Property: Right Outcome, Wrong Reason—Gill v. Gill, 919 N.W.2d 297 (Minn. 2018)

Wendy Cicotte

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PROPERTY: RIGHT OUTCOME, WRONG REASON—GILL
V. GILL, 919 N.W.2D 297 (MINN. 2018)

Wendy Cicotte*

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I. INTRODUCTION

_Gill v. Gill_ should have been a standard case about classifying, valuing, and distributing marital property during a marriage dissolution. Instead, _Gill_ developed into an authoritative case that usurped legislative authority and created new precedent. Creating new precedent was unnecessary because there was ample discretion provided in the governing statutes to obtain a just and equitable distribution. Further, the new precedent is undesirable because it takes away the flexibility and certainty of the governing statutes, while proliferating gender and role-based disparities that the legislature has purposefully tried to eliminate.

A. Factual Background

Stephen Gill (“Stephen”) and Gretchen Gill (“Gretchen”) were married in 1993. During their marriage, the couple decided the optimal course for their family was for Stephen to pursue his career while Gretchen focused her efforts on raising the couple’s children and providing background support to her husband while he developed and increased his earning capacity. This arrangement worked well for the couple. With Gretchen’s support, Stephen was able to acquire Talenti, a Gelato company. Under his leadership, the company thrived and became a multimillion-dollar asset.

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2 919 N.W.2d 297 (Minn. 2018).

3 MINN. STAT. §§ 518.003, 518.58 (2019); see also infra Section IV.D.4.

4 See infra Part II.

5 _Gill_, 919 N.W.2d at 298.


7 _Id. at 4.

8 _Id. at 10.
After nearly twenty-one years of marriage, Stephen filed for a marital
dissolution in August 2014. Pursuant to Minnesota statute, the Gill’s
ownership in Talenti was classified as marital property and valued at their
marriage dissolution’s valuation date. However, shortly after the valuation,
but before the Gill’s dissolution was final, the company sold for a $180
million up-front payment with two subsequent earn-out payments that
would be calculated on future growth. The sale amount was significantly
more than the company’s valuation just two months prior.

Gretchen petitioned the court to classify the proceeds from the sale of
Talenti, including the earn-out payments, as marital property and award her
an equitable portion. To address the situation, the Gill court had to
determine whether the proceeds from Talenti’s sale were marital or
nonmarital property, and if so, whether the earn-out payments were part of
the proceeds.

The district court applied the law rigidly and held the sale occurred
after the valuation date, so proceeds were not marital property. The court
further stated, in dictum, that “earn-outs, if obtained, will be a result of
Husband’s significant post-marital labor and should be awarded to him as
nonmarital property.”

Gretchen appealed the district court’s decision to the Minnesota Court
of Appeals. The Minnesota Court of Appeals reversed the district court’s
award based on contract interpretation, holding that “the purchase
agreement unambiguously provided that the purchaser of [Talenti] was
willing to pay $180 million, plus two earn-out payments . . . regardless of

\[1\] Gill, 919 N.W.2d at 300.
\[2\] MINN. STAT. § 518.58, subdiv. 1 (2019) (“The court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference.”).
\[3\] Gill, 919 N.W.2d at 309 (valuing Talenti at $180 million).
\[4\] Gill, 919 N.W.2d at 309.
\[5\] Compare id. (valuing Talenti at $180 million at valuation date), with id. at 309 (stating sale price after valuation date, but before dissolution, as a $180 million up-front payment with two potential future earn-out payments that could range from $0 to $170 million in value).
\[7\] Id.; see also Gill, 919 N.W.2d at 301.
\[8\] MINN. STAT. § 518.003, subdiv. 3(b) (2019) (“Nonmarital property’ means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which . . . (d) is acquired by a spouse after the valuation date . . . ”); Gill, 919 N.W.2d at 301.
\[10\] See Gill, 900 N.W.2d 717.
whether a seller continued work for the purchaser. Because the earn-outs payments were part of the purchase price for [Talenti], they reflect [Talenti’s] value as of the [valuation date]."

Stephen appealed the decision to the Minnesota Supreme Court. The Minnesota Supreme Court affirmed the Minnesota Court of Appeals' holding that “because the parties’ interest in the company was marital property that was acquired before the valuation date, the consideration for the sale of the company, which occurred before the dissolution and included an amount paid at the time of the sale and a contractual right to receive future amounts, is also marital property.”

However, the dissent in Gill rightly pointed out that the majority, in reaching its decision to classify earn-out payments as marital property, required “considerable legal gymnastics which include[d] disregarding the district court’s factual findings, ignoring the valuation date, [and] rewriting the statutory definition of ‘marital property.’”

B. Summary of Analysis

Minnesota’s law governing property distribution in a marriage dissolution was purposely crafted to eliminate gender bias and generate certainty through an established valuation date while still affording a high degree of flexibility to render a just and equitable distribution through judicial discretion. The new precedent ignores the legislature’s purposeful balancing and instead adopts a new inflexible rule: that all proceeds from the sale of marital property before dissolution constitute marital property as a matter of law.

This note analyzes in detail the challenges caused by Gill. Challenges include: (1) equitable distribution requires discretion which the statute provides and Gill takes away; (2) Gill's attempt at a strict rule creates uncertainty; (3) new precedent was unnecessary because a just and equitable outcome could have been accomplished within the confines of the existing law; (4) Gill proliferates the power imbalance that often accompanies a traditional marital relationship where one spouse, traditionally the wife, gives up her earning potential to stay home and raise the couple’s children.

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* "Id. at 719.
* "See Gill, 919 N.W.2d at 301.
* "Id. at 298.
* "Id. at 308 (Anderson, J., dissenting).
* "MINN. Stat. §§ 518.003, 518.58 (2019); see also infra Part II.
* "Gill, 919 N.W.2d at 298; see also id. at 308 (Anderson, J., dissenting).
and support her husband; and (5) Gill facilitates post-Gill planning for distribution of marital assets that game the system.\(^{24}\)

This case note begins with a history of the statutes and cases that regulate how Minnesota classifies and divides property in a marriage dissolution.\(^{25}\) This is followed by the facts of Gill v. Gill and an in-depth procedural history.\(^{26}\) Ultimately, this case note posits that in all the stages of litigation, none of the courts reached a fully reasoned conclusion within the confines of the law on the valuation of marital property.\(^{27}\)

As a result, in deciding Gill, the Minnesota Supreme Court created new precedent that could engender unfair property distribution in the future because it does not allow judicial discretion and instead reinforces negative gender stereotypes that may create unfairness in the dissolution of traditional marriages.\(^{28}\)

## II. History

### A. Just and Equitable Property Distribution

Minnesota—like most states—adheres to the concept of equitable distribution.\(^{29}\) As early as 1951, section 518 of the Minnesota statutes regulated how marital property should be classified and divided in a marriage dissolution to achieve equitable distribution.\(^{30}\)

Initially, the statute gave the court absolute discretion to make a “disposition” of property that was “just and equitable.”\(^{31}\) The statute listed six discretion ary factors for consideration by the court when making the disposition, but many of the factors had a focus that favored the

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\(^{24}\) See infra Section IV.E.–F.

\(^{25}\) See MINN. STAT. § 518.003 (2019); see also MINN. STAT. § 518.58 (2019).

\(^{26}\) See infra Part III.

\(^{27}\) See infra Part IV.

\(^{28}\) See infra Section IV.F.

\(^{29}\) Compare Equitable Distribution, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for a fair, but not necessarily equal, allocation of the property between the spouses.”) with Community Property, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Assets owned in common by husband and wife as a result of their having been acquired during the marriage by means other than an inheritance by, or a gift or devise to, one spouse, each spouse generally holding a one-half interest in the property. Only nine states have community-property systems: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. A community-property regime is elective in Alaska.”).

\(^{30}\) MINN. STAT. § 518.003, sec. 5 (1951).

\(^{31}\) Id. (“Upon a divorce for any cause . . . the court may make such disposition of the property of the parties acquired during coverture as shall appear just and equitable.”) (emphasis added).
breadwinner’s financial contributions and were often to the homemaker’s detriment. Generally, during this period, the breadwinner was a man, and the homemaker was most often a woman. The statute also contained explicit gender discrimination through continued use of the centuries-old term “coverture.” Under coverture, a married man and a woman were treated by the State as a single, male-dominated legal entity.

Additionally, there was implicit discrimination throughout the statute because it did not explicitly eliminate discrimination by referencing both spouses or including additional factors to safeguard against society’s traditional expectation that the woman gives up career and financial opportunity to stay home and care for the home and family. For example, property disposition depended on how it was acquired. In this period, property would most often be acquired solely from the husband’s earnings because the majority of married women were not in the workforce. Likewise, the court was urged to look at who was paying or supplying the consideration for the property. Again, the husband was most likely to be the spouse paying or supplying the consideration for the property due to the traditional roles spouses held in society at this time.

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32 Id. (limiting the court’s discretion to six factors: (1) a regard to the nature and determination of the issues in the case; (2) the amount of alimony or support money; (3) the manner by which said property was acquired; (4) the persons paying or supplying the consideration for the property; (5) the charges or liens imposed upon the property to secure payment of alimony or support money; and (6) all the facts and circumstances of the case).

33 Id. (“Upon a divorce for any cause, or upon an annulment, the court may make such disposition of the property of the parties acquired during coverture as shall appear just and equitable . . . .”).

34 Id.; see also 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *430 (1765).

35 Compare MINN. STAT. § 518.58 (1978) (adding language applying discretionary factors to “each party” and “each spouse”), with MINN. STAT. § 518.58, Sec. 5 (1951) (containing no language that shows application of the discretionary factors to both spouses or parties).

36 MINN. STAT. § 518.58, sec. 5 (1951).


38 MINN. STAT. §518.58, sec. 5 (1951) (current version at MINN. STAT. § 518.58, subdiv. 1 (2019)).

39 Cynthia Starnes, Divorce and the Displaced Homemaker: A Discourse on Playing with Dolls, Partnership Buyouts, and Dissociation under No-Fault, 60 U. CHI. L. REV. 67, 70 (1993) (“Startling inequities have resulted, as judges ignore the realities of scant property and limited earning potential and adopt the legislative assumption that homemakers need minimal, if any, maintenance.”).
In the ensuing twenty-five years, the legislature recognized the statute’s discrimination and unfair prejudice and slowly began the process of eliminating bias by updating key terminology and adding language to accomplish its goal of obtaining a just and equitable result. In 1978, the legislature replaced “coverture” with “marriage” and replaced the discretionary language—“may make . . . disposition of the property . . . as shall appear just and equitable,”—with the explicit language that the court “shall . . . make a just and equitable disposition of the marital property.”

