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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-738**

In re the Marriage of:

Veronica Michelle Lopez, petitioner,
Appellant,

vs.

Jose Edgar Lopez,
Respondent.

**Filed December 27, 2011
Affirmed in part, reversed in part, and remanded
Hudson, Judge**

Blue Earth County District Court
File No. 07-FA-09-3925

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Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from a dissolution judgment granting appellant spousal maintenance
solely for education expenses, appellant argues that the district court abused its discretion

in awarding only temporary maintenance. Appellant also argues that the district court abused its discretion when it determined child support without considering the financial benefit to respondent of receiving the dependency tax exemptions for the couple's children. In addition, appellant argues that the district court abused its discretion when it awarded the homestead to the parties as tenants in common while requiring that appellant pay the mortgage with no credit for increases in equity after dissolution. We affirm the portions of the judgment relating to the dependency exemptions and the award of the homestead. But because the district court did not make adequate findings regarding the parties' expenses, which precluded proper review of the maintenance award, we reverse and remand for the necessary findings.

FACTS

Appellant-wife Veronica Lopez filed for dissolution of her 13-year marriage to respondent-husband Edgar Lopez in December 2009. The district court dissolved the marriage by amended judgment in February 2011. At the time of dissolution, the parties had four children: two sets of identical twins, who were six years old and twelve years old.

Wife requested permanent maintenance. Wife, who had almost completed her GED, also testified at trial that she needed post-secondary education to be employed. Wife also requested the four federal income-tax dependency exemptions for the couple's children; husband requested they be split. Additionally, wife asked that the family home be jointly owned by the parties but that she retain possession, continue paying the mortgage, and receive any post-dissolution increase in equity once the home was sold.

When the dissolution judgment was entered, husband earned a gross annual income of \$90,175. The district court attributed income to wife, who worked part-time at the time of dissolution, of \$12,000 per year. The district court's only finding regarding living expenses was a reference by exhibit number to the expense claims each party submitted at trial. The district court stated that each party's expense claims "are premised on the assumption that neither needs to seek adjustment in their historical lifestyle." The district court further stated, "There is no doubt that each of the parties is overreaching in their claims for needed expenses and that each has the means to significantly curtail their expenses."

Wife was awarded temporary maintenance for education expenses. The district court found that wife could not meet the physical and emotional needs of her children and also maintain a household while pursuing an education without "significant financial support." The district court awarded up to \$10,000 annually in spousal maintenance to be paid solely for the cost of wife's tuition, fees, books, and materials in pursuit of a bachelor's degree.

The district court awarded the parties joint legal custody of the children and awarded sole physical custody to wife. Husband was ordered to pay \$2,064 per month in basic child support. The district court awarded husband the four dependency tax exemptions, stating, "Given his income level, allowing him to claim the dependency exemptions would generate the most tax benefits for the family."

The district court found that the marital assets, including the family home, were compiled by the parties jointly as "partners in the development of the marital property."

The district court awarded the homestead to the parties as tenants in common and ordered that wife receive the exclusive right to occupy the house. Wife remains responsible for mortgage payments, real estate taxes, insurance, and ordinary maintenance. The parties share “maintenance that exceeds \$1000 in cost.” The district court ordered the home sold when husband’s child-support obligation ends, if wife remarries, or if wife vacates the home. Upon sale of the home, the parties are to split the proceeds after payment of the existing mortgage, liens, and sale-related costs.

Wife moved for amended findings and conclusions of law or a new trial. The district court denied most of wife’s motion but clarified in its amended order that the parties shall share the net sale proceeds of the homestead when it is sold after the existing mortgage, liens, and sale costs are paid.

This appeal follows.

D E C I S I O N

I

Wife challenges the district court’s denial of permanent spousal maintenance. We review a district court’s spousal maintenance award for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). “A district court shall consider all relevant factors before ordering maintenance.” *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). Findings of fact will not be set aside unless clearly erroneous. *Id.*; Minn. R. Civ. P. 52.01.

Wife argues that the district court abused its discretion in its grant of maintenance by (1) not establishing reasonable expenses for the parties, (2) not providing for the

reasonable needs of wife, and (3) improperly attributing income to wife. When setting the amount and duration of a maintenance award, a district court must consider several factors, including the time necessary to acquire education sufficient to enable the party seeking maintenance to find appropriate employment, that party's age, the standard of living established during the marriage, the duration of the marriage, and the financial resources of the party seeking maintenance, such as that party's ability to meet needs independently. Minn. Stat. § 518.552, subd. 2 (2010). District courts balance the recipient's need for maintenance against the financial ability of the spouse to provide the maintenance. *Krick v. Krick*, 349 N.W.2d 350, 351–52 (Minn. App. 1984). But first, the district court must make findings regarding the expenses of the parties. *Durand v. Durand*, 367 N.W.2d 621, 626 (Minn. App. 1985). Without findings as to reasonable expenses, an appellate court is unable to evaluate whether a party meets the statutory standards in reviewing a maintenance award. *Cummings v. Cummings*, 376 N.W.2d 726, 731 (Minn. App. 1985) (remanding for entry of adequate findings on the parties' reasonable and necessary expenses).

