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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1680**

In re the Marriage of:

Terri Kay Hlavac, petitioner,
Respondent,

vs.

Michael Vernon Hlavac,
Appellant.

**Filed January 9, 2012
Affirmed in part, reversed in part, and remanded
Schellhas, Judge**

Polk County District Court
File No. 60-FA-08-2272

Patti J. Jensen, Galstad, Jensen & McCann P.A., East Grand Forks, Minnesota (for respondent)

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this appeal from a marital-dissolution judgment, appellant challenges the district court's award of temporary spousal maintenance to respondent, division of

marital property, denial of his pretrial motion for credit against his retroactive child-support and spousal-maintenance obligations, and denial of his pretrial motion that respondent be held in contempt. We affirm in part, reverse in part, and remand.

FACTS

Appellant Michael Hlavac (husband) and respondent Terri Hlavac (wife) were married on May 4, 1996, and are the parents of two children, the oldest of whom turned 18 before the date of the marriage-dissolution judgment.

In July 2008, wife commenced this marriage-dissolution action. On January 21, 2009, the district court issued a temporary order, which, among other things, granted the parties joint legal custody and wife sole physical custody of the children, ordered husband to pay \$1,450 per month in child support, and ordered husband to pay temporary spousal maintenance of \$1,000 per month. The court ordered that husband's child-support and spousal-maintenance obligations be retroactive to August 7, 2008. The court granted wife possession of the parties' homestead and ordered her to "pay all debts and expenses relating to the home."

Wife made only one mortgage payment on the homestead in February 2009. In April 2009, husband filed a contempt motion against wife for her failure to pay the debts and expenses related to the home, along with a motion requesting a \$14,700 credit against his retroactive child-support and spousal-maintenance obligations. As to the \$14,700 credit, husband argued that from August 7, 2008, until the issuance of the temporary order on January 21, 2009, he paid household and family expenses. Husband filed an

affidavit describing his payments, which totaled \$17,447.29.¹ For reasons unclear in the record, when the dissolution trial commenced in April 2010, the district court had not heard husband's motion.

Before commencement of the dissolution trial on April 14, 2010, husband sought a ruling from the district court on his motion for credit against his child-support and spousal-maintenance obligations and for a holding that wife was in contempt. At that time, the homestead mortgage had been foreclosed, the foreclosure redemption period was running, and wife continued in possession of the homestead. Wife testified that she was financially unable to make the mortgage payments because she needed to pay for necessities for the parties' children.

At trial, in addition to child support, wife sought spousal maintenance in the monthly amount of \$1,000 for six years. She also argued that, to avoid undue hardship, the district court must consider her nonmarital student-loan indebtedness in the amount of \$29,000 in its division of marital property. To support her argument, wife testified that, although she incurred the debt prior to the marriage, she and husband were then cohabitating. Wife testified that she used the student-loan proceeds to pay for necessary living expenses for husband, their first child, and herself in addition to books and tuition. Wife also supported her undue-hardship argument relative to her student-loan

¹In his affidavit, husband states that from August 2008 through the date of the temporary order, he paid the monthly mortgage payments in the total amount of \$11,467.56, home insurance in the amount of \$583.56, car insurance premiums for respondent and one child in the amount of \$1,724.14, utility, phone, internet, and cable bills for the home in the amount of \$2,002.79, cell phone bills for respondent and one of the children in the amount of \$623.15, respondent's car payment in the amount of \$153, and other various expenses in the amount of \$893.09.

indebtedness with evidence that during the first four years of the marriage, the parties filed joint tax returns but received no tax refunds because the refunds were withheld by the taxing authorities to pay \$16,000 in back taxes that husband owed at the time of the parties' marriage.

The district court ordered husband to pay monthly child support for the parties' minor child in the amount of \$847, awarded wife temporary spousal maintenance in the amount of \$1,000 per month for six years, and included wife's student-loan debt in the division of marital property. The court denied husband's motion for a credit against his child-support and spousal-maintenance obligations and denied husband's request that the court hold wife in contempt for failing to pay the homestead mortgage pursuant to the temporary order.