Nonetheless, even with the explicit instruction to make a just and equitable disposition, the legislature still allowed the court considerable discretion in how to implement its intent. There were still concrete discretionary factors to consider, though the list was significantly changed to eliminate favoritism for the breadwinner and create a way to fairly assess the needs of both spouses with gender-neutral factors. For example, two new factors—age and health—applied equally to both spouses and genders. The additional factors of employability and vocational skills look to counter the homemaker’s sacrifice, regardless of whether the homemaker is a man or a woman.

The new assessment was a charge to consider “all relevant factors,” but the new list was by no means exhaustive. The court’s latitude of discretion even extended to an award of up to one-half of the nonmarital property based on extreme hardship.

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40 Id. Starnes advocates divorce law reform as “an immediate response that will both ease current suffering and encourage future relaxation of gender roles.” Id. at 9.
41 Compare MINN. STAT. § 518.58, sec. 5 (1951), with MINN. STAT. § 518.58 (1978) (emphasis added).
42 MINN. STAT. § 518.58, sec. 5 (1978).
43 Id. (replacing the factors from 1951 with sixteen gender neutral factors: (1) the length of the marriage; (2) any prior marriages of a party; (3) age; (4) health; (5) station; (6) occupation; (7) amount and sources of income; (8) vocational skills; (9) employability; (10) estate; (11) liabilities; (12) needs; (13) opportunity for future acquisition of capital assets; (14) amount of support, maintenance and income of each party; (15) whether the property award is in lieu of or in addition to maintenance or support; (16) the contribution, or dissipation of each spouse in the acquisition, preservation, depreciation or appreciation in value of the respective estates; and (17) the contribution of a spouse as a homemaker).
44 See Starnes, supra note 39, at 119 (“The ‘ideal to which marriage aspires [is] that of equal partnerships between spouses who share resources, responsibilities, and risks’ and thus perhaps some limited duty to sacrifice for the good of the partnership.”).
45 MINN. STAT. § 518.58, sec. 5 (1978) (“The court shall base its findings on all relevant factors including all the factors listed in supra note 43[,]” (emphasis added).
46 Id. (current version at MINN. STAT. § 518.58, subdiv. 1 (2019)) (“If the court finds that either spouse’s resources or property, including his portion of the marital property . . . are so inadequate as to work an extreme hardship, the court may, in addition to the marital
B. Just and Equitable Property Distribution for All

Most importantly, the 1978 amendment acknowledged the significant contributions a homemaker brings to a marriage by openly charging the court to consider the “contribution of a spouse as a homemaker” and mandating a *presumption* that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife.\(^47\) This mandated consideration evinced an increased awareness that many marriages share all property and income while focusing the wife’s efforts on maintaining the home and family and building the husband’s career and earning power.\(^48\) The legislature and the court recognized that marriages are dependent on several components, only one of which is financial.\(^49\) Therefore, a spouse’s contribution could no longer be measured solely by the amount of money he or she contributed; nonfinancial components also needed to be measured to facilitate just and equitable property division.\(^50\)

Fine-tuning of the statute continued in 1979 when the legislature changed the primary consideration for awarding nonmarital property from one of “extreme hardship” to a consideration of “unfair hardship” and added an examination of “all relevant circumstances” in doing so.\(^51\) In 1982, the legislature returned to the homemaker provision and added one word—“conclusively.”\(^52\) The statute now read, “It shall be *conclusively* presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife.”\(^53\) This one-word addition heightened the importance of the homemaker’s role from one that presumed the homemaker had a high probability of property, apportion up to one-half of the property otherwise excluded [as nonmarital property] . . . to prevent the hardship.”).\(^54\)

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\(^47\) *Id.* (“The court shall also consider the contribution or dissipation of each in the acquisition, preservation, depreciation or appreciation in value of the respective estates, as well as the contribution of a spouse as a homemaker.”).

\(^48\) *Id.*


\(^50\) See Nardini v. Nardini, 414 N.W.2d 184, 192 (Minn. 1987) (recognizing that the increase in the value of a business acquired prior to the marriage is due to the efforts of both spouses, including the wife’s nonfinancial contributions to the home life that allowed the husband to focus on growing the family business).

\(^51\) *Id.*

\(^52\) MINN. STAT. § 518.58 (1979).

\(^53\) MINN. STAT. § 518.58 (1982).

\(^54\) *Id.* (emphasis added).
making a substantial contribution to a conclusive presumption that “cannot be overcome by any additional evidence or argument because it is accepted as irrefutable proof that establishes the fact beyond dispute.” Moreover, the addition solidified the legislature’s intent to make a just and equitable distribution by financially protecting the homemaker who had sacrificed his or her own income and earning potential for the greater good of the family. This alleviated some of the pressures a financially vulnerable homemaker might feel to seek a financial safety net by abandoning the vital homemaker role and entering the workforce.

Finally, throughout the statute, the legislature changed the word “disposition” to “division.” “Disposition of property” references property owned by one individual that is transferred to another, while “division of property” references property that is owned together and subsequently divided among the owners. This momentous change reinforced the legislature’s “conclusive presumption that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife,” regardless of whether one spouse was a homemaker who did not, during the period of the marriage, utilize his or her earning potential.

Marital property was no longer the breadwinner’s to be transferred as the court deemed fair. Instead, marital property was property that rightfully belonged to both spouses based on their distinct, yet equally valuable, contributions to the marriage.

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56 See Starnes, supra note 39, at 69, stating:
Wifely submission is risky business . . . . Gone is the day when a wife could depend on her husband’s labor to maintain her at home, ‘secure and safe.’ Today is the day of divorce at will and equality rhetoric, which means that if her marriage ends, the homemaking wife will be catapulted into financial independence, and probably financial ruin.
57 MINN. STAT. § 518.58 (1982).
58 Disposition, BLACK’S LAW DICTIONARY (11th ed. 2019).
59 Equitable Division, BLACK’S LAW DICTIONARY (11th ed. 2019) (“With equitable distribution, when a marriage ends in divorce, property acquired during the marriage is divided equitably between the spouses regardless of who holds title to the property.”).
60 See MINN. STAT. § 518.58 (1982).
61 See Quick v. Quick, 381 N.W.2d 5, 7-8 (Minn. Ct. App. 1986) (acknowledging the husband was the primary wage earner, but the wife’s contribution as a homemaker and the twenty-year marriage of the parties justified the equal division of property in the parties’ dissolution action).
C. Just and Equitable Valuation of Property

Part of a court’s responsibility to make a just and equitable division of property involves the challenging issue of assigning a fair value to property in a timely manner. In 1979, the legislature gave courts authority to reassess a property’s value up to thirty months after a dissolution:

When one party is awarded the homestead and the other party is awarded a fixed dollar amount based on an assumed or appraised market value of the homestead and within 24 months following the decree the homestead is sold, within six months of the sale either party may petition, and the court may grant, an apportionment of the proceeds in the proportion award in the decree, based upon the net sale price rather than the assumed or appraised market value.\(^\text{62}\)

The thirty-month post-dissolution window created too much uncertainty and was quickly discarded in 1981.\(^\text{63}\) The legislature’s solution to this uncertainty was a statutory provision allowing the court to force the sale of the homestead or other marital assets during the pendency of marriage dissolution if the circumstances required it.\(^\text{64}\)

The next important statutory revision for purposes of this case note occurred in 1988.\(^\text{65}\) Historically, marital property included any property that was acquired during the existence of the marriage but prior to the date of dissolution.\(^\text{66}\) However, in 1988, the legislature changed the language defining “nonmarital property” and established a new cutoff date for classifying and valuing marital property—the valuation date.\(^\text{67}\) Any property

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\(^\text{62}\) MINN. STAT. § 518.58 (1979) (current version at MINN. STAT. § 518.58, subdiv. 1 (2019)).
\(^\text{63}\) MINN. STAT. § 518.58 (1981).
\(^\text{64}\) Id. (“If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of the proceeding for a dissolution of marriage or an annulment.”).
\(^\text{66}\) MINN. STAT. § 518.54, subdiv. 5 (1951) (current version at Minn. Stat. § 518.003, subdiv. 3b (2019)) (“Property acquired during coverture’ means any property, real or personal, acquired by the parties . . . to a divorce . . . at any time during the marriage relation between them . . . .

\(^\text{67}\) MINN. STAT. § 518.54, subdiv. 5 (1988) (“Nonmarital property’ means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which . . . is acquired by a spouse after the valuation date.”); MINN. STAT. § 518.58, subdiv. 1 (1988) (“The court shall value marital assets for purposes of division between the parties 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.”).
acquired after the valuation date, regardless of a later dissolution date, was presumed to be nonmarital property. However, the legislature built in court discretion by adding that “if there is a substantial change in value of an asset between the date of the valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.”

The valuation date was originally the day the proceedings for dissolution commenced. But in 1989, the legislature clarified that the valuation date was the date of the initially scheduled prehearing settlement conference, or, if agreed upon by the parties, another date that was deemed fair and equitable. An early valuation date, such as Minnesota’s, serves to protect both spouses. For example, a spouse who controls and manages a business is protected in the event the value of that business increases between the pretrial hearing and trial date due to the individual efforts of the managing spouse. It confers the benefits of his or her labor. Conversely, it also protects the non-managing spouse. Should the spouse who controls and manages the business decide to run the business into the ground, the non-managing spouse will not suffer any loss as a result of the managing spouse’s actions.

Choosing a valuation date is one of the most challenging problems created by the equitable distribution law and yet is of utmost importance.

