STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1411

In re the Matter of:
James Johnston Stone, petitioner,
Appellant,

vs.

Janet Boykin Stone,
Respondent.

Filed April 29, 2013
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge

Hennepin County District Court
File No. 27-FA-10-3436

Denis E. Grande, Susan A. Daudelin, Mackall Crounse & Moore, PLC, Minneapolis, Minnesota (for appellant)

Gregory R. Solum, Christine Schmidt, Edina, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

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

HALBROOKS, Judge

Appellant challenges the district court's ruling that he pay respondent $2,510 per month in spousal maintenance until the younger of their children turns 18, arguing that neither the amount nor the duration of maintenance is supported by the record. Because

we conclude that the district court did not abuse its discretion by setting the duration of spousal maintenance, we affirm in part. But because the district court included in respondent's reasonable expenses the credit-card payments that appellant was ordered to pay as part of the dissolution property division and the payments on family loans that respondent was ordered to pay, we reverse in part and remand.

FACTS

Appellant James Stone and respondent Janet Stone were married on May 5, 2005. Before the marriage, appellant completed four years of undergraduate training and a medical degree. Respondent had completed a bachelor's degree in studio art with a minor in education. At the time of the marriage, appellant was in his general-surgery residency at the Medical College of Virginia, earning approximately $49,000 per year. During the five years of marriage prior to separating, appellant's annual income ranged from approximately $40,000 to $85,000. Respondent earned $15,410 in 2005, primarily working in retail. After their first child was born in December 2005, respondent stopped working outside of the home for the remainder of the marriage. Their second child was born in February 2008.

The parties moved in late 2008 so that appellant could pursue a specialty in pancreatic transplants at the University of Minnesota. They separated in February 2010, and appellant petitioned for dissolution in April 2010. At that time, appellant's annual income was approximately $54,000, or $4,500 per month. Soon after the separation, both parties relocated to Virginia. Respondent began working as a childcare provider, earning approximately $2,223 a month, and appellant took a position as a general surgeon,

earning a $250,000 salary. Although the parties had not carried any credit-card debt during their marriage, both parties accrued significant debt during their separation in the form of credit-card debt and loans from their families. This debt was used largely for attorney fees, but also for living and travel expenses.

The district court held a one-day trial, focusing primarily on the issue of spousal maintenance. Respondent requested $5,000 per month in temporary maintenance, while appellant argued that spousal maintenance was inappropriate. Respondent submitted two proposed budgets: one for $5,001, and one for $6,494. The larger budget took into account the cost of renting a house with a yard and separate bedrooms for each child. The parties agreed that respondent's apartment at the time of the proceedings did not meet the marital standard of living, but disagreed on an appropriate housing budget. Appellant testified that he was able to rent a four-bedroom house with a yard near the school that their children would attend for $1,525 per month. Respondent's proposed budget included $2,100 in rent, but she conceded at trial that appellant's living circumstances were "reasonable" and agreed that she could provide a similar home for the children on a monthly rental budget of $1,500-$1,600.

The district court ordered appellant to pay $2,250 per month in temporary spousal maintenance until the earliest of the following: death of either appellant or respondent, remarriage of respondent, last child reaches the age of 18 years, or further order of the district court. At the time of the judgment, the children were ages 3 and 5.

The district court stated that the award was equitable and fair "considering the standard of living established during the marriage, the duration of the marriage, and

[r]espondent's contributions as homemaker while [appellant] completed training in his specialty." It noted that "[respondent's] time as a homemaker enabled [appellant] to complete his medical training and specialty training, at least in part, and it is fair and reasonable that she receive some benefits as a result." It concluded that "[a]lthough the parties were married for only six years" the temporary award "is fair and reasonable to provide for a standard of living for [respondent] and the children while in her care."

The district court also awarded respondent $1,527 per month in child support, based on each parent having 50% parenting time. Finally, the district court divided the marital debts and property. It ordered the parties to pay their own credit-card debt and family loans, as well as their own attorney and expert fees and costs. But "[i]n lieu of an equalization payment," it ordered appellant to pay off the balance on respondent's three credit cards.

Appellant moved for a new trial or amended findings on the ground that the district court erred in awarding spousal maintenance. He argued that (1) respondent's budget included several inappropriate or overstated expenses, (2) the district court improperly calculated child support, (3) the district court improperly credited respondent for her role while appellant was completing medical training, and (4) the duration of maintenance was inappropriate given the length of the marriage. Respondent filed a responsive motion, conceding that child support was improperly calculated, but arguing that the maintenance award was appropriate.

The district court issued an amended judgment and decree, denying appellant's motions and granting respondent's motions in part. The district court recalculated the

amount of spousal maintenance to be $2,510 per month and the amount of child support to be $1,267 per month. The district court accepted respondent's proposed budget with the exception of the cost of health care for the children (item reduced from $337 per month to $56 per month for respondent only), 90% of respondent's proposed childcare costs (item reduced from $800 per month to $80 per month) and $10 for renter's insurance. The district court specifically found that respondent's reasonable proposed budget was $5,483 per month.[1] This appeal follows.

