STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0759

In re the Marriage of: David Joseph Williams, petitioner,
Appellant,

vs.

Cheryl Constance Stevens Williams,
Respondent.

Filed April 24, 2017
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-FA-15-3432

David C. Gapen, Gapen, Larson & Johnson, L.L.C., Minneapolis, Minnesota (for appellant)

Mary Catherine Lauhead, Law Offices of Mary Catherine Lauhead, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant-husband challenges the district court's award of permanent spousal maintenance to respondent-wife. Husband claims that the district court's findings on wife's earning potential as well as wife's need and husband's ability to pay spousal

maintenance are clearly erroneous. Husband also asserts that the district court abused its discretion when it awarded wife permanent spousal maintenance. We affirm.

FACTS

Appellant-husband David Joseph Williams and respondent-wife Cheryl Constance Stevens Williams were married in 1998 and had three children during the marriage. In April 2015, husband filed a petition for dissolution of marriage. The matter was tried before a district-court referee on December 15, 2015, and January 25, 2016. At the time of the trial, both parties were 40 years old.

Wife has a bachelor's degree in elementary education. During the parties' 17-year marriage, wife worked part-time positions that corresponded with the children's school schedule because she was their primary caretaker. The responsibilities wife assumed in the home allowed husband to focus on his career and provide the family's primary source of income. Despite wife's many part-time jobs during the marriage, she has never held a licensed teaching position. In June 2015, while the parties were separated, wife let her teaching license lapse. To reinstate the license, wife would need to complete 125 hours of training.

At the time of trial, husband was employed as a partner at a retail-software-consulting company. The parties agreed, and the district court found, that husband's income was an average of $200,000 per year, a figure which included a base salary and variable bonuses. Wife was employed as an associate educator, working 35 hours per week at a rate of $22 per hour. Wife testified that the position "doesn't employ for more than 41 weeks a year" and there are required breaks throughout the year for which wife is

not paid. Wife further testified that she could "probably" find a full-time job paying $22 per hour but "[i]t would take some time because [she has] worked in the schools and typically they don't operate during the summer." The district court calculated wife's school-year income to be $28,077, and, based on this income, determined that wife's annual income was $37,436.

On the first day of trial, wife testified that "[u]ltimately, [she] would like to be self-supporting" and that her goal was not to receive "lifetime maintenance." Wife further testified that she desired to attend between two and four years of graduate school to obtain a master's degree in social work (MSW). Husband's expert witness, a vocational evaluator, conducted an assessment of wife. The evaluator stated that wife "exhibits the ability to successfully complete selected training programs at the graduate school level." In addition, the evaluator stated that wife was an attractive candidate for employment as an elementary-school teacher or substitute teacher if she renewed her teaching license and applied for jobs starting in fall 2016. On the second day of trial, wife requested permanent maintenance because her "earning potential won't meet even half of what [the parties'] lifestyle has been."

The parties agreed that wife should receive spousal maintenance but disagreed on the amount and the duration. Husband argued that wife should be awarded temporary maintenance of $1,750 per month for 60 months. Wife argued that she should be awarded maintenance of $6,800 per month for three years, stepped down to $4,500 per month for four additional years, and then stepped down again to a permanent maintenance award of $3,500 per month thereafter.

After the two-day trial, the district court entered its judgment requiring, among other things, husband to pay wife permanent spousal maintenance in the amount of $3,100 per month until wife's remarriage, death of either party, or further order of the district court. Husband appeals.

D E C I S I O N

As a preliminary matter, wife disputes the scope of review. Wife relies on *Gruenhagen v. Larson*, 310 Minn. 454, 246 N.W.2d 565 (1976), and argues that the scope of this court's review "is limited to determining whether the evidence sustains the findings of fact and the findings sustain the district court's conclusions of law and judgment" because husband did not make any posttrial motions. Wife's statement of the scope of review is incomplete.

Where, as here, there was no motion for a new trial or for amended findings, the scope of review includes substantive legal issues properly raised to and considered by the district court, in addition to whether the evidence supports the district court's findings of fact and whether those findings support the district court's conclusions of law. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003) ("[M]otions for a new trial . . . are not a prerequisite for appellate review of substantive questions of law when a genuine issue of law is properly raised and considered at the district court level."); *Gruenhagen*, 310 Minn. at 458, 246 N.W.2d at 569. Within the scope of review, this court reviews substantive legal questions de novo or for an abuse of discretion, as determined by the question. *See, e.g.*, *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (applying abuse of discretion standard to review

district court's award of spousal maintenance). We review whether the evidence supports a district court's findings of fact for clear error. Minn. R. Civ. P. 52.01. Finally, this court reviews de novo whether the district court's finding of fact support its conclusions of law and judgment. *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. App. 2002).