We agree with wife that the district court's findings as to the parties' reasonable expenses were inadequate. The district court found that the parties' expense claims demonstrated that each was "overreaching in their claims for needed expenses and that each has the means to significantly curtail their expenses." But the district court made no findings regarding either party's current expenses. As a result, we are unable to effectively review the district court's exercise of discretion. If the district court does not make sufficient findings of fact, we cannot assess whether it addressed the statutory

factors, and we remand for further findings. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). Moreover, a lack of findings addressing the parties' circumstances at dissolution becomes problematic if future modification is sought. *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (stating, in context of child support, that "litigation of a later motion . . . becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified").

We therefore remand for the necessary findings and analysis by the district court, which may, at its discretion, reopen the record to make its findings. In its reconsideration of spousal maintenance, we note that wife sought permanent maintenance in addition to her temporary need for education expenses. The district court's maintenance award should not presume that wife seeks only temporary maintenance. Because we are remanding for additional findings, we need not reach wife's arguments regarding whether the district court provided for wife's reasonable needs or whether the district court improperly attributed income to wife.

II

Wife argues that the district court abused its discretion by awarding husband the four dependency income-tax exemptions for the couple's children. Dependency exemptions claimed on federal taxes may be allocated to either parent. *Rogers v. Rogers*, 622 N.W.2d 813, 823 (Minn. 2001). The Internal Revenue Code states that the parent with primary custody is entitled to the dependency exemption. *Id.* (citing 26 U.S.C. § 152e(1) (2000)). But "[t]he code does not preclude state district courts from allocating

tax dependency exemptions to a noncustodial parent incident to the determination of child support and physical custody.” *Id.* In establishing child support, the district court must consider “which parent receives the income tax dependency exemption and the financial benefit the parent receives from it.” Minn. Stat. § 518A.43, subd. 1(5) (2010). We review allocation of a dependency tax exemption for an abuse of discretion. *Valento v. Valento*, 385 N.W.2d 860, 863 (Minn. App. 1986), *review denied* (Minn. June 30, 1986).

Wife asserts that the district court awarded husband all of the dependency exemptions and ordered support without consideration of their beneficial impact to husband’s income. The district court awarded husband the four exemptions conditioned on remaining current on child support and uninsured-medical-expense obligations and wife signing the necessary IRS forms. The district court found that “[Husband] provides the majority of the fund[s] necessary to support the children. Given his income level, allowing him to claim the dependency exemptions would generate the most tax benefits for the family.”

The district court must consider, in establishing child support, which parent receives the exemption and the resulting financial benefit to that parent. Minn. Stat. § 518A.43, subd. 1(5). Although the district court could have made more specific findings, we conclude that the district court’s limited findings regarding the financial benefit to husband are sufficient. *See, e.g., Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (affirming award of dependency exemptions to noncustodial father where district court found relative resources of parties justified award and exemptions

were of no benefit to mother because her income was tax-exempt), *review denied* (Minn. Feb. 18, 1999). Further, any decrease in husband’s income due to receiving two, rather than four, dependency tax exemptions would not be sufficient to warrant an adjustment in his support obligation because of the minimal impact of any potential error.¹ Such a de minimis error does not warrant a remand. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis error in setting child support).

III

A district court is afforded broad discretion in the division of marital property. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). We review the division of marital property for an abuse of discretion and affirm if the property division has an acceptable basis in fact and principle. *Id.* “A trial court’s division of marital property need not be mathematically equal; it need only be just and equitable.” *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987). Factors a district court should consider in making an equitable division of property include the length of the marriage; the parties’ age, health, station, occupation, and income; vocational skills; employability; estate; liabilities; needs; and the opportunity for future acquisition of capital assets. Minn. Stat. § 518.58, subd. 1 (2010). In addition, the court must consider the contribution of each party in the acquisition of marital property. *Id.*

Wife argues that the district court abused its discretion by awarding the family home to the parties as tenants in common while requiring that she pay the mortgage

¹ Additionally, it is not clear to this court—and wife was unable to explain—what benefit she would derive from receiving the exemptions, given her minimal income.

without credit for post-dissolution increases in equity. We conclude that the district court based its award of the homestead on fact and principle. In its findings, the district court considered the income of each party, their employability, and their occupations. See Minn. Stat. § 518.58, subd. 1. Caselaw also supports the district court's award of the homestead to wife and husband as tenants in common. *Bateman v. Bateman*, 382 N.W.2d 240, 244, 248 (Minn. App. 1986) (upholding award of homestead to parties as tenants in common where possession and occupancy of home to remain with custodial parent and home to be sold at later date), *review denied* (Minn. Apr. 24, 1986).

Although the district court did not make findings as to why wife would not receive credit for post-dissolution equity increases, it found that each party contributed to the value and development of marital property. Further, a division of property need only be just and equitable, not equal. *Lynch*, 411 N.W.2d at 266. Here, wife must pay the mortgage, real estate taxes, and routine maintenance, but she also receives the benefit of living in the home. The district court noted that wife's monthly mortgage "is no more nor less than the cost of living in some residence for her and her children, whether it is called a mortgage payment or rent." Additionally, wife receives the benefit of home-related income-tax deductions, and husband must share in the cost of home maintenance exceeding \$1,000. The district court did not abuse its discretion in its award of the family home.

Affirmed in part, reversed in part, and remanded.