STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2068

In re the Marriage of:

Julie M. Steen, petitioner,
Respondent,

vs.

Keven L. Steen,
Appellant.

Filed August 21, 2017
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-FA-15-2305

Mark A. Carter, Carter Legal Services, P.A., Minnetonka, Minnesota (for respondent)

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Smith, John, 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

SMITH, TRACY M., Judge

In this marriage-dissolution appeal, appellant-husband Keven Steen argues that the district court abused its discretion by (1) granting respondent-wife Julie Steen her portion of appellant's military pension retroactively to the date of the initial case-management conference; (2) making appellant responsible for half of respondent's student-loan debt; and (3) overstating his income and respondent's need for purposes of calculating spousal maintenance. Because the district court did not abuse its discretion in awarding respondent her share of the pension retroactively or in dividing the student-loan debt between the parties, we affirm in part. But because the district court did not make adequate factual findings on appellant's available income, we reverse the award of spousal maintenance and remand to the district court for further findings.

FACTS

Appellant and respondent married in 1988. They commenced this marriage-dissolution action in February 2015.

For most of the marriage, respondent did not work outside of the home; instead, the parties agreed that respondent would primarily care for the children and the household. Around 2008, after the children reached age 18, respondent took out a student loan and enrolled in an associate-degree program. She finished school and became certified as a medical assistant in 2010. She has been employed full time since then in that career.

Appellant retired from the U.S. Army in 1998 and has since received a military pension in the amount of $2,225 per month. Of that amount, the parties agree that

respondent is entitled to $480.86, which represents half of the portion of the pension that was earned during the marriage.

At the case-management conference in July 2015, appellant agreed to pay respondent $1,000 per month in temporary maintenance until the case was resolved.

An evidentiary hearing was held in May 2016 on disputed issues. While the parties agreed that appellant would pay permanent spousal maintenance, they disagreed as to the amount. And while the parties stipulated to the division of most of their property, they disagreed as to whether respondent was entitled to be paid her share of the pension for the months between the May 2015 valuation date and the hearing. They also disagreed on the allocation of respondent's student-loan debt.

The district court dissolved the parties' marriage, ordered appellant to pay respondent her share of the pension dating back to the valuation date, made each party responsible for half of the remaining balance of the student-loan debt, and awarded respondent $2,000 per month in permanent maintenance.

D E C I S I O N

I. The district court did not abuse its discretion in awarding respondent her share of the pension beginning on the valuation date.

Appellant argues that the district court erred in awarding respondent her $480.86 monthly share of the pension from the May 2015 valuation date through the May 2016 evidentiary hearing. Appellant asserts that the parties agreed that the $1,000 monthly payments he made to respondent between July 2015 and the evidentiary hearing would come from the pension, so those payments satisfied respondent's interest in the pension for

those months. Respondent argues that the district court correctly treated the $1,000 payments as temporary spousal maintenance having no effect on her property interest in the pension.

The district court has broad discretion with respect to the division of property in cases involving the dissolution of marriages. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We will uphold the district court's determinations unless they are clearly erroneous. *Id.*

Appellant's argument that the parties understood the temporary payments to include respondent's share of the pension is unsupported by the record. At the case-management conference on July 9, 2015, when discussing respondent's request for spousal maintenance, appellant, who was not yet represented by counsel, stated, "I don't have any problem splitting my military pension, which is roughly a thousand dollars a month." The district court explained that, because the pension accrued during the marriage, respondent "would get it anyways. That's not spousal support." Appellant insisted that, if respondent received $1,000 per month from the pension, it would count as a maintenance payment by appellant because respondent was not eligible to receive pension payments directly from the military under federal law. The district court again explained that the"[p]ension that was accrued during the marriage is [a] marital asset [and] will be divided between the parties," meaning that appellant could not use respondent's share of the pension to make maintenance payments to respondent. Toward the end of that conference, respondent's attorney proposed that appellant pay $1,000 per month "as temporary maintenance" until the case could be resolved. Appellant agreed to pay $1,000 per month as temporary maintenance.

The idea that the $1,000 would eliminate respondent's interest in the pension for those months was not mentioned during this conversation about temporary maintenance.

Although appellant initially believed that he could use respondent's share of the pension to pay temporary maintenance, the district court immediately corrected that misunderstanding. *See* 10 U.S.C. § 1408(c)(1). The district court stated unequivocally that the marital share of the pension would be divided among the parties as marital property and that appellant's giving respondent her own share of the pension would not count as a maintenance payment. When appellant agreed to pay respondent $1,000 per month, both the district court and respondent's attorney expressly referred to it as "temporary maintenance" and made no reference to the pension.

