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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1248**

In re the Marriage of: Joseph Wendel Ewert, petitioner,
Appellant,

vs.

Beth Lynn Ewert,
Respondent.

**Filed May 9, 2011
Affirmed
Stauber, Judge**

Chisago County District Court
File No. 13FA0715

Joseph Wendell Ewert, Shafer, Minnesota (pro se appellant)

Kenneth J. Jacobs, Law Office of Kenneth J. Jacobs, Forest Lake, Minnesota (for
respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Pro se appellant argues that the district court (1) misapplied Minn. Stat. § 518A.38
(2010) by ordering a lien to enforce his future child-support obligation against his lien on
the parties' marital homestead; (2) miscalculated the amount of his future child-support

obligation; and (3) erred in determining that items originally deemed his personal property would remain in possession of respondent. We affirm.

FACTS

Appellant Joseph Wendell Ewert and respondent Beth Lynn Ewert were divorced in April 2009. The parties have two minor children together.

Under the divorce judgment and decree, the district court ordered appellant to pay child support in the amount of \$751 per month, and medical support of one-half of all medical insurance costs for the children, for a total of \$965.13 per month. Appellant was also ordered to reimburse respondent one-half the cost of the older minor child's orthodontic work in the amount of \$2,425. The district court awarded appellant a lien against the marital homestead in the amount of \$135,298.80, payable within one year of the district court's judgment and decree. Appellant was also awarded certain items of personal property that were in the possession of respondent.

By April 2010, appellant had accumulated child-support and medical-support arrearages totaling \$10,398.93, and he had not yet paid respondent the \$2,425 for his child's orthodontic work. Respondent moved the district court to reduce the amount of appellant's marital lien by the total arrearages in child support, medical support, and orthodontia expenses, in the amount of \$12,823.93. Appellant did not contest the reduction of his lien for this amount.

Respondent also moved the district court for relief under Minn. Stat. § 518A.38, subd. 1, to make the child-support order a lien or charge upon appellant's remaining interest in the homestead. Appellant's estimated future child-support obligation was

calculated as \$87,826.83. This amount was calculated as follows: amount of child support (\$965.13 per month), multiplied by the number of months until the minor child will graduate from high school (91 months).

Respondent also requested that the district court make a determination allowing her to dispose of the items of personal property that were awarded to appellant but remain in her residence. According to respondent, appellant failed to remove many of these items although he was provided several opportunities to do so. Respondent indicates that she sent a certified letter to appellant requesting removal of the items, but appellant still failed to respond or remove the remaining items. Appellant claims that he collected some of the items at issue and that respondent prevented him from retrieving the rest.

In an order filed May 18, 2010, the district court reduced appellant's lien in the homestead premises by his current child-support and medical-support arrearages as of April 29, 2010, in the amount of \$10,398.93, and further by the amount of appellant's share of the unpaid orthodontic bill in the amount of \$2,425. In order to secure payment of future child support, the district court also awarded respondent a lien upon appellant's lien in the homestead property in the amount of \$87,826.83. In doing so, the district court amended the parties' original divorce judgment and decree to provide that \$87,826.83 of the appellant's marital lien shall not be due and payable until the last minor child of the parties is no longer subject to an award of child support. The district court was unpersuaded by appellant's argument that he needs funds to pay his tax delinquencies incurred in his business, stating that it "believes the needs of the minor

children are of paramount interest in this matter and that granting a lien or charge upon [appellant's] property will ensure the minor children's basic needs are met.”

Appellant now seeks review of the May 18, 2010 order.

D E C I S I O N

I.

Appellant challenges the district court's decision to order a lien upon appellant's lien in the homestead property to ensure future child-support payments. Appellant argues that in making such an order, the district court misapplied Minn. Stat. § 518A.38. We disagree.

A district court's child-support order will be reversed only if the 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). The district court abuses its discretion if it misapplies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). Questions of statutory interpretation are reviewed de novo. *In re Senty-Haugen*, 583 N.W.2d 266, 268 (Minn. 1998).

Minn. Stat. § 518A.38, subd. 1, states, in pertinent part: “The court may make any child support order a lien or charge upon the property of the obligor, either at the time of the entry of the judgment or by subsequent order upon proper application.” Additionally, Minn. Stat. § 518A.71 (2010) states that “[i]n all cases when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order.” Based upon the plain language of

the child-support statute, it was well within the district court's discretion to order a lien on appellant's property to ensure future child-support payments.

