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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1319**

In re the Marriage of: Dawn Marie Meether, petitioner,
Appellant,

vs.

Michael Duane Meether,
Respondent.

**Filed March 8, 2011
Affirmed in part, reversed in part, and remanded; motion granted
Stoneburner, Judge**

Washington County District Court
File No. 82FA081691

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Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

In this second appeal from the district court's judgment regarding maintenance issues and attorney fees, appellant wife challenges the amount of maintenance and attorney fees awarded to her. By notice of a related appeal, respondent husband

challenges the duration of the maintenance award, the requirement that he secure the award with life insurance, the amount of insurance required, and the amount of attorney fees awarded to wife. We affirm in part, reverse in part, and remand.

FACTS

Appellant Dawn Marie Meether (wife) and respondent Michael Duane Meether (husband) were married in 1978. Their marriage was dissolved in December 2008. The parties were both 50 years old at the time of the dissolution, and there were no minor children involved in the dissolution.

The parties' financial history and circumstances during the marriage and at the time of the dissolution are not in dispute. Both parties have bachelor's degrees, which were completed during the marriage. Husband was the primary wage earner during the marriage, working in agricultural sales and management. In the early years of the marriage, wife worked part-time outside of the home and was primarily responsible for care of the parties' three children throughout their minority.

The parties moved from Iowa to St. James in 1987 and lived in St. James for 18 years. In St. James, wife worked a series of part-time jobs, then full time as a bank teller, and, for approximately five years before the parties moved to Cottage Grove, wife worked full time as the financial manager of an automobile dealership. In November 2004, husband was promoted and transferred to the Twin Cities. He commuted from St. James until the parties bought a home in Cottage Grove in June 2005. Wife then became employed full time at the Minnesota Department of Revenue.

The dissolution of marriage action was filed in March 2008. For purposes of the dissolution, the parties stipulated that wife's monthly wages were \$3,044 gross, \$2,235.22 net, and husband's monthly wages were \$11,458 gross, \$6,281.82 net.¹ In addition, husband received a \$50,000 bonus in 2007 and a \$53,000 bonus in 2008. He expected to continue to receive bonuses in the future. Wife claimed monthly expenses of \$5,663, and husband claimed monthly expenses of \$5,870. The parties stipulated to a property division that divided the marital property almost equally, with wife receiving property valued at \$116,000 and husband receiving property valued at \$121,000. The parties agreed that wife is entitled to spousal maintenance, but disagreed on the amount and duration of maintenance. The issues of the amount and duration of maintenance, whether the maintenance obligation should be secured with life insurance, division of the 2008 bonus, and wife's entitlement to attorney fees were tried to the district court in December 2008.

In February 2009, the district court issued an order for judgment and judgment, requiring husband to pay temporary maintenance for five years in the amount of \$2,500 per month; dividing husband's net 2008 bonus equally; and requiring husband to pay wife \$7,500 in attorney fees. Husband was not required to secure the maintenance obligation with life insurance.

Wife appealed the duration and amount of maintenance awarded and the court's refusal to require husband to secure maintenance awarded with life insurance. In

¹ In addition to deductions for taxes and union dues, wife had \$245.31 per month deducted from her gross pay for retirement contributions; husband's monthly retirement deduction is \$1,116.

December 2009, this court reversed and remanded for additional findings, concluding that the district court's findings were inadequate to permit appellate review. *Meether v. Meether*, No. A09-594, WL 2009 5092031, at *5 (Minn. App. Dec. 29, 2009). Wife was awarded attorney fees on appeal in an amount to be determined by the district court.

On remand, at the request of the district court, each party filed additional proposed findings and responded to each other's proposals. In an amended judgment filed on August 2, 2010, the district court (1) awarded permanent maintenance to wife in the amount of \$2,500 per month for five years and \$1,000 per month thereafter until wife's death or remarriage; (2) required husband to secure maintenance with a \$270,000 life insurance policy for so long as he has a maintenance obligation; (3) declined to award wife any portion of husband's future bonuses; and (4) determined the appropriate amount of attorney fees for the appeal to be \$3,500.

