

NO. A06-0799

State of Minnesota
In Court of Appeals

IN RE THE MARRIAGE OF:

CATHERINE M. KAMPF,

Respondent,

vs.

MARK N. KAMPF,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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STATEMENT OF THE LEGAL ISSUES

1. Whether the trial court erred by failing to calculate Appellant's spousal maintenance obligation based on Respondent's actual net income, i.e., taking into account Respondent's itemized deductions and head of household status.

- **The trial court ruled in the negative.**

Apposite cases:

Lyon v. Lyon, 439 N.W.2d 18, 22 (Minn. 1989)

Snyder v. Snyder, 212 N.W.2d 869, 875 (Minn. 1973)

Kemp v. Kemp, 608 N.W.2d 916, 922 (Minn. Ct. App. 2000)

2. Whether the trial court erred by including in Respondent's monthly budget a savings category of \$300 per month and a retirement category of \$333 per month.

- **The trial court ruled in the negative.**

Apposite cases:

Rask v. Rask, 445 N.W.2d 849 (Minn. Ct. App. 1989)

Sefkow v. Sefkow, 427 N.W.2d 203, 216 (Minn. 1988)

Kemp v. Kemp, 608 N.W.2d 916, 922 (Minn. Ct. App. 2000)

STATEMENT OF THE CASE

After a five day marriage dissolution trial in August 2005 before Judge Robert F. Carolan in Dakota County, on the issues of spousal maintenance, property, and attorney fees, the trial court issued its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree [hereinafter "Judgment and Decree"], entered December 13, 2005. The Judgment and Decree ordered Appellant, Mark Kampf, [hereinafter "Appellant"] to pay Respondent, Catherine Kampf, n/k/a, Catherine Coryell [hereinafter "Respondent"] a total of \$170,880 gross each year in spousal maintenance until July 2008, at which time Appellant will then pay Respondent \$156,000 gross each year thereafter. Id., Conclusion of Law 2, Judgment and Decree. Respondent is being awarded \$14,240 per month (\$170,880 each year) until July 1, 2008, and \$13,000 per month (\$156,000 annually) thereafter, to meet the trial court's budget of \$9,005 per month (\$108,060 annual budget for Respondent).

Appellant does not object to a permanent spousal maintenance award. Appellant is not disputing his ability to pay the ordered spousal maintenance. Rather, Appellant's objection is that the net after tax spousal maintenance, as ordered, vastly exceeds the reasonable budget of Respondent. Appellant submits that expenses that are not currently being incurred by Respondent are not reasonable and necessary expenses. Appellant further submits that the amount of spousal maintenance ordered, after paying taxes, allows Respondent to have a budget surplus beyond her reasonable needs. Appellant submits that it is legal error to order an obligor to pay an amount of spousal maintenance

that allows the obligee to have a budget surplus above and beyond her reasonable and necessary needs.

On January 27, 2006, a motion hearing on both parties' motions for amended findings and/or new trial was heard. In its Findings of Fact, Conclusions of Law, and Order to Amend Judgment and Decree of February 24, 2006, the trial court denied Appellant's request to modify the spousal maintenance obligation to take into account Respondent's actual net income after taxes, and denied Appellant's request to exclude the unreasonable and unnecessary budget categories of savings and retirement.

This appeal follows.

STATEMENT OF THE FACTS

Appellant and Respondent were married on September 17, 1976. Finding of Fact 4, Judgment and Decree. The parties separated on January 29, 2004. Id., Finding of Fact 5. Respondent was born June 14, 1956, and is currently 50 years of age. Finding of Fact 3, Judgment and Decree. Appellant was born December 30, 1954 and is currently 51 years of age. Id. Appellant is a vice-president at Kraus-Anderson insurance and earned \$646,013 gross annual income in 2004. Finding of Fact 32, Judgment and Decree. He earned an average of \$656,207 gross annual income from 2002 to 2004. Respondent was not employed at the time of the divorce trial, although the trial court found that she could earn at least \$14,872 gross per year after remedial training. Finding of Fact 21, Judgment and Decree.

