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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2298**

In Re the Marriage of:
Denise Marie Notsch, petitioner,
Appellant,

vs.

Allen Walter Notsch,
Respondent.

**Filed September 16, 2008
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Beltrami County District Court
File No. 04-F6-06-000874

Kevin T. Duffy, Duffy Law Office, P.O. Box 715, Thief River Falls, MN 56701 (for appellant)

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Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Denise Notsch appeals from the judgment and decree that dissolved her marriage to Allen Notsch. She argues that the district court should have awarded her spousal maintenance, that its findings lack the required specificity to support a child-support

award, that the district court should have awarded her a portion of Allen Notsch's nonmarital property, and that the district court should have granted her motion to amend the judgment. Denise Notsch's testimony supports the district court's spousal maintenance award, but because the district court's findings do not provide adequate discussion to allow us to conclude that it considered the factors relevant to determining spousal maintenance, we reverse and remand. Because the district court's factual findings show that it considered the statutory child-support factors and because Denise Notsch fails to show how the district court abused its discretion by awarding her no interest in nonmarital property or by denying her motion to amend, we affirm in part.

FACTS

Denise Notsch and Allen Notsch were married from June 1996 until dissolution in April 2007. They had two minor children at the time of the dissolution, K.N., six years old, and S.N., nine years old. The judgment and decree continued the parties' joint legal custody but granted Denise Notsch sole physical custody. The district court found that Allen Notsch should pay \$330 per month in child-support based on the child-support guidelines.

The district court found that Allen Notsch, a self-employed dairy farmer, has an average net monthly income of \$1,119, and that Denise Notsch is unemployed with no disability preventing her from obtaining entry-level employment. The court declined to award spousal maintenance.

The district court identified the parties' marital property, including interest in eight parcels of real property. It evenly allocated a small parcel of farmland and a parcel of

land on which the parties had plans to operate a milk processing plant. It credited Allen Notsch with his 36 percent nonmarital interest in the homestead and a 23 percent nonmarital interest in a piece of farmland the Notsches co-owned with another couple. The district court evenly divided the marital assets and liabilities, and granted Allen Notsch the real estate subject to a lien in favor of Denise Notsch's share of the assets.

After trial, Denise Notsch moved the district court for a new trial claiming ineffective assistance of counsel and asked the district court to amend the judgment and decree. The district court denied her motion. This appeal follows.

DECISION

I

We first consider Denise Notsch's argument that the district court abused its discretion by not awarding her spousal maintenance. A district court has broad discretion in deciding whether to award maintenance and we will not overturn the decision unless the district court abused its discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion when its factual findings are clearly erroneous. *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986). A clearly erroneous finding is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). A district court also abuses its discretion if it makes insufficiently detailed factual findings. *Stevens v. Stevens*, 501 N.W.2d 634, 637 (Minn. App. 1993).

We are not persuaded by Denise Notsch's contest to the finding that she has no physical or mental disability that inhibits her from entry-level employment. That finding

is supported by her own testimony. She testified that since her injury, she has worked as a janitor, as an election official, on the farm, and performing household labor in lieu of rent. She testified that her previous injuries “don’t prevent [her] from getting a job.” She also testified that she occasionally rides horses. Although she offered additional testimony concerning injuries, the district court’s finding that no physical or mental disability inhibits her from obtaining employment is not clearly erroneous because it is supported by her testimony that she has worked, is able to work, and that she will work “as soon as something opens up.” *See Doering v. Doering*, 385 N.W.2d 387, 391 (Minn. App. 1986) (upholding a district court’s testimony-based findings).

Denise Notsch also contests the general quality of the district court’s maintenance-related findings, arguing that they are not adequate to allow for meaningful appellate review. In order to grant spousal maintenance, the district court must consider the standard of living during the marriage. Minn. Stat. § 518.552, subd. 1 (2006). A district court must make “sufficiently detailed findings . . . to demonstrate its consideration” of all factors relevant to the determination of spousal maintenance. *Stich v. Stich*, 435 N.W.2d 52, 52 (Minn. 1989). A nonexclusive list of relevant factors has been established by statute, Minn. Stat. § 518.552, subd. 2, but the paramount considerations are the need of the recipient, the recipient’s ability to meet that need, and the financial circumstances of the contributing spouse. *Gatfield v. Gatfield*, 682 N.W.2d 632, 638 (Minn. App. 2004). The district court need not discuss each factor expressly if the court’s findings demonstrate that it gave the relevant factors due consideration. *Stich*, 425 N.W.2d at 52.

