STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2244

In re the Marriage of:
Patricia M. Friederichs, petitioner,
Respondent,

vs.

Timothy J. Friederichs,
Appellant.

Filed September 19, 2011
Affirmed in part, reversed in part, and remanded
Wright, Judge

Clay County District Court
File No. 14-FA-08-4584

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

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Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and Wright, Judge.

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

WRIGHT, Judge

In this marital-dissolution appeal, appellant-husband challenges the district court's division of marital property and the decisions to award child support, spousal

maintenance, and attorney fees. For the reasons addressed below, we affirm in part, reverse in part, and remand.

FACTS

Respondent-wife Patricia M. Friederichs and appellant-husband Timothy J. Friederichs were married on September 6, 1994. Wife petitioned to dissolve the marriage on September 11, 2008. The parties reached an agreement as to custody and parenting time for their three minor children. But they proceeded to trial to resolve contested issues regarding property division, child support, and spousal maintenance.

During the marriage, wife was employed as a licensed practical nurse (LPN). But she has not worked as an LPN since July 2008, at which time she earned $13.77 hourly. Her nursing license was suspended in June 2008 following a disciplinary matter. Although the license expired in December 2008, she may reinstate her license if she pays a $600 fine or successfully challenges a disciplinary reprimand issued by the North Dakota Board of Nursing. When she filed the dissolution petition, wife was self-employed as a seamstress and home-cleaner, earning approximately $650 monthly. She also earned approximately $240 weekly in unemployment benefits, but these benefits were scheduled to end shortly after trial.

For most of the marriage, husband was employed as a farmer by Fredrix Farms, Inc., a family farm corporation established in March 1995. Husband owns 50 percent of the corporation. His parents each own a 25-percent share.

During the dissolution proceedings, husband asserted as nonmarital property his interest in Fredrix Farms, Inc., and a seven-acre parcel of his real property (seven-acre

property) adjacent to the farm that Fredrix Farms, Inc., operates in Barnesville. Husband acquired the seven-acre property in 1989 and deeded it to his parents in 1990. His parents deeded the seven-acre property back to husband in March 1996, and husband deeded it back to his parents in July 2009. A home constructed on the property in 2009 increased the property's value from approximately $52,700 to approximately $151,300. At the time of trial, husband leased the home from his parents.

The district court found that husband's share of Fredrix Farms, Inc., is marital property and the seven-acre property is husband's nonmarital property. But because the district court found that husband contributed $67,000 in marital assets to the cost of constructing the home on the seven-acre property, it concluded that there was a $67,000 marital interest in the seven-acre property.

The district court ordered husband to pay wife a property-equalization payment of $275,671.80. Finding that wife lacks sufficient property, income, and earning capacity to provide for her reasonable needs, the district court awarded monthly spousal maintenance to wife in the amount of $1,500 for five years commencing on August 1, 2010. The district court awarded joint legal custody of the minor children, awarded wife sole physical custody, and ordered husband to pay $1,158 in monthly child support. The district court also awarded wife $3,000 for attorney fees. This appeal followed.

D E C I S I O N

I.

Husband asserts that the district court committed several errors with respect to the property division on which the equalization payment to wife is founded. Husband argues

that the district court erred when it identified and valued the parties' marital property. He specifically challenges the district court's finding that husband's interest in Fredrix Farms, Inc., is marital property and its valuation of the marital interest in Fredrix Farms, Inc. Husband also assigns error to the district court's finding that there is a marital interest of $67,000 in the home on the seven-acre property. The district court's valuation of husband's individual retirement account (IRA), husband argues, is clearly erroneous.

The classification of property as marital or nonmarital is a question of law, which we review de novo. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). We review the district court's findings underlying this determination for clear error. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). In doing so, we defer to the district court's assessment of witness credibility and view the record in the light most favorable to the district court's findings. *Chafoulias v. Peterson*, 668 N.W.2d 642, 662-63 (Minn. 2003); *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). We will not reverse the district court's findings absent a firm and definite conviction that a mistake was made. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001). 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).

Minnesota Statutes section 518.003 defines marital and nonmarital property.

