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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0759**

In re the Marriage of:

Veronica Michelle Lopez, petitioner,
Appellant,

vs.

Jose Edgar Lopez,
Respondent.

**Filed January 14, 2013
Affirmed
Schellhas, Judge**

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

Bailey Breck Rolsfrud, Lori Jensen Lea, Brian D. Roverud, Calvin P. Johnson, Calvin P. Johnson Law Firm, LLC, Mankato, Minnesota (for appellant)

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant-wife challenges the district court's award of temporary spousal maintenance that is limited to her educational expenses, arguing that the district court

abused its discretion by declining to: award permanent maintenance, reopen the record on remand from this court, and award appellant-wife attorney fees from respondent-husband. We affirm.

FACTS

At age 30, appellant-wife Veronica Lopez petitioned the district court to dissolve her 13-year marriage with respondent-husband Jose Lopez, age 33. The parties had four children during their marriage—two sets of twins. Wife sought sole physical and legal custody of the children, child-support payments, and spousal maintenance for her support and educational expenses. In the dissolution judgment, the district court granted the parties joint legal custody and wife sole physical custody of the children, ordered husband to pay monthly child support of \$2,064 to wife, and awarded wife up to “\$10,000 per calendar year” in maintenance for the following purposes:

the amount that [wife] is obligated to pay for tuition, fees, books and materials in order to acquire such training or education as she, in her sole discretion, deems appropriate. This obligation applies to any post-GED education program pursued by [wife] at an accredited learning institution, including a college preparation program.

In an amended dissolution judgment, the court conditioned wife’s receipt of maintenance on her residing with the minor children “within the State of Minnesota and within 100 miles of the post office building in St. Clair MN as determined by a Google map search.” The amended judgment states that “[i]f [wife] relocates in violation of this restriction, then [husband]’s obligation to pay maintenance terminates upon order of the Court.”

On appeal to this court, wife argued, among other things, that the district court abused its discretion by awarding only temporary maintenance, not establishing reasonable expenses for the parties, and not providing for the reasonable needs of wife. *Lopez v. Lopez*, No. A11-738, 2011 WL 6757462, at *1–2 (Minn. App. Dec. 27, 2011) (*Lopez I*). This court remanded, concluding that it was unable to review the district court’s maintenance award because the district court made no findings regarding either party’s current expenses. *Id.* at *3. This court instructed the district court to make “the necessary findings and analysis,” permitting the district court, in its discretion, to reopen the record to make its findings. *Id.* at *3. This court also cautioned the district court to “not presume that wife seeks only temporary maintenance.” *Id.*

On remand, the district court requested that the parties submit “proposed findings limited exclusively to the expenses of the parties” and, as noted in its second amended judgment, “quite specifically limited the attorneys to the record developed at trial.”

In its second amended judgment, the district court made findings regarding the parties’ reasonable necessary monthly expenses, did not change its award of maintenance to wife, and clarified that the maintenance award is “temporary in nature, limited in scope as well as in time.” The court noted that “whether [wife] should receive any maintenance is . . . a legally close question” and that “no maintenance would be warranted” if wife “fails to pursue appropriate training or education.” The court explained that, by awarding wife temporary maintenance for her educational expenses conditioned on her remaining in Minnesota with the children, the court was balancing wife’s interest in “better[ing] herself with education” and husband’s interest in spending time with the children. The

court also noted that husband “will need to curtail his expenses or perhaps even borrow money to cover the education costs. So for that reason more than anything, the award of maintenance to [wife] is time limited.”

This appeal follows.

DECISION

Maintenance Award

Wife argues that the district court abused its discretion by awarding temporary maintenance for her educational expenses instead of permanent maintenance.