The district court's findings do not provide adequate discussion to allow us to conclude that it considered the factors relevant to determining spousal maintenance. The district court's findings on the factors of spousal maintenance are limited to two sentences: "During the marriage Petitioner worked in various capacities on the family's dairy farm operation. Petitioner, while currently unemployed, is under no physical or mental disability which would inhibit her from an entry level position in the labor market." The district court made no express finding of Denise Notsch's financial need or her ability to meet it. The absence of any finding characterizing her financial need makes it impossible to determine, on appeal, whether the district court considered it before reaching its conclusion on spousal maintenance. The district court also apparently gave no consideration to the couple's standard of living during the marriage, or to whether Denise Notsch could provide for her reasonable need and be self-supporting in relation to that standard.

The district court appears to have considered Denise Notsch's physical and emotional condition, which is one of the statutory factors. Minn. Stat. § 518.552, subd. 2. But that consideration alone does not allow an inference that the court considered actual need and her ability to meet it.

Because the district court's findings do not provide an adequate basis for appellate review, we reverse and remand for the court to consider the factors relevant to a determination of spousal maintenance.

II

Denise Notsch next argues that the district court's child-support award was an abuse of discretion. She raises three challenges. First, she contends that the district court failed to make specific findings on the appropriate statutory factors by not referencing either of the parties' monthly income and expenses. Second, she maintains that the district court made no findings regarding the appropriateness of Allen Notsch paying for health insurance for the children when they were covered under Denise Notsch's welfare benefits. And third, she urges that the district court relied on tax records to determine child support instead of taking testimony. The setting of child support is discretionary with the district court and we will not alter a district court's support determination unless it abused its discretion by resolving the matter contrary to logic or the facts on the record, or by improperly applying the law to the facts. *See Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (stating that a district court abuses its discretion if it sets child support in a manner "that is against logic and the facts in the record"); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (stating that "[a]n abuse of discretion occurs when the [district court] improperly applies the law to the facts").

Denise Notsch misreads the district court's judgment and decree when she claims the district court did not find Allen Notsch's monthly income or expenses. The district court found Allen Notsch's net monthly income to be \$1,119. "Net monthly income" for child-support purposes is defined as total monthly income less certain statutorily-listed

expenses. Minn. Stat. § 518.551, subd. 5(b) (2004).¹ Apparently because Denise Notsch misread the judgment to omit a finding of Allen Notsch's net monthly income, she does not argue that the district court's finding of Allen Notsch's net monthly income fails to comply with Minn. Stat. § 518.551, subd. 5(b), and we have no occasion to further address this matter. And although Denise Notsch is correct in asserting that the district court did not find her monthly income or expenses, the district court set Allen Notsch's monthly child-support obligation at what the county asserted was the guideline amount of \$330.² If a district court sets support at the guideline amount, it is required to make written findings only on "the amount of the obligor's income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the determination of child support." Minn. Stat. § 518.551, subd. 5(i) (2004). Neither Denise Notsch nor the county made a case to the district court for findings on factors other than Allen Notsch's net monthly income. Findings on factors other than Allen Notsch's net monthly income were not required.

¹ Because this dissolution was filed before January 1, 2007, the child-support-guidelines calculations of Minn. Stat. § 518.551 (2005, Supp. 2005) apply to this case. *See* 2006 Minn. Laws ch. 280, § 44, at 1145 (addressing the effective date of 2006 amendments of the child-support statutes).

² We note that the guideline child-support obligation for two children for a support obligor with Allen Notsch's net monthly income of \$1,119 is actually \$335.70. Minn. Stat. § 518.551, subd. 5(b). Because the county asserted that \$330 is the guideline amount, however, and because the district court explicitly stated that the \$330 figure was the guideline figure, we decline to rule that the district court misapplied the guidelines. Also, a \$5.70 understatement of a monthly child support obligation would not require a remand. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 230 (Minn. App. 1985) (refusing to remand for a de minimis error in the setting of child support).

