STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2350

In re the Marriage of:
Ronald Anthony Iskierka, petitioner,
Respondent,

vs.

Gail Denise Iskierka,
Appellant.

Filed March 8, 2011
Affirmed in part, reversed in part, and remanded
Wright, Judge

Hennepin County District Court
File No. 27-FA-08-3392

Linda K. Wray, Twin Cities Legal Service, Edina, Minnesota (for respondent)

Michael D. Dittberner, Linder, Dittberner & Bryant, Ltd., Edina, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Crippen, Judge.*

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

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

In this marital-dissolution dispute, appellant-wife challenges the amount of permanent spousal maintenance ordered, arguing that the district court erred by assessing the parties' postdissolution living expenses disparately and miscalculating the spousal-maintenance award. By notice of related appeal, respondent-husband challenges the district court's determination of wife's earning ability and calculation of wife's expenses. For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

Appellant-wife Gail Denise Iskierka and respondent-husband Ronald Anthony Iskierka married in April 1985. They currently have three adult children. During the marriage, husband was the primary wage-earner. Although wife was employed full-time before the parties married, she left her employment in 1987 when the parties' twins were born and became a homemaker who cared for and educated the children. She secured part-time employment in September 2006. Thus, when the marriage was dissolved in 2008, wife was employed part-time and husband was employed full-time.

The parties separated in October 2007, and husband petitioned to dissolve the marriage in May 2008. The trial proceeded before a family court referee pursuant to

Minn. Stat. § 484.65, subd. 7 (2010).[1] At the time of trial, wife resided in the marital home and husband resided at his father's home with two of the parties' adult children. Each party submitted a budget of anticipated postdissolution expenses. The district court found that husband's proposed expenses were reasonable and approved them without modification. The district court reduced wife's proposed expenses. Finding that wife lacks the ability to meet her financial needs, the district court ordered husband to pay permanent spousal maintenance and set husband's monthly obligation at $1,500 until the sale of the marital home and $3,000 thereafter. The district court also ordered wife to vacate the marital home and awarded husband possession and occupancy of the home until it is sold.

Wife moved for amended findings or a new trial. Following a hearing, the district court amended its findings and order to increase the monthly spousal-maintenance obligation to $2,000 until the sale of the marital home and to $3,500 thereafter. Because it had erroneously included monthly expenses of the parties' adult children in the spousal-maintenance calculation and failed to consider additional reasonable monthly expenses attributable to wife, the district court found that wife's reasonable monthly budget was $500 greater than originally determined. This appeal followed.

D E C I S I O N

A district court has broad discretion when determining a spousal-maintenance obligation. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). Thus, on review,

[1] The referee issued recommended findings and an order, which the district court confirmed, thereby becoming the order of the district court. *See* Minn. Stat. § 484.70, subd. 7(c), (e) (2010).

we will not disturb the district court's decision as to the amount of spousal maintenance ordered absent an abuse of discretion. *Id.* A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). Accordingly, unless the district court's findings of fact in support of a spousal-maintenance obligation are clearly erroneous, they will not be set aside on appeal. *Bourassa v. Bourassa*, 481 N.W.2d 113, 115 (Minn. App. 1992). A factual finding is clearly erroneous when, after careful review of the record, we are left "with the definite and firm conviction that a mistake has been made." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (quoting *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987)).

The purpose of a spousal-maintenance award is to enable the recipient and the obligor to maintain a standard of living that approximates the marital standard of living to the extent this goal can be equitably achieved. *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004). Spousal maintenance may be awarded if the district court finds that the recipient lacks sufficient property to provide for reasonable needs when considering the standard of living established during the marriage, or the recipient "is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment." Minn. Stat. § 518.552, subd. 1 (2010). When the district court awards spousal maintenance, both the recipient's reasonable needs that comport with "the circumstances and living standards of the parties at the time of the divorce" and the obligor's financial capacity must guide the district court's determination as to the amount of spousal maintenance and

the duration of the obligation. *Botkin v. Botkin*, 247 Minn. 25, 29, 77 N.W.2d 172, 175 (1956); *see also Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009); *Erlandson*, 318 N.W.2d at 39-40.

