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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2327**

In re the Marriage of:
Christine Marie Tiede n/k/a
Christine Marie Desmond, petitioner,
Appellant,

vs.

Paul Bernard Tiede,
Respondent.

**Filed August 17, 2010
Affirmed; motion granted in part and denied in part
Willis, Judge***

Cass County District Court
File No. FA-06-1116

Michael S. Gaarder, Pennington, Lies & Cherne, P.A., St. Cloud, Minnesota (for
appellant)

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Considered and decided by Schellhas, Presiding Judge; Connolly, Judge; and
Willis, Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Appellant challenges a district-court order allowing respondent to offset mortgage payments on the marital homestead against his child-support obligation. Because we conclude that the district court did not abuse its discretion, we affirm.

FACTS

In September 2006, the 16-year marriage of appellant Christine Marie Desmond and respondent Paul Bernard Tiede was dissolved. The judgment established custody and parenting time of the parties' four minor children, awarded Desmond temporary spousal maintenance, established Tiede's monthly child-support obligation, and divided the parties' marital assets and debts. Desmond was awarded the marital homestead, subject to two mortgages, and was to hold Tiede harmless from the obligation to make any payment regarding the homestead.

In December 2008, because Tiede was no longer receiving annual bonuses from his employer, he moved to modify child support based on a reduction in income. The district court granted Tiede's motion and applied the child-support guidelines to Tiede's reduced income. The other terms of the judgment and decree remained unchanged.

In June 2009, Tiede filed a motion requesting, among other things, permission to pay a portion of his child-support obligation directly to the companies holding the mortgages on the marital homestead and that the remainder of the support obligation be directed to Desmond. Tiede based his motion on information that he learned from his credit report that Desmond was more than 30 days late paying the first mortgage and

more than 60 days late paying the second mortgage. Tiede also alleged that the second mortgage holder had told him that Desmond had indicated that she was no longer able to make mortgage payments. Tiede's credit rating was affected because he is an obligor on the mortgages. Desmond did not refute Tiede's allegations that she had stopped making mortgage payments.

The district court granted Tiede's motion to allow Tiede to pay a portion of his child-support obligation directly to the mortgage companies and to offset that amount against the support payments being made to Desmond, should Desmond choose not to make payments on the mortgages and not to address the likely foreclosure on the marital homestead. This appeal follows.

D E C I S I O N

I.

Tiede requests that this court consider evidence of a recent settlement between Tiede and the second mortgage holder, extinguishing the second mortgage on the homestead, thereby rendering portions of this appeal moot. The settlement occurred after this appeal was filed and is not, therefore, part of the appellate record. Tiede also puts forth evidence that no redirection or offset of child support has actually occurred since January 2010, when it became permissible for him to do so.

“The papers filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.” Minn. R. Civ. App. P. 110.01. An appellate court may not base its decisions on matters outside the record on appeal and may not consider matters not produced and received in evidence

below. *Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988). “However, when the evidence is documentary evidence of a conclusive nature (uncontroverted) which supports the result obtained in the [district] court, this court may consider it.” *Peterson v. Johnson*, 720 N.W.2d 833, 840 (Minn. App. 2006) (quotation omitted). In general, new evidence may be introduced on appeal if it is: (1) documentary; (2) essentially uncontroverted; and (3) not offered in support of a reversal. *In re Risk Level Determination of C.M.*, 578 N.W.2d 391, 394 (Minn. App. 1998).

Here, the factual evidence that Tiede puts forward regarding the extinguishing of the second mortgage is documentary; it is “essentially uncontroverted” (Desmond objects to its consideration, but does not object to its accuracy); and it is not offered in support of a reversal. Consideration of evidence that the second mortgage has been extinguished renders the appeal, in part, moot. We grant Tiede’s motion as to that evidence. But evidence that no offsets have yet occurred does not affect the issues here, and we deny Tiede’s motion as to that evidence. Therefore, Tiede’s motion to consider new evidence is granted in part and denied in part.

