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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1224**

In re the Marriage of:
Holly Virginia Anderson, petitioner,
Respondent,

vs.

Derrick T. Anderson,
Appellant.

**Filed July 23, 2012
Affirmed in part, reversed in part, and remanded; motion denied
Johnson, Chief Judge**

Scott County District Court
File No. 70-FA-09-14473

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Considered and decided by Johnson, Chief Judge; Rodenberg, Judge; and
Huspeni, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

This appeal arises from the dissolution of the marriage of Holly Virginia Anderson and Derrik T. Anderson. The parties raise multiple issues concerning spousal maintenance, child support, an income tax exemption for a dependent child, and attorney fees. We conclude that the district court erred in certain aspects of its award of spousal maintenance and in certain aspects of its award of child support. We conclude that the district court did not err in other respects. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

The parties were married in 1989. They have two sons, who were born in 1991 and 1994. Ms. Anderson presently is 49 years old. She holds a G.E.D. and works as a technology assistant for a school district. She works full-time nine months of the year, but she is paid on a 12-month calendar, \$2,112 per month. Mr. Anderson presently is 48 years old. He works as a cement finisher. He routinely collects unemployment benefits during the winter months. His average monthly income is at issue on appeal but is at least \$3,980 per month.

Ms. Anderson petitioned to dissolve the marriage in May of 2009. At a hearing in January 2010, the parties reached a partial settlement agreement that Ms. Anderson's attorney read into the record in open court. In that agreement, the parties agreed to joint legal and joint physical custody of their younger son, who then was 15 years old. The parties also agreed that Mr. Anderson's home was to be designated as the child's primary

residence. The parties further agreed that “each party shall assume and pay their own attorney’s fees in this proceeding.” Ms. Anderson subsequently refused to execute a written version of the agreement, which prompted Mr. Anderson to file a motion to enforce the agreement. In May 2010, the district court adopted the agreement that was read into the record as the basis for deciding the issues addressed by the agreement.

The case proceeded to trial on the remaining issues. The district court received evidence on September 9 and 10 and November 24, 2010. The district court issued an order dissolving the marriage in March 2011 and issued an amended order in May 2011. The district court ordered Mr. Anderson to pay permanent spousal maintenance to Ms. Anderson in the amount of \$1,000 per month. The district court ordered Ms. Anderson to pay child support to Mr. Anderson in the amount of \$113 per month. Both Mr. Anderson and Ms. Anderson appeal, and each raises multiple issues.

D E C I S I O N

I. Spousal Maintenance

The district court ordered Mr. Anderson to pay permanent spousal maintenance to Ms. Anderson in the amount of \$1,000 per month. Both parties challenge the spousal maintenance order.

We apply a clearly erroneous standard of review to a district court’s findings of fact concerning spousal maintenance. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). We apply an abuse-of-discretion standard of review to a district court’s determination of the proper amount and duration of an award of spousal maintenance. *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). The district court abuses its discretion if its determinations are “against logic and facts on the record.” *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. Sept. 28, 2005). And we apply a *de novo* standard of review to questions of law related to spousal maintenance. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

An award of spousal maintenance “shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors.” Minn. Stat. § 518.552, subd. 2 (2010). The relevant factors are the financial resources of the spouse seeking maintenance to provide for his or her needs independently, the time necessary to acquire education to find appropriate employment, the age and health of the recipient spouse, the standard of living established during the marriage, the length of the marriage, the contribution and economic sacrifices of a homemaker, and the resources of the spouse from whom maintenance is sought. *Id.*; *see also Kampf v. Kampf*, 732 N.W.2d 630, 633-34 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). No single factor is dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). In essence, the district court balances the recipient’s needs against the obligor’s ability to pay. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

A. Mr. Anderson's Income

The district court found that Mr. Anderson's gross income is \$3,980 per month. Both parties challenge this finding. Mr. Anderson argues that his income should be set at a lower amount; Ms. Anderson argues that it should be set at a higher amount.

1. Mr. Anderson's Argument Regarding Imputation

Mr. Anderson argues that the district court erred by imputing two types of income to him for the purposes of spousal maintenance. Mr. Anderson bases these arguments on a portion of the district court's order in which it stated that Mr. Anderson "has a history of side jobs which, although he denies doing them now, is a potential source of additional income," and that he will "almost certainly see his income increase as the economy bounces back from recession."