D E C I S I O N

Appellant argues that the record does not support a maintenance award, or in the alternative, that the district court erred in calculating the duration and amount of maintenance. This court's 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, 202 n.3 (Minn. 1997) (quotation omitted). A factual finding is clearly erroneous when, after careful review of the record, we are "left with the definite and firm conviction that a mistake has been made." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (quotation omitted).

A district court may grant an award of spousal maintenance if it finds that one of the divorcing spouses 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

[1] $6,494 proposed budget - $1,011 items excluded = $5,483.

> 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 (2012). An award of spousal maintenance "shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors." *Id.*, subd. 2 (2012). The purpose of the 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." *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quotation omitted).

Relevant factors include the ability of the spouse seeking maintenance to provide for his or her needs independently, the age and health of the recipient spouse, the standard of living established during the marriage, the length of the marriage, the contribution of a homemaker, and the resources of the spouse from whom maintenance is sought. Minn. Stat. § 518.552, subd. 2. No factor is dispositive, and the supreme court has cautioned 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.

I. Did the district court abuse its discretion in setting the duration of spousal maintenance?

Appellant argues that the district court abused its discretion by awarding up to 14 years of temporary spousal maintenance based on the relatively short duration of the marriage and the facts that respondent is young and healthy and is earning more money than she earned prior to or during the marriage. We will reverse the district court's award of maintenance only if its findings are not supported by the record, or if the court improperly applied the law.

Although the duration of the maintenance award is long compared to the length of the marriage, it is not unsupported by the evidence. The marital standard of living varied during the five years of the parties' marriage prior to separation as appellant completed specialty training, when he earned an average of approximately $58,000 annually. At the time of trial, appellant had completed this training and found employment as a general surgeon earning $250,000 annually. Respondent, who spent most of the marriage at home with the children, was earning approximately $25,000 per year.

The district court concluded that respondent "lacks sufficient property to provide for her reasonable needs with the children." It noted that the parties were married for only six years at the time of dissolution, but found that the maintenance award was equitable and fair "considering the standard of living established during the marriage, the duration of the marriage, and [r]espondent's contributions as homemaker while [appellant] completed training in his specialty."

Appellant's reliance on *Dobrin* is misplaced, given the "unique factual and procedural context" of that case. 569 N.W.2d at 200. In *Dobrin*, the supreme court determined that the record did not support the district court's award of permanent maintenance on remand following a marriage of less than three years. *Id.* at 200, 203. Because *Dobrin* did not address the appropriate length of a temporary award, and because "each marital dissolution proceeding . . . [must] center[] upon the individualized facts and circumstances of the parties," it does not provide useful guidance here. *See id.* at 201.

Given the district court's emphasis on allowing respondent to provide a standard of living for her children that mirrors the marital standard of living, tying the length of the spousal maintenance award to the time that the parties' children are minors is not an abuse of discretion. We therefore affirm the district court's determination of the duration of the maintenance award.

II. Did the district court abuse its discretion in setting the amount of spousal maintenance?

Appellant argues that the district court abused its discretion by including in respondent's reasonable monthly expenses (1) payments on credit cards that appellant was ordered to pay in full as part of the property division, (2) payments on respondent's family loans that she was ordered to pay, and (3) a housing rental payment that exceeds the marital standard of living. Appellant also contends that when the district court reduced respondent's budget, it did not take into account all of the improper expenses. Without the inclusion of these expenses, appellant argues that respondent would be able to meet her reasonable monthly expenses without spousal maintenance.

"[T]he support to which a divorced party is entitled is not simply that which will supply her with the bare necessities of life. Rather, 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 v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009) (citation and quotation omitted). On review, we examine the district court's findings to determine if they are supported by the record and will reverse if we are "left with the definite and firm conviction that a mistake has been made." *Prahl*, 627 N.W.2d at 702 (quotation omitted).

A. Credit-Card Payments

Respondent's budgeted expenses include $300 per month for credit-card payments. The district court found that, at the time of the dissolution, respondent owed nearly $7,000 on three separate credit cards. The district court ordered appellant to pay the balance due on all three cards "[i]n lieu of an equalization payment." Respondent concedes that it was clear error for the district court to award $300 per month in credit-card payments that do not exist. Because this portion of the maintenance award is unsupported by the record, the district court clearly erred by including credit-card payments in respondent's reasonable expenses. We therefore reverse the district court's decision to include this expense in respondent's monthly budget.

B. Payments on Family Loans

At the time of the initial case-management conference, the parties had $6,225 in marital debt, which included $4,500 in loans from respondent's family. By the time the judgment was filed, both parties had incurred significant additional debt. The district

court found that respondent had incurred approximately $50,000 in loans from her family, and appellant had incurred $55,000 in loans from his family. Both parties testified that they used these loans for attorney fees, travel costs, taxes, and living expenses. The district court specifically found that the parties were responsible for repaying their own family loans and their own attorney fees.