I. The district court's finding on wife's earning potential was not clearly erroneous.

Husband argues that the district court's finding on wife's earning potential was clearly erroneous because there is no support in the record that wife is limited to part-time work and the district court incorrectly calculated wife's income. We disagree.

The district court's determination of a party's income is a finding of fact, which we review for clear error. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). A finding of fact is clearly erroneous where this "court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). This court views the evidence in the light most favorable to the district court's findings. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). We also defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also* Minn. R. Civ. P. 52.01.

Husband argues that the district court's finding on wife's earning potential is clearly erroneous because there is no justification in the record for wife to continue to work less than 40 hours per week. Husband asserts that the district court "absolve[d] [wife] from the responsibility to rehabilitate herself by seeking appropriate full-time employment," noting that wife could make $45,760 annually if she worked 40 hours per

week at a rate of $22 per hour, wife is capable of working more than 35 hours, and wife has the ability to attain more appropriate employment.

Husband relies on *Passolt v. Passolt*, 804 N.W.2d 18 (Minn. App. 2011), *review denied* (Minn. Nov. 15, 2011), and *Frederiksen v. Frederiksen*, 368 N.W.2d 769 (Minn. App. 1985), in support of his argument. We do not find these cases persuasive. First, unlike in *Passolt*, the district court did not misapply the law when it assessed wife's ability to work full-time because the district court imputed income to wife, where wife was not underemployed in bad faith. Next, reliance on *Frederiksen* with regard to step-reductions in spousal maintenance is inappropriate. Here, husband argues that the district court's finding about wife's earning potential was clearly erroneous, an argument which does not involve the amount or the duration of the maintenance award.

The district court considered wife's financial resources and the factors underlying her ability to meet her needs independently, as required under Minn. Stat. § 518.552, subd. 2(a) (2016). The district court found that wife's testimony on cross-examination that she could work 40 hours per week on a year-round basis was not credible. Because this court defers to the district court's credibility determinations, we will not disregard the district court's determination regarding wife's testimony.

The district court also found that wife was "appropriately employed on a nearly full-time basis." Wife currently works 35 hours per week for $22 per hour. At trial, wife testified that obtaining an MSW would cost approximately $50,000 and take two to four years to complete. Further, wife testified that her starting pay as a social worker would be around $40,000 and that after working 20 years she would make close to $70,000.

Husband's expert testified that wife could make the median salary for social workers, approximately $64,000, within five years of obtaining the degree. Viewing the evidence in the light most favorable to the district court's findings, we cannot say that the district court clearly erred in finding that wife should continue in her current position rather than incur a $50,000 expense to attend two to four years of schooling, followed by between five and 20 years of work to achieve a salary of approximately $64,000. Accordingly, the record supports a finding that wife's income is properly computed based on her continuing to work 35 hours per week.

Husband further argues that the district court incorrectly calculated wife's income. The district court calculated wife's annual income to be $37,436. To reach this figure, the district court annualized wife's school-year income of "$28,077 (paid out over a 9-month period at $3,120 per month)" and imputed income to wife for the summer months. Wife testified that she earns $22 per hour and works 35 hours per week. On these figures, wife would earn $40,040 per year if she worked 52 weeks.

The district court found wife's annual earning potential to be $2,604 less than the $40,040 figure that is supported by wife's testimony. However, wife testified that her "current position doesn't employ for more than 41 weeks a year" and that there are breaks throughout the school year during which wife is not paid. While the district court does not explain how it arrived at wife's school-year income figure, which it annualized to determine her annual income, we conclude that it is within the range of an associate educator who earns $22 per hour, works 35 hours per week, and receives pay for less than 41 weeks out of the year. Moreover, on this record, we conclude that any alleged error in

the district court's calculation of wife's earning potential is de minimis. *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (declining to remand for technical error). Thus, the district court's determination of wife's earning potential was not clearly erroneous.