> "Marital property" means property, real or personal, . . . acquired by the parties . . . to a dissolution . . . at any time during the existence of the marriage relation between them . . . . All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be

> marital property . . . . The presumption of marital property is overcome by a showing that the property is nonmarital property.
>
> "Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which
>
> (a) is acquired as a gift, . . . made by a third party to one but not to the other spouse;
>
> (b) is acquired before the marriage;
>
> (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b) . . . .

Minn. Stat. § 518.003, subd. 3b (2010). To rebut the marital-property presumption, a spouse must establish the property's nonmarital character by a preponderance of the evidence. *Olsen*, 562 N.W.2d at 800.

A.

Husband received a 50-percent share of Fredrix Farms, Inc., when it was formed in March 1995. Because husband acquired this interest during the parties' marriage, it is presumptively marital. *See* Minn. Stat. § 518.003, subd. 3b. Husband seeks to rebut this presumption by asserting that his 50-percent share of the corporation is nonmarital property because he received it as a gift from his parents. *See id.*, subd. 3b(a) (defining nonmarital property as a gift "made by a third party to one but not to the other spouse"). Donative intent is the most important factor for consideration when determining whether a gift is made and, if so, whether the gift is made to one spouse to the exclusion of the other. *Olsen*, 562 N.W.2d at 800. Donative intent presents a fact question that is established by the surrounding circumstances. *Id.*

A nonmarital interest in property may be established with credible testimony. *Kerr v. Kerr*, 770 N.W.2d 567, 570 (Minn. App. 2009). Finding that husband failed to present any credible evidence that his interest in the corporation was a gift, the district court determined that husband received the shares "in consideration of the contributions he had made, and would continue to make, on behalf of the farming operation in terms of contribution of services." The district court rejected as not credible husband's testimony that his interest in Fredrix Farms, Inc., was a gift from his parents, as well as his father's testimony that husband's parents contributed all of the corporation's assets. Specifically, the district court observed that "[t]he lack of truthfulness demonstrated by [husband] during the course of these proceedings draws into question his credibility . . . [and] the [district court] finds that the testimony of [husband] and his father lack[s] credibility." Moreover, husband's reliance on evidence that wife was not involved in the founding or operation of the corporation and that the debts and obligations of the corporation are not marital debts neither establishes that the corporate interest was a gift nor satisfies the statutory criteria to establish a nonmarital interest in the property by a preponderance of the evidence. *See* Minn. Stat. § 518.003, subd. 3b; *Olsen*, 562 N.W.2d at 800. Because the determination of the weight and credibility of testimonial evidence is the exclusive province of the district court, *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996), we defer to the district court's credibility determinations here, *Vangsness*, 607 N.W.2d at 472.

On this record, husband fails to establish that the district court erred when it concluded that the marital-property presumption that applies to the Fredrix Farm, Inc., corporate shares was not rebutted.

B.

Husband also challenges the district court's valuation of his interest in Fredrix Farms, Inc., arguing that the district court overstated the value of the corporation by including assets that are not owned by the corporation. A district court's valuation of an asset is a finding of fact that will not be set aside unless the record establishes that it is clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). The district court's valuation of assets need not be exact. *Id.* Because "valuation is necessarily an approximation in many cases," it need only fall "within a reasonable range of figures." *Id.* (quotation omitted).

1.

The district court found that the value of the corporation's assets is $1,002,836 and the corporation's debt is $156,350.50, resulting in a net value of $846,485.50. Therefore, the district court found, the value of husband's one-half interest is $423,242.75. Husband challenges three aspects of the district court's valuation, the value of the corporation's "non-current farm assets" as $500,000 in machinery and equipment, "current farm assets" as $402,836, and "other depreciable assets" as $100,000.

