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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1362**

In re the Marriage of:  
Gary Stephen Charboneau, petitioner,  
Respondent,

vs.

Noreen Joan Charboneau,  
Appellant.

**Filed July 1, 2008  
Affirmed  
Worke, Judge**

Anoka County District Court  
File No. 02-F1-05-000737

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Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and  
Worke, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

On appeal in this spousal-maintenance dispute, appellant argues that the district  
court abused its discretion by (1) not awarding her permanent maintenance when her  
ability to support herself is uncertain, (2) awarding her an insufficient amount of

maintenance, (3) not ordering respondent to pay her medical-insurance costs, and (4) not ordering respondent to secure the maintenance award with life insurance. We affirm.

## D E C I S I O N

Appellant Noreen Joan Charboneau argues that the district court abused its discretion in making its maintenance award. 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). "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. To successfully challenge the district court's findings of fact under the clearly-erroneous standard, a party

must show that despite viewing that evidence in the light most favorable to the [district] court's findings (and accounting for an appellate court's deference to a [district] 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.

*Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

### ***Temporary Maintenance***

The district court awarded appellant temporary maintenance until respondent Gary Stephen Charboneau, a law-enforcement officer, begins receiving pension benefits and at which time appellant will receive 50% of those benefits. Appellant argues that the district court should have awarded permanent maintenance because when "there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3

(2006). Appellant contends that the temporary award is an abuse of discretion because the parties were married for nearly 25 years; appellant was a stay-at-home parent; she relinquished employment opportunities; and she has degenerative-disc disease that will prevent her from becoming self-sufficient. Appellant further argues that she should have been awarded permanent maintenance because respondent will most likely continue to work after he retires and would still be able to provide spousal maintenance.

A maintenance award is “payments from the future income or earnings of one spouse for the support and maintenance of the other.” Minn. Stat. § 518.003, subd. 3a. (2006). A district court may order maintenance if a party lacks sufficient property to provide for the party’s reasonable needs or if a party is unable to provide self-support through adequate employment. Minn. Stat. § 518.552, subd. 1(a), (b) (2006). In determining the amount and duration of a spousal-maintenance award, the district court is to consider the statutory factors under Minn. Stat. § 518.552, subd. 2 (2006). The district court must consider “all relevant factors,” including available financial resources of the spouse seeking maintenance, the probability of self-support, the contributions of each party to marital property, marital property apportioned to the spouse seeking maintenance, the marital standard of living, the duration of the marriage, and the obligor’s ability to meet his needs. *Id.*, subd. 2(a)-(h). No single factor is dispositive, and the issue is basically the obligee’s need balanced against the obligor’s financial condition. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). The party seeking maintenance has the burden to produce evidence on the statutory factors at trial.

*See Dobrin*, 569 N.W.2d at 202 (stating that statute implicitly places burden on spouse seeking maintenance to prove need for it).

Here, the district court made findings that support the award of temporary maintenance. First, while this was a long-term marriage, it was not a “traditional marriage” in which one spouse left the labor market to raise the parties’ children. Appellant did not work during the marriage, but this decision was not a mutual agreement between the parties. Appellant worked outside the home at the beginning of the marriage, but left the workforce after the birth of the parties’ fourth child. Respondent requested that appellant return to work because the parties constantly experienced financial difficulties. Appellant testified that despite experiencing financial hardship, she never considered going back to work. Further, respondent not only worked outside the home, but he was also the primary caregiver. Respondent took off work to take the children to doctor appointments, made dinner when he returned home from work, took the children to their athletic events, and attended their school conferences.

The district court also found that despite suffering from various physical ailments, a history of alcohol abuse, and work restrictions, appellant is able to find part-time, sedentary work. The court found, however, that appellant expended “extraordinarily minimal efforts at finding new employment.” Following the parties’ separation, appellant received assistance from the Displaced Homemakers Program in seeking positions and took resume and computer classes. Appellant also had a vocational analysis done, which indicated that she has employable skills. Appellant received certificates of completion as a Microsoft office specialist, for business computer skills,

and as a customer-service specialist. But since the separation, appellant applied for only one clerical job, possibly two.

Additionally, during the marriage the parties' did not maintain a high standard of living. The court found that after the separation, appellant's financial circumstances were superior to respondent's circumstances, and that respondent incurred more debt during the separation to maintain a modest lifestyle. Finally, and most significantly, the court ordered that temporary maintenance would terminate only when respondent retired and started receiving pension benefits. In making that determination, the court divided respondent's pension benefits in half, including respondent's nonmarital interest in the retirement benefits. At the time of the hearing, respondent was 51 years old and eligible to retire. Respondent testified that he wanted to retire as soon as possible. Therefore, when maintenance terminates, appellant will receive monthly payments equal to what respondent receives each month. The court found that respondent will most likely have to find part-time employment after retirement in order to maintain a modest lifestyle, but that his work-related shoulder injury that resulted in permanent work restrictions will limit his employment options. The court found that appellant is also capable of finding employment despite her work restrictions. The court balanced the parties' financial situations and put them in nearly identical positions; therefore, the district court did not abuse its discretion in awarding appellant temporary maintenance.

