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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1436**

In re the Marriage of:
Kurtis Lee Manley, petitioner,
Appellant,

vs.

Sara Anne Manley,
Respondent

**Filed August 20, 2018
Affirmed
Worke, Judge**

Dakota County District Court
File No. 19AV-FA-16-774

Suzanne M. Remington, Edina, Minnesota (for appellant)

Sara Anne Manley, Eagan, Minnesota (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-husband argues that the district court overstated his income for purposes of calculating spousal-maintenance and child-support awards. We affirm.

FACTS

Appellant-husband Kurtis Lee Manley and respondent-wife Sara Anne Manley married in 1996 and separated in 2014. Prior to 2008, husband operated several companies that generated millions of dollars in revenue. Around 2008, these companies “completely crashed.” After the businesses collapsed, husband and wife paid their bills using savings, retirement accounts, and liquidated assets. Husband has approximately \$11 million in judgments against him.

Wife has not been employed outside of the home or earned income since 2010. Around 2011, husband started Hunter Homes, LLC, through which he constructed homes. Hunter Homes was “in [wife’s] name” because of the judgments against husband. Wife was not an employee of Hunter Homes, but “offered [her] advice if [husband] needed something.” Hunter Homes started generating income between 2011 and 2013, but not at the same level as husband’s previous companies. Wife does not know whether Hunter Homes still exists, but she believes that it has not conducted business since 2016.

In March 2016, husband filed a petition for dissolution of marriage. The district court held a court trial at which wife was represented by counsel and husband proceeded pro se. Wife offered evidence of bank statements from 2015 and 2016 for a checking account associated with Hunter Homes. Based on these bank statements, wife calculated that Hunter Homes generated \$465,937.13 in income for husband in 2015 and \$402,158.37 in 2016. Husband testified that his businesses suffered losses from 2013 to 2016 and that he has not generated any income since 2014. Husband testified that a majority of the

deposits into the Hunter Homes checking account were loans from his brother to help get the business “back on track,” including a \$70,000 deposit.

Husband testified that the account statements reflect a \$272,827.46 deposit in June 2016 that was the result of a sale. He explained that he was a one-third owner of that project and that Hunter Homes received \$107,500 for that sale and then distributed the rest to other parties. The account statements reflect a withdrawal of \$182,500 on June 15, 2016. In addition, a 2016 1099-MISC form indicates that The Lincoln Group, Inc. paid Hunter Homes \$107,500.

In its dissolution decree, the district court noted that husband “failed to provide any evidence of his 2014 income” and had testified that he had not filed a 2014 tax return. The district court addressed a 2015 draft tax return for husband, but noted that husband “failed to provide any underlying documents supporting the 2015 tax returns.” The district court also observed that the 2015 draft tax return indicated a prior year net operating loss of \$590,214, which was inconsistent with husband’s testimony concerning his 2014 tax return. The district court discounted husband’s testimony that many of the deposits into the Hunter Homes account in 2015 were reimbursements for business expenses, concluding that his testimony was not credible “in light of the 2015 Hunter Homes, LLC bank statements reflecting actual deposits totaling \$465,937.13 and the 2015 draft income tax return showing \$0 in gross receipts.” The district court noted that although “each deposit may not be a gross receipt, . . . [h]usband, with the burden of proof, failed to reconcile such deposits and provide the [c]ourt with the necessary evidence” to find that \$465,937.13 was not his gross income.

With regard to husband's 2016 income, the district court acknowledged husband's assertions that many of the deposits were reimbursements for business expenses and loans, but noted that husband "failed to provide any documentation" and "failed to provide any evidence supporting business gross receipts." The district court concluded that the only evidence of 2016 gross receipts was the Hunter Homes account statements reflecting total deposits of \$402,158, and the district court adopted that number as husband's 2016 gross income.

The district court took \$402,158 and divided it by 12 to calculate husband's gross monthly income as \$33,513. Based on that calculation, the district court awarded wife \$15,000 per month in permanent spousal maintenance and \$1,842 per month in child support. Husband appeals.

D E C I S I O N

Husband argues that the district court erroneously determined that his gross monthly income is \$33,513.¹ "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 finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotations omitted). We view the

¹ Husband also argues that the district court erred in awarding wife permanent spousal maintenance of \$15,000 per month and child support of \$1,842 per month. Because these arguments are based entirely on the district court's calculation of husband's gross monthly income, the sole issue in this case is whether the district court erroneously determined husband's gross monthly income.

record in the light most favorable to the district court's findings and defer to its credibility determinations. *Id.*

For purposes of establishing child support, Minn. Stat. § 518A.29(a) (2016) defines "gross income" as including, but not limited to:

[S]alaries, wages, commissions, self-employment income under section 518A.30, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section 518A.31, and potential income under section 518A.32.

Further, section 518A.30 (2016) defines "income from self-employment or operation of a business" as including:

[G]ross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support.

Here, the district court concluded that husband's gross monthly income is \$33,513 based on Hunter Homes's bank statements. Admittedly, husband testified that he had no income in 2016 and that many of the deposits reflected in the statements were reimbursements for business expenses and loans, but the district court noted that husband failed to provide any documentation to support his testimony. Additionally, the district court found husband's assertion that he had no documents concerning the relevant deposits

not credible. We defer to the district court's credibility determinations. *Vangsness*, 607 N.W.2d at 472.

As the party seeking to deduct business expenses from this income total, husband bore the burden of demonstrating that the business expenses were ordinary and necessary. *See* Minn. Stat. § 518A.30 (“The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary.”). Because husband provided no documentation to support his testimony concerning his income and the district court determined that his denial of access to documentation was not credible, we conclude that husband has not met his burden of demonstrating that the district court clearly erred by relying solely upon the Hunter Homes checking-account statements to determine his gross income for 2016. Therefore, we must also conclude that the district court did not clearly err in calculating husband's gross monthly income.

Affirmed.