Husband contends that the district court erred by including the machinery and equipment among the corporation's "current farm assets" because, he asserts, the corporation owns no machinery or equipment. We are not persuaded that the district

court erred. The record on which the district court relied contains ample evidence that the farm machinery and equipment are corporate assets. This evidence includes the corporation's 2009 federal tax return, which lists machinery with a cost of $501,487 that was "Placed In Service" after the corporation was formed in 1995, and a March 2010 corporate balance sheet for Fredrix Farms, Inc., which identifies machinery and equipment valued at $624,500. The district court expressly rejected as not credible the testimony of husband and his father that Fredrix Farms, Inc., does not own the farm equipment and machinery. Accordingly, the district court's inclusion of the value of the machinery and equipment in the corporation's assets was not erroneous. Because the district court's valuation of the equipment and machinery at $500,000 approximates the cost of the equipment listed on the corporation's 2009 federal tax return, the district court's valuation falls "within a reasonable range of figures" and is not clearly erroneous. *See id.* at 606.

2.

Husband next argues, and wife conceded at oral argument, that the district court erroneously included the value of the four trucks twice—once in the "current farm assets" and again in the "other depreciable assets." The district court found that the corporation's "current farm assets" consist of cash/checking accounts, accounts receivable, crop inventory, pre-paid expenses, and "other depreciable assets: Three (3) Kenworth trucks and One (1) Chevrolet truck." The district court also identified a category of "depreciable assets," consisting of "three (3) Kenworth trucks and one (1) Chevrolet truck" with a value of $100,000, which it added to the value of the current farm

assets and machinery and equipment to reach the "total assets" figure of $1,002,836. The district court's inclusion of depreciable assets is not clearly erroneous. But the district court's inclusion of the four trucks twice in its calculation is clearly erroneous. Accordingly, we reverse and remand to the district court to reduce the value of the corporation's assets by $100,000.

C.

Husband challenges the district court's determination that $67,000 in marital funds were used to construct the home on the seven-acre property in 2009, resulting in a $67,000 marital interest in the property. He contends that his parents paid the entire cost of the home construction with a mortgage obtained in March 2010. The district court found that the home was constructed and paid for before the March 2010 mortgage and that husband contributed at least $67,000 that had been accumulated during the marriage toward the home construction.

The district court relied on a January 2009 email that husband sent to his former girlfriend as the basis for its finding. Husband wrote: "[T]here is only 67000 [sic] set aside to get it up concreate [sic], windows, siding, insulation, completly [sic] done on the outside, and yes my father is involved because he is doing the financing for me and that is it." But this email neither establishes that the $67,000 originated from husband nor that the funds were marital. Without an additional explanation of the basis for the district court's finding that $67,000 in marital property was used to construct the home, we are unable to determine whether this aspect of the district court's decision is erroneous. Accordingly, we remand this issue to the district court to either explain the basis for its

determination or to correct this finding and adjust the marital property valuation accordingly.

D.

Although husband does not challenge the district court's determination that his IRA is marital property, he argues that the district court's valuation of the account for the property division is clearly erroneous. Following the parties' separation in June 2008 and the commencement of dissolution proceedings in September 2008, husband withdrew $7,000 from his IRA on November 21, 2008, and approximately $32,000 from the account on June 22, 2009. The value of the account was $60,055.86 on June 26, 2008, and $1,027.29 one year later on June 26, 2009. The district court found that the account had a balance of $60,055.86 when the parties separated in June 2008 and that only husband had access to the account at that time. Based on these facts, the district court valued the IRA at $60,055.86 for the marital-property division. Husband now argues on appeal that the district court erroneously used the account's value in June 2008, rather than in June 2009.

In a marital-dissolution proceeding, property valuation is governed by Minn. Stat. § 518.58, subd. 1 (2010), which provides:

> The [district] court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the [district] court may adjust the valuation of that asset as necessary to effect an equitable distribution.

We cannot discern from the district court's findings its basis for selecting the date of the parties' separation as the appropriate valuation date for husband's IRA. The record before us does not reflect that a prehearing settlement conference was scheduled. And when questioned at oral argument, the parties did not recall that a prehearing settlement conference was scheduled or held. The record also does not reflect that the parties stipulated to a valuation date. Moreover, the district court did not find that another date is fair and equitable. We, therefore, remand to the district court to make additional findings that explain the basis for the valuation date.