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68 MINN. STAT. § 518.003, subdiv. 3b(d) (2019); see also Rohling v. Rohling, 379 N.W.2d 519, 522 (Minn. 1986) (finding future retirement funds were marital property because respondent acquired the right to receive retirement funds under the plan during the period in which he was employed and married).
69 MINN. STAT. § 518.58, subdiv. 1 (1988) (current version at MINN. STAT. § 518.58, subdiv. 1 (2019)).
70 MINN. STAT. § 518.58, subdiv. 1 (1989).
71 Id.
73 Id. at 474–75.
74 Id. at 475–76.
75 Id. at 474–75, stating: Practitioners may also argue that the court should employ this valuation date in special, time-is-of-the-essence-type situations, especially 'where there is evidence that a marital asset was dissipated, wasted, or converted to a non-marital form.' This quick alternative protects a spouse from another’s squandering of marital assets and allows the protected spouse to retain more resources to start a new life. (quoting Cox v. Cox, 882 P.2d 909, 918 n.5 (Alaska 1994)).
76 Id. at 470–71 (quoting Sutliff v. Sutliff, 543 A.2d 534, 537 (Pa. 1988)) ("[T]he practical effect of this procedure may make a difference in the amount of marital property awarded and prevent a potential decrease in the clients standard of living [because] 'value is by no
In complex divorces, protracted pretrial proceedings and other calendar delays often produce a significant interval between the commencement of an action and the time of trial. During the interim, property values likely do not remain constant. Minnesota’s legislature recognized this conundrum and sought to alleviate its unjust ramifications by implementing an early valuation date at the date of the pretrial settlement conference, augmented with judicial discretion.

**D. Contradictions Between the Legislature’s Intent and Defining Precedent**

Each amendment to the statute’s language was explicitly implemented to offset a negative imbalance that the prior version of the statute inadvertently created. These imbalances became evident as cases made their way through the courts and showed the statute’s imperfections. As courts resolved the issues that surfaced when parties attempted to comply with or avoid the statute, courts created defining precedent to which the legislature responded accordingly with a series of amendments to reconcile the law with reality.

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means a constant. Indeed, what appears just at a particular valuation date may not have an equitable effect down the road.

Judkins, supra note 72, at 475 (“[D]ivorce trial occurs after filing the initial pleading, comprehensive financial discovery, and presentation of all evidence supporting one’s position.”).

Id. at 474 (“One must also caution practitioners about the effect of early valuation dates on increases in marital assets, like stock plans, securities, or business partnerships. Property value may rise . . . .”).


See, e.g., Grigsby v. Grigsby, 648 N.W.2d 716, 722–723 (Minn. Ct. App. 2002) (holding when the benefits of an employment-separation agreement are acquired after the valuation date, but are related to employment performed during marriage, the benefits are marital property); Nardini v. Nardini, 414 N.W.2d 184, 192 (Minn. 1987) (holding the trial court abused its discretion when it divided the family business without taking into account the wife’s contributions to the business and solely considered the husband’s pre-marriage purchase of a business interest); Miller v. Miller, 352 N.W.2d 738, 742–743 (Minn. 1984) (finding the wife played a substantial role in amassing the marital estate even though the acquisition, preservation, and appreciation of the marital property was primarily attributable to the husband).

See, e.g., Danielson v. Danielson, 392 N.W.2d 570, 573 (Minn. Ct. App. 1986) (maintaining the trial court’s decision should be reversed only for an abuse of discretion);
Gill is the latest in the court’s long line of precedent. The Minnesota Supreme Court’s opinion in Gill overruled precedent and ignored the statute’s carefully crafted text by classifying property acquired after the valuation date as marital property. As noted, the legislature included ample room for judicial discretion to consider all relevant factors in reaching a just and equitable division of property. Within the confines of that judicial discretion, the Gill court could have reached the same conclusion resulting in a just and equitable division of the Gills’ property, but, instead, the court chose to carve a new path outside the confines of the law. This new precedent, even if unintended, could lead to future outcomes that undermine the legislature’s intent to make a just and equitable division of property.

III. THE GILL DECISION

A. Facts

Both Appellant Stephen and Respondent Gretchen were employed when they were married in 1993. Stephen was the President of Phillips Beverage Company, and Gretchen worked full time selling cable television advertising. The parties’ roles during the marriage were very traditional—Stephen was the breadwinner, and Gretchen was the stay-at-home mother and wife. After the birth of the couple’s first child in 1994, Gretchen gave up her career to stay home and raise the parties’ four children. Meanwhile, Stephen continued to work and advance his earning ability at the Phillips Beverage Company.

During Stephen and Gretchen’s marriage, Stephen purchased an ownership interest in Talenti, a gelato company. In 2008, Stephen and his former boss, Eddie Phillips, went in as equal partners and bought a little

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Rohl Iing v. Rohl Iing, 379 N.W.2d 519, 522 (Minn. 1986) (stating the appellate court must affirm the district court’s decision if it has an acceptable basis in fact and principle even though the appellate court might have come to a different conclusion).

Gill v. Gill, 919 N.W.2d 297 (Minn. 2018).

Id. at 298, 311 (Anderson, J., dissenting).

Id. at 311.

Id. at 298.

Id.

Id.

Id. at 298–99.

See Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree at 4, Gill v. Gill, No. 27-FA-14-5356 (Minn. 4th Jud. Dist. Fam. Ct. Div., Apr. 8, 2016). At the time of dissolution, Stephen was the Chief Executive Officer of Talenti, making a gross annual salary of $362,500 per year.
over 50% of Talenti for approximately $1.5 million.\footnote{Id. at 10.} After purchasing Talenti, Stephen became its Chief Executive Officer (CEO).\footnote{Id.} Stephen’s involvement and leadership were significant contributors to Talenti’s growth and success.\footnote{Id.} Following Stephen’s purchase of Talenti, Stephen formed a limited liability company, Wyndmere, LLC (“Wyndmere”), to hold the parties’ interest in Talenti.\footnote{Id.} The five named owners of Wyndmere are Stephen and the parties’ four children.\footnote{Id.} Sometime after Wyndmere’s creation, Wyndmere acquired a membership interest in Talenti’s parent company, David Goliath Group, LLC (DGG).\footnote{Id.}

Other members of the Talenti team were added over the ensuing years, and some purchased an interest in the company. Additionally, in 2011, Eddie Phillips died, and his interest passed to his sons, Dean and Tyler Phillips.\footnote{Id.} Dean subsequently joined the team, but Tyler did not.\footnote{Id.} The following chart shows the members, individual owners, and ownership percentage of DGG:

<table>
<thead>
<tr>
<th>DAVID GOLIATH GROUP, LLC</th>
<th>INDIVIDUAL OWNER</th>
<th>OWNERSHIP PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fialko, LLC</td>
<td>Dean B. Phillips</td>
<td>38.7043%</td>
</tr>
<tr>
<td></td>
<td>Tyler J. Phillips</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dean B. Phillips</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Revocable Trust u/a/d February 26, 1993</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tyler J. Phillips</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Revocable Trust u/a/d April 27, 1994</td>
<td></td>
</tr>
<tr>
<td>Wyndmere, LLC</td>
<td>F. Stephen Gill</td>
<td>38.7043%</td>
</tr>
<tr>
<td></td>
<td>Gill Family Irrevocable Trust FBO Chandler Susan Gill u/a/d February 14, 2011</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gill Family Irrevocable Trust FBO Paige Madison Gill u/a/d</td>
<td></td>
</tr>
</tbody>
</table>
February 14, 2011
Gill Family Irrevocable Trust FBO McKenzie
Elizabeth Gill u/a/d
February 14, 2011

<table>
<thead>
<tr>
<th>Trust</th>
<th>Beneficiary</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gill Family Irrevocable Trust FBO Taylor</td>
<td>Francis Gill u/a/d</td>
<td>3.3000%</td>
</tr>
<tr>
<td>Hochschuler, LLC</td>
<td>Joshua Hochschuler</td>
<td>18.2914%</td>
</tr>
<tr>
<td></td>
<td>Carole Silverman</td>
<td></td>
</tr>
<tr>
<td>The Majody Helms, LLC</td>
<td>Jack P. Helms</td>
<td>3.3000%</td>
</tr>
<tr>
<td>Kent Pilakowski</td>
<td>Kent Pilakowski</td>
<td>1.000%</td>
</tr>
</tbody>
</table>

Even though Gretchen is not listed as an owner of DGG, it was not disputed that she had marital ownership in both Wyndmere and David Goliath because both were acquired during the parties' marriage. In 2013, DGG decided to sell Talenti and began negotiations with Unilever N.V. and Conopco Inc. (collectively, “Unilever”). Negotiations continued for approximately one year, culminating in a letter of intent signed in July 2014. The sale terms set out in the letter of intent were consistent with the final purchase agreement, wherein the purchase price was split between a $180 million upfront payment and two future, contingent earn-out payments worth up to $170 million. Each member had a right to receive their percentage of the earn-out payments, regardless of whether they worked for Talenti after the sale.

B. Procedural History

Stephen petitioned for a dissolution of his marriage to Gretchen in August 2014. The district court set the dissolution’s valuation date for September 5, 2014, before the purchase agreement for Talenti’s sale was

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“See Gill v. Gill, 919 N.W.2d 297, 299 (Minn. 2018); see also Minn. Stat. § 518.003, subd. 3b (2016) (“Marital property’ means property . . . acquired by the parties, or either of them . . . at any time during the existence of the marriage relation between them . . . but prior to the date of valuation . . .”).
“Gill, 919 N.W.2d. at 299.
“Id.
“Id.
“Id. at 300.
“Id. at 299.
“Id. at 299.
“Id.
executed on December 2, 2014.106 At the valuation hearing, the court valued Talenti at $180 million based on the up-front sale price in the letter of intent, which the court determined was the “present value” of the business.107 The court also found that the value was consistent with other acquisitions of similarly-situated frozen dessert companies.108 However, when the court valued Talenti, it did not consider the earn-out payments that were also referenced in the letter of intent.109

The Talenti sale closed on December 2, 2014, after the valuation date but before the final dissolution of the parties’ marriage.110 The purchase agreement was consistent with the terms in the July letter of intent and consisted of a $180 million upfront payment, followed by the two earn-out payments that were dependent upon Talenti’s performance during the following two years.111 The purchase agreement specified a formula for calculating the earn-out payments, which could potentially total $170 million.112 When the earn-out payments were realized, they would be available to all members.113

The contract language provided:

SECTION 1.01. The Asset Purchase, . . . (b) As additional consideration for the Assets, the Company shall also be eligible to receive from Asset Buyer (i) an amount equal to the First Earn-out Payment . . . and (ii) an amount equal to the Second Earn-out Payment . . . .

