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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0676**

In re the Marriage of:  
Judith M. Dunkin, petitioner,  
Respondent,

vs.

Richard L. Dunkin,  
Appellant.

**Filed March 11, 2008  
Affirmed  
Connolly, Judge**

Hennepin County District Court  
File No. 27-FA-000300047

David C. Olson, Lanners & Olson, P.A., 12805 Highway 55, Suite 102, Plymouth, MN 55441 (for respondent)

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Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY, Judge**

Appellant-husband appeals from an order of the district court denying his posttrial motion for a new trial or amended findings regarding the award of temporary spousal

maintenance to respondent-wife. Because the district court did not abuse its discretion, we affirm.

## **FACTS**

This is an appeal from the district court's denial of appellant-husband Richard L. Dunkin's motion for amended findings relating to an award of spousal maintenance to respondent-wife Judith M. Dunkin. The parties were married in 1993, and wife filed a petition for dissolution on June 9, 2005. The parties reached a settlement agreement resolving the majority of the disputes regarding division of property related to the dissolution of their marriage. This agreement was approved and incorporated into the district court's partial findings of fact, conclusions of law, order for judgment, and judgment and decree (partial judgment) filed on August 29, 2006. The parties reserved the issues of spousal maintenance, distribution of several property items, and attorney fees for the district court's determination at trial. The district court addressed those issues in its supplemental findings of fact, conclusions of law, order for judgment and decree (supplemental judgment) filed on August 30, 2006.

The district court ordered husband to pay wife spousal maintenance in the amount of \$750 per month for a period of five years. Husband filed a motion with the district court seeking, among other things, a new trial or amended findings of fact regarding his income and ability to pay spousal maintenance. In its order filed January 22, 2007, the district court specifically addressed and denied husband's motion for amended findings related to spousal maintenance. While not specifically addressing it, the district court also denied husband's motion for a new trial.

In its supplemental judgment, the district court found wife's monthly income to be \$1,700 per month. In calculating wife's monthly income, the district court included amounts received from her pension and retirement income. The district court further found her reasonable monthly expenses to be \$2,200 per month.

In the same order, the district court determined that husband has been earning about \$50,000 per year working at Wal-Mart, including an "unpredictable amount of overtime, but a recent change of assignment puts future overtime in doubt." The district court heard testimony from husband that he lost his opportunity for overtime work because the new regional manager for his employer eliminated overtime hours. Wife testified that husband had consistently worked overtime during his employment with Wal-Mart throughout their marriage. Wife testified that husband's pay stubs through March 17, 2006 showed a gross annual income to date of \$11,577.60, which she calculated to be \$54,309.47 annually. Husband testified that his monthly income was \$3,588, or approximately \$43,000 annually. Husband testified that his net monthly income was \$2,263. The district court did not specify exactly what it included in determining husband's annual income.

Also in the supplemental judgment, the district court found husband's monthly expenses to be \$3,100 per month. As part of his monthly expenses, husband is making payments on a 30-year mortgage. Husband voluntarily assumed this expense as a means of satisfying wife's lien on the property that he was awarded in the partial judgment. The district court found that wife was "in need of some maintenance within the meaning of Minn. Stat. § 518.552, subd. 1, and that [husband] has the means to pay it."

## DECISION

Husband argues that the district court abused its discretion by failing to make specific findings of his current net income and ability to pay, and in its award of spousal maintenance to wife. Appellate courts review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin*, 569 N.W.2d at 202 & n.3 (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see also* Minn. R. Civ. P. 52.01 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous . . .").

The district court may grant an award of spousal maintenance to either spouse in a dissolution proceeding if it finds that the spouse seeking the award

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2006).

Once the district court determines that an award of spousal maintenance is appropriate, the district court may make an award, either temporary or permanent, as the district court deems just after considering the factors set forth in Minn. Stat. § 518.552, subd. 2 (2006).

Husband argues that the record does not support the amount of the spousal maintenance award, as the award exceeds the amount the district court determined was the deficit between wife's monthly income and her monthly expenses. Husband argues that the district court's award will leave his former spouse with a monthly surplus, while leaving him with a greater monthly deficit. Husband cites no authority to support his contention that an award of spousal maintenance in excess of the deficit determined by the district court is an abuse of discretion.