The district court considers several relevant factors regarding the party seeking spousal maintenance, including the financial resources of the party; the likelihood that the party will become fully or partially self-supporting given the party's age, skills, and education; the standard of living established during the marriage; the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which the party's earning capacity has been diminished; the earnings, seniority, retirement benefits, and other employment opportunities forgone by the party; and the age, physical condition, and emotional condition of the party. Minn. Stat. § 518.552, subd. 2 (2010). Also relevant are the ability of the prospective obligor to meet his or her needs while also meeting the needs of the party seeking spousal maintenance and the contribution of each party to the marital property and to the advancement of the other's employment or business. *Id.* Consistent with the statutory factors, our jurisprudence has emphasized the importance of considering a homemaker's contributions to the household in lieu of working full-time when determining the capacity for full-time employment. *See Carrick v. Carrick*, 560 N.W.2d 407, 410 (Minn. App. 1997) (holding that district court may not find bad-faith underemployment when homemaker was employed part-time at dissolution in same type of part-time position held during marriage and no evidence exists as to an intent to reduce income to obtain spousal maintenance). Of these relevant factors, none is determinative. *Kampf v. Kampf*, 732

N.W.2d 630, 634 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Rather, the district court weighs the particular facts and circumstances presented to determine whether spousal maintenance is appropriate and, if so, the proper amount and duration. *Id.* at 633-34.

I.

As an initial matter, we address husband's challenge to the district court's consideration of wife's part-time employment as a basis for setting the amount and duration of spousal maintenance. Husband contends that the district court erred by failing to find wife capable of meeting a significant portion of her needs through full-time employment. Because husband did not assert this basis for error in a motion for amended findings or a new trial, our review is limited to whether the evidence sustains the district court's findings of fact and whether those findings sustain the conclusions of law. *Veit v. Veit*, 413 N.W.2d 601, 604 (Minn. App. 1987).

The district court expressly considered the factors required by Minn. Stat. § 518.552, subd. 2, when it determined the amount of spousal maintenance. Specifically, the district court found that wife lacks the financial resources to meet her needs independently, she is employed part-time, she does not have the option of working full-time for her current employer, and her attempts to secure full-time employment have been unsuccessful. The district court found that wife does not hold a postsecondary degree; and prior to her current part-time employment, she devoted almost 20 years to raising the parties' children and maintaining the family household. The district court considered that wife contributed to the acquisition of the marital estate as a homemaker,

mother, and educator of the parties' children. Based on the marital standard of living, the state of the economy, and wife's age, education, employment history, and health, the district court found it unlikely that wife can become self-supporting at the marital standard of living.

Husband argues that the district court erred by failing to find wife capable of full-time employment because wife took computer-literacy classes, was actively seeking full-time employment, and has no health conditions that prevent her from working full-time. In support of his argument, he cites *Schallinger v. Schallinger*, 699 N.W.2d 15 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005), and *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541 (Minn. App. 2006). We affirmed the district court's finding in *Schallinger* that a spousal-maintenance recipient was capable of full-time employment, even though she was working part-time, because she had sufficient education and training to obtain full-time employment and her health did not prevent her from working full-time. 699 N.W.2d at 22. In *Rauenhorst*, we affirmed the district court's finding that a spousal-maintenance recipient, who was not working full-time, was capable of full-time employment based on her education, good health, and history of self-support for much of her adult life. 724 N.W.2d at 544-45.

The facts before us, however, are readily distinguishable. Here, unlike the spousal-maintenance recipients in *Schallinger* and *Rauenhorst*, wife spent nearly 20 years outside the job market and her educational preparation and limited work experience hinder her prospects for full-time employment. The district court's determination that wife has limited prospects for becoming self-sustaining through full-time employment

rests on a strong evidentiary foundation. Our careful review of the record establishes that these findings are sustained by the evidence and reflect clear consideration of the relevant statutory factors.

II.

Each party challenges the district court's inclusion of certain monthly expenses as a basis for setting husband's monthly spousal-maintenance obligation. We address each party's arguments in turn.

A.

Wife contends that the district court erred by making unfairly disparate findings as to the parties' reasonable monthly expenses for their housing, dining, retirement savings, and other needs and by failing to deduct from husband's budget certain expenses attributable to their adult children.[2] As a result, wife argues, an increase in her spousal maintenance award is necessary to provide comparable standards of living for the parties.