The disputed issue at trial regarding spousal maintenance was the amount that Appellant should pay Respondent each month. At trial, Respondent requested \$18,000 in permanent spousal maintenance each month, i.e., \$216,000 per year, claiming a budget of \$12,676.79 per month. Finding of Fact 28, Judgment and Decree. Appellant requested that Respondent be awarded \$8,000 per month, or \$96,000 per year, in spousal maintenance, asserting that Respondent had \$6,583.32 per month in reasonable and necessary expenses based on the standard of living that the parties enjoyed during the marriage.

The Court found that Respondent's reasonable monthly budget was \$9,005, which included a budget category of \$850 miscellaneous cash each month, a budget category of \$333 for a retirement contribution each month, and a \$300 per month savings category

each month. Finding of Fact 31 and Appendix B, Judgment and Decree. Had the Court not included the two budget items of a savings and retirement contribution in determining Respondent's budget, Respondent's budget would have been \$8,372 per month (\$9,005 less \$333 for retirement, and less \$300 for savings).

At trial, both parties' experts presented evidence of Respondent's itemized deductions when calculating the amount of spousal maintenance that Respondent would need to meet her reasonable monthly budget. See Exhibits 7 and 34 (APP. 101-110). The experts generally agreed on the amount of Respondent's itemized deductions, but each expert calculated the spousal maintenance based on each party's respective claimed budget. Id. Since neither party asserted a budget of \$9,005 per month at trial, no expert calculated spousal maintenance based on a \$9,005 monthly budget.

The trial court found that based on Respondent's reasonable monthly budget of \$9,005, Respondent's spousal maintenance award was \$14,240 per month until June 30, 2008, and would be \$13,000 per month as of July 1, 2008. Conclusion of Law 2, Judgment and Decree. The trial court did not make any findings as to how it calculated these spousal maintenance obligations. See generally Judgment and Decree.

Appellant presented evidence at the hearing on his motion for amended findings that the spousal maintenance that would be required to cover a \$9,005 monthly budget was \$11,643 per month until June 30, 2008 (a difference of \$2,597 per month from the trial court's Order of \$14,240 per month); and \$10,564 per month beginning July 1, 2008 (a difference of \$2,436 per month from the trial court's Order of \$13,000 per month). Respondent agreed that based on a \$9,005 per month budget, Respondent's present

circumstances resulted in a \$11,643 per month spousal maintenance award until June 30, 2008, but argued that her circumstances would change in the future resulting in a different spousal maintenance award. See APP. 122-123, 137-138.

Based on a budget of \$8,372 per month (not including a retirement or savings contribution), Appellant presented unrefuted evidence at the motion hearing that the spousal maintenance order would be \$10,518 per month until June 30, 2008 (a difference of \$3,722 per month rather than the \$14,240 per month that the Court ordered); and \$9,415 per month commencing July 1, 2008 (a difference of \$3,585 per month from the Court's Order of \$13,000 per month). See APP. 041-042, 078-085.

In its Findings of Fact, Conclusions of Law and Order to Amend Judgment and Decree, the trial court summarily found that it had "considered federal and state income tax withholding when determining the appropriate amount of spousal maintenance." Finding of Fact 6, Findings of Fact, Conclusions of Law and Order to Amend Judgment and Decree, entered Feb. 24, 2006. It further concluded that "[c]alculating the petitioner's net income assuming a head of household filing status, adult dependants and itemized deductions is speculative as these assumptions change from year to year." Id., Conclusion of Law 2. Again, the trial court failed to demonstrate how it reached its conclusion that \$14,240 per month to meet a \$9,005 monthly budget was accurate.

