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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1526
A17-1687

In re the Marriage of:
Grace Kathryn Adams, petitioner,
Respondent,

vs.

Frank Thomas Adams,
Appellant.

Filed September 4, 2018
Affirmed in part, reversed in part, and remanded
Johnson, Judge

Dakota County District Court
File No. 19AV-FA-16-1380

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

UNPUBLISHED OPINION

JOHNSON, Judge

Grace Kathryn Adams and Frank Thomas Adams were married for approximately 21 years before their marriage was dissolved. Frank challenges the district court's denial

of his request for spousal maintenance and the district court's grant of child support to Grace. We affirm in part, reverse in part, and remand.

FACTS

Grace and Frank were married in June 1995. They have three minor children together. Grace petitioned for dissolution of the marriage in May 2016. She sought custody of the children, child support, and a division of the parties' marital property. Frank filed a counter-petition in which he sought an award of spousal maintenance. Before trial, the parties agreed on all issues concerning child custody and the division of marital property.

A trial was held on one day in February 2017 on the issues of child support and spousal maintenance. At the time of trial, both Frank and Grace were employed. Grace, who then was 51 years old, was employed as a salesperson. Her annual compensation between 2012 and 2015 ranged from $200,611 to $728,528. Her employer changed its pay structure for salespersons in the middle of 2016; she earned total compensation of $369,921 in that year. The district court found that Grace's gross annual income is $369,921, which equates to gross monthly income of $30,827. The district court found that her net monthly income is $17,511.

Frank, who then was 65 years old, was employed as a project manager. His annual base salary was $113,000, but he earned slightly less in 2016 ($111,517) because he frequently was absent from work due to his diabetes and was required to take unpaid leave for some of his absences. He testified that his earnings in 2017 also would be reduced due to excessive absenteeism. He also testified that he expected his employer to lay him off

when he completed his then-current project in May or June of 2017. He testified further that he likely would retire at that time in light of his age and his health. He expected that, in retirement, he would receive social security benefits of $30,396 per year and would withdraw approximately $19,800 per year from retirement accounts. Accordingly, he anticipated retirement income of $50,196 per year, or $4,183 per month, before taxes. The district court found that Frank's gross annual income is $113,000 per year, using his base salary at the time of trial, which equates to gross monthly income of $9,417. The district court found that his net monthly income is $6,307.

Grace introduced evidence that her monthly expenses are $14,884. The district court found that her reasonable monthly expenses given the marital standard of living are $12,999, which is approximately 13 percent less than the amount she claimed. Given that finding and the district court's finding that Grace's net monthly income is $17,511, she has a monthly surplus of $4,512.

Frank introduced evidence that his monthly expenses are $9,945. The district court found that his reasonable monthly expenses given the marital standard of living are $4,958, which is approximately 50 percent less than the amount he claimed. Given that finding and the district court's finding that Frank's net monthly income is $6,307, he has a monthly surplus of $1,349.

In its decree, the district court resolved the issue of child support by ordering Frank to pay Grace $694 per month. The child-support award is based on the parties' stipulation that Grace have sole physical custody of their children and that Frank have parenting time on alternating weekends. The district court denied Frank's request for spousal

maintenance. The district court reasoned that Frank does not have a need for spousal maintenance because, even after paying child support to Grace, he will have a monthly surplus.

In May 2017, Frank was laid off by his employer, as he had predicted in his trial testimony, and he decided to retire. He promptly moved for a new trial or for amended findings, arguing that his retirement was newly discovered evidence that requires a new trial or reconsideration of his request for spousal maintenance. *See* Minn. R. Civ. P. 59.01. The district court denied the motion on the ground that Frank's decision to retire was not newly discovered evidence but, rather, was a change in circumstances that occurred after trial. Frank appeals.

D E C I S I O N

I. Child Support

Frank argues that the district court erred in its calculation of his child-support obligation.

To determine the existence and amount of a basic child-support obligation, a district court first must find the gross income of each parent. Minn. Stat. §§ 518A.34(a), (b)(1) (2016). For child-support purposes, "gross income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, [and] commissions . . . ." Minn. Stat. § 518A.29(a) (2016). This court applies a clear-error standard of review to a district court's finding of gross income for purposes of calculating child support. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2015).

