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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1867**

Brenda Lee Miller, petitioner,
Appellant,

vs.

Mitchel Lee Miller,
Respondent,

County of Carver, intervenor,
Respondent

**Filed May 5, 2014
Affirmed
Worke, Judge**

Carver County District Court
File No. 10-FA-05-133

Scott R. Timm, Waconia, Minnesota (for appellant)

Stephen W. Walburg, Jaspers Moriarty & Walburg, Shakopee, Minnesota (for respondent
Mitchel Lee Miller)

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County)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court should have held respondent in contempt of court for failing to pay spousal maintenance and gave inadequate weight to the child support magistrate's (CSM) determination of respondent's income. We affirm.

FACTS

In 2005, the district court dissolved the marriage of appellant Brenda Lee Miller and respondent Mitchel Lee Miller. At the time, respondent owned two businesses in the construction field and was earning approximately \$8,000 per month. Respondent was ordered to pay appellant \$1,200 per month in child support for the parties' two daughters. Respondent was ordered to pay spousal maintenance in a declining sliding scale for ten years: \$2,300 per month for 36 months, \$2,100 per month for 24 months, \$1,900 per month for 12 months, \$1,800 per month for 12 months, \$1,700 per month for 12 months, \$1,600 per month for 12 months, \$1,500 per month for 12 months, and then terminating. Respondent was awarded the parties' home, subject to a marital lien in favor of appellant, which respondent was required to pay in installments of \$40,000 on the five-, seven-, nine-, and eleven-year anniversaries of the dissolution. Because respondent was awarded the home, he was also required to pay appellant \$325,000 in April 2005 and \$10,000 when he sold the parties' townhome.

In early 2009, respondent moved to modify child support and spousal maintenance, claiming that his income was dramatically reduced due to the economic decline. Following a hearing, the CSM modified respondent's child support in

accordance with his then-current reduced income. Around the same time, appellant moved the district court to hold respondent in contempt for, among other things, failing to pay child support and maintenance. Following a hearing, the district court issued an order in June 2010, finding that

Respondent sold the parties' home . . . last year for \$1.22 million dollars. [Appellant] had a marital lien on the home for \$160,000. . . . [Appellant's] marital lien was satisfied in full from proceeds from the sale of the home. . . .

Per the Decree, respondent was required to pay [appellant] \$40,000 on the 5-year, 7-year, 9-year, and 11-year anniversaries of the [j]udgment and [d]ecree. Respondent satisfied the entire marital lien prior to the 5-year anniversary. The amount greatly exceeds any arrears presently due and owing [appellant] with respect to unpaid spousal maintenance amounts.

The district court determined that respondent made a good-faith effort to meet his maintenance obligation and dismissed the contempt motion.

In November 2011, following another review hearing to modify child support, the CSM found that respondent's gross annual income in 2010 was \$80,507 and adjusted his child-support payments accordingly. Months later, appellant again moved to find respondent in contempt for failure to pay child support and spousal maintenance.

The district court held a hearing on July 10, 2012.¹ Respondent testified that in order to pay appellant the \$325,000 property settlement in 2005, he borrowed from his parents, and had later repaid approximately \$140,000. He testified that he also paid

¹ Respondent paid his child-support arrears prior to the hearing; thus, respondent-county declined to pursue the portion of the contempt motion addressing child support.

appellant \$10,000 when he sold the townhome. After paying appellant her full \$160,000 marital lien, respondent paid appellant \$495,000 over the course of seven years.²

The district court found that respondent is 52 years old, has no marketable skills beyond his businesses, does not own stocks or bonds, does not own appreciable personal assets, and does not have a personal savings account. The district court also found that respondent borrowed \$325,000 to comply with the judgment and decree, and admitted to repaying his parents a portion of this loan instead of paying spousal maintenance.

The district court reiterated its finding that respondent satisfied appellant's full marital lien, and found that the amount that appellant received from the judgment and decree exceeded any arrears due. The court also found "it hard to believe that [appellant] has been adversely affected by respondent's failure to comply with his spousal maintenance obligations . . . when she has received sums in excess of the spousal maintenance amounts then due and owing." The district court also found that respondent made payments toward his spousal-maintenance obligation, although not in the ordered amounts. The court found that, based on respondent's finances, his pre-payment of the marital lien, and his ongoing contributions toward his maintenance obligation, that he did not willfully fail to pay his obligation. The district court determined that respondent did

² This amount does not include spousal-maintenance payments. According to the formula in the decree, at the time of the hearing in 2012, respondent would have owed appellant approximately \$177,600 [(\$2,300 x 36) + (\$2,100 x 24) + (\$1,900 x 12) + (\$1,800 x 12) = \$177,600]. Respondent owed \$40,761.45 in arrears; thus, apparently respondent had paid appellant approximately \$136,838.55 in maintenance since the decree.

not have the ability to meet his obligation and dismissed appellant's contempt motion. This appeal followed.

