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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0356**

In re the Marriage of: Rhonda J. Paulson, petitioner,
Appellant,

vs.

Bradley L. Paulson,
Respondent.

**Filed November 19, 2012
Affirmed
Rodenberg, Judge**

Otter Tail County District Court
File No. 56FX93001817

Jeffrey D. Skonseng, Krekelberg, Skonseng & Miller, P.L.L.P., Fergus Falls, Minnesota
(for appellant)

Bradley L. Paulson, South St. Paul, Minnesota (pro se respondent)

Considered and decided by Kirk, Presiding Judge; Rodenberg, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

RODENBERG, Judge

In this spousal maintenance dispute, appellant-wife contends that the district court
erred in determining the amount of a maintenance award by overstating respondent-

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

husband's monthly expenses, and by failing to adequately address the tax consequences of the maintenance award on respondent-husband's ability to pay. She also claims that the district court abused its discretion in failing to require security for her spousal maintenance award. We affirm.

FACTS

The 13-year marriage of appellant Rhonda Paulson and respondent Bradley Paulson was dissolved by judgment and decree entered June 15, 1999, pursuant to a marital termination agreement. The decree reserved the issue of spousal maintenance. Together, the parties have two adult children, twins, born August 13, 1992. Appellant had sole physical and legal custody of the children when they were minors, and appellant stopped receiving monthly child-support payments in the amount of \$827 when the children graduated from high school in June 2011. At the same time, appellant stopped receiving social security disability payments for the children in the monthly amount of \$584.

The district court found that, during their marriage, the parties enjoyed a "somewhat comfortable" standard of living, similar to that which respondent currently enjoys with his wife. Appellant enjoyed a similar standard of living while receiving child support payments prior to June 2011.

On June 28, 2011, appellant filed a motion to establish spousal maintenance. On September 30, 2011, the district court issued an order and memorandum granting temporary spousal maintenance and scheduling an evidentiary hearing on the motion for October 10, 2011. After that evidentiary hearing, and on December 30, 2011, the district

court issued its findings of fact, conclusions of law, order, and amended judgment granting permanent spousal maintenance in favor of appellant in the amount of \$550 per month. The district court did not require security for the future payments.

The district court's findings of fact included the following: Appellant has dealt with serious health issues since 2002. In June of 2010, she was diagnosed with incurable lymphoma. Currently, appellant's monthly income is \$1,032.60, consisting of a \$1,168.50 social security disability payment from which is deducted \$135.90 for medicare health and drug premiums. Appellant reported, and the district court found reasonable, monthly living expenses of \$2,255, an amount which includes a \$50 per month payment toward medical bills (with the expectation for the amount to rise to approximately \$560 per month due to her ongoing cancer treatment). The district court found that appellant is not employable due to her poor physical condition. Appellant actively seeks assistance with funding for her medical care, and presently receives approximately \$16 per month in food stamps and \$200 per winter in energy assistance. The district court found that appellant's monthly expenses exceed her monthly income by approximately \$1,223.

Respondent and his current wife were married in 2006. They evenly share ordinary household expenses, and together they own one car, which respondent uses 90% of the time because his wife takes the bus to work. Respondent has been employed by the federal government since 1984. Respondent has himself had increasingly serious medical issues in recent years, including issues related to his knees, which affect his job performance because, as the court found, "approximately 70 to 80% of his work time is

spent walking throughout the hospital” where he is employed. The district court found that respondent’s current gross monthly income is \$4,006.52, or \$48,078.24 per year. His current net monthly income is \$3,098.85. Respondent reported monthly living expenses of \$2,842.58, of which the court found \$2,409.58 to be reasonable. The district court allowed respondent \$143.50 in pet-related expenses and the entire \$229.08 car payment in what it determined to be his reasonable monthly living expenses. The district court found that respondent’s net income exceeds his reasonable monthly expenses by \$689.27.