ARGUMENT

I. STANDARD OF REVIEW

On appeal from a judgment after a court trial, the appellate court reviews legal questions *de novo* and findings of fact under a clearly erroneous standard. Poured Concrete Foundation, Inc. v. Andron, Inc., 529 N.W.2d 506, 510 (Minn. Ct. App. 1995). Findings of fact that are influenced by legal error must be set aside. Webb Business Promotions, Inc. v. American Electronics & Entertainment Corp., 617 N.W.2d 67, 73 (Minn. 2000). A finding is clearly erroneous if it lacks “substantial evidentiary support or . . . was induced by an erroneous view of the law.” Scott v. Forest Lake Chrysler-Plymouth Dodge, 637 N.W.2d 587, 597 (Minn. Ct. App. 2002) (quotation omitted). The appellate court must ultimately determine “whether the evidence sustains the findings of fact and whether those findings sustain the conclusions of law and judgment.” Schroeder v. White, 624 N.W.2d 810, 811 (Minn. Ct. App. 2001). The trial court needs to make specific findings in order for this Court to make a proper review of the order. Moylan v. Moylan, 384 N.W.2d 859, 863 (Minn. 1986).

II. AN ORDER FOR SPOUSAL MAINTENANCE MUST PROVIDE FOR AN OBLIGEE’S NEEDS, BUT CANNOT GIVE HER A BUDGET SURPLUS

The amount of spousal maintenance awarded to Respondent is an abuse of discretion and is not supported by the facts or the law of this case. The court may award spousal maintenance only to meet an obligee’s reasonable needs. Snyder v. Snyder, 212 N.W.2d 869, 875 (Minn. 1973) (stating “[t]he purpose of alimony is to care for the Respondent's needs after divorce, not to provide her with a lifetime profit-sharing plan”)

(quotation omitted). “Because maintenance is awarded to meet need, maintenance depends on a showing of need.” Lyon v. Lyon, 439 N.W.2d 18, 22 (Minn. 1989) (refusing to award Respondent spousal maintenance even though Appellant had the ability to pay up to \$4,000 per month in spousal maintenance because Respondent had sufficient income to meet her own needs independently) (citing Sefkow v. Sefkow, 427 N.W.2d 203, 216 (Minn. 1988) (eliminated \$200 in savings from the Respondent’s budget and found that the Respondent “did not show that her living expenses exceeded her spendable income [and therefore the court must] hold that any award of maintenance is improper”)).

The court errs in awarding spousal maintenance to give a party a budget surplus because a budget surplus by definition means that there is no need for the ordered spousal maintenance. Here, the trial court erred by (A) giving Respondent a surplus of income by not calculating the correct taxes on Respondent’s spousal maintenance obligation; and (B) providing Respondent spousal maintenance to cover unnecessary and unreasonable expenses for retirement and savings.

A. The Court must calculate Respondent’s actual income to determine the spousal maintenance that Respondent needs to meet her reasonable budget.

Respondent’s income must take into account her actual net income based on her itemized deductions and head of household status. A court’s finding as to net income that does not take into account itemized deductions where a party itemizes, or head of household status where the party claims that status, results in an artificially low income. The Minnesota Court of Appeals has previously concluded that a finding of net income

that fails to take into account itemized deductions where the party itemizes deductions is clearly erroneous. Kemp v. Kemp, 608 N.W.2d 916, 922 (Minn. Ct. App. 2000) (rejecting trial court's calculation of income as clearly erroneous, in part, because income determination was solely on two paycheck stubs and one deduction from the standard tax tables, even though the husband in Kemp itemized deductions).

Although tax-tables can be used to calculate taxes, the tax return of a party reveals exactly how much tax should be paid, which, in this case, is based on Respondent itemizing her deductions, and can be calculated even before the return is filed. Net income is properly calculated based upon money available to the taxpayer. If a person overpaid taxes throughout the year, any refund would appropriately be considered in the party's net income. Dinwiddie v. Dinwiddie, 379 N.W.2d 227, 230 (Minn. Ct. App. 1985) (finding trial court erred in computing obligor's projected net income by failing to include tax refunds). If a person's income includes certain tax deductions or credits, those credits and deductions are properly included to calculate a party's actual income available to them. Buloc v. Buloc, No. C1-97-1781, 1998 WL 113957 (*unpublished opinion*) (Minn. Ct. App. 1998) ("The earned income, working family, and dependent care expense credits paid to appellant in the form of a tax refund constituted income available to appellant, so excluding them from appellant's income would have artificially lowered her income."). See APP. 099.