We also are not persuaded by the challenge to the child-support award on grounds that the district court did not make a finding describing why Allen Notsch should be credited for paying for health insurance when the children were covered under Denise Notsch's public-assistance benefits. The district court did not find that the children were sufficiently covered by her welfare benefits. It may be that the district court did not find her testimony to be credible on this issue, or the district court may have concluded that Allen Notsch's insurance policy offered more comprehensive coverage than hers. Denise Notsch cites no authority that a district court abuses its discretion by directing one parent to maintain health insurance for the children while they may also be partially covered by public assistance.

Denise Notsch's argument that the district court should have taken testimony on the child-support issue instead of relying on the income tax documents is also not compelling. The argument contradicts her position at trial, when she asked the district court specifically to examine the income tax returns to determine Allen Notsch's income and decide if the current child-support award should remain in place. A party may not take one position at trial and a legally contradictory position on appeal. *N. States Power Co. v. Gas Servs., Inc.*, 690 N.W.2d 362, 366 (Minn. App. 2004) (listing examples); accord *W. H. Barber Co. v. McNamara-Vivant Contracting Co., Inc.*, 293 N.W.2d 351, 358 (Minn. 1979).

III

Denise Notsch next asserts that the district court should have awarded her a monetary settlement from some nonmarital property, including the nonmarital component

of Allen Notsch's farm machinery and the nonmarital component of Allen Notsch's real estate. We review the district court's apportionment of nonmarital property for an abuse of discretion. *Kottke v. Kottke*, 353 N.W.2d 633, 636 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1984). Nonmarital property includes property acquired by one spouse before the marriage, property gifted by a third party to one spouse only and any property acquired in exchange for such property. Minn. Stat. § 518.003, subd. 3b (2006). Unless a court finds unfair hardship, nonmarital property is excluded from the court's division of marital property. Minn. Stat. § 518.58, subd. 2 (2006). The district court did not find unfair hardship.

Denise Notsch asserts that her postdissolution situation constitutes unfair hardship because after the divorce she became "essentially homeless." But she lives rent-free in exchange for performing household chores. She has a home and is not homeless.

Denise Notsch also argues that she has very limited vocational skills and a disability. She claims therefore that she has a limited opportunity for economic improvement. And she argues that the district court's property division awarded Allen Notsch all of the income-generating assets from the marriage. Taken together, these arguments are challenges to the district court's factual findings that she is able to work and the court's implicit legal conclusion that her situation is not unfair hardship. But the district court's findings are adequately supported.

We have already explained that Denise Notsch's testimony supports the finding that she is under no physical and mental disability that inhibits her from performing an entry-level job. Her claim that the district court awarded Allen Notsch all of the parties'

income-generating assets mischaracterizes the district court's property award. Although her claim is literally true as to the physical property, it overlooks that she was awarded her share of the value of those income-generating assets. Because the district court's findings with respect to her ability to work are not clearly erroneous, and because the district court awarded her one-half of the marital property, the district court did not clearly err by declining to find that her situation constituted an unfair hardship. Consequently, she was not entitled to a portion of Allen Notsch's nonmarital property.

IV

Denise Notsch argues that the district court abused its discretion by denying her motion for a new trial or alternatively to amend the original judgment and decree. We review a district court's decision whether to amend a judgment for an abuse of discretion. *Haefele v. Haefele*, 621 N.W.2d, 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). A district court may, in its discretion, amend a judgment and decree for mistake, inadvertence, or excusable neglect. Minn. Stat. § 518.145, subd. 2(1) (2006). In her posttrial motion, Denise Notsch told the district court that ownership of the dogs had been overlooked and was not discussed by the parties during the trial. But she did not establish that her failure to raise the issue at trial was due to mistake, inadvertence, or excusable neglect, and she therefore does not establish that the district court had a basis to exercise its discretion and amend the judgment and decree.

Denise Notsch's motion for a new trial or alternatively to amend the judgment asked the district court to find that her counsel had ineffectively represented her. The district court found that she had been adequately represented. That finding is supported

and weighs against her motion to amend the judgment and decree. *See Kornberg v. Kornberg*, 542 N.W.2d 379, 387 (Minn. 1996) (affirming a district court's refusal to modify a judgment in part because district court found moving party had been effectively represented by counsel). Because she was adequately represented at trial, and because she cites no legal authority on appeal that requires a district court to exercise its discretion to amend the judgment, Denise Notsch has not shown that the district court abused its discretion by declining to reopen the judgment.

Affirmed in part, reversed in part, and remanded.