Frank contends that the district court erred by finding that his gross monthly income is $9,417, which is equivalent to gross annual income of $113,000, which was his base salary at the time of trial. He contends that the district court should have found that his gross monthly income is one-twelfth of $111,517, which was the amount he actually earned in 2016 after subtractions from his salary for his excessive absences.

The statutory definition of gross income focuses on the concept of "periodic payment[s]." *See* Minn. Stat. § 518A.29(a). It appears that the subtraction from Frank's salary in 2016 was made on a single occasion or on only a few occasions but was not consistently applied each pay period. Frank introduced into evidence some of his 2016 pay stubs, which indicate that he received periodic payments from January to October 2016 that were consistent with a salary of $113,000. The evidentiary record does not reveal exactly how or when $1,483 was subtracted from Frank's salary and whether it was done on a single occasion or on several occasions. Likewise, the evidentiary record does not reveal exactly how or when an amount would be subtracted from Frank's salary in 2017. He testified that he was "in the hole on PTO" and that he had made arrangements with his employer's human-resources department for a subtraction from his salary. But it appears that the 2017 subtraction had not yet occurred, and it is unclear whether it would occur on a single occasion or on several occasions. In light of the evidence in the record, the district court did not clearly err by finding that Frank's gross annual income is $113,000 and, thus, that his gross monthly income is $9,417.

Frank also contends that the district court erred by not inserting a number on line 8 of the child-support guidelines worksheet and, thus, not making a finding concerning child-

care support. In response, Grace contends that the absence of a dollar figure on line 8 does not prejudice Frank and, in fact, works to his advantage. Frank does not address the issue in his reply brief. We agree that the district court's omission of a finding for child-care support does not prejudice Frank because it decreased his child-care obligation. Accordingly, there is no reversible error. *See* Minn. R. Civ. P. 61; *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008).

Thus, the district court did not commit reversible error in its child-support award.

II. Motion for New Trial

Frank argues that the district court erred by denying his motion for a new trial.

"A new trial may be granted" if there is "[m]aterial evidence newly discovered, which with reasonable diligence could not have been found and produced at trial." Minn. R. Civ. P. 59.01(d). In general, evidence is "newly discovered" only if it was '"in existence at the time of trial but not known to the party at that time.'" *Zander v. Zander*, 720 N.W.2d 360, 365 (Minn. App. 2006) (quoting *Swanson v. Williams*, 303 Minn. 433, 436, 228 N.W.2d 860, 862 (1975)), *review denied* (Minn. Nov. 14, 2006).

The district court denied Frank's motion for a new trial on the ground that Frank's "loss of his job is not newly discovered evidence" because "[e]vents occurring after the trial are not considered 'newly discovered' evidence warranting a reopening of the record." Frank contends that "the reality of [his] job loss was likely in existence at the time of the trial, but unknown to" him. Frank did not submit any evidence with his new-trial motion that would support a finding that Frank's employer had in fact decided before trial that Frank would be laid off but had not yet informed Frank of that decision. Although Frank

testified at trial that he expected to be laid off three or four months later, the lay-off did not actually occur until after the close of evidence and after the district court's issuance of the dissolution decree. In light of the caselaw interpreting rule 59.01(d), Frank's post-trial lay-off is not considered "newly discovered evidence." *See Zander*, 720 N.W.2d at 365.

Thus, the district court did not err by denying Frank's motion for a new trial.

III. Spousal Maintenance

Frank argues that the district court erred by denying his request for spousal maintenance.

Spousal maintenance is defined as "payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2016). A district court considering a request for spousal maintenance must consider two issues. First, a district court must consider whether the spouse seeking spousal maintenance 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 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, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2016). The threshold inquiry is, in essence, whether the spouse seeking spousal maintenance has demonstrated a "showing of need." *Curtis v.*

Curtis, 887 N.W.2d 249, 252 (Minn. 2016). A spouse demonstrates a need for spousal maintenance if, considering the standard of living during the marriage, the party is unable to provide for his or her reasonable expenses through either employment or income from property. *See* Minn. Stat. § 518.552, subd. 1. Determining a party's reasonable expenses is a case-specific inquiry that "depend[s] on the unique characteristics of the party seeking maintenance and the standard of living established during the marriage." *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009). A party's reasonable expenses are not simply the expenses that afford a party "the bare necessities of life"; rather, reasonable expenses are those that allow "the circumstances and living standards of the parties at the time of the divorce." *Id.* (quotations omitted).

