**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-2297**

In re the Marriage of:
Stephanie Elizabeth Gouette, petitioner,
Respondent,

vs.

Steven Michael Gouette,
Appellant.

**Filed October 1, 2012**
**Affirmed**
**Harten, Judge**[*]

Dakota County District Court
File No. 19HA-FA-08-943

Phillip Gainsley, Minneapolis, Minnesota (for respondent)

John De Walt, Walling, Berg & Debele, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Kirk, Judge; and Harten, Judge.

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

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

**HARTEN**, Judge

Appellant challenges both the permanency and the amount of respondent's spousal maintenance award. Because we see no abuse of discretion in the award, we affirm.

## FACTS

Appellant Steven Gouette and respondent Stephanie Gouette were married in 1995. They are the parents of a son, J., born in 1997, and a daughter, S., born in 2000. Throughout the marriage, by mutual agreement, respondent had primary responsibility for the children and the home; appellant, a certified public accountant, worked full-time in that capacity.

Respondent had a high school diploma and some college credits. For one year, she worked as a teller supervisor at a bank, and until 2002 she worked intermittently as a nursery school teacher at a community center, where she then became assistant membership director. In 2005, she left that job and borrowed $37,000 from her parents to start her own retail jewelry business. The business was never profitable, and respondent never repaid the loan. She has not worked outside the home since 2005.

The parties separated and began the dissolution process in 2008. Following a 2011 trial, respondent was awarded sole legal and sole physical custody of the parties' children.

Financial issues were resolved on the basis of sworn posttrial submissions. Appellant was then earning approximately $11,661 per month, which implied a gross annual salary of $139,932 for 2011; his previous earnings were $141,409 in 2010,

$158,853 in 2009, and $174,624 in 2008. The district court used appellant's 2011 earnings as the basis for calculating spousal maintenance and child support and found that his monthly expenses, exclusive of his child support and maintenance obligations, were $3,500 as he had claimed. Respondent claimed reasonable monthly expenses of $6,445. The district court reduced this amount to $5,000 and concluded that, "[g]iven [appellant's] ability to pay, the sum of $3,500 per month for two years and $3,000 per month thereafter is a fair and reasonable permanent spousal maintenance award." Appellant's child support obligation was set at $1,361 per month until September 2013, when it will be appropriately adjusted given the $500 decrease in his spousal maintenance obligation and respondent's spousal maintenance income.

Appellant challenges both the permanency and the amount of the spousal maintenance award.[1]

**D E C I S I O N**

This court reviews a district court's award of spousal maintenance under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion by making findings of fact that are unsupported by the record or by improperly applying the law. *Id*., n.3. "Maintenance-related findings of fact are not set aside unless clearly erroneous." *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 409 (Minn. App. 2000), *review denied* (Minn. 25 Oct. 2000).

[1] In his statement of issues, appellant identifies the two issues of this appeal to be the duration and amount of maintenance; in his prayer for relief, he seeks a remand of the maintenance award. Accordingly, although mentioned in appellant's brief, the issue of whether the district court made appropriate findings to support the order that appellant obtain life insurance is not before us and we do not address it.

A district court may grant an award of spousal maintenance if it finds that the spouse seeking maintenance either

> (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 . . . .

Minn. Stat. § 518.552, subd. 1 (2010). Factors to consider in awarding maintenance include

> [t]he 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.

*Chamberlain*, 615 N.W.2d at 409; *see also* Minn. Stat. § 518.552, subd. 2(a)-(h) (2010).

**1. Duration of Maintenance**

"Where there is some uncertainty as to the necessity of a permanent award [of spousal maintenance], the court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3 (2010). Appellant argues that the district court abused its discretion in awarding permanent spousal maintenance. For this argument, he relies on *Passolt v. Passolt*, 804 N.W.2d 18, 19, 25 (Minn. App. 2011) (a district court may consider an unemployed maintenance recipient's prospective ability to become self-supporting absent a finding that the unemployment is in bad faith and

remanding for the district court to consider the recipient's ability to become self-supporting), *review denied* (Minn. 15 Nov. 2011). But *Passolt* is distinguishable from the instant case on four grounds. First, *Passolt* concerned an award of $16,740 to a recipient whose reasonable monthly needs were $12,286, *id.* at 21; here, respondent's reasonable monthly expenses were found to be $5,000 and her award was first $3,500, then $3,000. Second, at the time of dissolution, both parties in *Passolt* were age 52 and the marriage had lasted 30 years; the husband's annual earnings were $525,000 while the wife's were $3,000. Here, the parties were 37 and 39 when their 15-year marriage was dissolved; appellant's annual earnings were $139,932, and respondent was not employed. Third, by the time of the appeal in *Passolt*, the younger of the parties' two children had already been emancipated for 14 months; here, the parties' two children are now 12 and 15 and in respondent's custody. Fourth, the recipient in *Passolt* was certified as a special education teacher, a field in which there was a demand and where an absence from the field would not prevent her from finding a job and earning about $37,000 if she updated her certification; here, respondent has no degree and no experience, and the local job market is not good.[2] *Passolt* does not support a reversal of the permanent spousal maintenance award.

