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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0631**

In re the Marriage of:

Debra Lynn Olson, petitioner,
Appellant,

vs.

Bruce Dwight Olson,
Respondent.

**Filed March 25, 2008
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. DC 280556

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Debra Lynn Olson n/k/a/ Debra Lynn Hotvedt challenges the district court's denial of her motion for additional spousal maintenance, arguing that: (1) under the statutory maintenance factors, she was entitled to additional maintenance; (2) the record does not support the district court's finding as to her expenses; (3) the record does not support the district court's imputation of income to her; (4) the district court's calculations of her ability to support herself improperly require her to invade her property distribution; and (5) the district court understated respondent Bruce Dwight Olson's ability to pay maintenance by incorrectly determining that he retired upon the sale of his business. We affirm.

DECISION

Appellant and respondent divorced by a stipulated judgment and decree in May 2005. The parties agreed that (1) respondent would pay appellant "Tier I" spousal maintenance in the amount of \$10,000 per month for two years; (2) following the two-year period respondent would pay appellant "Tier II" spousal maintenance with a beginning amount of \$2,000 per month; and (3) appellant's right to continued "Tier I" spousal maintenance was reserved with future maintenance to be determined by the court pursuant to the factors set forth in Minn. Stat. § 518.552 (2006).

Appellant argues that the district court abused its discretion in denying her spousal maintenance above the agreed-upon "Tier II" amount of \$2,000 per month. We disagree.

We review a district court's maintenance award for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion regarding maintenance if resolution of the issue is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). "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. And findings of fact are clearly erroneous when they are "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).

The district court applied the factors set forth in Minn. Stat. § 518.552, subd. 2, in determining the amount and duration of the spousal-maintenance award. This process essentially balances "the recipient's need against the obligor's ability to pay." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001). Relevant factors include: (1) the petitioning spouse's ability to meet his or her needs independently; (2) the time necessary for the petitioning spouse to acquire sufficient education or training to find appropriate employment and the probability of the petitioning spouse becoming fully or partially self-supporting; and (3) the standard of living established during the marriage. Minn. Stat. § 518.552, subd. 2. No single factor is dispositive, and the district court must weigh the facts of each case to determine whether maintenance is appropriate. *Weikle v. Weikle*, 403 N.W.2d 682, 687 (Minn. App. 1987), *review denied* (Minn. June 30, 1987).

Appellant argues that the district court abused its discretion in finding that appellant did not establish a need for additional maintenance. Appellant disputes the

district court's findings that: (1) her reasonable monthly expenses amount to \$5,298; (2) she can earn \$34,195 per year through employment; and (3) she has financial resources from which she can meet her needs.

Reasonable Monthly Expenses

Appellant argues that the monthly budget she submitted to the court was reasonable and that the district court abused its discretion in reducing her budget. Appellant objects to the district court's refusal to include uninsured dental-care expenses, but does not dispute respondent's statement that the amount is "for estimated cosmetic work that has not been done." And the record reveals that appellant's dental expenses derive from a "proposed treatment plan." No expenses were actually incurred. Accordingly, we conclude that this reduction was not clearly erroneous.

Appellant also challenges the district court's reduction of her vehicle maintenance and repairs expenses. But appellant does not explain why nearly \$300 per month in repairs and maintenance is necessary for either of her two vehicles, one of which is brand-new and the other only five years old. Appellant further claims that a replacement vehicle expense of \$200 is reasonable because the parties purchased new vehicles every three years during their marriage. But, again, this expense has not actually been incurred. Moreover, this court has noted that it is not always possible for a person to receive maintenance that would support the standard of living enjoyed by the parties during the marriage: "The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, *as closely as is equitable under the circumstances.*" *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn.

App. 2004) (emphasis added). Here, the district court recognized that respondent's retirement has changed the parties' circumstances, and they cannot maintain the standard of living they once enjoyed. This finding is supported by the record. Therefore, the district court did not err in disallowing appellant's replacement vehicle expense.