Second, if a spouse has a need for spousal maintenance, the district court may award spousal maintenance "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." Minn. Stat. § 518.552, subd. 2; *see also Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). The relevant factors in determining whether to award spousal maintenance and in setting the amount and duration of spousal maintenance are "the financial resources of the [spouse] seeking maintenance" to provide for his or her needs independently, the time necessary to acquire education to find appropriate employment, the age and health of the recipient spouse, "the standard of living established during the marriage," the length of the marriage, the contribution of each spouse and economic sacrifices of a homemaker, and the resources of the spouse from whom maintenance is sought. Minn. Stat. § 518.552, subd. 2(a)-(h); *see also Kampf v. Kampf*,

732 N.W.2d 630, 633-34 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). No single factor is dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). In essence, the district court balances "the recipient's need against the obligor's ability to pay." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

In this case, the district court resolved Frank's request for spousal maintenance as follows: "[Frank] has a net monthly surplus . . . . While he has some minor health concerns, diabetes and hypertension, he is able to work and support himself. Presently, he is not in need of maintenance."

Frank challenges the district court's denial of spousal maintenance by contending that the district court erred in its findings concerning his reasonable expenses and, thus, erred by finding that he has a net monthly surplus. Frank introduced a detailed monthly budget, which he testified was an accurate reflection of his actual expenses for the months of July, August, September, and October of 2016. The district court, without explanation, adjusted downward the amounts of eight categories of expenses and deleted entirely the amounts of four other categories of expenses.

The most significant action taken by the district court concerns Frank's monthly contribution of $2,000 to his 401(k) account. The district court did not make an express finding concerning why it removed this item from Frank's monthly budget. Frank introduced pay stubs showing that he consistently made such contributions throughout 2016. The record shows that Frank's retirement savings grew from $2,000 when he was married in 1995 to approximately $314,000, including approximately $230,000 in his 401(k) account, at year-end 2015. Accordingly, the evidence shows that Frank's standard

of living before the dissolution petition included regular contributions to his 401(k) account. The district court found, without explanation, that Grace's contributions to her 401(k) account were reasonable expenses. The district court did not explain why it made different findings concerning the parties' respective contributions to the same type of account. Thus, on this record, we conclude that the district court erred by not finding that $2,000 in 401(k) contributions is a reasonable part of Frank's monthly budget. *See Kampf*, 732 N.W.2d at 634 (concluding that obligee's reasonable monthly expenses should include amounts for savings and retirement accounts because such contributions were made during marriage). The remaining reductions or deletions to Frank's monthly budget are not clearly erroneous.

After accounting for $2,000 in monthly contributions to Frank's 401(k) account, Frank's reasonable expenses are $6,958 per month. Given the district court's finding that his net monthly income is $6,307, as well as his child-support obligation of $694, he has a monthly deficit of $1,345. His monthly deficit demonstrates that he "is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment." *See* Minn. Stat. § 518.552, subd. 1(b). His inability to provide self-support requires an analysis of the eight statutory factors relevant to spousal maintenance. *See id.* § 518.552, subd. 2.

Thus, the district court erred in its findings of Frank's reasonable expenses and, thus, erred by denying his request for spousal maintenance on the ground that he does not have a need for spousal maintenance. Accordingly, we reverse and remand to the district court for consideration of the eight statutory factors relevant to spousal maintenance.

IV. Reservation of Spousal Maintenance

Frank argues that the district court erred by not reserving jurisdiction over the issue of spousal maintenance.