Here, the actual net income of Respondent needs to be considered when determining the appropriate amount of spousal maintenance to meet her reasonable and necessary monthly budget. Whether the trial court looks at the withholding tables, taking

into account her itemized deductions, or whether the trial court looks at her actual taxes paid, the court must make a determination of spousal maintenance that looks at her actual income after taxes. Respondent's expert, Joe Kenyon, and Appellant's expert, Patrick Schmidt, used essentially the same assumptions for income tax deductions to determine net income for Respondent. See Exhibits 7 and 34 (APP. 101-110). There was no dispute regarding Respondent's income tax deductions for real estate taxes and mortgage interest expense at trial:

Itemized deduction	Respondent's Expert <i>Trial Exh. 7, p. 1 & Appendi Ia and IIa.</i>	Appellant's Expert <i>Trial Exh. 34, pp. 1 & 2, lines 26 and 28.)</i>
Real estate taxes	\$4,537	\$4,500
Mortgage interest	\$12,094	\$12,000

Id.

It would be unreasonable for Respondent to not itemize deductions given her real estate tax, state income tax, and mortgage interest obligations. There was no evidence that these itemized deductions were speculative, as the trial court indicated in its Order to Amend Judgment and Decree. Indeed, the trial court found the real estate taxes and mortgage payment to be reasonable parts of her necessary ongoing budget. Although admittedly these expenses might change as time goes on, the proper way for the trial court to address any significant changes would be in a motion for modification – not to entirely exclude them as if they do not exist. To calculate Respondent's spousal maintenance without considering Respondent's itemized deductions, is to make

assumptions about Respondent's cash flow that are simply not factual, and therefore, are clearly erroneous.

Additionally, the itemized deduction for state income tax is dependent on the gross earnings and spousal maintenance assumptions used. Since each party's expert used different assumptions for earnings and spousal maintenance, each expert calculated a different state income tax obligation. However, both experts correctly calculated the state income tax for their income assumptions and recognized that state income tax is a proper itemized deduction. Neither party's expert calculated spousal maintenance for a budget of \$9,005 per month as the Court found Respondent's budget to be. See Finding of Fact 31 and Appendix B, Judgment and Decree. However, Appellant and Respondent agreed at the hearing on the motion for amended findings that based on the assumptions set forth at trial, the amount of spousal maintenance ordered exceeds the budget found by the trial court.

1. **Respondent can meet her budget with a monthly spousal maintenance obligation of \$11,643 until June 30, 2008 and \$10,564 starting July 1, 2008.**

Assuming a budget of \$9,005, which would even include unnecessary savings and retirement expenses, Respondent only needs spousal maintenance of \$11,643 per month until June 30, 2008 and \$10,564 per month commencing July 1, 2008. The following spousal maintenance awards result in Respondent meeting her monthly budget after itemizing deductions for tax purposes:

Monthly Spousal Maintenance	Monthly Cash Flow after taxes	Respondent's Monthly Budget	Monthly Budget Surplus	Citation to Appendix
\$11,643	\$9,005	\$9,005	0	APP. 078-082
\$10,564	\$9,005	\$9,005	0	APP. 083-085

At the hearing on Appellant's motion for amended findings, Respondent's counsel agreed that the calculations of \$11,643 and \$10,564 to meet the \$9,005 budget were correct:

MR. JOHNSON: Needs were, yes. And so then what I'm saying is the \$11,643 should be the amount of gross spousal maintenance in order to meet that need. The interesting thing is that Miss Meier doesn't challenge those numbers. They don't object to those numbers.

MS. MEIER: I don't object to the calculations. Are the calculations correct? Yes, if we assume every assumption that they make. So I'm saying accounting wise they're correct calculations, if you agree with every single assumption that they made.

MR. JOHNSON: And they find no fault with our assumptions. In fact, both experts agreed on the assumptions.

APP. 122-123.