Appellate review of a district court’s maintenance award “is limited to [determining] whether the trial court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997) (quotation omitted). “Findings of fact . . . shall not be set aside unless clearly erroneous . . .” Minn. R. Civ. P. 52.01. “A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made” when “view[ing] the record in the light most favorable to the district court’s findings.” *Thompson v. Thompson*, 739 N.W.2d 424, 429 (Minn. App. 2007) (citing *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000)). “That the record might support findings other than those made by the district court does not render the findings clearly erroneous.” *Id.* An appellate court will not reverse a district court’s maintenance award unless the district court abuses its “broad discretion.” *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). A district court does not abuse its discretion unless it arrives at a conclusion that is “a clearly erroneous conclusion that is against logic and the

facts on record.” *Dobrin*, 569 N.W.2d at 202. But an appellate court reviews de novo a district court’s statutory construction as a question of law. *Lee*, 775 N.W.2d at 637.

Wife seems to argue that she is entitled to permanent maintenance based on both grounds set forth in the maintenance statute—lacking sufficient property and inability to provide adequate self-support. *See* Minn. Stat. § 518.552, subs. 1–2 (2012). The maintenance statute provides that a district court “may” order maintenance when a spouse:

(a) 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, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Id., subd. 1. “The maintenance order shall be in amounts and for periods of time, either temporary or permanent, as the court deems just.” Minn. Stat. § 518.552, subd. 2.

“The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances.”¹ *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App.

¹ The maintenance statute requires that the district court determine the issue of maintenance “after considering all relevant factors including” eight factors enumerated by the maintenance statute:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;

(c) the standard of living established during the marriage;

(d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

(e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;

(f) the age, and the physical and emotional condition of the spouse seeking maintenance;

(g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and

(h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

Minn. Stat. § 518.552, subd. 2.

2009) (quotation omitted). “The issue is, in essence, a balancing of the recipient’s need against the obligor’s ability to pay.” *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001); *see Erlandson v. Erlandson*, 318 N.W.2d 36, 39–40 (Minn. 1982) (noting that under maintenance statute “the issue is basically the financial needs of [one spouse] and her ability to meet those needs balanced against the financial condition of [the other spouse]”). “[N]o single statutory factor . . . is dispositive,” and “[e]ach case must be determined on its own facts.” *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984).

Wife argues that uncertainty regarding the necessity of a *permanent* maintenance award required the district court to award to her permanent maintenance instead of temporary maintenance. We disagree. The maintenance statute provides that a district court shall render maintenance permanent or temporary “as the court deems just.” Minn. Stat. § 518.552, subd. 2. The maintenance statute also provides that “[n]othing in this section shall be construed to favor a temporary award of maintenance over a permanent award” and requires that a district court order a “permanent award leaving its order open for later modification” when “there is some uncertainty as to the necessity of a permanent award.” Minn. Stat. § 518.552, subd. 3 (2012); *see Nardini v. Nardini*, 414 N.W.2d 184, 196 (Minn. 1987) (construing section 518.552, subdivision 3, as requiring that “doubts with respect to *duration* are to be resolved in favor of permanency” (emphasis added)).

Here, the district court did not express uncertainty regarding the necessity of a permanent award but rather regarding the necessity of *any* award, noting that “whether [wife] should receive any maintenance is . . . a legally close question” and “no

maintenance would be warranted” if wife “fails to pursue appropriate training or education.”

Maintenance Limited to Educational Expenses

Relying on this court’s decision in *Coffel v. Coffel*, wife argues that the district court erroneously limited maintenance to her educational expenses. Wife’s argument is unpersuasive. In *Coffel*, we rejected an argument that the maintenance statute conditions a spouse’s receipt of maintenance on the spouse “chang[ing] her vocation for a more lucrative position.” 400 N.W.2d 371, 374–75 (Minn. App. 1987). Here, the district court did not deny wife maintenance as a means of requiring her to change her vocation. Rather, the court granted wife maintenance for her educational expenses, awarding maintenance because of wife’s desire to “better herself with education,” but the court awarded only temporary maintenance because the award will require husband to curtail his expenses and may require him to borrow money to satisfy his obligation. *See Prahl*, 627 N.W.2d at 702 (noting that under maintenance statute that “[t]he issue is, in essence, a balancing of the recipient’s need against the obligor’s ability to pay”).