Husband also argues that the district court erred by rejecting husband's contention that the funds were withdrawn to pay marital debts. We disagree. The district court did not credit husband's claim to have withdrawn the funds to pay a $28,000 equity line of credit on the parties' home. Rather, the district court found, and the record reflects, that there is no documentary support for husband's claim. As the exclusive arbiter of credibility, the district court was free to reject husband's testimony for lack of credibility. Accordingly, husband's claim of error fails.

Based on the foregoing analysis, we conclude that the district court's calculation of the equalization payment is erroneous for the reasons set forth above. We, therefore, reverse this aspect of the district court's decision and remand to the district court to recalculate the equalization payment and to make additional findings consistent with this decision.

II.

We next consider husband's arguments challenging the district court's child-support decision. The child-support guidelines establish a rebuttable presumption for a parent's child-support obligation based on the number of joint children and the combined parental income. Minn. Stat. § 518A.35, subd. 1(a)-(b) (2010). If parenting time is awarded, an adjustment is then made to account for parenting time based on the presumption that, when exercising parenting time, a parent is responsible for the costs incurred for caring for the child. Minn. Stat. § 518A.36 (2010). When the district court does not deviate from the presumptive child-support obligation, the district court must make written findings that state each parent's gross income, each parent's income for child support, and any other relevant evidentiary factors affecting the child-support determination. Minn. Stat. § 518A.37, subd. 1 (2010).

We will not reverse the district court's findings as to a parent's income unless they are clearly erroneous. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). To perform our appellate review, the district court's findings must be sufficient to enable us to determine whether the district court properly considered the requirements of a governing statute. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (reversing and remanding spousal-maintenance-award determination for consideration of relevant statutory factors). A district court commits reversible error in setting a child-support obligation when it resolves the matter in a manner that is against logic and the facts in the record. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Husband argues that the district court's calculation of husband's child-support obligation is erroneous for three reasons. We address each in turn.

A.

Husband asserts that, when calculating his income, the district court erred by considering as income one-half of the value of Fredrix Farm, Inc.'s corporate depreciation expenses. Generally, when calculating a child-support obligor's income, the deductibility of business expenses rests within the district court's sound discretion. *Keil v. Keil*, 390 N.W.2d 36, 39 (Minn. App. 1986).

"[G]ross income includes any form of periodic payment to an individual, including . . . self-employment income under section 518A.30 . . . ." Minn. Stat. § 518A.29(a) (2010). Income from self-employment or the operation of a business includes "gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30 (2010). If challenged, a party who seeks to deduct an expense, including depreciation, has the burden of proving that the expense is "ordinary and necessary." *Id.* Ordinary and necessary expenses do not include "amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the [district] court to be inappropriate or excessive for determining gross income for purposes of calculating child support." *Id.* We have recognized that tax returns with substantial depreciation deductions for farming operations may not be the most accurate calculation for the district court to use to determine income for the purpose of setting child support. *Freking v. Freking*, 479

N.W.2d 736, 740 (Minn. App. 1992); *Otte v. Otte*, 368 N.W.2d 293, 297 (Minn. App. 1985).

Husband argues that Minn. Stat. § 518A.30 is inapplicable because he is not self-employed. We disagree. Because husband is half owner of Fredrix Farms, Inc., which is a subchapter S corporation,[1] and husband reported corporate income and depreciation deductions on his tax return, husband has "income from . . . [the] operation of a business, including joint ownership of a partnership or closely held corporation" under section 518A.30. Section 518A.30, therefore, applies to the calculation of husband's income for child-support purposes.

The district court determined that it was appropriate to include husband's share of the corporate-depreciation expense as part of husband's income from the farm. The district court found that husband's gross monthly income is $4,989.25, based on husband's annual wages and husband's average income from the corporation in 2007, 2008, and 2009. Section 518A.30 allows the nonaccelerated component of depreciation to be deducted. *See* Minn. Stat. § 518A.30 (stating that income from operation of a business includes "amounts allowable by the Internal Revenue Service for the *accelerated component* of depreciation expenses" (emphasis added)). "[W]hen the record contains credible evidence of legitimate depreciation deductions, the [district] court should consider those deductions in determining an obligor's net income." *Preussner v. Timmer*, 414 N.W.2d 577, 579 (Minn. App. 1987).