#### ***Amount of Maintenance Award***

The district court awarded appellant \$1,250 per month in temporary maintenance. Appellant argues that the district court failed to make a specific finding as to her monthly

expenses and could not make a specific finding as to respondent's monthly expenses. Appellant contends that her monthly expenses far exceed her monthly maintenance award, which is her only income.

The district court found that appellant "claims current monthly expenses of \$2,520.75" and that she has been able to make her monthly payments. The court also found that appellant is capable of supplementing her income with part-time employment. The court's finding is supported by the record. Appellant has certificates in computer courses and customer service and has employable skills. Further, although unemployed at the time of the hearing, appellant put forth a very limited effort in attempting to find employment.

The district court found that it could not make a finding on respondent's reasonable monthly expenses, but that it was likely that he will have difficulty meeting expenses after he retires and that he may need to seek employment. Respondent's net-monthly income is \$4,258.79. The most recent submission regarding respondent's monthly expenses was dated April 3, 2006, and totaled \$5,482.89. Respondent did not submit an updated estimate at the time of the hearing because his expenses had not changed. At the time of the hearing, respondent had approximately \$40,000 in unsecured debt. Respondent also has approximately \$68,000 in debt that he cosigned for his college-aged children's expenses. The court found that appellant is able to meet her monthly expenses and that since the separation respondent has had difficulty maintaining a modest lifestyle. Because the district court essentially weighed appellant's need against respondent's ability to pay, the district court did not abuse its discretion in the amount of

the maintenance awarded. *See* Minn. Stat. § 518.552, subd. 2; *Erlandson*, 318 N.W.2d at 39-40.

### ***Medical Insurance***

The district court ordered that each party be responsible for their own medical- and dental-insurance costs. Appellant relies on *Maeder v. Maeder*, arguing that because of her age, disability, and foregone employment opportunities, respondent should be required to maintain her health-insurance benefits. 480 N.W.2d 677 (Minn. App. 1992), *review denied* (Minn. Mar. 19, 1992). In *Maeder*, the district court found that changed circumstances supported the modification of the maintenance award—to a permanent-maintenance award—based in part on the wife’s failure to rehabilitate into the job market, the cost of living since the original judgment, and because she no longer had health insurance. *Id.* at 679. The wife was 54 years old, had no vocational skills, had physical and emotional problems, contributed as a homemaker during the marriage, and the parties had an affluent lifestyle during the 21-year marriage. *Id.* at 679-80. Additionally, the wife made several unsuccessful attempts to support herself. *Id.* at 678. That is not the same case here. First, appellant was awarded temporary maintenance, not permanent; therefore, the contention that health benefits should be awarded as part of a permanent-maintenance award does not apply. Further, appellant’s circumstances are not the same as the wife in *Maeder*. The court here determined that appellant should be able to find employment that fits the limitations suggested by health-care providers, but that appellant “pursued limited educational opportunities” and expended “extraordinarily minimal efforts at finding new employment.” Additionally, the husband in *Maeder* was a

practicing physician earning at least \$200,000 per year. *Id.* at 679. Here, the court found that respondent has difficulty maintaining a modest standard of living. Appellant's reliance on *Maeder* is misplaced. The district court did not abuse its discretion by ordering the parties responsible for their own health-insurance costs.

### ***Life Insurance***

The district court did not order respondent to secure maintenance with life insurance. The district court has discretion to determine "whether the circumstances justifying an award of maintenance also justify securing it with life insurance." *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987); *see also* Minn. Stat. § 518A.71 (2006). Appellant relies on *O'Brien v. O'Brien*, arguing that when a husband is responsible for maintenance, he should also be responsible for protecting the maintenance. 343 N.W.2d 850 (Minn. 1984). In *O'Brien*, however, the district court awarded permanent maintenance to terminate at the husband's death, based on the wife's poor employment prospects because of her age, education, experience, and the time and care she had to give the parties' child who was severely afflicted with cerebral palsy. *Id.* at 851, 853. The supreme court determined that the case in *O'Brien* was an instance when "there should be some life insurance on the husband's life to afford the wife a measure of security for loss of maintenance in the event her husband should predecease her." *Id.* at 853. That is not the same case here. First, appellant was awarded temporary maintenance, not permanent. The court here did not find that this was a case justifying permanent maintenance; therefore, it is not the case when the maintenance should be secured with life insurance. Further, appellant's

circumstances are not the same as the wife in *O'Brien*. The court here found that appellant is capable of limited employment, whereas, the court in *O'Brien* found that the wife had poor employment prospects. *Id.* Additionally, the wife in *O'Brien* was awarded custody of and cared for the parties' 16-year-old daughter who was severely afflicted with cerebral palsy, who would never be able to live alone, and who had limited employment prospects. *Id.* at 851. Appellant's reliance on *O'Brien* is misplaced. The district court did not abuse its discretion by not ordering respondent to secure temporary maintenance with life insurance.

**Affirmed.**