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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2378**

In re the Marriage of:
Samuel Joseph Danna, petitioner,
Appellant,

vs.

Jori Lynn Danna,
Respondent.

**Filed November 25, 2008
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

Ramsey County District Court
File No. 62-F3-05-001811

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Considered and decided by Hudson, Presiding Judge; Bjorkman, Judge; and Huspeni, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

This is an appeal from a judgment and decree ordering appellant to pay permanent spousal maintenance to respondent in the amount of \$2,335 per month. Because the district court abused its discretion in awarding respondent permanent spousal maintenance, and because the district court's findings regarding appellant's income are clearly erroneous, we reverse and remand to the district for the requisite findings on these issues.

FACTS

Appellant Samuel Joseph Danna and respondent Jori Lynn Danna were married in April 1986 and separated in September 2005. Appellant is an equal shareholder with his brother in Danna Agency, Inc., a C corporation registered in Minnesota. Respondent worked as a licensed insurance agent for Danna Agency. Respondent stopped working at the agency in 2002 and has not worked since that time.

After appellant petitioned to dissolve the marriage, the parties resolved the issues relating to custody of their remaining minor child, parenting time, child support, personal and real property distribution, and debt distribution. The parties also agreed that appellant would pay respondent temporary spousal maintenance of \$1,200 per month. The parties submitted the remaining issues of the amount and duration of prospective spousal maintenance and the remaining property division to the district court in a one-half day trial on February 26, 2007.

On June 1, 2007, the district court issued its initial findings of fact, conclusions of law, order for judgment, and judgment and decree.¹ Noting respondent's testimony regarding her experience as an insurance agent and desire to return to work, the district court found respondent could become self-supporting without retraining or education. The district court found respondent could return to employment as long as she remains sober, and stated, in the memorandum accompanying its findings, that the parties both expected respondent to return to work as an insurance agent once she regained her license. The district court reserved the issue of spousal maintenance because "there [was] insufficient evidence to support the conclusion as to the length of time that [respondent] may need to become self-supporting *after* she has regained licensure as an insurance agent."

With respect to the parties' monthly income and expenses, the district court found appellant had net income of \$5,500 and expenses (excluding temporary spousal maintenance) of \$4,734. The district court noted respondent's claimed monthly expenses of approximately \$3,700 but made no findings on this issue because respondent "provided no information as to her present monthly living expenses and when she would be expected to incur expenses associated with independent living." The district court directed appellant to pay respondent \$750 per month toward the reduction of the remaining property division balance.

¹ On June 12, 2007, the district court issued a first amended judgment and decree comprised of the same findings of fact and conclusions of law, but adding the appropriate language dissolving the parties' marriage that the district court did not include in the initial decree.

On July 18, 2007, respondent moved for amended findings of fact or a new trial, asking the district court to modify several of its findings. Respondent asked the district court to award permanent spousal maintenance in the amount of \$3,750 per month. Respondent submitted an affidavit indicating her current monthly expenses totaled \$2,155. However, because she continued to live with her father, she also claimed many prospective expenses. On August 8, 2007, the district court heard argument from both parties' counsel on the motion. Other than respondent's written submission of her monthly expenses, the parties did not submit additional evidence.

On November 2, 2007, the district court issued an order modifying the award of spousal maintenance, but otherwise denying respondent's motion. The district court awarded respondent permanent spousal maintenance in the amount of \$2,335 per month retroactive to June 18, 2007. The district court affirmed its previous finding that appellant has monthly income of \$5,550, monthly expenses of \$4,534, but went on to find appellant's ownership status in the Danna Agency provided him access to corporate assets to meet part of his personal monthly expenses. The district court did not itemize what assets may be available to appellant or explain whether it was imputing income to appellant in the amount of the business expenses. The district court concluded appellant is able to pay spousal maintenance in the amount of \$2,335 per month. On December 5, 2007, the district court incorporated this order in its second amended findings of fact, conclusions of law, order for judgment, and judgment and decree.

Appellant commenced this appeal on December 18, 2007. Respondent filed a timely notice of review challenging the district court's limitation of the spousal maintenance award to \$2,335.

D E C I S I O N

At issue here are both the duration and amount of the spousal-maintenance award.

Generally,

[a] district court's maintenance award will not be reversed unless there has been a clear abuse of discretion. Minn. Stat. § 518.552, subd. 2 (200[6]), sets forth factors to be considered when determining the amount and duration of a maintenance award. No single factor is dispositive and each case must be determined on its own facts. The basic consideration is the financial need of the spouse receiving the maintenance, and the ability to meet that need balanced against the financial condition of the spouse providing that maintenance.

Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous. Factual findings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.

McConnell v. McConnell, 710 N.W.2d 583, 585 (Minn. App. 2006) (internal citations and quotations omitted).

I.

Appellant first challenges the district court's award of spousal maintenance on a permanent basis. The district court has "wide discretion" to determine the duration of a spousal-maintenance obligation. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). But "[w]here 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 (2006). The statute “requires that a [district] court order permanent maintenance if the court is uncertain that the spouse seeking maintenance can ever become self-supporting.” *Aaker v. Aaker*, 447 N.W.2d 607, 611 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990).

Here, the district court’s decision to award respondent permanent maintenance is not supported by the evidence and is based on factual findings that are internally inconsistent. In its initial findings following trial, the district court found that while respondent was then unemployed, she could regain her insurance agent license and become self-supporting without retraining. The district court expressly determined that both parties expected respondent “to have a productive career in the insurance sales business once she has received certification and re-licensing” following a one-week class. The district court reserved the issue of maintenance because there was insufficient evidence as to how long it would take respondent to support herself after she completed this short class. While the district court acknowledged respondent’s alcohol abuse negatively impacts her ability to work and that, since January 2002, she made “only minimal attempts to obtain full-time employment,” the district court found that “[respondent] was gainfully employed prior to January of 2002 and can once again become employed full-time so long as she remains sober.”

Without considering any additional evidence, the district court reversed its position in response to respondent’s motion, concluding there was uncertainty as to whether respondent would rehabilitate at all. Despite the fact that the district court

explicitly incorporated its initial findings (including the finding respondent could become self-supporting), the second amended findings state that respondent is currently unable to support herself at the parties' former standard of living and that the district court is "uncertain about the necessity of a permanent spousal maintenance award." Yet, the second amended findings also include the factual determinations that: (1) it is unclear whether respondent seeks temporary or permanent maintenance, (2) there does not appear to be a need for retraining or re-education for respondent to become self-supporting, and (3) respondent can become employed full-time once again if she remains sober. These findings are internally inconsistent.

The second amended findings and decree also contain findings that are not supported by the evidence. For example, the district court found that "[respondent] testified that she is working to acquire a business degree so that she can become licensed as an insurance agent. She is unable to provide the court with any timeframe as to when she might complete those studies and become self-supporting." However, respondent testified that she wanted to obtain a business degree, which could take two years, but that she could get relicensed as an insurance agent by simply paying \$700 and attending a one-week class. Thus, not only are the district court's second amended findings internally inconsistent regarding whether respondent will become self-supporting, but one of the critical findings made in the second amended findings is at odds with respondent's own testimony on the subject.

Respondent concedes that the second amended findings include some inconsistencies, but argues the new findings regarding spousal maintenance are meant to

control the general findings made in the first amended judgment and decree. Based on our review of the court's second amended judgment and decree in its totality, we disagree. The inconsistencies that exist, not only between the first and second amended findings but within the second amended findings themselves, render the finding regarding the need for permanent maintenance clearly erroneous. The district court tried this issue in February 2007, concluding the issue should be reserved due, in part, to the lack of evidence concerning how long it would take respondent to become self-supporting after she regained her insurance license. Nine months later, without taking additional testimony or other evidence on that point, the district court switched gears completely. The district court apparently reached its contrary conclusion by relying heavily on the parties' initial agreement concerning temporary maintenance as indicative of respondent's need. The inconsistencies and lack of evidentiary support render these findings clearly erroneous.

Moreover, the district court's amended finding that respondent requires permanent maintenance has a wide-ranging impact. If the award of permanent maintenance stands, in any subsequent proceeding to modify maintenance appellant would bear the burden of proof to demonstrate a substantial change in circumstances warranting a reduction in his maintenance obligation. *See Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (addressing shift in burden of proof regarding change in circumstances). Indeed, we held in *Schroeder v. Schroeder*, 405 N.W.2d 267, 269 (Minn. App. 1987), that a permanent-maintenance recipient who worked part-time had no obligation to undertake full-time employment.