Economic Hardship

Wife argues that the district court erred by not awarding to her permanent maintenance because the temporary-maintenance award leaves her in poverty. Husband counters that the court’s order implements a sharing of the economic hardship of dissolution. Husband’s argument is more persuasive.

“[T]he support to which a divorced party is entitled is not simply that which will supply her with the bare necessities of life” but, “[r]ather, the obligee can expect a sum

that will keep with the circumstances and living standards of the parties at the time of the divorce.” *Lee*, 775 N.W.2d at 642 (quotations omitted). But “[t]he concept of ‘reasonable needs’ is a malleable one, and will vary from case to case depending on the unique characteristics of the party seeking maintenance and the standard of living established during the marriage.” *Id.*

Here, the district court did not clearly err by finding that, for husband to pay maintenance that is even temporary and only for wife’s education expenses, he will need to “curtail his expenses” and may need to “borrow . . . money.” Wife may not have a standard of living that approximates her marital standard of living, but requiring husband to pay permanent maintenance would not be equitable in light of the fact that he may need to borrow money even to pay temporary maintenance. *See Melius*, 765 N.W.2d at 416 (“The purpose of a maintenance award is to allow the recipient *and the obligor* to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances.” (emphasis added) (quotation omitted)).

We conclude that the district court did not abuse its discretion by awarding wife temporary maintenance limited to her educational expenses.

Amount of Maintenance Award

Balancing Wife’s Financial Needs with Husband’s Ability to Pay

Wife argues that the district court erred by not awarding her permanent maintenance and that its maintenance determination is based on clearly erroneous findings regarding husband’s monthly income and the parties’ monthly expenses. We disagree for two reasons. First, based on the record, we are not left with a definite and

firm conviction that the district court's findings are erroneous. Second, the district court's balancing of wife's needs and husband's ability to pay maintenance is not against logic and the facts on record. Rather, the district court's maintenance award is logically consistent with the record evidence and a balancing of wife's needs and husband's ability to pay. *See Prahl*, 627 N.W.2d at 702 (noting that under maintenance statute “[t]he issue is, in essence, a balancing of the recipient’s need against the obligor’s ability to pay”).

Wife's Reasonable Necessary Monthly Expenses

Wife challenges the district court's conclusion that her reasonable necessary monthly expenses are \$3,091.65, arguing that her expenses are at least \$5,000. Wife also challenges the district court's calculation that her monthly expense deficit is approximately \$27, approximately \$1,909 less than her purported monthly expense deficit—\$1,936—noting that she has sole physical custody of the four children. But wife does not support her assertion that her *reasonable* monthly expenses are \$5,000 with any record citation.

Based on our review of the record, we infer that wife obtained the \$5,000 number from the budget that she submitted to the district court, in which she listed her monthly expenses as \$5,116.65. The district court found with respect to wife's monthly-expense calculation that her “claims for certain . . . expenses . . . , such as recreation, entertainment or social obligations are deemed to be unnecessary and therefore unreasonable” and that wife's “claim for payments on debt is not supported by any evidence reflecting the nature of the debt and is therefore speculative and is

disregarded.”² Consistent with that finding, the court allocated to wife’s monthly expenses \$975 less than she claimed, allocating \$50 for “[r]ecreation, entertainment & travel,” even though wife claimed \$300; \$0 for social obligations, even though wife claimed \$200 for “[s]ocial & [c]hurch [o]bligations”; \$25 for “[c]hildren’s extracurricular activities,” even though wife claimed \$250; \$0 for “[p]ersonal allowances & [i]ncidentals,” even though wife claimed \$200; and \$0 to pay her debt, even though wife claimed \$100 for “[p]ayments on [d]ebt (CC).” The district court also allocated to wife \$1,145 less than she claimed, allocating \$240 for utility bills, even though she claimed \$500; \$500 for wife’s groceries, even though she claimed \$700; \$50 for the “[c]hildren’s grooming needs,” even though she claimed \$100; \$25 for “[m]edical and dental,” even though she claimed \$250; \$50 for “[h]ousehold goods,” even though she claimed \$250; \$50 for “[h]ome maintenance,” even though she claimed \$100; \$0 for laundry and dry cleaning, even though she claimed \$100; and \$40 for “[p]et expenses,” even though she claimed \$100. But the district court did allocate to wife her claimed \$980.21 for “[m]ortgage, taxes and insurance”; \$400 for “[t]ransportation”; and \$236.44 for “[c]ar insurance.”