Minn. Stat. § 518A.38 allows the district court to “impose a lien on the obligor's property to assure payment of *future* child support.” *Ulrich v. Ulrich*, 400 N.W.2d 213, 217-18 (Minn. App. 1987) (emphasis added).¹ Minn. Stat. § 518A.38 authorizes the district court to establish a trust to assure future child-support payments, and is appropriate where the obligor has “repeatedly fail[ed] to meet his court-ordered support obligations.” *Id.* (quoting *Gabrielson v. Gabrielson*, 363 N.W.2d 814, 816 (Minn. App. 1985)). This court has previously determined that it is not an abuse of discretion for the district court to order that a child-support obligor's lien on a marital homestead be reduced by the amount of any unpaid child-support obligation at the time the lien is to be paid out to the obligor. *Cavegn v. Cavegn*, 378 N.W.2d 636, 637–39 (Minn. App. 1985).

The record establishes, and appellant does not dispute, that he has failed to make the requisite child-support payments to respondent based on the parties' divorce judgment and decree. The district court's order to impose a lien on appellant's lien on the marital homestead to assure future child-support payments was not against logic and was supported by the facts in the record. *See Putz*, 645 N.W.2d at 347.

Appellant also argues that the district court's order is “vague and does not address any interest earning potential that [he] would be earning if money was in [his] possession.” This argument has no merit. The district court is not required to identify

¹ In *Ulrich*, the court references Minn. Stat. § 518.57 (1984), which has been renumbered as Minn. Stat. § 518A.38. *See* 2005 Minn. Laws ch. 164, § 29, at 1924–25.

appellant's "interest earning potential" for purposes of enforcing a child-support obligation. *See* Minn. Stat. § 518A.735(d) (2010) ("[T]he only issues to be determined by the [district] court are whether the attorney fees or collection costs were reasonably incurred by the obligee for the enforcement of a child support judgment against the obligor or the validity of the child support judgment on grounds limited to mistake of fact."). In April 2009, to calculate the amount of monthly child support, the parties completed a "Child Support Guidelines Worksheet," which included both parties' monthly incomes. Presumably, this is the amount of money appellant "would be earning if money was in [his] possession."

The district court did not abuse its discretion in ordering a lien to enforce appellant's future child-support payments.

II.

Appellant next challenges the district court's calculation of future child support, which was calculated using the number of months (91) until the parties' last minor child will turn 18 years of age. Appellant argues that the district court erred in multiplying the monthly support by 91 months, when "1 child will be 18 in 3½ years and [the] monthly amount will change." We disagree.

Minn. Stat. § 518A.39, subd. 5 (2010) discusses termination of child support. It states, in pertinent part, that "[a] child support obligation for two or more children that is not a support obligation in a specific amount per child *continues in the full amount until the emancipation of the last child for whose benefit the order was made*, or until further order of the court." *Id.*, subd. 5(b) (emphasis added). Emancipation occurs once the

child reaches 18 years of age, or 20 if he or she is still attending secondary school. *See* Minn. Stat. § 518A.26, subd. 5 (2010) (defining “child”).

The support obligation was originally ordered in the divorce decree as a total sum of \$751 per month, and not as a specific amount per child. In its May 18, 2010 order, the district court stated that the amount of the lien was based on when “the last minor child graduates from high school.” But it appears that calculation was actually made based on when the younger minor child will turn 18 years of age: May 18, 2010 (date of order) to December 18, 2018 (date of younger child’s 18th birthday) = 91 months. While the district court erroneously stated that the lien calculation was based on when “the last child graduates from high school,” this error was harmless, because 91 months actually represents the number of months until the last child for whose benefit the order was made turns 18, in accordance with the child-support statute.

Appellant also states that “[a] motion to modify will be applied for within 120 days.” Under Minn. Stat. § 518A.39, subd. 5(c), appellant may request modification of the child-support order upon the emancipation of the older child. The support obligation would then be determined based on the income of the parties at the time the modification is sought, and the lien, because it is partially in the nature of child support, could then be adjusted accordingly. But the older child has not yet turned 18, so moving to modify in “120 days” would be premature.

The district court did not abuse its discretion in calculating the amount of future child support at this time.

III.

Finally, appellant argues that the district court abused its discretion in determining that the items that had not yet been removed from respondent's property would remain in respondent's possession. We disagree.

Appellant states that he spent "two (2) days removing as much of [his] property as possible," and that he was unable to access property contained in a shed on respondent's property because he "was denied access." But the district court did not appear to believe appellant's argument that respondent prevented him from accessing the rest of the property. It is well-settled that an appellate court defers to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Given this deference, as well as the evidence in the record including that the property is currently on respondent's premises, that respondent requested in a certified letter that appellant remove the property, and that appellant did not remove the property in a timely manner, we conclude that the district court did not abuse its discretion in determining that the property of the parties is now "divided as is presently divided between them."

Affirmed.