SECTION 1.02. The Distribution. . . . [I]Immediately following the consummation of the Asset Purchase, [David Goliath] shall effect a distribution to the Members of (a) the Asset Purchase Payment and (b) the right to receive (i) an amount equal to the First Earn-out Payment . . . and (ii) an amount equal to the Second Earn-out Payment . . . .

SECTION 1.03. The Membership Unit Purchase. . . . (b) As additional consideration for the Membership Units, the Members shall also be eligible to receive from Unit Buyer (i) an

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106 Id.
107 Id. at 309 (Anderson, J., dissenting).
109 Id. at 30.
110 Gill, 919 N.W.2d at 299 n.4.
111 Id. at 300.
112 Id. at 300.
113 Id.
amount equal to the First Earn-out Payment . . . and (ii) an amount equal to the Second Earn-out Payment . . . .”

The non-working members included: Eddie Phillips’ son, Tyler Phillips; Josh Hochscher’s mother, Carole Silverman; and the Gill’s four daughters, Taylor, McKenzie, Paige, and Chandler. In addition, Stephen negotiated a separate, two-year employment contract with Unilever, agreeing to be Talenti’s CEO for a salary of $362,500 in the first year and $375,625 the next.115

The dissolution of Stephen and Gretchen’s marriage was final on January 4, 2016, only one month after the sale of Talenti.116 Shortly after, Gretchen challenged the district court’s classification of the earn-out payments as nonmarital property.117 To rule on Gretchen’s post-trial motion, the district court looked to the plain language of section 518.003, subdivision 3b, of the Minnesota Statutes118 and determined that the earn-out payments were nonmarital property because they were acquired by Stephen after the valuation date and were compensation for work Stephen would do in the future.119 According to the district court, Gretchen was only entitled to her marital share of Talenti as it was assessed on the valuation date.120

Gretchen appealed the district court’s decision, and the Minnesota Court of Appeals reversed, reasoning that contract interpretation governed the classification of earn-out payments as marital or nonmarital property.122 The Minnesota Court of Appeals found that the sale’s contract branded both the upfront payment and the future earn-out payments as “consideration,” and, therefore, the earn-out payments were not compensation but part of the sale price.123 Therefore, the earn-out payments were marital property and Stephen’s share should have been divided accordingly.124

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114 Id.
115 See id. at 298–99.
116 Id. at 300.
117 Id.
118 Id. at 301.
119 MINN. STAT. § 518.003, subdiv. 3d(b) (2016) (“Nonmarital property’ means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which . . . is acquired by a spouse after the valuation date.”).
121 Gill, 919 N.W.2d at 309 (Anderson J., dissenting).
123 Id. at 720–21.
124 Id.
Stephen appealed, but upon review, the Minnesota Supreme Court affirmed the court of appeals and remanded the case back to the district court to value and equitably divide Stephen’s portion of the earn-out payments with Gretchen. The court concluded that “[a] sale of marital property during dissolution proceedings, regardless of when that sale occurs, results in the proceeds from the sale also being marital property, the value of which is defined by the contract selling that asset.”

Additionally, the court affirmed the Minnesota Court of Appeals’ determination that the earn-out payments were a contractual right from the sale of a marital asset that was acquired before the valuation date, subject to the court’s valuation and equitable division. Further, the earn-out payments were not compensation for work Stephen would do in the future because every DGG member was entitled to share in the payments, regardless of future employment with the company.

The Minnesota Supreme Court’s decision, however, was not unanimous. The dissent argued that the original district court holding should stand and noted that the district court set new, unnecessary precedent that was undesirable because it did not utilize appropriate standards of review, did not apply the law as written, and took away the flexibility of the statute’s judicial discretion. By doing so, the majority undermined the legislature’s intent to protect the homemaker and eliminate gender and role bias in a marriage dissolution.

IV. ANALYSIS

In Minnesota, when dividing property in a marriage dissolution, a court’s primary charge is to make the division just and equitable. Yet, when the district court denied Gretchen Gill a portion of the earn-out payments from Talenti’s sale, it was neither just, nor equitable. The Minnesota Supreme Court recognized the district court’s failure to fulfill its charge and attempted to remedy it. In one respect, the Minnesota Supreme Court succeeded—it made a just and equitable division. But in other respects, it

125 Gill, 919 N.W.2d at 307 (Anderson, J., dissenting).
126 Id. at 303–04.
127 Id. at 304.
128 Id. at 305.
129 See id. at 308 (Anderson, J., dissenting).
130 See supra Part II.
133 See Gill, 919 N.W.2d at 308.
failed because it needlessly created new precedent that overrode the legislature’s purposeful establishment of a valuation date and moved away from judicial discretion that allowed the court to protect homemakers like Gretchen Gill.\textsuperscript{134}

The same just and equitable result could have been attained completely within the confines of the law, using appropriate standards of review.\textsuperscript{135} A thorough analysis of the standards of review at each judicial stage of \textit{Gill} will illustrate how a just and equitable result could have been reached at any stage and why new precedent was unnecessary.

\textbf{A. Minnesota Standards of Review}

Minnesota has adopted basic standards of review that must be applied when reviewing findings of fact and questions of law, including contract and statutory interpretation.\textsuperscript{136} These standards of review merit some discussion because they limited the ways the reviewing courts in \textit{Gill} could overturn the district court’s decision.\textsuperscript{137}

\textit{1. Findings of Fact}

There are two kinds of findings of fact: oral and documentary. The legislature does not differentiate between the two.\textsuperscript{138} Deference to the lower court is required when reviewing findings of fact. Under Minnesota Rules of Civil Procedure, findings of fact cannot be set aside unless clearly erroneous.\textsuperscript{139} A district court’s factual findings are reviewed for clear error to see if there is reasonable evidence in the record to support the court’s findings.\textsuperscript{140} Even if there is reasonable evidence to support a finding of fact, the finding can still be clearly erroneous if the reviewing court, on the entire evidence, is “left with the definite and firm conviction that a mistake has been committed.”\textsuperscript{141}

\footnotesize{
\textsuperscript{134} See infra Section IV.D.
\textsuperscript{135} See infra Section IV.D.
\textsuperscript{137} Id.
\textsuperscript{138} Tarr v. Tarr, No. C9-93-2216, 1994 WL 91203, at *3 n.2 (Minn. Ct. App. Mar. 22, 1994) (stating that the 1985 amendment to Rule 52.01 overruled \textit{In re Trust Known as Great Northern Iron Ore Properties}, 243 N.W.2d 302 (1976), and the clearly erroneous standard now governs findings based on documentary as well as oral evidence).
\textsuperscript{139} MINN. R. CV. P. 52.01 (2019).
\textsuperscript{140} Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013).
\textsuperscript{141} Olsen v. Olsen, 562 N.W.2d 302, 305 (Minn. 1997)).
}
erroneous, the evidence must be viewed in the light most favorable to the
verdict.142

Applied to Gill, the valuation of Talenti is a finding of fact. Valuation
is an approximation and need only lie within a reasonable range of figures.143
The Gill valuation, made without a jury, cannot be set aside unless clearly
erroneous based on the record as a whole.144

2. Questions of Law

Minnesota courts generally review questions of law de novo and
examine how a district court applied the law to stipulated facts.145
No deference is given to a lower court on questions of law;146
however, a
reviewing court must still defer to a district court’s underlying findings of
fact.147

Applied to Gill, classification of proceeds from Talenti’s sale—
including its earn-out payments—as marital or nonmarital property is a
question of law, reviewed de novo.148 This differs from the valuation of
Talenti, a finding of fact that is reviewed under the clearly erroneous
standard.149

3. Mixed Questions of Law and Fact

Minnesota courts reviewing mixed questions of law and fact “accord
the district court discretion in its ultimate conclusions and review such
conclusions under an abuse of discretion standard.”150 If it is clear that a
district court improperly applied the law or made findings of fact that are
clearly erroneous and unsupported by the record, an abuse of discretion
has occurred.151 Applied to Gill, the district court had broad discretion in its

142 Id.
143 Hertz v. Hertz, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975).
144 Id.
145 Harlow v. State Dep’t of Human Servs., 883 N.W.2d 561, 568 (Minn. 2016).
146 Modrow v. JP Foodservice, Inc., 656 N.W.2d 389, 393 (Minn. 2003).
148 Olsen v. Olsen, 562 N.W.2d 797, 800 (Minn. 1997).
149 Hertz v. Hertz, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975).
150 In re Estate of Sullivan, 868 N.W.2d 750, 754 (Minn. Ct. App. 2015) (quoting Porch v.
Gen. Motors Acceptance Corp., 642 N.W.2d 473, 477 (Minn. Ct. App. 2002)).
12, 2010); see also Osborn v. Bank of the U.S., 22 U.S. 738, 866 (1824) (“Courts are the
mere instruments of the law and can will nothing. When they are said to exercise a
discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed
by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is
never exercised for the purpose of giving effect to the will of the judge, always for the purpose

https://open.mitchellhamline.edu/mhlr/vol46/iss3/10

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determination of the appropriate property division. The district court’s determination cannot be disturbed absent an abuse of that discretion.\footnote{In re Marriage of Hart, No. A06-243, 2007 WL 738671, at *3 (Minn. Ct. App. Mar. 13, 2007).}

4. Contract Interpretation

Contract interpretation and whether language in a contract is ambiguous is a question of law reviewed de novo.\footnote{Storms, Inc. v. Mathy Constr. Co., 883 N.W.2d 772, 776 (Minn. 2016); Halla Nursery, Inc. v. City of Chanhassen, 781 N.W.2d 880, 884 (Minn. 2010).} Determining whether a contract is ambiguous “depends on the meaning assigned to the words and phrases in accordance with the apparent purpose of the contract as a whole.”\footnote{Halla Nursery, 781 N.W.2d at 884.} “The language of a contract is ambiguous if it is susceptible to two or more reasonable interpretations.”\footnote{Id. at 304 (quoting Dykes v. Sukup Mfg. Co., 781 N.W.2d 578, 582 (Minn. 2010)) (“When the [contractual] language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract.”).}