This appeal follows.

DECISION

Spousal Maintenance

Husband challenges the district court's award of temporary spousal maintenance to wife. Spousal maintenance may be awarded to a spouse who "lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage" or a spouse who "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). We review a district court's

spousal-maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

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).

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; 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.* Of these 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.

Husband argues that the district court's spousal-maintenance award "is not supported by the evidence as a whole." We disagree. The district court found that wife's reasonable monthly expenses are \$3,607.55, that she currently earns \$12.30 per hour, and that her annual income in 2009 was \$24,058.12. The court credited wife's testimony that her standard of living has changed from being able to "do whatever she wanted," in regard to activities and purchases, to living "paycheck to paycheck."

In contrast, the district court found that husband earned an annual salary of \$116,562, \$104,021, and \$100,230 in 2007, 2008, and 2009, respectively. The court found that, at trial, husband overstated his monthly budget at \$6,619.50 in comparison with his previously submitted monthly budget of \$2,719. The court also found that husband "receives substantial funds for per-diem reimbursements when he is working on out-of-town projects" that "substantially subsidize his month-to-month budget." "Evidentiary weight and witness credibility are within the province of the fact-finder." *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009).

The district court found that wife "does not generally have the ability to provide for self-support through income or assets." The court considered each of the statutory factors in Minn. Stat. § 518.552, subd. 2, and made the following detailed findings:

[Wife] is unable to make ends meet with her level of earned income and child support. [Wife] has insufficient property to meet her needs. [Wife's] inability to meet her needs through her own income is somewhat evidenced by the inability of [wife] to even retain ownership and possession of the parties' former homestead once [husband] had left the family home (and despite the provisions of the Temporary Order). Second, the court believes [wife] needs temporary maintenance to allow her to make adjustments to her life-style and loss of

[husband's] financial contributions. Third, the court does not believe that education and training are the keys to enhancing [wife's] financial well-being; rather, as stated, learning to live on a smaller budget and within one's means would be more appropriate lessons. Fourth, the court believes that the parties enjoyed a more comfortable standard of living while they were married (even though this excessive standard living likely contributed to the parties' general poor financial health and recent foreclosure of their home).

The district court also found that husband could pay spousal maintenance in the amount and duration requested by wife.

After considering the relevant factors and the totality of all relevant circumstances, the district court found that wife's request for temporary spousal maintenance is reasonable and appropriate, and concluded that it is fair and just for husband to provide temporary maintenance in the amount of \$1,000 per month for six years. The district court did not abuse its discretion.

Student-Loan Debt

Husband argues that the district court abused its discretion in apportioning wife's student-loan debt to wife when dividing the marital property. The district court has broad discretion over the division of marital property, which we will not disturb on appeal absent a clear abuse of discretion. *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). In the allocation and division of marital property, debts are treated the same as assets. *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 80 (Minn. App. 1984). When distributing debts, a district court should be guided by equitable considerations. *O'Donnell v. O'Donnell*, 412 N.W.2d 394, 396 (Minn. App. 1987). An appellate court will affirm the district court's property division if the court had

“an acceptable basis in fact and principle.” *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

If a district court

finds that either spouse’s resources or property, including the spouse’s portion of the marital property . . . are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the [nonmarital] property otherwise excluded . . . to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

Minn. Stat. § 518.58, subd. 2 (2010).