In light of the district court’s need to balance wife’s needs against husband’s ability to pay, we conclude that the district court did not abuse its discretion when determining wife’s monthly expenses. *See Prahl*, 627 N.W.2d at 702 (noting that under maintenance statute, “[t]he issue is, in essence, a balancing of the recipient’s need against

² Wife does not challenge the district court’s finding that her “claim for payments on debt is not supported by any evidence reflecting the nature of the debt.”

the obligor's ability to pay"); *see also Dobrin*, 569 N.W.2d at 202 (noting that a district court does not abuse its discretion unless it arrives at a "clearly erroneous conclusion that is against logic and the facts on record").

Husband's Ability to Pay

The district court found that husband may need to borrow money to satisfy his maintenance obligation that requires him to pay wife's educational expenses. The record reflects that, since commencement of the marriage dissolution, husband had incurred \$5,000 in credit-card debt and also had to borrow approximately \$5,000 from friends to pay bills. Based on the record, we are not left with a definite and firm conviction that the district court's finding is clearly erroneous.

Wife challenges the district court's finding that husband's average monthly income is \$7,514.50, and \$90,175 annually. The record contains the parties' joint 2009 tax return, which reports husband's 2009 annual income as \$90,175. Wife argues that the court should have found that husband's annual income is \$13,590.25 higher or \$103,765.25, based on his annual per-diem total and a document apparently from his employer that lists his "YTD" as "[§]103,765.25." But, based on the record, including the parties' tax returns, we are not left with a definite and firm conviction that the district court is mistaken and that its finding is therefore clearly erroneous.

Wife argues that the district court's finding that husband's monthly positive cash flow is approximately \$143 is clearly erroneous because the court underestimated husband's monthly positive cash flow by deducting his work-related expenses twice. Wife argues that the court used husband's work-related expenses to establish his monthly

earned income of \$7,574.50, and then used the expenses again as reasonable monthly expenses. We are not persuaded because, based on the parties' joint tax return, the record does not leave us with a definite and firm conviction that the district court is mistaken. And we observe no record evidence, nor does wife identify any, that shows that the district court first determined that husband's monthly income is \$7,514.50 by deducting his monthly work-related expenses.

Wife challenges the district court's finding that husband's reasonable necessary monthly expenses are \$7,372, arguing that the court abused its discretion by calculating husband's reasonable necessary monthly expenses to be \$4,280.35 higher than wife's reasonable necessary monthly expenses—\$3,091.65. Wife's arguments are unpersuasive because the record does not leave this court with a definite and firm conviction that the court's finding is clearly erroneous, nor is the court's expense calculation against logic and the facts on record. Moreover, wife's proposed monthly budget for husband is only \$200 less than the amount determined by the court. And the court's determination of husband's monthly expenses is higher than wife's, at least in part, because it includes two monthly expenses unique to husband—child-support payments of \$2,064 and work-related expenses of \$2,845. If the total of those two items is deducted, husband's monthly expenses total \$2,463, which is \$628.65 less than the court's determination of wife's monthly expenses—\$3,091.65.