If a contract is ambiguous, contract interpretation is a finding of fact. However, with an unambiguous contract, interpretation is a question of law.\footnote{Id. at 776.} In Gill, the purchase agreement was deemed unambiguous, and its interpretation was reviewed de novo.\footnote{Cocchiarella v. Driggs, 884 N.W.2d 621, 624 (Minn. 2016); see also Swenson v. Nickaboine, 793 N.W.2d 738, 741 (Minn. 2011).}

5. Statutory Interpretation

The interpretation of a statute is a question of law that Minnesota courts review de novo.\footnote{Minn. Stat. § 645.16 (2019).} “The goal when interpreting a statute “is to ascertain and effectuate the intention of the legislature.”\footnote{Tuma v. Comm’t of Econ. Sec., 386 N.W.2d 702, 706 (Minn.1986); see also Minn. Stat. § 645.16 (2019).} When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect.\footnote{Burkstrand v. Burkstrand, 632 N.W.2d 206, 210 (Minn. 2001).} However, when a statute is silent on a key point and is subject to different plausible interpretations, the statute must be considered ambiguous.\footnote{Id. at 304 (quoting Dykes v. Sukup Mfg. Co., 781 N.W.2d 578, 582 (Minn. 2010)) (“When the [contractual] language is clear and unambiguous, we enforce the agreement of the parties as expressed in the language of the contract.”).}

\footnote{For a discussion of abuse of discretion, see 3 DUNNELL MINN. DIGEST APPEAL AND ERROR $ 12.09 (2019).}
may be ascertained by considering a number of factors, including the legislative history, the necessity for the law, and the consequences of various interpretations. Additionally, certain presumptions apply, including the presumption that the legislature does not intend an absurd result.

In its effort to obtain a just and equitable division of property, the Minnesota Supreme Court in Gill failed to adhere to these standards. However, as discussed later, the Gill court could have adhered to these standards and avoided setting new precedent, all while achieving a just and equitable division of the Gills’ material assets.

B. Examination of the District Court’s Opinion

The district court’s role is to hear disputes and resolve them by making findings of fact and conclusions of law. In Gill, the district court’s role was to make a just and equitable distribution of property under the governing law, sections 518.58 and 518.003 of the Minnesota Statutes.

1. The District Court’s Holding and Reasoning

The first issue the district court addressed was whether the earn-out payments were marital property accrued during the marriage. To resolve this, the district court applied section 518.003, subdivision 3b(d), of the Minnesota Statutes, which defines “nonmarital property” as any property acquired after the valuation date. Under this oversimplification of the governing statute, the district court determined that the relevant factor was confined to the value of Talenti as of the valuation date because the sale of Talenti occurred after the valuation date and proceeds from that sale were Stephen’s nonmarital property.

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162 MINN. STAT. § 645.16 (2019).
163 Id. § 645.17 (2019).
164 See infra Section IV.D.
167 MINN. STAT. § 518.003, subdiv. 3b (2019).
168 See infra Section IV.B.2.
On the valuation date, Talenti’s estimated value was $180 million. The district court justified this value through several means. First, it accepted testimony about the critical nature of the sale’s timing and the sensitive negotiations between Unilever and Talenti because Unilever was the only available buyer. Second, the district court found Unilever’s desire to buy Talenti was based exclusively on its current value, not on any future projections for growth. Finally, Talenti’s proposed value was deemed fair because it was similar to prices paid for other comparable companies and fell within the industry range. For these reasons, the district court held that Gretchen “received full marital value for Talenti as of the date of valuation.”

Despite the district court’s conclusion of the essential issue of classification, the district court continued to address other claims as required by law. The final claim needing attention was Gretchen’s claim that the earn-out payments were part of Unilever’s scheduled payments to purchase the parties’ marital ownership in Talenti, not payments for Stephen’s post-marital efforts to grow Talenti after the sale.

To address this additional claim, the district court first analyzed the contract language and determined that the “additional consideration” did not encompass the earn-out payments for Talenti but rather involved the promise of opportunity to prove future growth and be rewarded for that growth. Second, the district court dismissed Talenti’s tax documents that referred to the sale as an installment sale. Third, the district court pointed
to the uncertainty of obtaining the earn-out payments. The district court determined that the earn-out payments were intended as compensation for Stephen’s future work at Talenti. And finally, the district court acknowledged that all members, including passive members, would receive a share of the earn-out payments proportionate to their ownership, but the court quickly dismissed this acknowledgment as an unrelated decision among the DGG members and Unilever.

For these reasons, the court held in dictum that “the earn-outs, if obtained, will be a result of [Stephen’s] significant post-marital labor and should be awarded to him as his nonmarital property.”

2. Errors in the District Court’s Holding and Reasoning

A trial court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. The district court’s holding was an abuse of discretion and was neither just nor equitable.

When the district court made its decision regarding classification of proceeds from the sale of Talenti, it only used authority from section 518.003, subdivision 3b, Definitions: Marital property; exceptions, of the Minnesota Statutes. Yet this section explicitly points to section 518.58, Division of Marital Property, as the dominant authority for making a division of marital property.

Using section 518.58 is critically important because it contains the essential mandate to make a just and equitable division and provides the means to do so through obligatory consideration of “all relevant factors.” It also provides that if there is a substantial change in the value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution; a

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179 Id. at 14.
180 Id.
181 Id. at 15.
182 Id. at 16.
183 See Sirek v. Sirek, 693 N.W.2d 896, 898 (Minn. Ct. App. 2005) (citing Chamberlain v. Chamberlain, 615 N.W.2d 405, 412 (Minn. Ct. App. 2000)) (“District courts have broad discretion over the division of marital property and appellate courts will not alter a district court’s property division absent a clear abuse of discretion or an erroneous application of the law.”).
184 MINN. STAT. § 518.58, subdiv. 1 (2019).
185 See Stich v. Stich, 435 N.W.2d 52, 53 (Minn. 1989) (“Effective appellate review of the exercise of [the trial court’s] discretion is possible only when the trial court has issued sufficiently detailed findings of fact to demonstrate its consideration of all factors relevant to [equitable division].”).
grant of discretion very pertinent to Gill. The district court’s complete failure to apply section 518.58 is an abuse of discretion because the district court made its conclusion without consideration of all the circumstances and applicable law.

3. How the District Court Could Have Strengthened Its Holding and Reasoning

The district court should have done two things differently to have its decision upheld on appeal. First, the court should have carefully and methodically used all the governing law to reach its conclusion. Section 518.58 and section 518.003, subdivision 3b, are companion statutes, intended to be applied in tandem when making a division of marital property. Second, as an extension to the prior suggestion, the court should have exercised the discretion afforded by section 518.58, subdivision 1—the discretion to change a property’s value post-valuation date—because the facts showed a substantial change in Talenti’s value post-valuation date.

Discretion, when given, must be exercised. Exercising discretion means that the court has deliberately considered all relevant factors and

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186 Id.
188 MINN. STAT. § 518.003, subdiv. 3b (2019) (“Marital property’ means property . . . acquired by the parties . . . prior to the date of valuation under section 518.58, subdivision 1.”).
189 Id.
190 See State v. Grover, No. A16-1565, 2017 WL 3469449, at *2 (Minn. Ct. App. Aug. 14, 2017) (“[I]f the district court has discretion . . . it must exercise that discretion by deliberately considering circumstances for and against . . . . When the record demonstrates that an exercise of discretion has not occurred, the case must be remanded . . . . “).
based its decision upon them.\footnote{Id.} In \textit{Gill}, the court did not exercise the obligatory discretion, primarily because it did not apply the law that mandated discretion.

To properly exercise discretion, the district court should have considered the substantial change in Talenti’s value between the valuation date and the final distribution.\footnote{Gill v. Gill, 900 N.W.2d 717, 720 (Minn. Ct. App. 2017).} Exercising this discretion does not mean the court was obliged to adjust Talenti’s value, only that it needed to consider the change in value to effect an equitable distribution.\footnote{See Grover, 2017 WL 3469449, at *2.}

Instead, the district court applied an inflexible standard based solely upon section 518.003, subdivision 3b, that merely defines nonmarital property as property acquired by a spouse after the valuation date.\footnote{MINN. STAT. § 518.003, subdiv. 3b (2019).} If the district court had properly applied section 518.58, there would likely be no basis to conclude that it abused its discretion.

It is not clear whether the district court thought it made a just and equitable division of the Gill’s property, but it does appear that it felt constrained to follow the law.\footnote{See MNCOURTS.GOV, supra note 165.} The district court reached the only outcome possible through inflexible application of section 518.003, subdivision 3b, that proceeds from the sale of Talenti are nonmarital property because they were acquired after the valuation date.\footnote{Gill, 919 N.W.2d at 304 (Minn. 2018).} Use of section 518.58 would have been liberating by allowing the district court to consider all relevant factors to make a truly just and equitable division.

Had the district court applied the relevant law and exercised discretion where required, the court would have presented a stronger case and its decision would likely have been affirmed upon review by the Minnesota Court of Appeals.

\subsection*{C. Examination of the Court of Appeals’ Opinion}

The Minnesota Court of Appeals has the authority to review decisions of the district court, but it is limited by established standards of review that prescribe the level of scrutiny it must apply.\footnote{See supra Section IV.A.} This was the Minnesota Court of Appeals’ challenge in \textit{Gill}–to operate within established standards of review but still find a way to reverse the district court’s judgment, which the Minnesota Court of Appeals considered unjust and inequitable.\footnote{Gill v. Gill, 900 N.W.2d 717, 722 (Minn. Ct. App. 2017).}
1. The Court of Appeals’ Reasoning and Holding

The Minnesota Court of Appeals did not address the district court’s essential holding—whether the earn-out payments were marital property accrued during the marriage before the valuation date. Rather, it addressed the district court’s obiter dictum—whether “earn-out payments from the sale of a marital interest in a company are husband’s nonmarital property by virtue of his having worked for the purchaser during the earn-out period under a separate employment agreement.” The Minnesota Court of Appeals determined this to be a classification issue, subject to de novo review.