Here, wife requested that the district court include her premarital student-loan debt in the division of marital property to avoid undue hardship, and the court included the debt in its list of “*marital* unsecured debts and liabilities” and allocated the debt to wife. (Emphasis added.) The net marital property distribution for each party is approximately \$17,700. The court’s allocation to wife of her student-loan debt (\$29,010.06), as part of the division of marital property, resulted in husband receiving approximately \$14,500 less in marital property than he would have received otherwise. The district court stated that it

made its division of property in consideration of the length of the marriage, the age of each party, the health of each party, the station in life of each party, the occupation of each party, the amount and sources of income of each party, the

vocational skills of each party, the employability of each party, the opportunities for future acquisition of capital assets and income of each party, all in accordance with Minnesota Statutes, section 518.58, and determines that under all of the facts and circumstances of this case that the foregoing property distribution is just, fair and equitable, although not exactly mathematically equal.

Although the district court did not make an explicit finding of undue hardship, it considered all of the relevant factors under section 518.58, subdivision 2.

This court has held that a finding on undue hardship is not needed when the specific facts and findings of the case warrant a finding of unfair hardship. *See Hein v. Hein*, 366 N.W.2d 646, 649 (Minn. App. 1985) (holding that district court did not err in allocating nonmarital property without unfair hardship finding because facts supported finding of unfair hardship). The facts in this record support a finding of undue hardship. The evidence is undisputed that wife incurred the student-loan debt while living with husband before their marriage and used some of the loan proceeds to support the family. The evidence also is undisputed that husband's \$16,000 premarital income-tax debt was partly paid with marital funds. Husband's annual income is approximately four times greater than wife's, and he benefits substantially from his receipt of per diem benefits from his employer. In addressing wife's financial needs, the district court found that "she is unable to make ends meet with her level of earned income and child support" and "has insufficient property to meet her needs."

Appellant cites *Tasker v. Tasker*, 395 N.W.2d 100, 105 (Minn. App. 1986), for the proposition that student-loan debt raises an issue of value to the family in determining the value of the educational debt. But *Tasker* is distinguishable from the present case

because, in *Tasker*, the student debt was incurred during the marriage and the district court nevertheless concluded that the debt was solely one spouse's responsibility because it benefited only that spouse. *Tasker*, 395 N.W.2d at 105. *Tasker* does not control the case before us.

We conclude that the district court did not err in considering wife's student-loan debt in the division of marital property.

Husband's Pretrial Contempt Motion

The district court's decision to invoke its contempt powers is subject to reversal only if the appellate court finds an abuse of discretion. *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). Before exercising its civil-contempt powers, the court must determine "whether there was a failure to comply with the order and, if so, whether conditional confinement is reasonably likely to produce compliance fully or in part." *Hopp v. Hopp*, 279 Minn. 170, 175, 156 N.W.2d 212, 217 (1968). Civil contempt is not punitive; it is designed to compel future compliance with a court order. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827–28, 114 S. Ct. 2552, 2557 (1994). Contempt proceedings in the context of enforcing maintenance judgments are civil in nature. *Hopp*, 279 Minn. at 173, 156 N.W.2d at 216.

Husband argues that the district court abused its discretion by denying his motion to hold wife in contempt for failing to pay the mortgage payments. We disagree.

Wife testified that she tried to make the monthly mortgage payment but was not able to; she paid for the children's necessities rather than pay the mortgage. Wife said she made a reasonable attempt to sell the home and resolve the mortgage-payment issue prior

to the home going into foreclosure. The parties attempted to sell the house, listed it for sale for six months, and at one point even reduced the price. Husband testified that he did not make any of the mortgage payments that wife was unable to make. Additionally, at the time of the trial, the home was subjected to a foreclosure action, had been sold at a sheriff's sale, and wife was living in the home during the redemption period. Because the record shows that wife was not able to make the mortgage payments and the parties no longer had any rights in the home except the right of possession until the redemption period ended, the district court did not abuse its discretion in denying husband's motion to hold wife in contempt. See *Minn. State Bar Ass'n v. Divorce Assistance Ass'n*, 311 Minn. 276, 285, 248 N.W.2d 733, 741 (1976) (stating that civil contempt order "is inflicted primarily as inducement for future compliance with the order").