An obligor's spousal maintenance obligation should be calculated based on his or her income at the time of trial. *Carrick v. Carrick*, 560 N.W.2d 407, 412 (Minn. App. 1997). "[E]arning capacity is not an appropriate measure of income unless (1) it is impracticable to determine an obligor's actual income or (2) the obligor's actual income is unjustifiably self-limited." *Melius*, 765 N.W.2d at 415 (quotation omitted). "A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

In this case, the district court did not make any findings that trigger either prong of the *Melius* test. The district court did not find that it was impracticable to calculate Mr. Anderson's income and did not find that Mr. Anderson's income "is unjustifiably self-

limited.” *See id.* On the contrary, the district court wrote that Ms. Anderson had “failed to prove the allegation” that Mr. Anderson was working side jobs. In addition, the record contains no evidence about the prospects for future economic growth in general or in the construction sector in Minnesota in particular. The district court effectively imputed income to Mr. Anderson by considering sources of income that he did not then receive. Thus, the district court erred by considering income Mr. Anderson might or might not receive above and beyond the district court’s specific finding of \$3,980 per month.

2. Ms. Anderson’s Arguments for Higher Income

Ms. Anderson argues that the district court erred with respect to this issue for multiple reasons. She argues that the district court erred by (1) not including the future value of Mr. Anderson’s retirement and insurance benefits in his present hourly wage; (2) not calculating Mr. Anderson’s income based on an average of the last 11 years of his work history; (3) not finding that Mr. Anderson worked side jobs; and (4) not considering Mr. Anderson’s failure to explain the origin of some deposits into his U.S. Bank account between 2003 and 2010.

These arguments are without merit. First, the district court included the future value of Mr. Anderson’s retirement benefits in Ms. Anderson’s share of the marital property, as the parties agreed in their partial settlement agreement. It would be inappropriate to consider future payments because an obligor’s spousal maintenance obligation should be calculated based on his or her income at the time of trial. *Carrick*, 560 N.W.2d at 412. Second, the district court determined Mr. Anderson’s income by extrapolating his year-to-date income to the entire year. This method of determining

income for the purposes of spousal maintenance is not against logic. *See Schallinger*, 699 N.W.2d at 22. The district court was required to find Mr. Anderson's income as of the time of trial. *See Carrick*, 560 N.W.2d at 412. Third, the district court found that Mr. Anderson's denials were more credible than Ms. Anderson's allegations concerning alleged side jobs.

Fourth, regarding the funds in Mr. Anderson's U.S. Bank account, Mr. Anderson conceded that he had performed side jobs as recently as 2008. Mr. Anderson produced a summary of his deposits during an 18-month period in 2009 and 2010, and he explained that all but approximately \$4,300 of the deposits were attributable to loans, tax refunds, unemployment benefits, or transfers from his union savings fund. The deposits ranged in size from five dollars to \$1,158.69. The district court reasonably chose to disregard the sporadic deposits and to determine Mr. Anderson's income based upon his year-to-date income for 2010.

Thus, the district court did not err by not finding that Mr. Anderson's income was higher than \$3,980 per month.

B. Ms. Anderson's Income

The district court found that Ms. Anderson's gross income is \$2,112.70 per month. Mr. Anderson argues that the district court erred by not imputing the potential income Ms. Anderson might earn through summertime employment.

If a person seeking spousal maintenance is employed on only a part-time basis, a district court may find that the person is able to earn a higher income such that spousal maintenance is unnecessary. *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 543-45 (Minn.

App. 2006); *Schallinger*, 699 N.W.2d at 22. This principle is based on the statutory provision that spousal maintenance is appropriate if a person seeking maintenance “is unable to provide adequate self-support . . . through appropriate employment.” Minn. Stat. § 518.552, subd. 1(b). A district court may find that the person seeking spousal maintenance is able to earn greater income even if the district court has not found that the person “has limited his or her income in bad faith.” *Passolt v. Passolt*, 804 N.W.2d 18, 22 (Minn. App. 2011), *review denied* (Minn. Nov. 15, 2011).