[1] "The earnings or losses of a subchapter S corporation pass through to its shareholders and are reported by the shareholders on their individual tax returns." *Hubbard Cnty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 225 (Minn. App. 2007).

Husband contends that, if section 518A.30 applies, the depreciation expenses were "ordinary depreciation," not the "accelerated component of depreciation expenses" that is excluded from the statutory definition of ordinary and necessary expenses. *See* Minn. Stat. § 518A.30. Husband had the burden of establishing that his claimed depreciation was an ordinary and necessary expense. *See id.* (stating that self-employed person claiming depreciation expense has burden of establishing that expense). Husband fails, however, to identify any evidence in the record that establishes what portion of the claimed depreciation is ordinary, or nonaccelerated, depreciation. The record contains corporate tax returns for Fredrix Farms, Inc., that report husband's share of the income, deductions, and credits for tax years 2007 through 2009. Husband's 2008 income tax return indicates that husband reported corporate income reflecting depreciation deductions. Other documentary evidence appears to contain depreciation details for certain assets of Fredrix Farms, Inc. But husband offered no testimonial evidence or documentary evidence differentiating ordinary and accelerated depreciation.

"On appeal, a party cannot complain about a district court's failure to rule in [that party's] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Husband presented insufficient evidence to establish what portion of the claimed depreciation, if any, is an ordinary and necessary expense. He, therefore, failed to satisfy his burden of establishing that his claimed depreciation was an ordinary and necessary expense. Accordingly, the district court did

not abuse its discretion by including the corporate depreciation expenses in husband's income.

B.

Husband also challenges the district court's finding that wife has the ability to earn an hourly wage of $7.25, or $1,256.66 each month. He contends that this finding is contrary to evidence that wife can earn an hourly wage of $13.77 as an LPN.

When calculating a child-support obligation, the district court must determine a parent's potential income if the parent does not have full-time employment. Minn. Stat. § 518A.32, subd. 1 (2010). The district court must employ one of three methods when determining a parent's potential income:

> (1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;
> (2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or
> (3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.

Id., subd. 2 (2010).

The district court found that wife is self-employed, earning approximately $200 monthly as a seamstress and $450 monthly cleaning homes. The district court also found that wife's weekly unemployment benefits in July 2010 were $240. As to wife's previous employment as an LPN, the district court found that wife had not worked in that

capacity since her license was suspended because of a disciplinary matter in July 2008, at which time she earned $13.77 hourly. The district court found that she lacks the financial ability to obtain a hearing on the license suspension, which is necessary for reinstatement of the license. Based on these findings, the district court determined that wife

> has the present ability to earn the federal minimum wage of $7.25 per hour and to be employed on a full-time basis, although she has applied for more than 30 jobs since leaving Innovis Health in July 2008, and has received no substantial job offers. It is appropriate that gross income be imputed to [wife] in the amount of $1,256.66 per month. It is anticipated that her earning capacity will increase once her LPN license is reinstated.

These findings reflect the district court's consideration of wife's "probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community." *See id.*, subd. 2(1). The district court's use of an imputed monthly income finding of $1,256.66 is consistent with a monthly income derived from an annual figure.[2] *See* Minn. Stat. § 518A.29(d) (providing that "[g]ross income may be calculated on either an annual or monthly basis). Because the district court's findings comport with the statutory requirements, the district court did not err when it calculated wife's potential income based on full-time employment at $7.25 hourly.

[2] An hourly wage of $7.25 that is multiplied by 40 hours weekly, multiplied by 52 weeks annually, and divided by 12 months per year equals $1,256.67. ($7.25 x 40 x 52) ÷ 12 = $1,256.67.

C.

Husband argues, and wife concedes, that when calculating husband's child-support obligation, the district court erroneously excluded wife's spousal-maintenance award when determining the gross income of each party. A parent's gross income for child-support purposes includes "spousal maintenance received under . . . the current proceeding." Minn. Stat. § 518A.29(a). "[S]pousal maintenance payments . . . ordered payable to the other party as part of the current proceeding are deducted from other periodic payments received by a party for purposes of determining gross income." Minn. Stat. § 518A. 29(g) (2010). The district court erred by failing to include the spousal-maintenance award in wife's income and by failing to exclude the spousal-maintenance award from husband's income when calculating their child-support obligations. We reverse and remand on this ground. On remand, after correctly calculating husband's spousal-maintenance obligation, the district court shall determine the correct amount of child support as calculated in a manner consistent with Minn. Stat. § 518A.29(a), (g).