To add to the confusion, the Minnesota Court of Appeals concluded that the amount Unilever paid for Talenti reflected the value of the company at the valuation date. Therefore, the question the court answered was not the one it asked—whether the earn-out payments were marital property. The question it answered was how much Unilever agreed to pay. Valuation, however, is a question of fact to be reviewed under the clearly erroneous standard.

To resolve this conundrum, the Minnesota Court of Appeals focused on interpretation of the purchase agreement and concluded that the contract was unambiguous based on its perceived plain meaning. Under this finding, the Minnesota Court of Appeals found that the plain meaning of the purchase agreement clearly identified the upfront payment and future earn-out payments as “consideration” for Talenti’s purchase, with an agreed upon formula for calculating the earn-out payments. Further, the Minnesota Court of Appeals found the earn-out payments were not compensation for Stephen’s post-sale efforts because he was compensated through a separate employment agreement. Additionally, the purchase agreement specified that all members of DGG would receive an equitable share of the earn-out payments, regardless of whether they worked for

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199. See Shumaker, supra note 175 and accompanying text.
200. Gill, 900 N.W.2d at 719.
201. Olsen v. Olsen, 562 N.W.2d 797, 800 (Minn. 1997).
202. Gill, 900 N.W.2d at 720.
203. Id.
204. “There is caselaw authority that the mislabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item.” Dailey v. Chermak, 709 N.W.2d 626, 631 (Minn. Ct. App. 2006) (citing Graphic Arts Educ. Found., Inc. v. State, 240 Minn. 143, 145–46, 59 N.W.2d 841, 844 (1953)).
205. Gill, 900 N.W.2d at 721.
206. Id. at 720.
207. Id. at 722.
Talenti at the time of sale or continued working for Talenti in the future. This significantly undercut the district court’s conclusion that earn-outs were nonmarital property earned by Stephen as compensations for his services. The court also found that because the earn-out payments were part of the purchase price, they reflected Talenti’s value as of the valuation date.

For these reasons, the Minnesota Court of Appeals held that the earn-out payments were marital property and remanded the case back to the district court for further proceedings consistent with its opinion.

2. Errors in the Court of Appeals’ Reasoning and Holding

Unlike the district court’s judgment, the Minnesota Court of Appeals’ judgment produced a just and equitable result: Gretchen received her fair share of Talenti’s sale proceeds. But like the district court, the Minnesota Court of Appeals’ judgment did not comport with the law. There are three errors committed by the Minnesota Court of Appeals.

First, the Minnesota Court of Appeals erroneously only reviewed the part of the district court’s decision that was obiter dictum. Thus, even though the court came to a different conclusion from the district court and held that the earn-out payments were marital property, the holding was not based on a review of the district court’s central holding: whether the right to the earn-out payments was marital property accrued during the marriage. Unlike the district court, when the Minnesota Court of Appeals set out to determine whether Gretchen received a just and equitable distribution, it focused primarily on how much Unilever agreed to pay. Whereas, when

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208 Id. at 719. Some of Talenti’s current leadership team would not be continuing employment with Unilever. For example, Dean Phillips would be leaving the company to care for his daughter who was battling cancer, yet, would still receive a portion of earn-outs prorated according to his ownership interest in DGG. Amended Findings of Fact, Conclusions of Law, Order for Judgment and Decree at 16, Gill v. Gill, No. 27-FA-14-5356 (Minn. 4th Jud. Dist. Fam. Ct. Div., Apr. 8, 2016).

209 Gill, 900 N.W.2d at 722.

210 See supra notes 175–182 and accompanying text. For an in-depth discussion of dicta, see generally Judith M. Stinson, Why Dicta Becomes Holding and Why it Matters, 76 BROOKLYN L. REV. 219 (2010), https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1217&context=blr [https://perma.cc/KRT7-74G2]. “To the extent that courts treat dicta as holding, they are more likely to reach incorrect decisions, to exceed their judicial authority, and to generate illegitimate results.” Id. at 221. This is precisely what happened in Gill when the Minnesota Court of Appeals focused solely on the district court’s dicta to reach a different conclusion.


212 Gill, 900 N.W.2d at 720.
the district court set out to determine whether Gretchen received a just and equitable distribution, it focused primarily on how much Talenti was worth on the valuation date. This revision of the issue changed the nature of the case from a question of classification to a question of valuation and contract interpretation.

Second, the Minnesota Court of Appeals improperly determined that proceeds from the sale of Talenti were marital property. This was improper because the sale occurred after the valuation date, and the governing statute clearly states that “Nonmarital property” means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which . . . is acquired by a spouse after the valuation date. The only way to circumvent the timing of Talenti’s sale after the valuation date was through the use of judicial discretion—afforded by the statute—to adjust the valuation, which the court did not use.

Third, like the district court, the Minnesota Court of Appeals did not apply all the governing law. The court of appeals only referenced the governing statutes once to conclude that the parties’ ownership of Talenti was presumptively marital property. The court did not address the directive in section 518.003, subdivision 3b, that property acquired after the valuation date is nonmarital property, nor did the court apply any of the discretionary factors afforded in section 518.58 to ensure a just and equitable division. Instead, the court awarded Gretchen a share of the earn-out payments in a willy-nilly fashion without proper reference to governing law.

These three errors led to an inadequate resolution and left the Minnesota Court of Appeals’ holding open to further review by the Minnesota Supreme Court.

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214 Gill, 900 N.W.2d at 722.


216 Id. (“If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.”).

217 See supra Section IV.B.2.

218 Gill, 900 N.W.2d at 720; see also MINN. STAT. § 518.003, subdiv. 3b (2019).
3. How the Court of Appeals Could Have Strengthened Its Holding

The court of appeals’ short opinion and disregard of applicable law may have been, in effect, a punt to the supreme court. However, if its punt was unintentional, the court could have strengthened its opinion to comport with the law and avoid further review in three ways.

First, the Minnesota Court of Appeals should have focused its analysis on the district court’s arbitrary and capricious application of the law—its complete failure to apply section 518.58—and found that the district court abused its discretion. Only after the Minnesota Court of Appeals established that the district court abused its discretion, could it overrule the district court’s finding of fact, Talenti’s valuation, because it was clearly erroneous. The valuation was clearly erroneous because the district court did not consider all the relevant factors, i.e. the timing of Talenti’s sale or the letter of intent that was signed before the valuation date and substantially mirrored the purchase agreement, or exercise its discretion to adjust Talenti’s value based on these relevant factors.

Second, although the Minnesota Court of Appeals’ de novo interpretation of the contract to determine whether the earn-out payments were part of the sales proceeds was critical to the final analysis, it was only necessary and proper as a means to determine Talenti’s value—not as a means to determine whether Talenti’s proceeds were marital property. The question of whether Talenti’s proceeds were marital property should have been determined through the use of judicial discretion afforded by the governing statutes, not through contract interpretation.

Finally, the Minnesota Court of Appeals could have written its opinion more precisely to address the subtle nuances between classification and valuation that have continually caused errors throughout the course of litigation. If the Minnesota Court of Appeals had done these three things, the Minnesota Supreme Court could have easily affirmed the Minnesota Court of Appeals’ decision without establishing new precedent.

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219 Minnesota Judicial Branch, Minnesota Court of Appeals, MNCOURTS.GOV http://www.mncourts.gov/courtofappeals.aspx [https://perma.cc/9R83-9M5Q] (“As the error-correcting court, the Court of Appeals handles most of the appeals, which allows the Minnesota Supreme Court to spend time resolving difficult constitutional and public policy cases. Court of Appeals’ decisions are the final ruling in about ninety-five percent of the 2,000 to 2,400 appeals every year. Typically, about five percent of the Court’s decisions are accepted by the Minnesota Supreme Court for further review.”).

220 See supra Section IV.B.2.


222 See supra Section IV.B.2 for a discussion of how the court of appeals improperly based its review solely on the district court’s dicta rather than the district court’s essential holding.
D. Examination of the Supreme Court’s Opinion

The Minnesota Supreme Court’s challenge was to affirm the Minnesota Court of Appeals’ just and equitable holding while reconciling the holding to comport with the law. To do so, the court properly returned to the district court’s essential issue: whether proceeds from Talenti’s sale, including future contingent earn-out payments, were marital or nonmarital property.

1. The Supreme Court’s Reasoning and Holding

The Minnesota Supreme Court’s analysis was much more in depth than the Minnesota Court of Appeals’, as it tried to reconcile the just and equitable outcome of the court of appeals’ contract interpretation with the district court’s rigid adherence to the valuation date. It attempted this reconciliation through a multi-step process. First, the court established that ownership of Talenti was a marital asset. Next, the court substituted the contractual rights from Talenti’s sale to stand in the place of the marital asset. Finally, the court determined the scope of the contractual right—whether the earn-out payments were part of the sale price—and concluded that the earn-out payments were marital property.

a. Standards of Review

The Minnesota Supreme Court acknowledged all the proper standards of review—an important step to create a solid foundation for its decision. The court determined that: (1) whether property is marital or nonmarital is a question of law reviewed de novo; (2) unambiguous contracts are interpreted de novo; (3) deference must be given to the district court’s findings of fact, which cannot be set aside unless clearly erroneous; (4) a district court’s evaluation and division of property cannot be overturned unless the court abused its discretion; and (5) if the reviewing court is left with the clear and firm conviction that a mistake has been made, then the

223 Gill v. Gill, 919 N.W.2d 297, 298 (Minn. 2018).
224 Id. (“[T]he parties’ interest in the company was marital property that was acquired before the valuation date . . . .”).
225 Id. at 304 (“Because Wyndmere received a contractual right to receive the earn-out payments from the pre-dissolution sale of a marital asset that was acquired before the valuation date, we conclude that the earn-out payments, as direct proceeds from the sale, are marital property subject to the court's valuation and equitable division.”).
226 Id. (“To determine the scope of the contractual rights that Wyndmere received from the sale of the parties’ marital asset, we look to the sale's purchase agreement.”).
227 See MNCOURTS.GOV, supra note 219.
district court’s decision can be found to be clearly erroneous, notwithstanding the existence of evidence to support such findings.\textsuperscript{228}

\textit{b. Statutory Application}

The Minnesota Supreme Court referenced both applicable statutes—sections 518.003 and 518.58.\textsuperscript{229}