At trial, Mr. Anderson presented the testimony of Dr. Phillip Haber, an occupational psychologist. Dr. Haber testified that Ms. Anderson could earn \$33,737 per year (or \$2,811.42 per month) if she worked year-round. Dr. Haber did not testify that Ms. Anderson should quit her current job with the school district; rather, he testified that she should find comparable work during the summer months, when school is not in session. The district court found that Ms. Anderson’s “current position offers job security, a limited commodity in today’s economy, and generous fringe benefits, i.e., retirement income and health insurance.” The district court did not expressly address the question whether Ms. Anderson’s income should assume summertime employment, although it did note that Ms. Anderson’s work schedule previously had allowed her to be at home with her children during the summer months. It appears that the district court implicitly rejected Mr. Anderson’s argument on this issue.

We are unaware of any caselaw in which the rationale of *Rauenhorst*, *Schallinger*, and *Passolt* has been applied to the situation in which a person seeking spousal maintenance is employed on a full-time basis in a field that customarily operates less than

12 months per year. Mr. Anderson has not offered any authority for the proposition that the district court erred by not imputing income to Ms. Anderson for summertime employment. In light of the spousal-maintenance statute, the question is whether Ms. Anderson's employment in her current position for nine months of the year is "appropriate employment." Minn. Stat. § 518.552, subd. 1(b). Although some persons employed by school districts choose to find other, temporary employment in the summertime, many do not do so. Mr. Anderson has not demonstrated that it is *inappropriate* for teachers and other school district employees to not work during the summer breaks between academic years. Thus, the district court did not err by not considering income from summertime employment when making a finding of Ms. Anderson's income for purposes of spousal maintenance.

C. Maintenance Award

The district court concluded that Mr. Anderson should pay permanent spousal maintenance to Ms. Anderson in the amount of \$1,000 per month. Mr. Anderson argues that the district court erred because this amount of spousal maintenance allows Ms. Anderson to meet her needs but leaves him far short of meeting his own needs.

The district court did not make any explicit findings about the parties' respective reasonable budgets. The district court noted that Ms. Anderson "claims that her reasonable monthly expenses are \$3,215.00 and [Mr. Anderson] claims his reasonable monthly expenses are \$4,800.00." The district court merely commented, "The court is not persuaded that either claim is unreasonable, albeit perhaps unrealistic in light of their financial circumstances."

Given the district court's finding that Mr. Anderson's income is \$3,980 per month, the district court's apparent acceptance of his evidence that his reasonable monthly needs are \$4,800 per month, and the spousal maintenance award of \$1,000 per month, Mr. Anderson would have a monthly deficit of \$1,820, before taxes. On the other hand, Ms. Anderson would have a monthly deficit of only \$102, before taxes, given the district court's finding that her income is \$2,113 per month, the district court's apparent acceptance of her evidence that her reasonable monthly needs are \$3,215 per month, and the spousal maintenance award of \$1,000 per month. The district court justified this result by stating, "While an award of monthly maintenance of \$1,000.00 may seem unfair, and put [Ms. Anderson] in a position of having a larger income than [Mr. Anderson], when the tax consequences are taken into account that award simply levels the playing field."

The order does not demonstrate that the district court based its determination of spousal maintenance on the appropriate statutory factors. *See* Minn. Stat. § 518.552, subd. 2. In addition, the order does not demonstrate that the district court balanced Ms. Anderson's needs against Mr. Anderson's ability to pay. *See Prahl*, 627 N.W.2d at 702. Furthermore, the district court's comment about "level[ing] the playing field" indicates that the district court sought to achieve identical amounts of income for each party. But equalization of income is not the purpose of spousal maintenance. *See Snyder v. Snyder*, 298 Minn. 43, 53, 212 N.W.2d 869, 875 (1973).

Thus, the district court erred when determining the amount of spousal maintenance. On remand, the district court should make explicit findings about the

parties' respective reasonable expenses, should acknowledge and consider the resulting monthly deficit of each party, and should state reasons for its award that are based on the statutory factors. *See* Minn. Stat. § 518.552, subd. 2.

