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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1317**

In re the Marriage of:
Julie Lynn Duesenberg, petitioner,
Respondent,

vs.

Michael James Duesenberg,
Appellant.

**Filed July 23, 2018
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Ramsey County District Court
File No. 62-FA-16-33

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respondent)

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

UNPUBLISHED OPINION

JESSON, Judge

After a 23-year marriage, appellant-husband and respondent-wife dissolved their
marriage. The couple resolved most issues in the dissolution except for one: spousal
maintenance. Following trial, the district court awarded wife permanent spousal

maintenance, which husband now challenges. First, husband argues the district court abused its discretion in its calculation of wife's reasonable monthly expenses—specifically, the court's determination of wife's monthly retirement savings and charitable donations. Second, husband argues the court abused its discretion by including debt-repayments in wife's reasonable monthly expenses because the court already included these debts when it divided the couple's marital assets and liabilities. In other words, husband argues the district court counted these debts twice.

We affirm the district court's findings and determinations concerning wife's monthly expenses for retirement and charitable donations. But we agree with husband on the issue of debt. We conclude that the district court incorrectly included debt repayments in the spousal-maintenance award. We reverse and remand for a recalculation of the wife's reasonable monthly expenses and leave it within the district court's discretion to reconsider the amount and duration of the spousal-maintenance award. We also leave within the district court's discretion to reconsider if this decision requires a reexamination of wife's request for attorney's fees.

FACTS

The parties, Julie Duesenberg (wife) and Michael Duesenberg (husband), married in 1993. Over the years, the parties built a comfortable middle-class life for themselves. At the time of trial in this case, husband worked as a regional sales manager earning over \$138,000 and wife worked as a nurse earning more than \$72,000. Like many couples, they set their sights on the future by saving for retirement—accumulating about \$275,000 in combined retirement savings by the time the events in this case were set in motion. They

owned a home in White Bear Lake valued at \$285,000 where they raised two children and a dog named Rowdy. They sent their children to public school and donated money to their church, the Humane Society, and St. Jude's Children's Fund.

But the relationship frayed, and after more than 23 years of marriage, the parties petitioned for dissolution. They resolved all issues involving their child¹ and the division of assets and liabilities, but left unresolved wife's request for permanent spousal maintenance. The district court conducted a trial on the spousal-maintenance issue to determine whether wife's income was sufficient to cover her reasonable monthly needs. To determine each parties' reasonable needs, husband and wife submitted estimated monthly budgets to the district court. Important to this case were two line-items in each party's budget underpinning the district court's findings: retirement savings and charitable contributions.

On the question of retirement savings, husband estimated that he saves \$600 each month for retirement² while wife estimated that her own contribution was \$505. When asked at trial if she currently participated in her employer's 401(k) savings plan, wife replied that she could not afford to after paying her basic living expenses. For charitable contributions, husband estimated his monthly contribution was \$250 to his church while wife indicated her contribution was \$20 whenever she attended church. The district court found that both parties' monthly expenses for retirement were \$600 and \$250 for charitable contributions, based on the standard of living established during their marriage.

¹ At the time of dissolution, the older of the parties' children was emancipated.

² Husband reached this number by taking 6% of his gross income.

The district court also included \$400 in debt-repayment expenses as part of both parties' monthly expenses. This inclusion was despite the fact that the court had already included debt repayments in its property division of the couples' assets and liabilities. Although husband objected that including this debt in both the property division and monthly expenses was effectively counting the debt twice, the court disagreed because "both parties included this expense in their budget" and wife testified credibly that she incurred debt since the date of separation.

Based on these findings, the district court awarded wife permanent spousal maintenance and included debt repayments as a line-item in the spousal-maintenance award. Husband appeals.

D E C I S I O N

Husband argues that the district court improperly awarded wife permanent spousal maintenance. Specifically, husband claims the court's findings on wife's monthly retirement savings, charitable contributions, and debt repayments are not supported by the evidence. Spousal maintenance should be awarded to a spouse who cannot provide for "reasonable needs" given the standard of living the couple cultivated during their marriage. Minn. Stat. § 518.552, subd. 1(a) (2016). We review a district court's spousal-maintenance decision for an abuse of the court's broad discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses that discretion if its conclusions are clearly erroneous—meaning the district court's factual findings are not supported by the record—or if the court improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 n.3

(Minn. 1997). This court upholds any findings of fact that are not clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

We first address the district court's findings regarding wife's monthly expenses for retirement savings and charitable contributions. Afterwards, we turn to the district court's inclusion of debt repayments in wife's monthly expenses despite including these debts when it divided the marital property.

Charitable donations and retirement savings

Husband first challenges two findings that underpin the district court's spousal-maintenance award. The first finding was that wife's reasonable monthly expense for charitable donations was \$250, and the second finding was that wife's monthly retirement savings amounted to \$600. Husband argues the evidence does not support these two figures—stressing that wife's own testimony contradicted the district court's findings.