Within section 518.003, subdivision 3b, the Minnesota Supreme Court emphasized that all property acquired subsequent to the marriage and before the valuation date is presumed to be marital property, regardless of whether title is held individually or by both spouses; that each spouse has a common ownership in marital property that vests no later than the time of the entry of the decree in a proceeding for dissolution; and that nonmarital property is property acquired by a spouse after the valuation date.\textsuperscript{230}

Within section 518.58, the Minnesota Supreme Court emphasized the statute’s mandate that the court make a just and equitable distribution of marital property.\textsuperscript{231} Additionally, the court reasoned that the judicial discretion, afforded in section 518.58, subdivision 3, to force the sale of marital property for equitable purposes, could reasonably be expanded to include a consensual sale. As such, the sale proceeds would be marital property.\textsuperscript{232}

\textit{c. Contractual Analysis}

The Minnesota Supreme Court used Minnesota precedent to cement both its expansive interpretation of marital property that upheld the legislature’s intent to incorporate the contributions of both spouses\textsuperscript{233} and its narrow interpretation of nonmarital property to reinforce the limited exceptions as exclusive of all other exceptions.\textsuperscript{234}

After grounding its decision in statutory authority and case law, the Minnesota Supreme Court made its critical and distinctive observation—whether property is classified as marital depends on when it was acquired.\textsuperscript{235}

\begin{footnotesize}
\begin{itemize}
  \item Gill, 919 N.W.2d at 301–03.
  \item Minn. Stat. §§ 518.003, subd. 3b, 518.58, (2019).
  \item Gill, 919 N.W.2d at 302.
  \item Id. at 303.
  \item Id.
  \item Id. at 302–03; see also Baker v. Baker, 753 N.W.2d 644, 650 (Minn. 2008); Nardini v. Nardini, 444 N.W.2d 184, 192 (Minn. 1987).
  \item Gill, 919 N.W.2d at 302–03; see also Minn. Stat. § 645.19 (2019) (“Exceptions expressed in a law shall be construed to exclude all other.”); Janssen v. Janssen, 331 N.W.2d 752, 755 (Minn. 1983).
  \item Gill, 919 N.W.2d at 303.
\end{itemize}
\end{footnotesize}
The court maintained that the earn-out payments were not acquired, but received, in exchange for already-acquired marital property. As an exchange, the sale converted the parties’ marital asset from an indirect membership interest in Talenti into a contractual right to receive proceeds from its sale.

After establishing that the contractual rights in the sales proceeds were marital property received through exchange, the court proceeded to analyze whether earn-out payments were included within the scope of those contractual rights. Like the Minnesota Court of Appeals, the Minnesota Supreme Court interpreted the contractual language de novo. The unambiguous language of the purchase agreement provided that all DGG members would receive a right to a proportional share of the earn-out payments. Further, the plain language indicated that the earn-out payments are consideration for the sale, not compensation for Stephen’s future work.

In tandem with its contract interpretation, the Minnesota Supreme Court cited section 518.58, subdivision 1, of the Minnesota Statutes to establish that the court must base its equitable division “on all relevant factors.” It determined a relevant factor was the right conferred on all DGG members regardless of any post-sale efforts. Thus, equity required Gretchen to receive a portion of the earn-out payments based on her pro-rata share of DGG.

Through this analysis, the Minnesota Supreme Court affirmed the Minnesota Court of Appeals’ decision and held:

Because the parties’ interest in the company was marital property that was acquired before the valuation date, the consideration of the company, which occurred before the dissolution and included an amount paid at the time of the sale and a contractual right to receive future amounts, is also marital property.

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236 Id. It must be noted, however, that the court’s substitution of “exchanged” for “acquired” comes confusingly close to the definition of nonmarital property in section 518.003, subdivision 3b, of the Minnesota Statutes. Section 518.003 describes nonmarital property as property acquired by either spouse which is “in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e).” Clause (d) refers to property acquired by a spouse after the valuation date.

237 Id. at 304.

238 Id.

239 Id. at 304–05.

240 Id. at 304.

241 Id. at 305.

242 Id. at 307.

243 Id.

244 Id. at 297.
2. Errors in the Supreme Court’s Reasoning and Holding

The Minnesota Supreme Court reached a just and equitable outcome but ignored existing precedent and statutory language to obtain its result and created new precedent that is both unnecessary and overreaching. In reaching its decision, the Minnesota Supreme Court made three creative, but erroneous, uses of the law.

First, even though the court did a better job of setting out statutory authority for its decision, it still missed the mark by ignoring the valuation date like the district court. To counter this, the Minnesota Supreme Court made the semantic, but material, switch from “acquired” to “exchanged” and created a distinction that would allow the substitution of a contractual right for a marital asset. Regardless of semantics, the contractual right to receive the earn-out payments still came after the valuation date. Yet, the Minnesota Supreme Court concluded that the earn-out payments were for the sale of marital property, which made the timing irrelevant. The only legitimate way to subvert the fact that Talenti’s sale occurred after the valuation date was through the exercise of judicial discretion, which would allow the court to adjust the value of the asset as necessary after the valuation date to achieve a just and equitable outcome.

Second, the Minnesota Supreme Court erroneously relied on the provision in section 518.003 that states, “[E]ach spouse has a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution.” While this is a worthy reference to one of the governing statutes, this provision of section 518.003 does not help resolve the classification of the sales as either marital or nonmarital property. The court likely referenced this provision to show that property can be divided up until the day of dissolution. While this is true, the legislature’s intent for this 1982 amendment was to clarify that divisions of marital property are not taxable events, not to justify ignoring the valuation date.

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245 Minn. Stat. § 645.16 (2019) (The Minnesota Supreme Court’s goal should be “to ascertain and effectuate the intention of the legislature.”).
246 See Gill, 919 N.W.2d at 301–08.
247 MINN. STAT. §§ 518.58, subdiv. 1, 518.003, subdiv. 3b(d); see also supra Section IV.B.2.
248 See supra Section IV.D.1.
249 Gill, 919 N.W.2d at 304.
250 Id.
251 MINN. STAT. § 518.58, subdiv. 1 (2019).
252 Id.
253 The Minnesota Supreme Court has distinguished the 1982 amendment, stating: The intent of the legislature in enacting this act is to confirm, clarify, and ratify legislative intent embodied in prior and existing state law, and state law as
Third, during the pendency of a dissolution proceeding, the governing law allows the court to preserve the parties’ marital assets through a court-ordered sale of those marital assets and provide for the distribution of the funds received. The Minnesota Supreme Court erroneously inferred that proceeds from a consensual sale of marital property are no different than proceeds from a court-ordered sale of marital property. While the governing statute allows for a court-ordered sale of marital property, it is silent on the matter of a consensual sale of marital property. Regardless of the statute’s meaning, the court’s inference is flawed because the problem—that Talenti’s proceeds were never marital property under the strictures of the law—remains. The proceeds were nonmarital property acquired after the valuation date. The only way the court could have incorporated the value of Talenti’s proceeds into the pre-sale valuation was by exercising its discretion and adjusting Talenti’s value when the value significantly increased shortly after the valuation date.

The Minnesota Supreme Court’s creative, but faulty analysis, led to new precedent. Justice Anderson’s dissent rightly pointed out that the majority’s reasoning called for “considerable legal gymnastics,” which not only ignored the district court’s valuation date, but also rewrote the statutory

amended by this act, that the division or disposition of marital property caused by or incident to a decree of dissolution or annulment is not a sale, exchange, transfer, or disposition of or a dealing in property but is a division of a common ownership by spouses in property for purposes of the property laws of this state and for purposes of the United States and Minnesota income tax laws.

Miller v. Miller, 352 N.W.2d 738, 743 (Minn. 1984) (quoting 1982 MINN. LAWS, ch. 464, § 3).

Gill v. Gill, 919 N.W.2d 297, 303–04 (Minn. 2018) (“We see no reason to treat the proceeds of a consensual sale of marital property differently from the proceeds of a court-ordered sale of marital property.”).

See MINN. STAT. § 518.58, subdiv. 3(a). If a statute is ambiguous, the court may ascertain the legislature’s intent by considering several matters, including the legislative history, the necessity for the law, and the consequences of various interpretations. MINN. STAT. § 645.16 (2019).

According to section 518.58, subdivision 1, of the Minnesota Statutes, “‘Nonmarital property’ means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which . . . (d) is acquired by a spouse after the valuation date.” Here, the proceeds from the sale of Talenti were acquired after the valuation date. Gill, 919 N.W.2d at 301.

Gill, 919 N.W.2d at 311 (Anderson, J., dissenting) (citing MINN. STAT. § 518.58, subdiv. 1 (2018)).

Id.
The definition of marital property. The majority did not merely apply the existing statutes, it additionally “adopted a new hard and fast extra-textual rule—that all proceeds from the sale of marital property before dissolution constitute marital property as a matter of law—regardless of whether this produces an equitable result.”

3. Justifications for the Supreme Court’s Reasoning and Holding

The Minnesota Supreme Court’s holding did not fully comport with law, but it was just and equitable by allowing Gretchen to receive a proportionate share of the proceeds that she had only been denied because of strategic corporate timing. Three justifications provided by the Minnesota Supreme Court firmly supported its conclusion.

First, the Minnesota Supreme Court concluded that it did not need to defer to the district court’s purported findings of fact and could interpret the contract de novo as a question of law. The Minnesota Supreme Court’s subsequent interpretation conformed with the common usage of earn-out payments in business acquisitions. It is not unusual for a sale to use earn-out payments as a way to defer payment, especially when the parties cannot come to an agreement on a fair purchase price. Additionally, earn-out payments are a way to bridge the gap between a company’s current value and its unrealized potential value and can provide incentives for key leadership to remain active in the company post sale. These common usages resonate with Gill, solidifying the Minnesota Supreme Court’s

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80 Id. at 308. Although Justice Anderson’s dissent rightly points out the flaws in the majority’s holding, its own analysis is flawed as well because it mimicked the district court’s analysis and would not produce a just and equitable division of property.

81 Id. at 311.


83 See Gill, 919 N.W.2d at 301-08.

84 Id. at 307 (citation omitted) (“We need not defer to the district court’s purported findings of fact because they are instead conclusions of law based on the district court’s interpretation of the purchase agreement.”).