Appellant also challenges the district court's refusal to allow \$1,000 per month for "debt payment" to her attorneys, arguing that "[t]here is nothing in the record that the [amount] is merely in anticipation of the cost of this litigation." But because appellant provided no documentation of her attorney fees, there is nothing in the record that shows that the debt had accrued. *See Dobrin*, 569 N.W.2d at 202 ("[i]mplicit in Minn. Stat. § 518.552 is that the spouse seeking maintenance demonstrate the need therefor"). Accordingly, the district court's refusal to include attorney fees among her expenses was not clearly erroneous.

Finally, the district court's additional reductions are supported by the evidence as a whole: appellant claimed (1) an expense of \$1,237 per month for educational expenses when she is not going to school; (2) a \$200 per month retirement expense when she is 49 years old and capable of full-time employment; and (3) a mortgage expense of \$1,000 per month when the evidence demonstrated that the homestead was unencumbered except for a \$21,000 home equity line of credit with monthly payments ranging between \$114 and \$181 per month. The district court did not reduce appellant's expenses for vacations, entertainment, club memberships, grooming, and gas and insurance for her two vehicles. The district court omitted only the expenses it determined to be anticipated or inappropriate for consideration in a spousal-maintenance motion. Accordingly, we

conclude that the district court did not err in finding that appellant had reasonable monthly expenses of \$5,298.

Ability to Work

Appellant argues that the district court erred in assigning appellant \$34,195 annually from employment. But the court did not assign any income to her. Instead, it considered her ability to earn income through employment as one factor in its decision that she did not need additional maintenance.

Appellant's argument that the district court imputed income to her is unsupported by caselaw. "In a dissolution action, a finding that a party seeking maintenance has the ability to meet needs independently by full-time employment is not an 'imputation of income.'" *Schallinger v. Schallinger*, 699 N.W.2d 15, 17 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). And here, the district court did not clearly err in finding that appellant can contribute to her own needs by gaining employment. Appellant worked for the family business, and there is no evidence in the record indicating that she cannot work now. A vocational expert opined that she could earn \$2,346 per month after about three months of computer training. The record shows that appellant took some computer classes. Although she has not taken the amount of computer training recommended by the vocational expert, we conclude that the court's finding that appellant could make about \$2,346 per month was not "manifestly contrary to the weight of the evidence." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d at 726.

Other Financial Resources

Appellant also argues that the district court improperly required her to spend down her property distribution to meet her reasonable monthly expenses. Appellant contends that the district court erred in considering the \$3,333.34 monthly payment she receives out of the buy-out agreement payments from the sale of the family business in denying her motion for additional maintenance. But because Minn. Stat. § 518.552, subd. 2, requires the court to consider “the financial resources of the party seeking maintenance, including marital property apportioned to the party,” that income stream was appropriately considered by the district court. Appellant also challenges the district court’s speculation that, without invading principal, she could earn \$96,840 annually by developing part of her property and investing the profit generated from its sale. But again, the district court did not impute any investment income to appellant, it merely considered this factor in determining that additional maintenance was inappropriate. *See Fink v. Fink*, 366 N.W.2d 340, 342 (Minn. App. 1985) (considering interest income which may be generated from a marital property award when calculating spousal maintenance does not constitute an abuse of the district court’s discretion). In sum, we conclude that the district court did not err in considering appellant’s financial resources and her ability to provide for herself through employment in deciding whether to grant appellant’s motion for additional maintenance.

Because we conclude that the record supports the district court’s determination that appellant has not established a need for additional maintenance, we need not reach the question of respondent’s ability to pay. But we note that the record supports the

district court's finding that respondent sold the family business as contemplated by the marital termination agreement and retired in good faith. Thus, the district court properly determined that respondent lacks the income to pay appellant additional maintenance.

Affirmed.