Husband also erroneously argues that the district court failed to recognize that respondent, by not paying the mortgage to keep the home out of foreclosure, breached the fiduciary duty imposed upon her under Minn. Stat. § 518.58, subd. 1a (2010). But a district court must compensate a party for the loss of marital property resulting from a breach of fiduciary duty under section 518.58, subdivision 1a, only if, among other things, the party claiming a loss of marital property shows that the loss was not "for the necessities of life." Minn. Stat. § 518.58, subd. 1a. Because the record shows that wife's failure to make the mortgage payments was the result of her decision to pay for necessities of life for the parties' children, husband did not satisfy this burden.

Husband's Pretrial Motion for Child-Support and Spousal-Maintenance Credit

Husband argues that the district court abused its discretion in denying his motion for a credit against his child-support and spousal-maintenance obligations. The district court “is accorded broad discretion with respect to the . . . allowance of [spousal] maintenance, and provision for the . . . support of the children of the parties.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The district court also has broad discretion to determine the retroactivity of child support. *Guyer v. Guyer*, 587 N.W.2d 856, 859 (Minn. App. 1999), *review denied* (Minn. Mar. 30, 1999).

Under the district court's temporary order, husband's child-support and spousal-maintenance obligations commenced August 7, 2008, while wife's obligation to make the homestead mortgage payments commenced in February 2009. Husband argues that because he “paid [\$17,447.29] for the mortgage of the family house, the utilities for the family house, food expenses, cell phone expenses, and recreation expenses of the children” during the period of time for which the court subsequently ordered him to pay child support and spousal maintenance, he should receive a credit against his retroactive child-support and spousal-maintenance obligations. The court denied husband's motion in the dissolution judgment without making findings or setting forth its reasoning, nor did the court set forth its reasoning in its temporary order for ordering the commencement of the parties' obligations on different dates approximately five months apart.

“Taking into account the broad discretion of the [district] court on issues in marital cases, it is especially important that the basis for the court's decision be set forth with a high degree of particularity if appellate court review is to be meaningful.” *Hemmingsen v.*

Hemmingsen, 767 N.W.2d 711, 718 (Minn. App. 2009) (quotations omitted), *review granted* (Minn. Sept. 29, 2009), *appeal dismissed* (Minn. Feb. 1, 2010). In deciding “basic determinations in marriage-dissolution litigation[,] the district court must identify both its decision (e.g., spousal maintenance, child support, parenting time) as well as the underlying reason(s) for that decision (i.e., findings showing why the amount of maintenance, child support or parenting time is appropriate in the particular case.” *Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010). When the district court does not make adequate findings, remand for additional findings is warranted. *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987).

The payments that husband made before the district court issued its temporary order, for which he argues he should be credited, share the objectives of child support and spousal maintenance. See Minn. Stat. § 518.552, subd. 1 (stating that spousal maintenance affords assistance to spouse who is not financially self-sufficient in light of marital standard of living); Minn. Stat. § 518A.26, subds. 4, 20 (2010) (stating that “basic” child support “includes the dollar amount ordered for a child’s housing, food, clothing, transportation, and education costs, and other expenses relating to the child’s care”). A district court may consider money expended on homestead property at which children reside as being in the nature of child support and order an offset accordingly. *Martin v. Martin*, 364 N.W.2d 475, 478 (Minn. App. 1985).

We cannot discern from the district court’s temporary order or the dissolution judgment whether, in denying husband’s motion for a credit, the court considered his payments made for the benefit of wife and the children before it issued its temporary

order, so we cannot ascertain whether the district court's denial of husband's motion was fair and equitable. *See Lewis v. Lewis*, 414 N.W.2d 588, 590 (Minn. App. 1987) (stating that meaningful appellate review requires findings that show that a court considered all the relevant statutory factors and fairly resolved the case). We therefore conclude that the district court abused its discretion in denying husband's motion without providing findings or its reasoning, and we reverse and remand for additional findings.

Affirmed in part, reversed in part, and remanded.