STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0737

In re the Marriage of: Michael Dennis Dewar, petitioner,
Appellant,

vs.

Luanna Sue Gary,
Respondent.

Filed February 18, 2020
Affirmed; motion denied
Reilly, Judge

Washington County District Court
File No. 82-FA-16-4749

Michael D. Dewar, Inver Grove Heights, Minnesota (pro se appellant)

David K. Meier, Sjoberg & Tebelius, P.A., Woodbury, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

In this marital-dissolution appeal, appellant-husband argues that the district court violated his due-process rights, improperly valued business interests owned by the parties, and abused its discretion in selecting the business valuation date. Husband also filed a motion to strike portions of respondent-wife's brief. We affirm the district court's decision, and deny husband's motion to strike as moot.

FACTS

Appellant-husband Michael Dennis Dewar and respondent-wife Luanna Sue Gary married in July 2004 and separated in September 2016. On November 2, 2016, husband filed a petition for dissolution of marriage. The district court conducted a two-day court trial in December 2017 and entered a dissolution judgment on April 11, 2018. The district court found that there was an irretrievable breakdown of the marriage and dissolved the parties' marriage. The April 11, 2018 order divided most of the marital property. However, the district court did not have sufficient evidence to calculate the value of a business owned by the parties and entered a "reservation of award" pending determination of the value of the business.

The district court directed the parties to obtain the services of a neutral business evaluator. When the parties could not agree on a neutral evaluator, the district court allowed the parties to submit reports from their own business evaluators for the district court's review. The district court also permitted each party to file written objections to the other party's report. Husband and wife each obtained a business valuation analysis and appraisal from his or her own evaluator. The parties filed these reports with the district court, and also filed written objections to the other party's report. After reviewing the reports and objections submitted by the parties, the district court issued an order on November 9, 2018 establishing the value of the business. Husband moved for a new trial, which the district court denied. Husband now appeals.

D E C I S I O N

I. The district court did not abuse its discretion by relying on written submissions.

Husband argues that the district court violated his procedural due-process rights by resolving a factual dispute regarding the valuation of the parties' business based on the written submissions of the parties. Whether an individual's procedural due-process rights have been violated is a question of law reviewed de novo. *Rew v. Bergstrom*, 845 N.W.2d 764, 785 (Minn. 2014). However, procedural and evidentiary rulings are discretionary with the district court and are "reviewed under an abuse-of-discretion standard." *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

In family court matters, "[i]t is within the [district] court's discretion to restrict presentation of evidence to nonoral testimony." *Christenson v. Christenson*, 490 N.W.2d 447, 451 (Minn. App. 1992), *review granted* (Minn. Jan. 15, 1993), *review dismissed* (Minn. Feb. 16, 1993). Where, as here, a party can submit documentary evidence supporting its proposed valuation of the business and rebuttal written arguments, the lack of an evidentiary hearing does not offend due process. *See Sieber v. Sieber*, 258 N.W.2d 754, 756 (Minn. 1977) (recognizing district court's discretion to restrict presentation of evidence to nonoral testimony). This is especially true where the "facts are relatively uncomplicated and the evidence can be fairly and efficiently presented by affidavits and documentary evidence." *Christenson*, 490 N.W.2d at 451 (citing *Sieber*, 258 N.W.2d at 756). Here, the district court allowed each party to submit a business evaluation report. The district court also permitted each party to file written objections to the other party's report. The district court reviewed the reports, objections, and supporting affidavits and submissions of both parties in reaching its valuation determination. Because affidavits and documentary evidence could be fairly and efficiently used to address the limited issue of the business valuation, we discern no abuse of discretion in the district court's procedural and evidentiary rulings. *See Braith*, 632 N.W.2d at 721. We determine that there is not a due-process violation here.

II. The district court did not clearly err in its valuation of the parties' business.

Husband argues that the district court erred in valuing the parties' business. "A [district] court's valuation of a business in a dissolution action is a finding of fact that should not be set aside on appeal unless clearly erroneous." *Bateman v. Bateman*, 382 N.W.2d 240, 245 (Minn. App. 1986), *review denied* (Minn. Apr. 24, 1986). If the district court's determination "falls within the limits of credible estimates made by competent witnesses," we will affirm the finding "even if it does not coincide exactly with the estimate of any one of them." *Id.* (citation omitted).