Wife argues, relying on *Laumann v. Laumann*, that the district court abused its discretion by determining that the parties have "different standards of need," despite wife's equal and substantial contribution to the parties' standard of living. Wife's

argument is unpersuasive. In *Laumann v. Laumann*, this court concluded that the district court abused its discretion by “failing to award [wife] permanent maintenance,” noting that the district court “applied different standards of need to [wife] and [husband]” and “fail[ed] . . . to consider the affluent standard of living [wife] helped to establish during this 26-year marriage.” 400 N.W.2d 355, 358–59 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987). But this court also concluded that the district court’s findings were clearly erroneous as to the wife’s needs and the husband’s expenses. *Id.* Moreover, the supreme court has cautioned that “each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties and . . . , accordingly, it is unwise to view any marital dissolution decision as enunciating an immutable rule of law applicable in any other proceeding.” *Dobrin*, 569 N.W.2d at 201.

Prioritizing Husband’s Work Expenses

Wife asserts that the district court abused its discretion by prioritizing husband’s work expenses over the needs of the children. But wife fails to support her assertion with record citation, argument, or authority. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519–20, 187 N.W.2d 133, 135 (1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”).

We conclude that the district court did not abuse its discretion by declining to award wife permanent maintenance and instead awarding wife maintenance that is temporary and limited to her educational expenses.

District Court's Action on Remand

Wife argues that the district court abused its discretion by declining to reopen the record on remand to receive additional evidence. We disagree.

“Appellate courts review a district court’s compliance with remand instructions under the deferential abuse of discretion standard.” *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). “[D]istrict courts are given broad discretion to determine how to proceed on remand, as they may act in any way not inconsistent with the remand instructions provided.” *Id.* But a district court must “execute the mandate of this court strictly according to its terms” and “has no power to alter, amend, or modify our mandate.” *Halverson v. Vill. of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982).

In *Lopez I*, this court remanded for findings regarding each party’s current expenses. 2011 WL 6757462, at *3; *see Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (“Effective appellate review of the exercise of [a trial court’s] discretion [when making maintenance determinations] is possible only when the trial court has issued sufficiently detailed findings of fact to demonstrate its consideration of all factors relevant to an award of permanent spousal maintenance.”). On remand, the district court limited the parties to “ONLY the testimony of the parties and the exhibits of record.”

Wife argues that the district court abused its discretion by not permitting the parties to submit new evidence because the district court’s finding that husband’s monthly business expenses are \$2,845 is unsupported by the record. Wife’s argument is unpersuasive. On remand, district courts may act “in any way not inconsistent with the remand instructions provided.” *Janssen*, 704 N.W.2d at 763. We conclude that the district

court did not abuse its discretion by limiting the record to the trial testimony of the parties and the exhibits of record.

Attorney Fees

Wife argues that the district court abused its discretion by declining to award her need-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2012). We disagree.

“This court generally reviews denials of attorney fees for an abuse of discretion” *In re Estate of Holmberg*, ___ N.W.2d ___, ___, 2012 WL 3892508, at *2 (Minn. App. Sept. 10, 2012), *review denied* (Minn. Nov. 27, 2012). Section 518.14, subdivision 1, requires a district court to award attorney fees only when the district court finds that, among other things, “the party from whom fees . . . are sought has the means to pay them.” Absent that finding sustained by the record, “there is neither a mandate nor discretion to award [need-based] fees.” *Mize v. Kendall*, 621 N.W.2d 804, 810 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001).

Although the district court made no express findings regarding husband’s ability to pay wife’s attorney fees, from the court’s other findings, we infer that the court denied wife attorney fees because husband does not have the ability to pay wife’s attorney fees. *See Gully v. Gully*, 599 N.W.2d 814, 825–26 (Minn. 1999) (concluding that, even though district court “made no separate findings” regarding former husband’s ability to pay former wife’s attorney fees under section 518.14, subdivision 1, “the language used by the court reasonably implies that the court believed [former husband] had the ability to pay [former wife]’s attorney fees”).

We conclude that the district court did not abuse its discretion by not awarding wife attorney fees under section 518.14, subdivision 1.

Affirmed.