While we acknowledge the statutory requirement that uncertainty be resolved in favor of a permanent award, the significance of the burden-shifting that occurs upon such a finding mandates that this decision be fully supported by the evidence in the first instance. To ensure clarity in future modification proceedings, the district court's findings must identify the financial and other circumstances under which a spousal maintenance award is made, whether there is doubt as to respondent's ability to become self-supporting, and the basis for any assumptions that respondent will become self-sufficient. Without such findings, the "baseline circumstances" against which any future change is to be measured are left unclear, which may "unnecessarily complicat[e]" modification proceedings. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997); *see also Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (stating, in the context of a child-support order, that unless "a support order provides a baseline for future modification motions by reciting the parties' then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified") (citing *Hecker*, 568 N.W.2d at 709). The requisite specific and complete findings will direct the parties regarding the extent, if any, to which respondent is obligated to rehabilitate.

We reverse the court's award of permanent maintenance and remand for adequate findings regarding respondent's ability to become self-supporting in the future, and for the duration of respondent's maintenance award to be re-evaluated in light of those

findings. The district court may choose to reopen the hearing and take further evidence to resolve these questions.

II.

Appellant next challenges the amount of spousal maintenance, specifically, his ability to pay that amount. “A district court’s determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous.” *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). A maintenance obligor’s ability to pay maintenance can be determined by examining the difference between the obligor’s net monthly income and his or her reasonable monthly expenses. *See* Minn. Stat. § 518.552, subd. 2(g) (2006) (stating the district court must consider “all relevant factors including,” among other things, “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance”); *see also Zagar v. Zagar*, 396 N.W.2d 98, 101 (Minn. App. 1986) (reciting general prohibition on the setting of maintenance at an amount requiring the obligor to liquidate assets to pay maintenance).

Here, the district court found appellant’s net monthly income from employment and his reasonable monthly expenses were \$5,550 and \$4,543, respectively. The district court also found that Danna Agency paid an average of \$2,573.25 per month for appellant’s “discretionary expenses” such as “auto expense[s], meals and entertainment, travel, and charitable contributions.” Appellant disputes the district court’s apparent imputation of this amount to him as income for maintenance purposes. But while the district court found that the agency paid these expenses on appellant’s behalf, it did not

adjust the finding of appellant's net monthly income accordingly. Evidence presented by respondent's expert, on which the \$2,573.25 figure is based, suggests that only half of this amount is attributed to appellant for tax purposes.²

During his trial testimony, appellant explicitly denied taking any money "under the table" from the agency. He asserts that because the agency paid certain expenses, he did not list those business-paid expenses in his claimed monthly expenses for maintenance purposes. Appellant also argues that the record does not show that these expenditures by the agency on his behalf are actually available to him as income. The district court did not address these arguments or make express findings as to whether appellant was overstating his personal expenses or understating his income. Rather, the district court simply found that appellant had the ability to pay respondent monthly maintenance of \$2,335.

Absent clear findings as to appellant's net monthly income and expenses, we cannot review the district court's \$2,335 maintenance award. We therefore remand this issue to the district court to make adequate findings on these matters and to reevaluate its determination of appellant's ability to pay maintenance in light of those findings. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding maintenance modification where the district court's findings failed to address the parties' expenses and obligor's ability to pay maintenance); *Rapacke v. Rapacke*, 442 N.W.2d 340, 343-44 (Minn. App. 1989) (reversing and remanding a maintenance award due to lack of findings on a party's needs and income).

² This assertion seems consistent with appellant's tax returns.

III.

By notice of review, respondent challenges the second amended finding regarding her need for maintenance. *See Stich*, 435 N.W.2d at 53 (noting that determination of a party's expenses is a "finding [of fact]"). A maintenance recipient's "needs are often determined by considering her income and available resources versus her reasonable monthly expenses." *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000); *see also* Minn. Stat. § 518.552, subd. 2(a) (2006) (stating that the district court must consider "all relevant factors including," among other things, "the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently").

Respondent alleges the district court erred in not including certain expenses related to the maintenance of a home, even though she was then living with her father, because those expenses reflected her marital standard of living. *See Chamberlain v. Chamberlain*, 615 N.W.2d 405, 409-12 (Minn. App. 2000) (discussing the importance of marital standard of living in determining a maintenance recipient's reasonable monthly expenses), *review denied* (Minn. Oct. 25, 2000). The district court properly refused to base respondent's maintenance award on those speculative expenses. The district court's finding is consistent with the parties' initial stipulation that appellant's maintenance obligation would be "subject to future modification by either party" when respondent's living arrangements changed.

Affirmed in part, reversed in part, and remanded.