Husband obtained a business evaluation analysis from David G. Kiwus of Financial Investigations & Valuations LLC (the FIV Report). The FIV Report determined that the business had a fair value of $230,500. The FIV Report considered three approaches to value—the cost or asset approach, the income approach, and the market approach—and reached its estimate of $230,500 by averaging together the values calculated under the income approach and the market approach. The FIV Report indicated that there were "various challenges with the financial information provided," including the lack of complete tax-return information and incomplete QuickBooks balance sheets. The FIV

Report noted that the "confusing and disorganized state of the tax returns" and "various discrepancies" in the QuickBooks financial statements "raise[d] concerns over the completeness and accuracy of the information provided."

Wife obtained a business evaluation analysis from Patrick K. Schmidt and Adam R. Benik of Value Consulting Group (the VCG Report). The VCG Report determined that the business had a fair market value of $50,000. The VCG Report, like the FIV Report, considered the cost approach, the income approach, and the market approach in its analysis. The VCG Report rejected the market approach and calculated its value by averaging the cost approach and the income approach. The VCG Report noted that its calculation was incomplete because the tax returns for the years 2013-2016 did not balance and, in each year, the reported balance for the partners' equity exceeded total assets.

The district court noted that the reports were similar in that they both determined that the balance sheets were potentially unreliable, and they both used the capitalization-of-earnings method in calculating the value of the business under the income approach. The district court noted that the FIV Report submitted by husband relied on the tax returns in its analysis, while the VCG Report submitted by wife relied on the business's historical income statements. The district court also found that the "primary areas of difference in the two reports are the amount of officer compensation allowed, the addition/subtraction of various expenses for vehicles and rent, and the capitalization rate used." The district court opted to use the VCG Report's estimated ongoing adjusted net income as a starting point. The district court adopted the VCG Report's estimated ongoing adjusted net income of $12,061 and added $7,110 for the vehicle deduction, resulting in an estimated ongoing adjusted net income of the business of $19,171.

After determining the amount of net income, the district court considered the capitalization rates suggested by each party. The district court found that the VCG Report's capitalization rate of 21% "better takes . . . into account" certain risks the business faced "due to its small size, the lack of a contract with the parent company, [and] the limited ability" to sell the business in the future. Based upon the district court's estimated ongoing adjusted net income of $19,171 and using the 21.0% capitalization rate, the district court concluded that the business had a fair market value of $91,290. This valuation falls between wife's evaluator's estimate of $50,000 and husband's evaluator's estimate of $230,500.

We recognize that the district court's discretion in valuing marital property is not unlimited and must be supported by the evidentiary record. *See Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 766 (Minn. 1983) (noting that a district court's valuation of an asset "should be supported by either clear documentary or testimonial evidence or by comprehensive findings"); *see also Balogh v. Balogh*, 356 N.W.2d 307, 313 (Minn. App. 1984) (determining that valuation award was arbitrary where district court failed to make factual findings demonstrating how it arrived at a value between two valuation figures). Here, the district court reviewed both reports in reaching its valuation decision and made specific factual findings explaining why it found the VCG Report more credible. When there is conflicting evidence, we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court determined that the VCG Report was more credible because its adjusted net income calculation was more reliable and its estimated capitalization rate "better reflects the degree of risk" of investing in the business. The record supports the district court's findings and credibility determinations, which are not clearly erroneous. Accordingly, we conclude that the district court did not clearly err in its valuation of the parties' business.

III. The district court did not abuse its discretion in selecting the valuation date.

Husband challenges the district court's selection of a valuation date for the business. The district court has broad discretion in setting the valuation date for marital property. *Desrosier v. Desrosier*, 551 N.W.2d 507, 510 (Minn. App. 1996). The district court values marital property at the time of the initially-scheduled prehearing settlement conference, but may select another valuation date that is "fair and equitable." Minn. Stat. § 518.58, subd. 1 (2018). Here, the district court scheduled an Initial Case Management Conference for December 12, 2016. The hearing was later cancelled at the parties' request. The district court set the valuation date as of January 1, 2017, approximately two weeks after the originally-scheduled Initial Case Management Conference. Neither party objected to the January 1, 2017 valuation date, which was arrived at during a telephone conference call when appellant was represented by counsel. We discern no abuse of discretion in this decision.

IV. Husband's motion to strike is denied as moot.

Husband filed a motion to strike alleged misstatements of fact in wife's brief. Because we have not relied on those portions of wife's brief that husband is requesting we strike, we deny the motion to strike as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d

231, 233 n.2 (Minn. 2007) (denying motion to strike as moot when court did not rely on challenged materials).

Affirmed; motion denied.