DECISION

Appellant argues that the district court should have held respondent in contempt for failing to pay spousal maintenance. Civil contempt is the failure to obey a court order in favor of an opposing party in a civil proceeding. *Minn. State Bar Ass'n v. Divorce Assistance Ass'n, Inc.*, 311 Minn. 276, 285, 248 N.W.2d 733, 741 (1976); Minn. Stat. § 588.01, subd. 3(3) (2012) (stating that a court may find a person in civil contempt of court for “disobedience of any lawful judgment, order, or process of the court”).

“The [district] court has greater discretion in civil contempt cases than in criminal contempt cases.” *Tatro v. Tatro*, 390 N.W.2d 461, 464 (Minn. App. 1986). This court will not disturb the district court's ruling on a contempt motion absent an abuse of discretion. *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986); *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) (stating that this court reviews the decision whether to invoke contempt power for an abuse of discretion and will not reverse the district court's factual findings unless they are clearly erroneous), *review denied* (Minn. Oct. 16, 2001). We also defer to the district court's credibility determinations made in a contempt hearing. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 298 (Minn. App. 2007).

The issuance of a spousal-maintenance order creates a presumption that the obligor has the ability to pay the amount ordered, thereby placing the burden of proving inability to meet the obligation on the obligor. Minn. Stat. § 518A.71 (2012). The district

court determined that respondent showed that he does not have the ability to meet his maintenance obligation. But appellant challenges several of the district court's findings in its order dismissing the contempt motion.

Appellant claims that the district court clearly erred by failing to find that respondent paid his parents several monthly payments toward his loan, rather than paying his spousal-maintenance obligation. Respondent testified that he was required to pay appellant \$325,000, which he borrowed from his parents. He also testified that he repaid his parents approximately \$140,000. The district court found that in order to comply with the property settlement in the judgment and decree, respondent borrowed \$325,000 from his parents, of which a significant amount is due and owing. The court found that "[r]espondent does admit to making payments to his parents rather than towards his spousal maintenance obligation," and noted that it was "troubled" by this fact, but concluded that there was no evidence detailing the amounts of the actual payments.

Although the district court found that respondent made payments to his parents rather than toward spousal maintenance, it appears that appellant wanted the district court to be more specific in this finding. But it is unclear how a more specific finding on the amount respondent repaid his parents would alter the district court's determination that respondent does not have the ability to meet his spousal-maintenance obligation.

Appellant also claims that the district court erred by finding that the payment of the property settlement exceeded respondent's spousal-maintenance arrears; thus, appellant was not adversely affected by his failure to pay her maintenance. Appellant asserts that her need is irrelevant in deciding whether to hold respondent in contempt.

But whether respondent has the ability to abide by the court order is relevant. *See Hopp v. Hopp*, 279 Minn. 170, 174-75, 156 N.W.2d 212, 216-17 (1968) (stating that in exercising its civil-contempt powers, a district court must find, among other things, that the party had the ability to comply with the court's order). Respondent's full payment of the marital lien shows that he is not maliciously withholding money from appellant.

Appellant also claims that the district court erred in finding that respondent does not have the ability to meet his spousal-maintenance obligation because the court found in an order "filed on December 7, 2011," that respondent's gross monthly income was \$6,709.00. The order from December 7, 2011, was issued by a CSM. The district court referenced this order when it stated that the CSM found that respondent's 2010 gross annual income was \$80,507, which included approximately \$48,000 of depreciation. The district court did not find the depreciation "to be readily available income to respondent." The court concluded: "For purposes of this contempt motion, this court is not persuaded *and does not find* that respondent's gross monthly income is \$6,709.00." (Emphasis added.) The district court did not find that respondent's monthly income was \$6,709; that finding was made by a CSM for child-support purposes.

The district court reasoned that respondent did not have the ability to meet his spousal-maintenance obligation given "the current state of his business, his lack of assets, and his ongoing child support obligation (which he is current on)." The district court found respondent's testimony credible and determined that respondent made a good-faith effort to satisfy his spousal-maintenance obligation. *See Szarzynski*, 732 N.W.2d at 298 (stating that we defer to the district court's credibility determinations). The district court

acted within its discretion by denying appellant's motion to hold respondent in contempt for failing to pay spousal maintenance.

Affirmed.