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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2172**

In re the Marriage of:
Alan Edward Bottke, petitioner,
Respondent,

vs.

Carol June Bottke,
Appellant.

**Filed December 31, 2012
Affirmed
Johnson, Chief Judge**

Rice County District Court
File No. 66-FA-10-2248

John G. Westrick, Marcia McDowall-Nix, Westrick & McDowall-Nix, P.L.L.P., St. Paul,
Minnesota (for respondent)

David L. Ludescher, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for
appellant)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Alan Edward Bottke and Carol June Bottke were married for approximately 20
years. Their dissolution decree requires Mr. Bottke to pay temporary spousal

maintenance in diminishing amounts until August 2016, at which time the maintenance obligation ceases. Ms. Bottke challenges the maintenance award on the ground that the district court should have awarded permanent, not temporary, maintenance. We affirm.

FACTS

The Bottkes were married in March 1990. Mr. Bottke initiated this dissolution proceeding in May 2010. The matter was tried in May 2011. Spousal maintenance was the central issue.

At the time of the trial, Mr. Bottke was 52 years old. He had been employed for several years by the Metropolitan Airports Commission. The district court found that Mr. Bottke's monthly net income is \$3,471.

At the time of trial, Ms. Bottke was 56 years old. She was self-employed as a hairstylist, and she estimated her revenue at \$300 per month, with expenses of \$200 per month. Her estimate of self-employment income is based on an assumption that she works between two and nine hours per week. She also was receiving \$814 per month in unemployment compensation, based on prior part-time employment of approximately 24 hours per week. Based on this evidence, the district court found that Ms. Bottke's monthly net income is \$1,050. Ms. Bottke worked on at least a part-time basis throughout the marriage, and she operated a beauty salon during part of the marriage. Her tax returns show that she had gross income of \$17,401 in 2008 and \$17,822 in 2009.

The district court found that Mr. Bottke has reasonable monthly expenses of \$2,494. The district court found that Ms. Bottke has reasonable monthly expenses of \$2,514.

In determining an award of spousal maintenance, the district court found that Ms. Bottke is capable of self-support with full-time employment and that she is physically and mentally able to work full-time. Accordingly, the district court concluded that Ms. Bottke was entitled to temporary maintenance:

[Ms. Bottke] has limited financial resources and she has not had to provide for her own on-going financial needs for a long time It will be several years until [Ms. Bottke] is able to fully support herself at the same standard of living the parties established during the marriage. The parties are in late middle age and the expectation of new career training would be unreasonable, so [Ms. Bottke's] long-term earning potential is limited.

The district court found that Ms. Bottke's need for temporary maintenance is \$1,325 per month but diminishing over time. The district court also found that Mr. Bottke could pay only \$1,200 per month. Thus, the district court ordered Mr. Bottke to pay \$1,200 per month from August 1, 2011 to July 31, 2012; \$850 per month from August 1, 2012 to July 31, 2014; and \$450 per month from August 1, 2014 until July 31, 2016. Mr. Bottke's maintenance obligation will cease on August 1, 2016. The district court stated that this award of maintenance "will allow [Ms. Bottke] to become self-supporting with incremental changes to the maintenance amount intended to match the court's estimation of [Ms. Bottke's] future earning capacity."

In August 2011, Ms. Bottke moved for amended findings of fact and conclusions of law. She requested the following amended finding concerning her ability to become self-supporting:

[Ms. Bottke] may be capable of some self-support with full-time employment. With full-time employment, [Ms. Bottke]

has been able to earn up to about \$1,500.00 per month. [Ms. Bottke] is physically and mentally capable of working full-time if she can find employment. [Ms. Bottke] has been looking for employment.

The district court denied the motion. Ms. Bottke appeals.

DECISION

Ms. Bottke argues that the district court erred by awarding temporary maintenance rather than permanent maintenance. 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); *see also* Minn. R. Civ. P. 52.01. We apply 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).