1.

Husband and wife submitted comparable budgets for housing expenses to the district court. In light of wife's limited assets, the district court reasoned, wife should anticipate purchasing a home for $225,000. After finding that husband's circumstances were the same and that husband intended to purchase a home for the same price, the

[2] Wife also argues that the district court committed an arithmetic error when it reduced wife's expenses and failed to effectuate its previously stated intent to award her $3,000 in monthly spousal maintenance until the sale of the marital home. But our review is limited to the record and the district court's order from which we conclude that the district court's amended findings do not demonstrate an arithmetic error as to wife's expenses. And the district court's order expressly awards wife monthly spousal maintenance of $2,000 until the marital home is sold.

district court approved a monthly housing budget for husband that was $270 greater than wife's monthly housing budget. Neither the record nor the district court's findings provide a basis for the district court's allocation of higher housing expenses for husband than for wife. Indeed, husband concedes that his housing expense should be $270 less than the district court included in his budget. Thus, we conclude that this aspect of the district court's findings is clearly erroneous.

2.

Wife next asserts that the district court erred by considering husband's monthly budget for retirement savings without considering a comparable expense for wife.[3] Husband counters that the district court appropriately omitted a retirement expense for wife because she failed to present a specific retirement-savings expense at trial. The record belies this contention. Although wife did not include a retirement-savings expense in her proposed budget, she acknowledged this deficiency in her trial testimony and requested that the district court consider her need to continue saving for retirement after the marital dissolution. Wife's proposed order submitted to the district court reflected a monthly retirement-savings expense of $400. And she sought the monthly retirement-savings expense of $400 again in her motion for a new trial. Moreover, the record establishes that the marital standard of living included saving for retirement as the parties accumulated more than $450,000 in retirement savings during the marriage.

[3] Although the district court did not expressly approve retirement savings for husband, the district court relied on husband's projected postdissolution budget, which includes a monthly pension contribution of $436.

The record before us does not reflect a basis to omit a retirement-savings expense for wife that is either comparable to husband's or consistent with the parties' marital standard of living. Because this omission defies logic and the uncontested facts in the record, we conclude that the district court erred by failing to include retirement savings in wife's monthly expenses or explaining why spousal maintenance that does not account for such an expense is warranted.

3.

Wife challenges the district court's reduction of her proposed monthly dining expense to $65 in light of the $105 monthly dining expense that the district court allocated for husband. She also challenges the district court's approval of husband's $160 monthly expense for "spending money" because she does not have a comparable expense. Wife argues that spousal maintenance founded on these disparities unfairly leaves the parties with different standards of living. We are not persuaded. The marital standard of living is our relevant reference point. *Peterka*, 675 N.W.2d at 358. The district court made a reasoned distinction between these expenses for the parties based on the evidence, which includes wife's actual monthly dining expenses and testimony that husband's dining expenses include business meals for which he is not reimbursed by his employer. Similarly, the district court reasonably allocated the parties' miscellaneous expenses based on the budget each party submitted. The miscellaneous expenses for each

party are comparable, although not identical.[4] Wife fails to demonstrate that the district court's findings as to the parties' postdissolution dining and miscellaneous expenses are contrary to the record or based on an erroneous application of the law to the facts.

4.

Expenses attributable to adult children are not to be considered when setting spousal maintenance. *Musielewicz v. Musielewicz*, 400 N.W.2d 100, 103 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). Wife asserts that the district court erred by failing to deduct the expenses of the parties' adult children from husband's budget. In its amended findings, the district court determined that it had erroneously included in husband's monthly expenses between $500 and $600 attributable to expenses for the parties' adult children. The district court reduced husband's monthly expenses by $222 to account for the adult children's groceries. But the district court did not identify or deduct from husband's budget any other expenses attributable to the adult children.

In addition to $222 in monthly grocery expenses that were excluded, husband's monthly budget contains other monthly expenses attributable to the parties' adult children. These include monthly expenses of $110 for car maintenance and repairs, $150 for oil and gas, and $100 for educational savings. The district court clearly erred by failing to exclude these expenses from husband's monthly budget and by failing to account for this exclusion in husband's adjusted monthly expenses.