Wife now appeals the amount of maintenance and attorney fees awarded, and, by notice of a related appeal, husband challenges the duration of maintenance, the requirement and amount of life insurance ordered to secure maintenance, and the amount of attorney fees awarded for the prior appeal.

DECISION

I. The district court did not abuse its discretion in awarding permanent maintenance.

We review a district court's decision to award permanent spousal maintenance for abuse of discretion. *Bolitho v. Bolitho*, 422 N.W.2d 29, 32 (Minn. App. 1988). Husband asserts that the district court abused its discretion by awarding permanent maintenance.

We disagree.

In determining the duration and amount of maintenance, a district court is required to consider all relevant factors, including:

- (a) the financial resources of the party seeking maintenance . . . and the party's ability to meet needs independently . . . ;
- (b) . . . the probability, given the party's age and skills, of . . . becoming fully or partially self-supporting;
- (c) the standard of living established during the marriage;
- (d) the duration of the marriage . . . ;
- (e) the loss of earnings, seniority, retirement benefits, and other employment opportunities foregone by the spouse seeking spousal maintenance;
- (f) the age, and physical and emotional condition of the spouse seeking maintenance;
- (g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and
- (h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property

Minn. Stat. § 518.552, subd. 2 (2010). "Where 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." *Id.*, subd. 3 (2010).

The district court found that wife can earn \$3,044 per month gross, has a stable job, and has no health problems. But the district court found that it is not certain that wife can maintain the standard of living enjoyed during the marriage without an award of permanent spousal maintenance. The mandate contained in Minn. Stat. § 518.552, subd. 3, “leaves little room for the exercise of discretion where the need for permanent maintenance is in question.” *Bolitho*, 422 N.W.2d at 32.

Husband’s reliance on pre-1985 cases, for the proposition that a permanent maintenance award is only appropriate where there are exceptional circumstances, is misplaced. In 1985, Minn. Stat. § 518.552 was amended to eliminate any negative presumption against permanent maintenance. *See Chamberlain v. Chamberlain*, 615 N.W.2d 405, 410–11 (Minn. App. 2000) (stating that pre-amendment cases requiring exceptional circumstances for an award of permanent maintenance “are of limited value in construing and applying the amended statute, at least with regard to the duration of a maintenance award”), *review denied* (Minn. Oct. 25, 2000).

Husband compares the maintenance award in this case to awards in other cases to argue that permanent maintenance is an abuse of discretion in this case. But we find such comparisons unhelpful. The supreme court has cautioned that “each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties and that, accordingly, it is unwise to view any martial dissolution decision as enunciating an immutable rule of law applicable in any other proceeding.” *Dobrin v. Dobrin*, 569 N.W.2d 199, 201 (Minn. 1997). We conclude that the district court’s finding that it is not certain that wife can maintain the marital standard of living without

maintenance is supported by the record, compelling the district court, under the mandate of Minn. Stat. § 518.522, subd. 3, to exercise its discretion by awarding permanent maintenance.

II. The district court abused its discretion in determining the amount of maintenance.

We review the amount of a maintenance award for abuse of discretion, which must show a clearly erroneous conclusion that “is against logic and the facts on the record.” *Dobrin*, 569 N.W.2d at 202. The district court also abuses its discretion when its findings are unsupported by the evidence or when it misapplies the law. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1998).

Wife argues that the district court’s findings, that (1) she was awarded \$17,000 from the parties’ joint-checking account and kept the parties’ 2007 income-tax refund of \$9,000 and (2) that there is no evidence that wife lost seniority or retirement benefits, are unsupported by the record. Wife also asserts that the district court erred by (1) failing to consider her net income in analyzing her ability to support herself independently and (2) failing to determine each parties’ reasonable monthly expenses.

A. The district court’s error in describing wife’s financial resources was harmless.

As wife asserts, the record demonstrates, that the 2007 income-tax refund was depleted before trial. As such, this amount was not a financial resource available to wife at the time the district court determined the appropriate amount of maintenance. The record also supports wife’s assertion that she only received approximately \$4,000 from the joint-checking account.