85 Id. at 300 (quoting the purchase agreement that stated, “As additional consideration for the Assets, the Company shall also be eligible to receive from Asset Buyer (i) an amount equal to the First Earn-out Payment . . . and (ii) an amount equal to the Second Earn-out Payment . . .”).


87 Id. at 60.
determination that the earn-out payments were not intended as compensation for Stephen’s future work.\(^\text{268}\)

Second, Stephen signed an employment agreement compensating him $738,125 to continue his employment at Talenti for two years.\(^\text{269}\) The amount was similar to the amount Stephen was already earning at Talenti—approximately $350,000 annually.\(^\text{270}\) Stephen’s claim that the earn-out payments were compensation for his continued employment is illogical because he would receive an additional $5.6 million for two years of work in addition to his contracted compensation—a total compensation astronomically beyond anything he ever received working at Talenti before the sale.\(^\text{271}\)

Third, the purchase agreement specified that all members, including passive members, would receive a portion of the earn-out payments, regardless of any future work with the company.\(^\text{272}\) This provision directly contradicted Stephen’s claim that the earn-out payments were compensation for his future work.\(^\text{273}\) Moreover, it is not logical, fair, or just for Gretchen to be the only non-working member precluded from receiving a share of the earn-out payments.\(^\text{274}\)

Despite the justifications behind the Minnesota Supreme Court’s holding, it was not enough to avoid creating new precedent.

4. How the Supreme Court Could Have Achieved Its Desired Outcome Without Setting New Precedent

Creating new precedent that usurped the legislature’s authority was unnecessary. Like the Minnesota Court of Appeals, the Minnesota Supreme Court should have explicitly pointed out the district court’s abuse

\(^{268}\) See Gill, 919 N.W.2d at 306.

\(^{269}\) Id. at 300.


\(^{271}\) Id. at 14.

\(^{272}\) Gill, 919 N.W.2d at 300 (quoting the purchase agreement language that stated, “[I]nmediately following the consummation of the Asset Purchase, [David Goliath] shall effect a distribution to the Members of (a) the Asset Purchase Payment and (b) the right to receive (i) an amount equal to the First Earn-out Payment . . . and (ii) an amount equal to the Second Earn-out Payment.”).

\(^{273}\) Id. at 306 (relating Stephen’s attempt to overcome the presumption that Gretchen is entitled to an equitable distribution of the earn-out payments by arguing that the earn-out payments are nonmarital property that he acquired “after the valuation date” as compensation for his post-marital labor).

\(^{274}\) Id. at 300, 307.
of discretion for its failure to apply the governing law.\footnote{See supra Section IV.B.3.} Once the Minnesota Supreme Court established the district court’s abuse of discretion, the court should have applied all of the governing statutes and presented a clear analysis of the law’s pertinence to its holding.\footnote{Gill, 919 N.W.2d at 310 (Anderson, J., dissenting) ("[T]here is no need to create a new timeframe for classifying proceeds where the district court already has discretion to change the valuation date if the court finds that ‘another date of valuation is fair and equitable.’").} It should have exercised the judicial discretion afforded in the statute and considered all relevant factors: the pre-valuation knowledge of Talenti’s impending sale, the letter of intent detailing the sale’s economic agreement, the letter of intent’s consistency with the final purchase agreement, and the timing of the sale relative to the valuation and dissolution date.\footnote{Gill, 919 N.W.2d at 298.} These relevant factors created the ideal case for using the afforded discretion to adjust the value of Talenti because the value had substantially changed between the date of valuation and the date of dissolution.\footnote{Id. at 311 (Anderson, J., dissenting) (citing MINN. STAT. § 518.58, subdiv. 1 (2018)).} As such, the Minnesota Supreme Court could have recognized the earn-out payments as part of the value of Talenti and adjusted Gretchen’s award after the valuation date as permitted by section 518.58.\footnote{See supra Section IV.C.2.}

Yet, the court ignored the language of the statute providing for judicial discretion to achieve a just and equitable result and instead focused solely on the classification of the earn-out payments while disregarding the valuation date.\footnote{Gill, 919 N.W.2d at 304.} This created new precedent that was unnecessary.

\textbf{E. Potential Future Consequences}

In Minnesota, the law governing property distribution in a marriage dissolution was purposely crafted to eliminate gender bias and generate certainty through an established valuation date while still affording a high degree of judicial flexibility to render a just and equitable distribution.\footnote{See supra Part II.} By setting the default valuation date at a prehearing conference, parties were protected from events both within and beyond their control.\footnote{See Judkins, supra note 72 at 474-75 ("Early valuation . . . also delivers certainty for pretrial settlement negotiations based upon accurate financial data.").}

Nevertheless, the Minnesota Supreme Court, in an effort to fix the lower courts’ decisions and follow established standards of review, ignored the legislature’s purposeful balancing. By doing so, the supreme court
adopted an inflexible new rule: that all proceeds from the sale of marital property before dissolution constitute marital property as a matter of law. While the supreme court decision may have solved one problem—that of fairly distributing earn-out payments to Gretchen Gill—it may have created others.

One possible consequence is that Gill’s new hard and fast rule may affirmatively eliminate the judicial discretion necessary to fairly evaluate the unique circumstances and needs of each party. As the dissent points out:

Under Minn. Stat. § 518.58, subd. 1, the district court has discretion to ‘adjust the valuation’ of a marital asset to reflect any ‘substantial change’ in the value of the asset after the valuation date in order ‘to effect an equitable distribution’ of the asset, as well as discretion to ‘make a just and equitable division of the marital property’ between the parties. Thus, the court is not ‘merely applying the existing statutes,’ as it contends; rather, the court is adopting a new hard and fast extra-textual rule—that all proceeds from the sale of marital property before dissolution constitute marital property as a matter of law—regardless of whether this produces an equitable result.”

For example, would the supreme court’s hard and fast rule be fair and equitable if Gretchen had consistently opposed and obstructed the sale of Talenti prior to her divorce? Likely not. Would the supreme court’s hard and fast rule be fair and equitable if a spouse purposely neglected or disdained a property prior to the valuation date, only to show sudden interest if the property is sold before the final dissolution for a significant increase in value due solely to the efforts of the other spouse? Again, likely not. Yet, the Minnesota Supreme Court’s new precedent could lead to these absurd outcomes if taken to its logical extreme, which outcome is often the result of denying the judge any substantial measure of discretion.

Moreover, Gill’s attempt at a strict rule to create certainty could actually create uncertainty. If marital property is distributed upon the valuation date but remains subject to potential redistribution if sold before final dissolution, certainty is diminished. An asset’s value has the potential to increase tremendously within that period. Yet, a party would be disincentivized from maximizing that potential for fear of redistribution.

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284 Gill, 919 N.W.2d at 298.
285 Id. at 311 (Anderson, J., dissenting).
287 Judkins, supra note 72, at 474 (“One must also caution practitioners about the effect of early valuation dates on increases in marital assets, like stock plans, securities, or business partnerships. Property value may rise . . . . ”).
This is exactly why the legislature provided judicial discretion—so that judges can use their common sense to obtain a just and equitable distribution in each individual circumstance. An additional possible consequence is the re-introduction of gender and role-based disparities due to the elimination of judicial discretion. By not exercising its judicial discretion and, instead, focusing on whether property is marital or non-marital, the Minnesota Supreme Court undermined the strength of the court’s judicial discretion to maintain gender equality.

For example, a potential byproduct of the homemaker’s sacrifice to stay home is a lack of in-depth knowledge regarding the working spouse’s business or career. This can spill over into divorce proceedings and result in an unfair and inequitable distribution of property. In *Gill*, Gretchen did not have a firm knowledge of Talenti’s worth, nor did she have a place at the negotiation table or a say in the sale’s timing. This put her at a disadvantage when the time came to value and distribute assets. Yet, there is no doubt that Gretchen’s role as a homemaker contributed invaluably to her husband’s business success and that she deserved an equitable portion of Talenti’s proceeds. Exercise of the court’s discretion was imperative to remedy this imbalance.

Although the new rule worked out favorably for Gretchen, in the future, *Gill* could facilitate planning to game the system and cheat the less knowledgeable spouse out of their fair share of assets. For example, earn-out payments, which used to favor the seller, could be couched as compensation to avoid the consequences of division, which are likely to be greater than the additional tax penalties.
These potential consequences might have been avoided by a close reading and application of the governing statutes that provided ample flexibility and certainty to reach the same outcome—fairly awarding Gretchen Gill an equitable share of the earn-out payments from Talenti’s sale.

F. Potential Statutory Revisions to Increase Clarity

Going forward, the legislature may have to amend one of the last remaining vestiges of noncompulsory judicial discretion in the statutes governing property distribution in marriage dissolutions. Section 518.58, subdivision 1, of the Minnesota Statutes currently reads, “If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.”

Perhaps the “may” should become another “shall,” just as the rest of the statute reads. Though it would not really change the requirement to exercise discretion by considering all competing factors and adjusting an asset’s valuation as needed for a just and equitable result, it would eliminate confusion about what it means to exercise discretion.

Additionally, a more stringent and clear emphasis within subdivision 3b of section 518.003, and section 518.58, to use both sections in tandem could prevent a similar outcome in the future.

Had these changes been implemented, the outcome could have been different at each stage of the Gill litigation. The parties could have saved time and resources, and the court could have avoided setting new precedent.

V. CONCLUSION

Over a span of fifty years, the Minnesota legislature carefully wrote and amended the statutes governing the division of marital property in a marriage dissolution to bring about a just and equitable division. In Gill, the judiciary brought about a regression by adopting a new rule that dictates all pre-dissolution proceeds from the sale of marital property—without regard to the valuation date—are marital property as a matter of law.
This new court-made rule is undesirable because it takes away the flexibility and certainty of the statute, while proliferating gender- and role-based disparities. It is also unnecessary because it could have been avoided at each stage of litigation if the courts had carefully assessed and applied the appropriate standard of review and the governing statutes. One way to avoid future repercussions of the courts’ errors is through amendment of the statutes to require a court’s use of its discretion when evaluating a substantial change in an asset’s value and an increased emphasis to apply the statutes in tandem.

 Luckily for Gretchen Gill, the court reached the right outcome, even if it relied on faulty reasoning to get there.297

297 See id. at 301–08.
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