After making detailed findings of fact and addressing the spousal maintenance factors in Minn. Stat. § 518.552, subd.2, (2010), the district court found a monthly maintenance amount of \$550 in favor of appellant to be proper “in light of [respondent’s] anticipated additional medical expenses and home repair costs due to the recent flooding of his basement.” The district court further recognized that “[a]t this level of spousal maintenance, [appellant] will continue to have a considerable shortfall between her income and expenses. She may need to liquidate some of her assets to pay her essential expenses.” The district court noted in ordering maintenance that “[a]lthough [respondent] is nearing retirement age and may need to retire soon due to health problems, he has substantial sources of retirement income, unlike [appellant].”

Appellant made no motion for amended findings at the district court.

This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by not awarding her spousal maintenance of more than \$550. She contends that the district court erred by not

addressing tax consequences associated with the award, by miscalculating respondent's reasonable monthly expenses, and by awarding an amount of maintenance that is not equitable. Appellant also argues that the district court should have ordered security for the spousal maintenance award.

I. The maintenance award

This court applies an abuse-of-discretion standard of review to a district court's determination of the proper amount and duration of an award of spousal maintenance. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). The district court abuses its discretion if its findings are unsupported by the record or if it improperly applies the law. *Id.* This court applies a clearly erroneous standard of review to a district court's findings of fact concerning spousal maintenance. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

The district court may award maintenance if it finds that the recipient spouse lacks sufficient property to provide for the "reasonable needs of the spouse considering the standard of living established during the marriage," or "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). An award of spousal maintenance "shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors." *Id.*, subd. 2.

The relevant factors that a district court must consider are the financial resources of the spouse seeking maintenance to provide for his or her needs independently, the time

necessary to acquire education to find appropriate employment, the age and health of the recipient spouse, the standard of living established during the marriage, the length of the marriage, the contribution and economic sacrifices of a homemaker, and the resources of the spouse from whom maintenance is sought. *Id.*; *see also Kampf v. Kampf*, 732 N.W.2d 630, 633–34 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). In essence, the district court balances the recipient’s needs against the obligor’s ability to pay. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001). When determining whether to award maintenance, the district court must make findings as to the reasonable and necessary expenses for both parties. *Cummings v. Cummings*, 376 N.W.2d 726, 731 (Minn. App. 1985).

A. Tax consequences

Appellant contends that respondent will be entitled to deduct on his federal and state income tax returns spousal maintenance paid by him, and that the district court therefore erred in failing to account for this deduction in computing respondent’s income.

A district court is not required to take tax consequences into consideration when determining what amount of spousal maintenance to award. *See Dahlberg v. Dahlberg*, 358 N.W.2d 76, 82 (Minn. App. 1984) (“It is within a court’s discretion to consider the tax consequences of its actions.”). While motions for amended findings are not necessary to preserve issues, if the court fails to make a finding on a particular issue of fact, a motion for amended findings is necessary to preserve that issue for appeal. *See Antonson v. Ekvall*, 289 Minn. 536, 539, 186 N.W.2d 187, 189–90 (1971); *see also Berquam v. Berkner*, 374 N.W.2d 802, 803 (Minn. App. 1985) (holding that a defect concerning the

district court's findings that is not brought to the attention of the trial court cannot be raised for the first time on appeal).

Appellant neither made any argument before the district court nor presented any evidence regarding how the tax consequences of maintenance would impact respondent's ability to pay. The district court made no findings on the issue. These facts, coupled with appellant's failure to move for amended findings, lead us to conclude that the issue is waived on appeal and not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that, generally, an appellate court will not consider matters not argued to and considered by the district court).

B. Respondent's monthly expenses

Appellant argues that the district court abused its discretion when it allowed, as reasonable monthly expenses, \$229.08 for respondent's monthly car payment, and \$143.50 per month for pet veterinary expenses paid by him.