III.

Husband argues that the district court's decision to award wife monthly spousal maintenance of $1,500 for five years is erroneous on three grounds. First, husband argues that wife can provide for her own support. Second, the amount of the award is excessive, he contends, because it exceeds the amount wife needs to maintain the marital standard of living. Finally, husband argues that he lacks the ability to pay the amount awarded in light of the property division and his court-ordered child-support obligation.

The district court may award spousal maintenance if the district court finds that the recipient "lacks sufficient property, including marital property apportioned to [the recipient], to provide for reasonable needs of the [recipient] considering the standard of living established during the marriage," or if the recipient "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). 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); *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

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.

The district court found that wife "lacks sufficient property, current income and current earning capacity to provide for her reasonable needs considering the standard of living established during the 14 years of marriage prior to the parties' separation." The district court considered wife's self-employment as a seamstress and home-cleaner, as well as her unsuccessful attempts to obtain other employment. The district court also made findings as to the parties' income, expenses, and earning abilities and observed that "[t]he vast majority of the parties' property is being awarded to [husband]." When considered as a whole, these findings reflect the district court's consideration of the relevant statutory factors.

One aspect of husband's challenge to the spousal-maintenance award is based on his contention that wife has the ability to maintain the marital standard of living by working as an LPN and that she has remained voluntarily underemployed by failing to pursue reinstatement of her LPN license. But the district court rejected this contention when it found that wife was financially unable to seek reinstatement of her LPN license. The district court acknowledged that, if wife's LPN license is ultimately reinstated and wife obtains additional training, she will have an increased earning capacity that may allow her to be self-sufficient. Consistent with these findings, which are amply supported

by the record, the district court limited the duration of the spousal-maintenance award to five years.

We are mindful, however, that section 518.552 expressly identifies the marital-property division and financial resources of the parties as relevant factors to be considered when determining whether and in what amount spousal maintenance shall be awarded. Minn. Stat. § 518A.352, subds. 1, 2(a), (g)-(h). Because we reverse and remand aspects of the district court's property division and child-support determination that may affect the district court's determination of both wife's need for spousal maintenance and husband's ability to pay, we also must remand the district court's spousal-maintenance determination. We direct the district court to consider whether the spousal-maintenance award should be altered in light of any changes in the property division and child-support determinations on remand.

IV.

Husband seeks reversal of the district court's award of $3,000 in conduct-based attorney fees against him on the grounds that husband failed to comply with discovery rules and violated the prohibition against transferring property during dissolution proceedings. We review a district court's award of conduct-based attorney fees for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

Conduct-based attorney fees may be awarded "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2010). The record supports the district court's finding that husband failed to completely and truthfully answer discovery requests, thereby contributing to the length of the

proceedings. Wife twice moved the district court to compel discovery based on husband's incomplete responses to interrogatories and requests for production of documents. The record reflects that husband failed to disclose in his interrogatory responses information regarding real estate transfers and corporate financial account information. Husband's assertion that his failure to comply with discovery is attributable to his attorney's serious illness lacks evidentiary support.

Moreover, the attorney fees were awarded, in part, based on the district court's finding that husband violated the restraining provisions in the dissolution summons, which forbade the parties from disposing of assets and warned that doing so "will" subject the violator to sanctions by the district court. *See* Minn. Stat. § 518.091, subd. 1 (2010) (requiring that every dissolution summons contain such provisions). As addressed above, the record reflects that husband transferred the seven-acre property to his parents and withdrew funds from the IRA after receiving the dissolution summons containing the notification restraining parties from disposing of assets during dissolution proceedings under penalty of sanction.

Accordingly, the district court did not abuse its discretion by awarding $3,000 in attorney fees for discovery violations.

Affirmed in part, reversed in part, and remanded.