[4] Wife's miscellaneous expenses of $300 were for clothing, footwear, laundry, grooming, cosmetics, and personal hygiene. Husband's miscellaneous expenses of $299 were for clothing, laundry, toiletries, hair care, and spending money.

B.

Husband also challenges certain monthly expenses considered by the district court when determining his spousal-maintenance obligation. He argues that the district court erred by amending its findings as to wife's reasonable monthly expenses to include a car-savings allowance, charitable contributions, and additional funds for vacation. Because husband did not assert this basis for error in a motion for amended findings or a new trial, our scope of review is limited to whether the evidence sustains the findings and whether the findings support the conclusions of law. *Veit*, 413 N.W.2d at 604.

1.

Husband maintains that wife is not entitled to the $300 car-savings allowance because, as the district court found in its original decision, wife's vehicle had been significantly refurbished shortly before the dissolution proceedings commenced and the cost of those repairs was a marital debt. But in its amended findings, the district court observed that wife's vehicle is approximately the same age as husband's and reasoned that the parties should be placed in comparable circumstances as to their vehicles.

The record supports the district court's amended findings. Wife testified that, notwithstanding the recent repairs to her vehicle, it likely would not provide more than three additional years of use. Husband testified that his vehicle required a significant investment to maintain. Both vehicles are of comparable age and condition. Because the record supports the district court's amended findings and a car-savings allowance of $300 for both parties is a reasonable household expense, husband's challenge to this aspect of the district court's decision fails.

2.

Husband next challenges the district court's amendment of its findings to include a $100 charitable-contribution expense in wife's monthly budget. The district court found that a pattern of charitable giving existed during the marriage and that a monthly expense of $100, which is approximately two percent of wife's monthly income, is reasonable. Our review of the record establishes that, during the marriage, the parties regularly contributed to their church and aspired to donate 10 percent of their income when the funds were available. This evidence of the parties' marital charitable giving is a sound basis for the district court's inclusion of this expense in wife's monthly budget. Husband's reliance on the dearth of wife's charitable contributions during the period of separation is misplaced because the relevant standard of living when determining spousal maintenance is the standard of living established during the marriage. Minn. Stat. § 518.552, subds. 1(a), 1(b), 2(c). Accordingly, the district court's inclusion of a modest monthly charitable-contribution expense is legally and factually sound.

3.

Husband contests the district court's sua sponte increase of wife's monthly vacation expense by $100 in its amended findings. He contends that the record does not support a monthly vacation expense of $200 because the parties vacationed primarily at their lake property and other destinations to which they traveled by car. According to husband, the monthly expense for these vacations is only $97.

A district court may amend an order sua sponte when there is record support for doing so. *See McCauley v. Michael*, 256 N.W.2d 491, 499-500 (Minn. 1977) (holding

that district court is free to review all evidence and findings on a motion to amend because findings are frequently interrelated). Although wife's motion for amended findings was not based on the vacation expense, she had included a $250 vacation expense in her proposed budget. And in her trial testimony regarding this expense, she explained that she enjoyed traveling to destinations other than the lake, she had occasionally taken such vacations during the marriage, and such vacations are more akin to the type of travel she anticipates after the marital dissolution. Husband's testimony corroborated that the parties sometimes flew to vacation destinations during the marriage. Here, the record supports the amended findings and modification of the monthly vacation expense. This challenge, therefore, fails.

In sum, we affirm the district court's determination that wife is unlikely to become fully self-sustaining by obtaining full-time employment. And we affirm the district court's determination as to the postdissolution expenses for husband's dining; wife's car-savings allowance, charitable contributions, and vacation; and both parties' miscellaneous spending. But the district court's disparate findings as to the parties' housing and retirement-savings expenses are contrary to the uncontroverted evidence, and the district court clearly erred by failing to exclude all of the expenses attributable to the adult children from husband's monthly budget. We, therefore, conclude that these errors result in a spousal-maintenance award that is contrary to logic and the facts in the record. Accordingly, we remand to the district court to correct the erroneous findings and amend the spousal-maintenance award in a manner consistent with this opinion.

Although it appears that the record is complete, the district court may, in its discretion, reopen the record on remand.

Affirmed in part, reversed in part, and remanded.