Respondent argued that the assumptions change over time. Indeed, real estate taxes increased, as Respondent's counsel stated, which would increase her overall itemized deductions. APP. 137-138. The facts at trial in August 2005 demonstrate that Respondent's itemized deductions and head of household status exist. Respondent claimed head of household for 2005, and there is no evidence that she will not claim the adult again for the following years since the adult child is in college. What is speculative

is for the trial court to prematurely determine that Respondent does not have this status or absolutely any of these itemized deductions, when they exist. By finding that Respondent has no itemized deductions, when she does, results in clearly erroneous findings as to Respondent's income.

With the correct spousal maintenance award that Respondent agreed to based on the assumptions provided at trial by both experts, Respondent would still be receiving a budget surplus because she is allowed \$333 per month in retirement savings, and \$300 per month in savings. In other words, Respondent has a budget savings/investment of \$633 per month over the course of 132 months, which results in a surplus of cash to Respondent of \$64,566 beyond her reasonable and necessary expenses. Further, this extra budget surplus does not even include the \$850 per month "miscellaneous cash" category that the trial court allowed Respondent to have. See Appendix B, Judgment and Decree.

2. **The Court's Order of \$14,240 and \$13,000 per month provides Respondent with a substantial and unnecessary budget surplus with a budget of \$9,005 as found by the Court.**

If this Court were to keep the \$9,005 per month that the trial court found in Finding of Fact 31 (Appendix B), tax-effecting the spousal maintenance award ordered by the Court provides Respondent with the following budget surplus:

Court-Ordered Monthly Spousal Maintenance	Monthly Earnings	Monthly Cash Flow after taxes	Monthly Respondent's Budget	Monthly Budget Surplus	Citation to Appendix
\$14,240 (until 6/30/08)	Not Working	\$10,549	\$9,005	\$1,544	APP. 058-062
\$13,000 (starting 7/1/08)	\$1,239.33	\$10,454	\$9,005	\$1,449	APP. 063-067

Assuming that Appellant is working and paying spousal maintenance until age 62 (December 2016), the error of the trial court awarding Respondent spousal maintenance in excess of a budget of \$9,005 will result in Respondent receiving an additional surplus of net income of \$191,118.00 as follows.

<u>Period of spousal maintenance</u>	<u>Number of months</u>		<u>Budget surplus each month</u>	=	<u>Surplus to Respondent</u>
January 1, 2005 to June 30, 2008	30 months	X	\$1,544	=	\$46,320
July 1, 2008 to December 20, 2016	102 months	X	\$1,449	=	\$144,798
RESPONDENT'S BUDGET SURPLUS					\$191,118

In sum, with the trial court's order of spousal maintenance, Respondent is receiving \$191,118.00 beyond her reasonable budget, assuming that the award would end at Appellant's age 62. Every year thereafter if spousal maintenance were to continue, this error is compounded significantly, and Respondent would receive an extra \$17,388 per year above and beyond her reasonable budget. It is clearly erroneous to award Respondent this extra money, and the trial court's order must be reversed.

III. RESPONDENT'S REASONABLE AND NECESSARY MONTHLY BUDGET IS \$8,312 PER MONTH

Finding of Fact 31, and correspondingly, Appendix B, of the Judgment and Decree should not include a savings or retirement expense and therefore, the appropriate reasonable necessary monthly budget for Respondent is \$8,312 (\$9,005 less \$333 for retirement and \$360 for savings). This Court has previously disallowed savings or investment expenses in an obligee's budget, and has overturned a trial court's decision regarding a party's reasonable expenses when that expense is not currently being incurred. Rask v. Rask, 445 N.W.2d 849 (Minn. Ct. App. 1989) (finding trial court erroneously included in wife's reasonable monthly needs a \$610 monthly mortgage payment wife thought would be required to purchase the type of home she wanted but had not yet purchased); Sefkow, 427 N.W.2d at 216 (eliminating \$200 in savings from the wife's budget); Kemp, 608 N.W.2d at 922 (stating that because the wife's margin account loan is temporary and more "in the nature of an investment, it cannot be considered a necessary, ongoing living expense, and we agree that it cannot be included in [wife's] expenses").