Husband is correct that wife has not contributed to her retirement savings in the two years since the couple separated and petitioned for dissolution. But as she explained, this was not due to a lack of interest, but rather, because she was struggling just to make ends meet. At trial, wife was asked why she had not participated in her employer's 401(k) program, and wife said, “[b]ecause between meeting living expenses, I haven't been able to afford to do that right at this time.” Wife was asked if she would like to contribute to retirement. “I would love to,” she replied.

It is wife's intention to save for retirement once her living expenses stabilize because retirement has always been an underlying assumption in the parties' marriage. In other words, wife claims that saving for retirement was a part of the parties' marital standard of

living and should be treated as a singular unit in the spousal-maintenance calculation. We agree. The parties were married for over 23 years and amassed \$277,593 in combined retirement savings. Although the district court noted that there was little evidence shedding light on exactly what the parties' marital standard of living was, it did find that their lifestyle evinced similar amounts of money for both parties' retirement savings. Given husband's estimate of \$600 for his own retirement savings, the district court reasoned that wife is entitled to the same amount.

The same reasoning applies to the district court's decision granting wife the same amount of charitable expenses as husband. Although wife estimated that her charitable giving after separation was approximately \$20 whenever she attended church, the district court found that the parties treated their overall charitable contributions as a whole unit within their marriage—not as discrete expenses based upon spending post-separation. Because husband estimated his contributions at \$250 and the evidence supported that figure, the district court concluded that wife's reasonable expenses should be in harmony with husband's.³

³ We recognize that there may be an unresolved issue in Minnesota law about how to divide marital resources that may have been used by one spouse to a greater degree than the other during the marriage. See 14 Michael P. Boulette *Minnesota Practice* § 10:5 (2017-18 ed. 2017) (suggesting that an “unanswered” question in Minnesota family law involves how to divide a family resource that one spouse utilized “for his benefit or pleasure” more than the other). Assuming this is an unanswered question, it is not presented here. The evidence is that husband and wife's marital standard of living treated retirement savings and charitable contributions as a singular goal shared by their partnership—not as separate expenses left to each other's ability to pay.

While husband claims that the evidence does not support equalizing these figures, the district court was required to take the parties' marital standard of living into account. In that sense, although husband, with a larger income, contributed more toward joint charitable donations, those donations were just that: joint.⁴

In sum, the district court's decisions allowing wife \$600 in retirement savings and \$250 in charitable donations are not clearly erroneous. *Gessner*, 487 N.W.2d at 923. The parties' standard of living demonstrated that both parties saved for retirement and made charitable contributions as a unit during their marriage. The district court's findings treating these monthly expenses in this way when calculating the spousal-maintenance award is within its discretion.

Debt repayments

Husband also argues the district court abused its discretion by including wife's expenses for debt repayments in the spousal-maintenance award when it also included those debts in its initial division of the marital assets and liabilities. We agree. In its division of the couple's assets and liabilities for their stipulated property settlement, the district court calculated the marital debt and assigned a number to each party corresponding to their share of that debt.⁵ But when the district court calculated spousal maintenance, it

⁴ Still, we note that the district court took care to examine the unique features of the parties' marriage rather than making symmetry with every expense. For instance, wife testified that she planned to move to St. Louis in the future and was thinking about buying a townhouse or condominium, but the district court refused to budget for this plan because it was too speculative to be included in wife's reasonable expenses.

⁵ The district court found that husband's share of the marital debt was \$17,429 and wife's was \$12,893.

included that same debt repayment as an expense. Husband objected to this debt in the maintenance award. But the district court disagreed, acknowledging it was double counting the debt but justifying its inclusion because “both parties included [debt repayment] in their budget” and wife had testified credibly that she has incurred debt since the date of separation.

In doing so, the district court erred. The marital debt was already included in the district court’s division of assets and liabilities for the stipulated property settlement—including that same debt in the parties’ expenses counted that debt a second time. The fact that the parties included these debts in their budgets does not justify the double counting, especially because husband asked the district court to remove the debt from its maintenance calculation. For these reasons, the district court’s findings that included debt repayments in parties’ monthly expenses are not supported by the record and are an abuse of discretion. We reverse and remand for a recalculation of the parties’ reasonable monthly expenses.

Remanding on this issue has a ripple effect on the district court’s determination of need-based attorney’s fees. Wife testified at trial that she liquidated her retirement account and received loans from her parents to cover her attorney’s fees and requested need-based attorney’s fees from the court. The decree denied wife’s request because her “budget includes debt repayment,” and with the district court’s spousal-maintenance award, wife “has the ability to pay her attorneys’ fees.” In other words, the district court felt that wife’s attorney’s fees would be covered by the debt expenses in the maintenance award, and a separate award in the decree would be redundant. Because we are reversing on the decision

to include debt expenses in the maintenance award, the district court must reassess whether need-based attorney's fees are warranted in light of the remand.

Given our decision and the district court's recalculation of the spousal-maintenance award without the inclusion of debt repayments, we leave within the district court's discretion whether to reconsider the duration of the maintenance award and whether the record should be reopened on the issue of attorney's fees.

Affirmed in part, reversed in part, and remanded.