We therefore conclude that the district court did not abuse its discretion in ordering appellant to pay respondent her half of the marital share of the pension dating back to the valuation date.

II. The district court did not abuse its discretion in dividing the student-loan debt.

Appellant challenges the district court's decision to make appellant responsible for half of respondent's student-loan debt. He argues that this division is unfair because he voluntarily assumed responsibility for a shared tax debt, making his total marital-debt obligation greater than respondent's, and because the student loan is within respondent's control, which means respondent has the ability to increase appellant's obligation by delaying repayment and letting interest accrue.

We review the district court's determination for an abuse of discretion. *Rutten*, 347 N.W.2d at 50.

The district court made each party responsible for half of the remaining balance of the debt on the student loan that respondent took out during the marriage. This determination is reasonable in light of the district court's findings that "the parties agreed that [respondent] would be a stay-at-home mother," that this arrangement caused respondent to lose "earnings, seniority, retirement benefits, and other employment opportunities" for 18 years, and that respondent now "earns much less than" appellant. These findings are supported by the record. Respondent testified that she believed appellant should pay the entire remaining balance of the student loan because the parties had a "deal" that she would stay at home, raise their children, and support appellant's career, and then go back to school to pursue her own career after the youngest child reached adulthood. Appellant does not dispute respondent's account of this arrangement. We conclude that the district court did not abuse its discretion in dividing the student-loan debt.

III. The district court abused its discretion in awarding spousal maintenance without making sufficient findings on the parties' available income.

Appellant challenges the maintenance award, arguing that the district court abused its discretion by overestimating both appellant's ability to pay and respondent's need.

We review awards of spousal maintenance for an abuse of discretion. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). District courts have broad discretion in decisions regarding spousal maintenance. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009). A district court abuses its discretion in determining spousal maintenance if it makes findings unsupported by the record or improperly applies the law. *Id.* We review legal questions de novo and review factual findings for clear error. *Id.*

A district court may award spousal maintenance "as the court deems just . . . after considering all relevant factors," including the eight factors listed in Minn. Stat. § 518.552, subd. 2 (2016). Here, the district court made written findings on each statutory factor. Appellant specifically challenges the district court's findings on factor (g), which refers to appellant's ability to meet his own needs while also meeting the needs of the spouse seeking maintenance, and its findings on the amount of maintenance respondent needs, which is informed by factors (a) through (f).

Even discretionary decisions that fall within statutory limits must be supported by factual findings. *See Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009) (remanding for the district court to make factual findings supporting its choice of effective date for modification of maintenance, which is committed to the district court's discretion). Here, the district court made a finding of appellant's gross annual income from employment and a finding of his total reasonable monthly budget. But the district court did not make findings on appellant's available income and ability to pay after meeting his needs, which are the appropriate inquiries. *See* Minn. Stat. § 518.552, subd. 2(g) (considering "the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance"); *see Lee*, 775 N.W.2d at 637-42 (discussing which sources of income may be characterized as income available for maintenance payments). Importantly, the district court made no finding of appellant's net income, which is necessary to determine his ability to pay maintenance. *See Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985) ("In order to determine ability to pay, the [district]

court must make a determination of the payor spouse's net or take-home pay."), *review denied* (Minn. July 26, 1985).

Minnesota cases make it clear that support orders should include findings on the parties' circumstances at the time support is set. *See Maschoff v. Leiding*, 696 N.W.2d 834, 840-41 (Minn. App. 2005) (directing courts to make findings of fact addressing the parties' existing circumstances in child-support orders). Such findings serve the purpose not only of informing the district court's exercise of its discretion in the initial support order, but also of establishing baseline facts for use in any future motions for modification. *Id.* at 840. It is necessary to establish baseline facts in the initial support order because any modification of a support order requires consideration of whether there has been a substantial change in circumstances rendering an existing support obligation unreasonable and unfair, which requires comparing the parties' circumstances at the time support was set with their circumstances at time of the motion to modify. *Id.*; *see Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (making a similar observation in the context of spousal maintenance). If the support order lacks findings on the parties' circumstances at the time, "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." *Maschoff*, 696 N.W.2d at 840.

Based on the factual findings before us, we cannot adequately review whether the record supports the district court's determinations regarding appellant's ability to pay $2,000 per month in maintenance. Accordingly, we reverse the maintenance award and

remand for the district court to make findings on appellant's available income under Minn. Stat. § 518.552, subd. 2(g). The district court shall have discretion to reopen the record on remand.

Affirmed in part, reversed in part, and remanded.