In Rask, the wife testified that she was not currently paying her claimed \$610 housing payment, but that she estimated that she would need that money in the future. There was no evidence in the record concerning when Appellant will begin incurring this expense, or whether she ever will. The Court noted that "[the wife] reserves every right to change her mind about whether she will buy a home or rent, and about what price she will pay for housing." Id. at 853.

Because the trial court's Appendix B allows Respondent to have an expense category for savings and retirement, the Court has ordered spousal maintenance beyond Respondent's current needs. Just like the Rask wife, Respondent in this case has the category of "savings" and "retirement" as expenses that she is not currently in need of, but that she has allocated for the future. Rather than considering Respondent's current needs, by including categories for savings and retirement, the trial court is allowing Respondent to share in Appellant's future income even though she does not currently need the money. Allowing Respondent to have a "savings" and "retirement" expense is no different than requiring Appellant to pay Respondent a certain percentage of Appellant's nonmarital retirement or investment accounts in the future, which is barred by Minnesota law. Minn. Stat. § 518.64, subd. 2(e) (stating all property divisions are final, which would prohibit the Court from awarding future property of Appellant to Respondent). In fact, ordering Appellant to pay spousal maintenance for Respondent's "savings" or "retirement" expense is more prejudicial to Appellant than ordering a percentage of his nonmarital assets because Respondent is allotted this money, but there is no accountability for Respondent to put this money away for savings or retirement, which is the same concern the Rask court had. Respondent can spend the spousal maintenance surplus that she receives for savings or retirement on anything she wants since it is not an actual need, and then she can still claim a lack of resources for future

hearings. A savings or retirement category for expenses is not appropriate and should not be included in wife's budget as they are not necessary expenses.¹

Assuming a budget of \$8,312, Respondent only needs spousal maintenance of \$10,518 until June 30, 2008 and \$9,417 per month commencing July 1, 2008. The following spousal maintenance awards result in Respondent meeting her budget, and properly awards no budget surplus, after itemizing deductions for tax purposes:

Monthly Spousal Maintenance	Monthly Employment Earnings	Monthly Cash Flow after taxes	Respondent's Monthly Budget	Monthly Budget Surplus	Citation to Appendix
\$10,518	Not Working	\$8,312	\$8,312	0	APP. 068-072
\$9,417	\$1,239.33	\$8,313	\$8,312	\$1	APP. 073-077

¹ Respondent argues Rodeghier v. Rodeghier to allow for a savings and/or retirement expense, however, that is an unpublished case that is not precedent. No. C3-98-481, 1998 WL 727751 (*unpublished opinion*) (Minn. Ct. App. 1998). This Court in Rask, Sefkow, and Kemp, all published decisions, has not allowed savings categories, or expenses for things that are not currently being incurred. This Court should follow its prior line of published cases and disallow Respondent from having such an unnecessary expense category. There is no concern that Respondent is living bare bones without the savings or retirement category, as the trial court allotted Respondent a category of \$850 for miscellaneous cash, which Appellant is not appealing.

CONCLUSION

Appellant is not trying to avoid his spousal maintenance obligation. He is simply asking this Court to provide him with an obligation that is accurate, and that does not give Respondent a surplus of income above and beyond what is needed for her necessary and reasonable needs. Appellant asks that this Court find that Respondent's reasonable and necessary monthly budget is \$8,312 per month. Accordingly, Appellant respectfully requests that this Court order Appellant's spousal maintenance obligation to be \$10,518 per month (\$126,216 gross per year) until June 30, 2008, and \$9,417 per month (\$113,004 gross per year) starting July 1, 2008.

Respectfully submitted,

Dated: August 15, 2006

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**STATE OF MINNESOTA
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IN RE THE MARRIAGE OF:

CATHERINE M. KAMPF,

RESPONDENT,

VS.

MARK N. KAMPF,

APPELLANT

CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. Rules of Civ. App. Pro. 132.01, subd. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,942 words. This brief was prepared using Microsoft Word 2003..

Dated: August 15, 2006

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).