Wife argues that the bulk of her property award consists of equity in the homestead and retirement accounts, and is not available for support. We agree, but the district court did not find that wife has resources other than income to apply to her support. Therefore, we conclude that any error in the district court's description of wife's resources was harmless error in the context of its maintenance analysis. *See* Minn. R. Civ. P. 61.

B. The district court did not err in finding that there was no evidence of loss of earnings, seniority, retirement benefits, or opportunities by wife.

The district court found that there was no evidence in the record directly addressing any loss of earnings, seniority, retirement benefits, or other opportunity by wife. Wife argues that the record shows that she “sacrificed her career” at the beginning of the parties’ marriage to focus on raising the parties’ children and gave up “the best employment she had to date” to follow husband from St. James to Cottage Grove. Nonetheless, the district court correctly stated that the record contains no direct evidence of loss of seniority or retirement benefits. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that “[a] party cannot complain about a district court’s failure to rule in [the party’s] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question”), *review denied* (Minn. Nov. 24, 2003). The district court correctly described wife’s work history, including the fact that she is currently earning more than she ever has in the past. We conclude that the district court’s finding on this factor is not clearly erroneous.

C. The district court erred in its findings related to expenses and wife's ability to support herself.

Wife argues that the district court's finding that her monthly expenses are "extravagant" is not supported by the record, and the district court abused its discretion by implicitly reducing her claimed expenses of \$5,663 by approximately \$1,553 per month for five years and \$2,678 per month thereafter.² We agree. Wife submitted a detailed budget that included a \$2,400 mortgage payment and an itemized list of \$918 for expenses related to the homestead; \$500 for groceries, restaurants, and "weekly lunches"; \$125 for clothing; \$100 for hair care and personal grooming; and \$100 for vacations and travel. The district court stated:

[Wife] also claims she is entitled to numerous vacations, a \$225 monthly clothing and hair care [expense], a \$500 food bill per month, a \$254 phone and cable bill per month, because this is what she has been accustomed to because the parties have been married for over 30 years and that is the standard of living.

The district court found that the size and value of the homestead "is excessive given [wife's] independent housing needs and personal income."³ The district court stated that the heat, phone, cable, and water expenses "appear in excess for one person," and

² The district court did not make findings regarding the parties' net incomes before or after maintenance and did not make a finding on the amount of wife's reasonable monthly expenses. The amount by which the district court reduced wife's claimed expenses is arrived at by estimating her tax liability on the maintenance award at 25%, adding net maintenance to wife's net income from wages, and subtracting that amount from wife's claimed expenses.

³ The district court makes several references to the fact that wife received all of the equity in the homestead, but the parties' stipulated property division provided substantially equal amounts of property to each party such that wife's receiving the homestead equity did not place her at a financial advantage over husband.

speculated that some of the expense might be attributable to the parties' 25-year-old daughter who resides with wife. The district court stated that it "need not factor in the additional costs caused by the adult daughter's rent and utility free living arrangement with [wife]," but the district court did not make a finding on the amount of such "additional costs." And no evidence in the record supports a finding that wife's utility costs include costs for her daughter.

The district court also found that wife's "\$225 monthly clothing and hair care expenses and \$500 a month in food for a single person appears to [be] excessively inflated and can be reduced."⁴ But the district court did not make a finding of what amounts would be reasonable for these items given the parties' standard of living. The district court concluded that wife's budget "is excessive, namely because of her continuation of extravagant living arrangements," and found that "a more reasonable budget for [wife's] housing would be in the \$2,000 per month range." This finding appears to be the basis of the district court's reduction of maintenance after five years from \$2,500 per month to \$1,000 per month.