II. The district court's finding that husband has the ability to pay maintenance was not clearly erroneous.

Husband argues that the district court's finding on his ability to pay maintenance is clearly erroneous because the district court did not provide sufficient explanation to support it.[1] We disagree.

"Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). Even if this court may prefer a lower maintenance amount, the district court does not automatically err in awarding an amount that creates a shortfall for the obligor if the award is appropriate given the circumstances. *See Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989).

Here, the district court found husband's monthly budget to be $10,000, including $2,000 for the children's private-school tuition. The district court found wife's monthly budget to be $7,700, including $200 for costs associated with the children. In its calculation of the parties' budgets, the district court determined that, after spousal

[1] Husband also argues that the district court's finding on wife's need for maintenance was clearly erroneous because the district court erred in its consideration of wife's ability to earn income. However, the parties agreed that wife was in need of maintenance. The dispute was on *the amount* and *the duration* of the maintenance.

maintenance and child support payments, husband would have a $1,976 budget deficit each month. Wife would have a $1,934 budget deficit each month.

The district court provided sufficient explanation of its findings on wife's earning potential and husband's ability to pay. The district court references Appendix C of its order when analyzing husband's ability to pay spousal maintenance, which breaks down husband's and wife's monthly budgets. The district court found that the parties' almost equal deficits at the end of each month were "fair and equitable under the circumstances of this case." In reaching this conclusion, the district court noted that it also considered "the income tax consequences associated with spousal maintenance." On these facts, it cannot be said that the district court's findings were against logic; thus, the district court's findings on husband's ability to pay spousal maintenance were not clearly erroneous. *See Frederiksen*, 368 N.W.2d at 775 ("Although we recognize that the overall impact of the dissolution decree places a substantial burden upon appellant, the payments still may not entirely meet respondent's needs. Under these circumstances we must rest our decision in the trial court's discretion.").

III. The district court did not abuse its discretion in awarding permanent maintenance to wife.

Husband argues that the district court abused its discretion by ordering permanent spousal maintenance because whether wife will become self-supporting in the near future is not uncertain. We disagree.

This court reviews a district court's award of spousal maintenance for an abuse of discretion. *Dobrin*, 569 N.W.2d at 202. A district court abuses its discretion when it

improperly applies the law or when it makes findings unsupported by the evidence. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009). "Spousal maintenance is appropriate when the requesting spouse lacks sufficient property or is otherwise unable to provide adequate self-support for his or her reasonable needs in light of the standard of living established during the marriage." *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007) (citing Minn. Stat. § 518.552, subd. 1 (2006)). Spousal maintenance may be temporary or permanent. Minn. Stat. § 518.552, subd. 2 (2016). Minn. Stat. § 518.552, subd. 2, specifies eight factors for the district court to consider in determining the amount and duration of spousal maintenance. Minn. Stat. § 518.552 subd. 2(a)-(h). "Each case must be decided on its own facts and no single statutory factor . . . is dispositive." *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984).

Further:

> Nothing in . . . section [518.552] shall be construed to favor a temporary award of maintenance over a permanent award, where the factors under subdivision 2 justify a permanent award.
>
> Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.

Minn. Stat. § 518.552, subd. 3 (2016). A district court does not abuse its discretion if it awards temporary spousal maintenance where the issue is *when*, rather than *if*, the recipient will become self-supporting. *Maiers v. Maiers*, 775 N.W.2d 666, 669-70 (Minn. App. 2009). Accordingly, even when a recipient of spousal support is able to secure employment, if it is uncertain at the time of the district court's decision whether

the recipient will become fully self-supporting, an award of permanent maintenance is not an abuse of discretion. *Duffey v. Duffey*, 416 N.W.2d 830, 833 (Minn. App. 1987), *review denied* (Minn. Feb 24, 1988); *see also Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987).

Although wife is 40 years old, in good health, and motivated to obtain an MSW, the district court found that it was not "appropriate or necessary for [wife] to undergo further vocation-based education when she is already appropriately employed." In making this finding, the district court considered the breakdown of wife's monthly budget, including the deficit that resulted after factoring in spousal-maintenance payments. The district court also carefully considered each of the statutory factors under Minn. Stat. § 518.552. Thus, the district court's decision to award permanent maintenance was not an abuse of discretion because it is uncertain whether wife will become fully self-sufficient "in light of the standard of living established during the marriage." *Kampf*, 732 N.W.2d at 633.

Affirmed.