A district court may award spousal maintenance if the spouse seeking support "lacks sufficient property" to provide for his or her reasonable needs or "is unable to provide adequate self-support." Minn. Stat. § 518.552, subd. 1(a), (b) (2012). 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." Minn. Stat. § 518.552, subd. 2 (2012). The relevant factors 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). No single factor is dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). 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).

With respect to the duration of an award of spousal maintenance, a district court must order permanent maintenance “if the court is uncertain that the spouse seeking maintenance can ever become self-supporting.” *Aaker v. Aaker*, 447 N.W.2d 607, 611 (Minn. App. 1989) (citing Minn. Stat. § 518.552, subd. 3 (1988)), *review denied* (Minn. Jan. 12, 1990). If the necessity of a permanent award is uncertain, “the court shall order a permanent award leaving its order open for later modification.” Minn. Stat. § 518.552, subd. 3 (2012); see also *Reinke v. Reinke*, 464 N.W.2d 513, 516 (Minn. App. 1990) (quotations omitted) (stating that section 518.552, subdivision 3, “leaves little room for the exercise of discretion where the need for permanent maintenance is in question”). But if uncertainty exists only with respect to *when* the spouse will become self-supporting, not *whether* the spouse will become self-supporting, an award of temporary maintenance is appropriate. *Maiers v. Maiers*, 775 N.W.2d 666, 669 (Minn. App. 2009).

In this case, the district court found that Ms. Bottke will be able to support herself due to her training and experience as a hairstylist. It is undisputed that she has worked continuously throughout the marriage on at least a part-time basis. And she does not dispute the district court’s finding that she is both physically and mentally capable of

working full-time. Based on these factual premises, the district court reasoned that Ms. Bottke needed an “adjustment period” of several years and then would become self-supporting. Given Ms. Bottke’s work history and her ability to work full-time, the district court did not clearly err by finding that she can become self-supporting. Furthermore, because the district court’s reasoning reveals uncertainty as to *when* Ms. Bottke will become self-supporting, not *whether* she will become self-supporting, the district court did not abuse its discretion by awarding only temporary maintenance. See *Maiers*, 775 N.W.2d at 669.

Ms. Bottke contends that her situation is similar to the facts of *Reinke*, in which the former wife had not been employed for four years, had earned low hourly wages, and was training to become a foster parent. 464 N.W.2d at 514. The district court noted that her job opportunities were “speculative” but awarded permanent maintenance in an amount that was reduced by \$200 after two years. *Id.* at 515. This court reversed because the woman’s “questionable marketable skills and uncertain future job prospects” gave rise to “significant doubt whether [she] can increase her income enough to fill the \$200 gap caused by the future step reduction.” *Id.* at 516. This case, however, is different because, according to the district court’s findings, there is no uncertainty as to whether Ms. Bottke will become self-supporting. Unlike the woman in *Reinke*, Ms. Bottke has a marketable skill as a trained hairstylist with nearly 40 years of experience. At trial, Ms. Bottke testified that other salons provide too much competition to allow her to work full-time. The district court’s order reflects an implicit determination that Ms. Bottke’s testimony on this point was not credible, and we must

defer to a district court's credibility determination. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Furthermore, Ms. Bottke has not introduced any evidence as to why the market would not support her salon or why she cannot find employment at another salon. A party may not complain about an adverse ruling if the party has failed to provide the district court with the evidence necessary to fully address the issue. *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Moreover, even if a person seeking spousal maintenance is employed part-time at the time of trial, a district court may find that the person is capable of self-support by working full-time such that spousal maintenance is unnecessary. See *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 545 (Minn. App. 2009) (affirming district court's grant of temporary maintenance based on finding that spouse was capable of full-time employment); see also *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005) (affirming district court's denial of spousal maintenance based on finding that spouse was capable of full-time employment), *review denied* (Minn. Sept. 28, 2005).

In sum, we conclude that the district court did not err by awarding temporary spousal maintenance rather than permanent spousal maintenance.

Affirmed.