II.

Desmond argues that the district court abused its discretion by granting Tiede’s request to allow him to make mortgage payments directly to the mortgage holders—now one mortgage holder—and to offset that amount against his monthly child-support payments to Desmond. A district-court order regarding child support will be reversed only if a district court abused its discretion by resolving the matter in a manner that is against logic and the facts on the record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn.

2002). Misapplying the law is an abuse of discretion. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). This court reviews questions of statutory interpretation de novo. *In re Senty-Haugen*, 583 N.W.2d 266, 268 (Minn. 1998).

Here, the district court reasoned that it would be inequitable for Tiede to become responsible for a potentially large deficiency judgment while Desmond, who has control of the real property, takes no steps to avoid such a result. The district court cited Minn. Stat. § 518A.39, subd. 2(f) (2008), and *Martin v. Martin*, 364 N.W.2d 475, 479 (Minn. App. 1985), as authority for granting Tiede's request.

Under Minnesota law, all divisions of real and personal property in a dissolution—which includes the apportionment of marital debt—may be modified only if the district court finds the existence of conditions that justify reopening a judgment. Minn. Stat. § 518A.39, subd. 2(f) (2008). Here, the parties stipulated that Desmond would hold Tiede harmless from the obligation to make any payments regarding the marital homestead. Based on evidence that Desmond had stopped making mortgage payments, the district court found that in the interests of equity and to enforce the parties' stipulation, it was necessary to revisit the issue of mortgage debt that was assigned to Desmond but for which Tiede might now be liable because of the mortgage note.

In *Martin*, this court affirmed the district court's characterization of payments regarding homestead property as being in the nature of child support and allowed the offset of those payments against support payments. 364 N.W.2d at 479. The district court had awarded the mother the marital homestead, which included a garage in which the father stored personal property. *Id.* at 477. There was a loan against the garage in the

father's name only. *Id.* at 477, 478. The parties later agreed that the father would stop storing property in the garage but would continue to make the loan payments, which would be deducted from his spousal-maintenance obligation. *Id.* The mother eventually remarried, which terminated the father's spousal-maintenance obligation. *Id.* at 477. But because the loan on the garage was not yet paid in full, citing equitable considerations, the district court permitted the father to offset the loan payments against his monthly child-support obligation and concluded that the father's loan payments were in the nature of child support. *Id.* at 479 (citing *Kerr v. Kerr*, 309 Minn. 124, 127-28, 243 N.W.2d 313, 315 (1976)).

Here, the amount of Tiede's monthly obligation has not changed. Instead, the district court concluded that equity favors allowing Tiede to make mortgage payments directly, if Desmond chooses not to make the payments, and to offset the payments against his monthly support obligation. The children will benefit directly from Tiede's mortgage payments, while in *Martin*, the payments offset were made toward a debt on a garage—not a dwelling—that was likely of no substantial benefit to the minor children. The mortgage payments here will afford the children the benefit of remaining in the marital homestead. Under these facts, the district court could consider payments on the mortgage on the marital homestead property at which the children reside as being in the nature of child support and allow an offset accordingly. *See Martin*, 364 N.W.2d at 478.

III.

Desmond argues that the offset of child support for mortgage payments is against public policy. The paramount public policy underlying child-support law in Minnesota is

the welfare of children. *Tammen v. Tammen*, 289 Minn. 28, 30, 182 N.W.2d 840, 842 (1970). Child support is intended, in part, to provide children with a standard of living similar to what they would have experienced had the parties remained married. *Desrosier v. Desrosier*, 551 N.W.2d 507, 509 (Minn. App. 1996). Here, the district court's order attempted to achieve that goal by making it possible for the children to remain in the marital homestead. The record shows that the district court carefully considered the welfare of the children when ordering that the amount of monthly mortgage payments that Tiede makes may be offset against his child-support obligation to Desmond.

We conclude that the district court's order was not an abuse of discretion.

Affirmed; motion granted in part and denied in part.