Although the statute lists specific factors to consider, the basic issue is the financial needs of the obligee and the obligee's ability to meet those needs balanced against the obligor's financial condition. *Erlandson*, 318 N.W.2d at 39-40. When a district court undertakes a thorough examination of the circumstances present in an individual case and arrives at a reasonable award, such award is not an abuse of discretion simply because it leaves the obligor spouse with a greater deficit. *Justis v. Justis*, 384 N.W.2d 885, 891-92 (Minn. App. 1986), *review denied* (Minn. May 29, 2006).

Because maintenance is awarded to meet need, maintenance depends on a showing of need. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 216 (Minn. 1988). This

dependence on need is implicit in the second threshold requirement dealing with unemployability of the spouse seeking maintenance. Indeed, what is implicit becomes explicit when the statute goes on to state that, in awarding maintenance, the factors to be considered include “the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party’s ability to meet needs independently . . . .” Minn. Stat. § 518.552, subd. 2(a) (1988).

*Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). The district court made specific findings regarding wife’s disability and the limits this placed on her employability. The district court’s findings on this issue are not clearly erroneous based upon the record and do not demonstrate an abuse of discretion.

Husband next argues that the district court abused its discretion in establishing his ability to pay, and specifically, in determining his income. An award of maintenance must be based upon a determination of the obligor spouse’s actual income as of the time of trial. *Carrick v. Carrick*, 560 N.W.2d 407, 412 (Minn. App. 1997). Specifically, husband argues that the district court abused its discretion by failing to consider that his future income will be reduced due to the loss of overtime pay at his job.

The district court did not make detailed findings as to what it included in calculating husband’s annual income, nor did it make a finding regarding husband’s monthly income. In his argument, husband cites several unpublished opinions of this court to support his assertion that the absence of detailed findings regarding monthly income and expenses as they relate to an obligor’s ability to pay spousal maintenance requires a reversal of the award. However, “the district court is not required to make specific findings on every statutory factor if the findings that were made reflect that the

district court adequately considered the relevant statutory factors.” *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004). “[T]his concept is applicable where, as here, multiple orders are used to resolve a question.” *Id.*

The district court heard competing testimony regarding husband’s income. Wife calculated husband’s estimated income for 2006 to be approximately \$54,000. Husband testified his income would be approximately \$3,588 per month, or \$43,000 per year. In its findings, the district court noted that husband “has been earning about \$50,000 annually,” a finding which represents an approximation of husband’s income over the past few years. In the three years prior to trial, husband earned anywhere from \$46,000 to \$49,000 per year. Wife’s testimony was supported by a paystub which indicated that husband had the potential to earn more than in previous years. “That the record might support findings other than those made by the trial court does not show that the court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

To challenge the trial court’s findings of fact successfully, the party challenging the findings must show that despite viewing that evidence in the light most favorable to the trial court’s findings (and accounting for an appellate court’s deference to a trial court’s credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made.

*Id.*

Neither the district court’s determinations made on competing testimony, nor its determination of husband’s approximate historical income is clearly erroneous based

upon the record. Both the supplemental judgment and the district court's order from the posttrial motions demonstrate that the district court gave due consideration to the statutory factors set forth in Minn. Stat. § 518.552, subd. 2.

Husband argues that the distribution of marital assets was skewed in favor of wife, and that this should balance against her need for spousal maintenance. It may be that the distribution was not equal, but this argument is without merit. The district court found that the settlement agreement husband now complains of was voluntarily entered into by both parties with full knowledge and understanding of its meaning. The district court specifically stated that it was mindful of this distribution agreement in making its determination of the amount of spousal maintenance to award and husband's ability to pay. For the district court to rely on the voluntary agreement of the parties in making its award of spousal maintenance does not represent an abuse of discretion.

While the district court could have provided more detailed findings as to its determinations regarding husband's expenses and income, the findings that it made were adequate and supported by the record. Therefore, its maintenance award was not an abuse of its discretion.

**Affirmed.**