Although the parties stipulated to their respective net monthly incomes, the district court did not make specific findings on net income of either party or how the maintenance awarded would affect each party's net income. The district court found that husband "certainly has the ability to pay . . . spousal maintenance" but stated that

⁴ Husband's proposed monthly budget included \$800 for groceries and "lunches at work"; \$575 for clothing and related expenses; \$150 for vacations, \$200 for hair care, personal grooming; and \$365 for telephone and cable. The district court found that husband "is not living excessively for a single person."

husband should “not be punished for living reasonably while [wife] continues to live extravagant [ly].”⁵ The district court does not mention husband’s intent to purchase a home in the \$370,000 range or explain why his \$5,870 monthly budget constitutes living less extravagantly than wife. The district court’s findings on reasonable expenses and net income are imprecise and fail to realistically assess the claims of each party. For that reason, the district court’s conclusions about wife’s “extravagance” and need to reduce expenses are against logic and the facts on the record and cannot be affirmed, particularly in light of the district court’s error in determining the standard of living appropriate to the maintenance analysis discussed below.

D. The district court erred in interpreting “standard of living” as used in Minn. Stat. § 518.552, subd. 2(c), and abused its discretion in establishing a step reduction in maintenance.

“The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances.” *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quoting *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004)).

Determining the amount and duration of maintenance, Minn. Stat. § 518.522, subd. (2)(c)

⁵ At trial, wife sought additional maintenance in the form of a percentage of husband’s annual bonuses. The district court declined to make such an award and wife does not appeal that decision. But wife correctly asserts that the district court must consider husband’s bonus income in determining the parties’ standard of living and husband’s ability to meet his need while meeting those of wife. *See Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987) (stating that bonuses which provide a dependable source of income may properly be included in calculation of future income for purposes of determining maintenance award), *review denied* (Minn. Oct. 30, 1987).

(2008), requires the district court to consider the “standard of living established during the marriage.”

We review the interpretation of a statute de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007). The district court interpreted Minn. Stat. § 518.552, subd. 2(c), to require consideration of the standard of living established *throughout* the marriage, such that early years of financial struggle and many years of a solid middle-class standard of living precluded a determination that an “extravagant” standard of living achieved in the final three years of the marriage was the appropriate standard of living to consider. But Minnesota cases hold that the support that a divorced spouse is entitled to is “a sum that will ‘[keep] with the circumstances and living standards of the parties *at the time of the divorce.*’” *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009) (emphasis added) (quoting *Botkin v. Botkin*, 247 Minn. 25, 29, 77 N.W.2d 172, 175 (1956)).

The district court was highly critical of wife’s desire to remain in the homestead and maintain the standard of living that she enjoyed at the time of the dissolution.⁶ The district court stated that it could not justify an award of \$3,700 per month requested by wife “because of two years, or three years at most, of extravagant living by the parties.” But district court did not find that the parties’ “extravagant living” was unreasonable

⁶ The district court refers to the homestead as a “\$405,000 house.” Although the parties purchased the house for \$405,000, they stipulated that at the time of the dissolution proceedings, the value of the house was \$378,000 due to the downturn in the economy. Husband, who was renting at the time of the dissolution, expressed his desire to purchase a house “for around \$370,000.” Although husband asserts that such a purchase would result in him having housing “inferior” to the homestead, there is no factual or commonsense support for this assertion.

given their income or otherwise explain why wife was required to reduce her standard of living to that of an earlier period in the marriage despite husband's ability to continue to support both himself and wife at the standard of living both enjoyed in the final years of the marriage.

We conclude that the district court erred by holding that the standard of living that wife is entitled to maintain post-dissolution is a lower standard of living than the parties enjoyed at the time of the dissolution and a lower standard than that which husband continues to enjoy. And because the district court's determination of the amount of maintenance is largely predicated on its erroneous interpretation of the standard of living to be considered, we conclude that the district court abused its discretion in determining that five years of maintenance at \$2,500 per month reduced to \$1,000 per month thereafter is sufficient to permit wife to maintain the standard of living established during the marriage.

A district court has broad discretion to establish step reduction in spousal maintenance awards. *Schreifels v. Schreifels*, 450 N.W.2d 372, 374 (Minn. App. 1990) (noting that a step reduction in maintenance makes part of the award temporary, and holding that because future events were uncertain, "the trial court should have left its order open for further modification rather than building in automatic reductions"). In this case, in addition to the uncertainty that requires an award of permanent maintenance as discussed above, the district court used the step reduction to enforce its erroneous conclusion that wife is not entitled to the standard of living enjoyed at the time of the dissolution when husband has the ability to pay maintenance that would maintain that

standard. For these reasons, a step reduction in maintenance was an abuse of discretion in this case.

