to [wife].” Further, the district court did not find that husband would not be able to meet his needs because it did not find husband’s monthly expenses credible. There was no need for the district court to invade wife’s pension when it did not find that husband’s resources or property were inadequate to work an unfair hardship.

Attorney fees

Finally, husband argues that the district court should have awarded him need-based attorney fees. A district court “shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding” if it finds that (1) they are necessary for a party to assert his rights in good faith; (2) the party from whom they are sought can afford to pay them; and (3) the party seeking them cannot afford to pay them. Minn. Stat. § 518.14, subd. 1 (2018). The district court did not abuse its discretion in refusing to award need-based attorney fees. Husband makes no legal argument as to why he should have been awarded attorney fees. He claims only that he “should receive an award of attorney fees because of [the parties’] disparate incomes, the wife had the means to pay them, and the husband does not have the means to pay them.” There is nothing in the record showing that wife can pay her fees along with husband’s fees. Wife submitted an affidavit asserting that she, in fact, cannot pay both her and husband’s attorney fees. Husband fails to show an abuse of discretion without an argument supporting his claim.

Affirmed.