II. Child Support

The district court ordered Ms. Anderson to pay child support to Mr. Anderson in the amount of \$113 per month. The district court reached this result after completing a child-support worksheet. *See* Minn. Stat. § 518A.34 (2010). Both parties challenge the child-support order.

Child support is based on the parties' respective gross incomes. Minn. Stat. § 518A.34(b)(1). A district court first must calculate each parent's gross income and then must add those figures for a combined parental income for determining child support, known as the "combined PICS." Minn. Stat. §§ 518A.29, .34(b), .35 (2010). The district court then uses a statutory table to determine the basic amount of child support and the party who bears the obligation. Minn. Stat. §§ 518A.34, .35. In some circumstances, the district court must make an adjustment based on the obligor's parenting time. Minn. Stat. §§ 518A.34(b)(6), .36 (2010).

We review the district court's decisions in a child-support matter for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). A ruling "that is against logic and the facts on record" exhibits an abuse of discretion, *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), as does a misapplication of the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). We will not reverse the district court's

findings as to a parent's income unless they are clearly erroneous. *Schallinger*, 699 N.W.2d at 23.

A. Mr. Anderson's Income

The district court found that Mr. Anderson's income for purposes of child support is \$3,980 per month.

Ms. Anderson argues that the district court erred by miscalculating Mr. Anderson's income. The district court found Mr. Anderson's gross monthly income by starting with his year-to-date income for the first eight months of 2010 (\$30,096.86), by dividing that number by two-thirds (or eight-twelfths) to obtain an annual figure (\$45,145.29), by adding Mr. Anderson's unemployment benefits (to arrive at \$47,756.29), by dividing that number by twelve months (\$3,979.69), and finally by rounding-up (\$3,980). The district court did not err in doing so.

Ms. Anderson argues that the district court erred by not drawing an adverse inference against Mr. Anderson on the ground that he "stonewalled any meaningful investigation" into his income by not providing the court with year-end 2010 data. But Mr. Anderson disclosed his current year's income as of the month before trial. The district court used that information to calculate Mr. Anderson's average monthly income. The district court was not obligated to keep the record open for additional evidence.

Thus, the district court did not err in its findings of Mr. Anderson's income for purposes of child support.

B. Ms. Anderson's Income

Mr. Anderson argues that the district court erred by determining Ms. Anderson's income for purposes of child support without considering her potential income from summertime employment.

The applicable statute provides:

If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week.

Minn. Stat. § 518A.32, subd. 1 (2010). The statute does not apply unless Ms. Anderson is "voluntarily unemployed, underemployed, or employed on a less than full-time basis."

Id. The district court found that Ms. Anderson was not employed on a less than full-time basis. In fact, she is employed as a technology assistant at an elementary school on a full-time basis for nine months per year. The caselaw is silent as to whether a district court errs by not factoring in a school employee's potential income during the summer breaks between academic years. In the education field, many school employees work only nine months each year, without finding other employment during the summer months. A person engaging in that practice is not generally considered to be "underemployed" or employed less than full time.

Thus, we conclude that the district court did not err by not considering Ms. Anderson's potential income during the summer months in a second job.

C. Parenting-Expense Adjustment

If a district court awards child support and determines parenting time, the district court is required to make an adjustment to the amount of child support if the obligor's parenting time is between 10 and 45 percent. Minn. Stat. § 518A.36, subs. 1, 2. In this case, the district court determined that, for purposes of the child-support calculation, Mr. Anderson should be deemed to have parenting time in the range of 45.1 to 50 percent. In that event, the statute does not require a parenting-expense adjustment. *See id.*, subd. 2. The district court did not make such an adjustment in this case.

Ms. Anderson argues that the district court erred by adopting the premise, for purposes of the child-support calculation, that Mr. Anderson's parenting time is between 45.1 and 50 percent. As an initial matter, Ms. Anderson has failed to demonstrate that she was prejudiced by the district court's analysis. To show that an adjustment would benefit her, Ms. Anderson needs to show that she is the obligor and that her parenting time is between 10 and 45 percent (which would mean that Mr. Anderson's parenting time is between 55 and 90 percent). *See id.* She contends that the district court should have found that her parenting time is between 45 and 50 percent. But if the district court had interpreted the transcript literally to say that Ms. Anderson's (not Mr. Anderson's) parenting time is between 45 and 50 percent, the district court still would have reached the same conclusion—that no adjustment is warranted. *See id.* Ms. Anderson has not even argued that her parenting time is between 10 and 45 percent. Accordingly, she has

not demonstrated that the district court committed prejudicial error by not making a parenting-expense adjustment.