We reverse the amount of maintenance awarded, including the step reduction, and we remand to the district court for a determination of maintenance in an amount sufficient to permit wife to continue enjoying the standard of living the parties enjoyed at the time of the dissolution, to the extent that husband has the ability to pay such maintenance. On remand, the district court, in its discretion, may reopen the record for additional evidence related to the determination of the amount of maintenance appropriate in this case. To the extent the district court finds any of the parties' claimed expenses unreasonable, we direct the district court to make specific findings of fact supported by the record as to what amounts are reasonable, given the standard of living at the time of the dissolution. We do not suggest by this opinion that the district court is precluded on remand from determining, based on evidence in the record, that \$2,500 is a reasonable amount of permanent maintenance, but we conclude that any step reduction in maintenance, absent evidence of certainty that wife can maintain the applicable standard of living with such reductions, would constitute an abuse of discretion.

III. The district court did not abuse its discretion in requiring security for maintenance obligation.

By notice of related appeal, husband argues that the district court erred by ordering him to maintain a life insurance policy with a face value of at least \$270,000, naming wife as the beneficiary, for so long as his maintenance obligation exists. The district court has broad discretion to require life insurance to secure a spousal maintenance

obligation. *Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007). An obligee's "age, education, vocational experience, and employment prospects" are some factors a district court may consider to justify requiring insurance as spousal-maintenance security. *Id.*

Husband erroneously asserts that a district court may only order life insurance to secure spousal maintenance in exceptional circumstances. *See id.* (holding that "the 1985 statutory modification [to Minn. Stat. § 518.552] for awarding permanent maintenance also eliminated the parallel exceptional-case test for securing permanent maintenance awards with life insurance"). The district court did not abuse its discretion by requiring husband to secure maintenance payments with life insurance.

Husband argues that the amount of insurance will provide an unnecessary windfall to wife, pointing out that "if he were to live to age 100, at which time [wife] would likewise be age 100," wife would "likely [be] without a real need for long-term support or corresponding life insurance proceeds." We are more troubled by the lack of any evidence in the record about the cost of maintaining the level of insurance required and the effect of the requirement on funds available for maintenance. Because we are remanding for a redetermination of the appropriate amount of maintenance, we also reverse the amount of insurance required by the district court and remand for a redetermination of an amount of insurance to secure maintenance that includes consideration of the effect of the requirement on husband's ability to pay maintenance.

IV. The district court did not abuse its discretion in determining the amount of wife’s attorney fees award for the first appeal.

In the first appeal, we awarded need-based attorney fees to wife in an amount to be determined by the district court. We noted that wife’s request exceeded the amount of need-based attorney fees she was awarded for trial in the district court and exceeded awards generally made by this court in cases of comparable complexity.

On remand, the district court awarded \$3,500. Both parties challenge the amount of the award. We review a district court’s award of attorney fees for abuse of discretion. *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620 (Minn. 2008). Because the amount is consistent with awards generally made by this court in cases of comparable complexity, we conclude that the district court did not abuse its discretion, and affirm the award.

V. Award of need-based attorney fees for current appeal.

Wife argues that she should be awarded \$8,195 in need-based attorney fees related to this appeal under Minn. Stat. § 518.14, subd. 1 (2010). Husband counters that wife has sufficient funds from her personal income, spousal maintenance, and awarded property to pay her own attorney fees. He further asserts that he has “already contributed significant funds” to paying wife’s attorney fees related to their dissolution dispute. In light of the similarity between the arguments presented in this appeal and the previous appeal, the fees previously awarded by the district court, the resources of the parties, the awards made by this court in similar cases, the supporting documentation submitted, and the

record as a whole, we conclude that it is appropriate to award wife \$2,500 for attorney fees incurred in connection with this appeal.

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