Appellant argues that the district court erred by including $650 in loan repayment when calculating respondent's reasonable monthly expenses because "the [district court] is effectively requiring [appellant] to pay the loans that were allocated to [respondent] for payment, and thereby the equitable division of the marital estate is defeated." Appellant also asserts that the district court "effectively ordered [appellant] to pay [respondent's] attorneys fees, in contradiction of its order regarding attorney fees and without any consideration of the required statutory factors in Minn. Stat. § 518.14."

We agree that the inclusion of this item in respondent's reasonable monthly expenses is inconsistent with the dissolution property and debt division. The district court specifically found that the parties would be responsible for their own debts to their families and their attorney fees. Therefore, the district court abused its discretion by including these same payments in respondent's reasonable monthly expenses. We therefore reverse the district court's decision to include this item in respondent's monthly budget.

C. Award of Rental Payment

The district court calculated the amount of the maintenance award based on the greater of respondent's two budgets. The difference between the budgets was the rental

cost of a three-bedroom house rather than the two-bedroom apartment that respondent was renting during the dissolution proceedings. Respondent estimated that she could rent a three-bedroom, 2,000-square foot house for $2,100 per month and that doing so would increase her total expenses by $1,493.[2] Appellant argues that the examples of rental homes available for $2,100 exceed the marital standard of living and that respondent could find an appropriate rental property for $1,525, as he has done. Appellant also argues that it is improper to award maintenance based on a hypothetical expense.

The record reflects that the parties' home in Minneapolis was approximately 1,400 square feet, with three bedrooms and a yard. The mortgage payments were approximately $1,670 per month. Appellant testified that he is currently renting a four-bedroom, 1,800-1,900 square foot home in Virginia near the school the children will attend for $1,525 per month. Appellant stated that this was one of the most expensive houses he considered renting. Respondent conceded that this living arrangement is reasonable.

The parties agree that respondent's two-bedroom apartment that she was renting at the time of the dissolution does not reflect the marital standard of living. But there is nothing in the record to support why the larger, more expensive examples of rental homes presented by respondent reflect the marital standard of living or why a $2,100 housing budget would be equitable under the circumstances. The record as it stands does not support the finding that respondent's reasonable monthly rent should be $575 more than

[2] Respondent's rent increases by $1,123, renter's insurance by $150, home maintenance expenses by $100, and utilities payments by $120.

appellant is paying. We therefore remand for recalculation of this element of respondent's budget or for further fact-finding.

D. Failure to Explain Amount Reduced

Appellant asserts that the district court should have eliminated $2,856 from respondent's proposed budget as follows: $281 for the children's medical and dental expenses, $800 for childcare, $300 for credit-card payments, $650 for payments on family loans, $575 for anticipated rental expenses, $150 for homeowner's insurance, and $100 for home maintenance. Appellant argues that if the district court had removed these items, respondent would no longer have any need for spousal maintenance.

The amended judgment specifically states that the district court reduced respondent's proposed $6,494 budget to remove the cost of the children's medical and dental expenses, 90% of childcare costs, and $10 for renter's insurance. These costs reduced the budget by $1,011 to the $5,483 that the court found reasonable. The record does not support appellant's argument that the district court failed to explain which expenses it was reducing.

III. Summary

The district court abused its discretion by including in respondent's reasonable monthly expenses a $300 payment for credit-card debt after appellant complied with the district court's order at the time of the dissolution to pay respondent's credit-card debt in full, $650 for payments on respondent's family loans that she was ordered in the dissolution judgment to pay, and by allocating respondent, without explanation, $575 more in rental expenses than was allocated to appellant. Further, examination of the

record leaves us with the firm conviction that a mistake has been made concerning the reduction in renter's insurance. Respondent's original and anticipated budgets both include $10 for renter's insurance. The amended budget includes $150 on a line marked "homeowner's insurance" with the word "renter's" handwritten next to it. In the amended judgment, the district court excluded "the renter's insurance cost of $10 per month . . . because it is already included in the budget." Since both of respondent's budgets assume that she will be renting, and not owning, housing, the district court should have reduced respondent's budget by $150 per month rather than $10.

On remand, the district court should recalculate respondent's maintenance award by reducing her reasonable monthly expenses by $650 for repayment of her family loans, $300 for monthly credit-card payments, and $150 for homeowner's insurance. Because respondent is renting housing, it is proper to include $10 per month for renter's insurance in her reasonable monthly budget. And we direct the district court to reexamine respondent's reasonable monthly housing expense as this record does not support the district court's allowance of $2,100 per month. Whether or not the record should be reopened on remand is subject to the discretion of the district court.

Affirmed in part, reversed in part, and remanded.