D. Worksheet Calculations

Mr. Anderson argues that the district court erred in its use of the child-support guidelines worksheet when calculating the child-support award. We agree. The district court's child-support guidelines worksheet contains several errors, which are described below.

First, the worksheet does not credit Ms. Anderson's account on line 1f for the \$1,000 spousal maintenance award from Mr. Anderson. Gross income includes the receipt of spousal maintenance. Minn. Stat. § 518A.29(a). The worksheet does, however, debit Mr. Anderson's account on line 1d for the same item. This error caused other errors in several other parts of the worksheet, including lines 3, 4, 5, 6, 7, 11, 12, 15a, and 15b.

Second, the worksheet does not include a *pro rata* basic support obligation for Ms. Anderson on line 6. Because each party has PICS income on line 3, and thus a percentage share of the combined PICS on line 4, each party should have a *pro rata* obligation on line 6.

Third, the worksheet incorrectly reflects a parenting-expense adjustment for Mr. Anderson on line 7. *See* Minn. Stat. § 518A.36. In light of the discussion above in part II.C., there should not be a parenting-expense adjustment.

As a result of these errors, the net child-support obligation shown on line 12 is erroneous. Thus, the district court erred in its calculations of child support. We reverse

and remand for reconsideration of this issue, which should include consideration of the amount of spousal maintenance, if any, awarded on remand.

III. Income Tax Exemption for Dependent Child

The district court determined that Mr. Anderson is entitled to claim an income tax exemption for the parties' minor child. Ms. Anderson argues that the district court erred by awarding the tax exemption to Mr. Anderson instead of awarding it to her.

After the dissolution of a marriage, the parent with primary custody of a minor child is entitled to claim the child as a dependent on his or her income tax return. 26 U.S.C. § 152(e)(1) (2006); *see also Rogers v. Rogers*, 622 N.W.2d 813, 822-23 (Minn. 2001) (discussing Internal Revenue Code's tax dependency exemption with relation to Minnesota dissolution cases). In this case, the district court awarded the exemption to Mr. Anderson on the ground that Mr. Anderson's residence is the child's primary residence. This determination is consistent with the parties' partial settlement agreement, which states: "They agree that Mr. Anderson's home will be designated as the child's primary residence." The agreement makes Mr. Anderson the custodial parent under federal tax law. *See* 26 U.S.C. § 152(e)(4)(A). Thus, the district court did not err by awarding the tax exemption to Mr. Anderson.

IV. Attorney Fees

Both Mr. Anderson and Ms. Anderson filed motions in the district court for awards of attorney fees. Both parties argue that the district court erred by not granting his or her respective motion.

The district court reasoned that the parties voluntarily resolved the issue of attorney fees in their partial settlement agreement. That agreement provides that “each party shall assume and pay their own attorney’s fees in this proceeding.” In its amended order, the district court stated, “At the settlement conference the parties agreed that each would be responsible for their own attorney’s fees.”

In a dissolution case, “[a]n award of attorney fees rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion.” *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999) (quotation omitted). In addition, “[s]tipulated dissolutions are greatly favored and will not be disturbed absent abuse of trial court discretion.” *Selzer v. Selzer*, 393 N.W.2d 2, 4 (Minn. App. 1986). “Courts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties.” *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). In light of the parties’ agreement to assume their own attorney fees, the district court did not abuse its discretion by not granting the parties’ respective motions.

In addition, Ms. Anderson has moved for attorney fees on appeal. We deny that motion for the same reason that we affirm the district court’s decisions to not grant the motions for attorney fees.

In sum, we affirm in part, reverse in part, and remand for further proceedings on the issues discussed above in parts I.A.1., I.C., and II.D.

Affirmed in part, reversed in part, and remanded; motion denied.