First, appellant argues that the nature of the car payment makes inclusion of that amount in respondent's monthly expenses inappropriate. Respondent borrowed the money with which he purchased the vehicle from his Thrift Savings Plan (TSP), a retirement account. He is repaying his plan by monthly installment payments. Appellant contends that the payments are not actually loan payments and instead amount to respondent reimbursing himself for amounts withdrawn from the TSP. Appellant argues that, when respondent pays off the TSP car loan, he will have "a vehicle and all of his retirement benefits." Relying on *Kemp v. Kemp*, appellant argues to this court that these payments are therefore more in the nature of an investment and should not be considered

a reasonable monthly expense. *See* 608 N.W.2d 916, 922 (Minn. App. 2000) (observing that a certain loan was more in the nature of an investment and therefore not properly considered a necessary ongoing living expense).

The testimony at the October 10, 2011 hearing was that respondent was claiming the full car payment as an expense, the TSP account was funded by respondent's earned income and an employer's match, and the TSP account was both the source of the loan and the recipient of the car-loan payments. The district court, in its order granting permanent maintenance, found the full \$229.08 car payment to be a reasonable and recurring expense, and appellant never argued at the district court that respondent could not reasonably claim the car-loan payment as a monthly expense based upon the payments going to his TSP account. She did not make that argument either at the evidentiary hearing or in her letter brief to the district court following the hearing. Because this issue was not argued to and considered by the district court, we decline to consider the issue here.¹ *See Thiele*, 425 N.W.2d at 582.

Second, appellant argues that it was an abuse of discretion for the district court to allow pet expenses of \$143.50 monthly as part of respondent's reasonable monthly expenses. Appellant reasons that, because she and respondent did not have expenses relating to pets during their marriage, it is inappropriate to consider such expenses now.

¹ We note that the argument that respondent will, after he makes all of the installment payments, have a "vehicle and all of his retirement benefits" is not significantly different than what would have been the situation had he borrowed the vehicle purchase money conventionally. Had he borrowed the purchase money from a bank, he would never have drawn down his TSP account and, after he made the last car payment, he would have "a vehicle and all of his retirement benefits."

Appellant cites to no apposite authority supporting the conclusion that including the pet expenses under these facts is an abuse of discretion and has not demonstrated that the district court abused its discretion by determining those expenses to be reasonable. The district court carefully considered this and the other claimed necessary monthly expenses, allowing some and disallowing others. We see no abuse of the district court's discretion.

C. Overall amount of maintenance

Appellant argues that the monthly maintenance amount was not equitable. The “basic consideration” in determining spousal maintenance “is the financial need of the spouse receiving the maintenance, and the ability to meet that need balanced against the financial condition of the spouse providing that maintenance.” *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006).

The district court found that respondent's net income exceeds his reasonable monthly expenses by \$689.27. The district court ordered respondent to pay permanent maintenance in the amount of \$550. This leaves respondent with a \$139.27 monthly surplus. Using the district court's findings with respect to appellant's present net monthly income and adding and factoring in the \$550 per month maintenance payment, appellant is still facing a \$672.40 monthly shortfall.

The district court here, in determining the amount of maintenance, made detailed factual findings according to the requisite statutory factors, including both parties' income and monthly expenses. *See* Minn. Stat. § 518.522, subd. 2. These detailed findings were based on numerous exhibits and detailed testimony presented at the evidentiary hearing. The district court carefully considered all of the evidence before it,

including respondent's present age and his own likely future medical problems, and properly based its findings on the evidence in the record. We cannot conclude that the district court failed to consider all the relevant factors and circumstances of the parties, or that it abused its discretion in determining the amount of monthly spousal maintenance.

II. Security

Appellant contends that the district court should have awarded security for the maintenance award. "In 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." Minn. Stat. § 518A.71 (2010). "The trial court has discretion to consider whether the circumstances justifying an award of maintenance also justify securing it with life insurance." *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

Appellant never requested the district court to order security for the maintenance award. The district court made no findings on this issue. The district court did not consider the matter at all, and appellant cites to no authority for the proposition that it was an abuse of discretion for the court not to have done so. We therefore decline to consider the issue on appeal. *Thiele*, 425 N.W.2d at 582.

Affirmed.