Appellant also relies on *Gales v. Gales*, 553 N.W.2d 416, 419 (Minn. 1996) (permanent spousal maintenance should be awarded only in an "exceptional" case). *But*

[2] Respondent's vocational expert stated in his report that, while she could work at various unskilled jobs, "according to the Minnesota Department of Employment and Economic Development, there are currently 128,510 people in the Twin Cities metropolitan economy who are out of work and searching for work[, which] creates a problem for the job seeker . . . ."

*see Dobrin*, 569 N.W.2d at 201 ("*Gales* did not change the law, but instead applied the criteria of Minn. Stat. § 518.552, subd. 2 to the record."); *Chamberlain*, 615 N.W.2d at 411 ("[W]hile *Dobrin* dispels any suggestion that *Gales* resurrected [the] 'exceptional-case' standard for awarding permanent maintenance, *Dobrin* also makes clear that permanent maintenance awards are considered in light of the factors set forth in Minn. Stat. § 518.552, subd. 2."). Thus, appellant's reliance on *Gales* for the "exceptional-case" standard is unwarranted. We note the supreme court's caution against reliance on any one case granting or denying permanent spousal maintenance:

> We take this opportunity to remind counsel that each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties and that, 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.

The findings on which the permanent maintenance award was based were not clearly erroneous, and the award was not an abuse of discretion.

**2. Amount of Maintenance**

The district court found that:

> [Respondent] lacks sufficient property, including marital property apportioned to her herein, to provide for her reasonable needs, and she lacks adequate self-support. . . . She lacks any particular employment skills. Per her expert's vocational evaluation, she is currently capable of earning roughly $23,733 per [year]. She is in need of maintenance from [appellant], and [he] has the financial resources to assist . . . her.
>
> According to [her] vocational evaluation, if [she] were to obtain her associates degree, which would take a year-and-a-half to two years, she could increase her income to roughly

> $34,320 per year. Regardless, given the standard of living during the marriage, it is at best uncertain as to whether [she] would ever be able to achieve an income great enough to adequately support herself, even after completing the contemplated rehabilitative training.

Appellant claims that the district court abused its discretion in setting respondent's spousal maintenance without making sufficient findings. But the district court produced detailed findings as to why respondent's claimed monthly expenses were reduced from her claimed $6,445 to $5,000, and ordered a two-step award, first 70%, then 60%, of the $5,000.

Further findings on the parties' finances are also provided by the Child Support Guidelines Worksheet included as an appendix to the district court's opinion. The worksheet notes that: (1) exclusive of the parties' child support obligations, maintenance of $3,500 will result in appellant having a gross monthly income of $8,161 ($11,661 - $3,500) and respondent (presuming that she does obtain full-time work at the level her vocational expert thought possible) having $5,478 (monthly earned income of $1,978 + $3,500); (2) appellant's share of their combined parental income for determining child support (PICS) is 60% and respondent's is 40%; (3) appellant's child support payment is $1,361[3]; (4) appellant's share of the children's health care coverage, obtained from his employer, is $286 and respondent's is $190; and (5) respondent's child support obligation is therefore $190. The result is that appellant pays respondent $3,500 in maintenance and $1,171 ($1,361 less her $190) in child support, a total of $4,671, from his monthly gross income of $11,661, leaving him with $6,990. Thus, appellant has a gross monthly

[3] $1,361 is 60% of $2,578, or $1,547, less the parenting expense adjustment for the time the children will spend with appellant. *See* Minn. Stat. § 518A.36, subd. 1(a) (2010).

income of $6,990 to meet his stated monthly expenses of $3,500, and respondent has a gross monthly income (if she is able to find a job) of $6,649 ($1,978 + $4,671) to meet her monthly expenses of $5,000. The findings are sufficient to support the spousal maintenance award of $3,500.

Appellant also argues that the award is erroneous because it "seemingly does not take into consideration at all the rehabilitative ability of respondent, or a corresponding obligation on [her] part, to become occupationally rehabilitated." But the award is based on respondent's getting a full-time job at the salary she is now capable of earning and also on her having physical custody of the children. Appellant argues that respondent could have a monthly income of $2,860 instead of $1,978 "if [she] simply increased her annual income to the [level] found by her vocational expert." But both the spousal maintenance and the child support awards are based on the fact that respondent will have physical custody of the children and the hope that she will be working full-time; "simply increasing her income" would require a considerable outlay of both time and money.[4]

The district court's findings related to the amount of the maintenance award are not clearly erroneous.

**Affirmed.**

[4] Moreover, if and when respondent is successful in acquiring qualifications and increasing her earnings, appellant may move for modification of the maintenance award. *See* Minn. Stat. § 518.552, subd. 3 (when need for permanent maintenance is uncertain, district court shall order it, leaving the order open for later modification).