A district court "may reserve jurisdiction of the issue of maintenance for determination at a later date." Minn. Stat. § 518A.27, subd. 1 (2016). Reservation permits a district court to "later assess and address future changes in one party's situation as those changes arise, without prematurely burdening the other party." *Prahl*, 627 N.W.2d at 703. If a district court does not award spousal maintenance and does not reserve jurisdiction over the issue, the district court may not change its decision and award spousal maintenance at a later date. *Berger v. Berger*, 308 Minn. 426, 428, 242 N.W.2d 836, 837 (1976). For that reason, reservation of spousal maintenance may be appropriate if there is uncertainty concerning the ability of the spouse seeking maintenance to continue to support himself or herself. *Berger*, 308 Minn. at 428, 242 N.W.2d at 837; *Wopata v. Wopata*, 498 N.W.2d 478, 485-86 (Minn. App. 1993); *Van de Loo v. Van de Loo*, 346 N.W.2d 173, 178 (Minn. App. 1984); *Tomscak v. Tomscak*, 352 N.W.2d 464, 465-66 (Minn. App. 1984). A district court has discretion to reserve jurisdiction over the issue of spousal maintenance. *Eckert v. Eckert*, 299 Minn. 120, 124, 216 N.W.2d 837, 839 (1974). Accordingly, this court applies an abuse-of-discretion standard of review to a district court's decision not to reserve jurisdiction over the issue of spousal maintenance. *Id.*

In this case, the decree contains one paragraph concerning reservation, which states as follows: "Neither party proved that he or she is entitled to a reservation of the issue of

spousal maintenance. For instance, [Frank's] health issues have not impaired his ability to work full time."

Frank argues that the district court should have reserved jurisdiction over spousal maintenance for two reasons: his imminent retirement and his chronic medical condition. As described above, Frank testified at trial about the likelihood that he would be laid off only three or four months in the future. Specifically, he testified that he had only one remaining project and that he was "pretty sure that they will let me go" when that project was concluded. He also testified about his diabetic condition, which had prevented him from achieving the minimal levels of attendance necessary to earn his base salary. He testified further that, if he were laid off, and in light of his age and health issues, he likely would choose to retire rather than seek another job. Frank also introduced evidence that his retirement income would be substantially less than the income he was earning through employment. Grace did not introduce any evidence to contradict or rebut Frank's evidence on these issues.

Frank's evidence strongly suggested that he would retire within a few months. His evidence indicated that his retirement would be both natural and reasonable given his apparently imminent lay-off, his age, and his health issues. His evidence went further than showing that his ability to support himself in the future was merely uncertain; his evidence established that his ability to support himself in the near future was unlikely. But the district court both denied his request for spousal maintenance and declined to reserve jurisdiction over the issue. If both of those rulings were undisturbed, Frank would be unable to obtain an award of spousal maintenance in the future, even after retiring and

experiencing a substantial reduction in income. If the issue of spousal maintenance cannot be reserved in these circumstances, a person in Frank's position would have an incentive to retire earlier than is otherwise necessary or desirable so as to achieve a reduced income before trial and thereby prove a need for spousal maintenance. But such a person then would bear the risk of a finding that he or she retired in bad faith. *See Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716-20 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009), *appeal dismissed* (Minn. Feb. 1, 2010). Given the circumstances of this case, the district court should have reserved jurisdiction over the issue of spousal maintenance. *See Berger*, 308 Minn. at 428, 242 N.W.2d at 837; *Prahl*, 627 N.W.2d at 704; *Tomscak*, 352 N.W.2d at 465-66 (Minn. App. 1984).[1]

Thus, the district court erred by not reserving jurisdiction over the issue of spousal maintenance. If the district court does not award spousal maintenance to Frank on remand after considering the statutory factors in section 518.552, subdivision 2, the district court shall reserve the issue of spousal maintenance.

In sum, the district court did not err in its calculation of Frank's child-support obligation and did not err by denying Frank's motion for a new trial. But the district court erred by, first, denying Frank's request for spousal maintenance on the ground that he is able to support himself according to the standard of living established during the marriage

[1]We note Grace's responsive argument that Frank did not preserve this argument by presenting it to the district court. But the district court addressed and resolved the issue in its decree. In any event, this court's caselaw indicates that the issue of reservation of spousal maintenance may be addressed on appeal even if it was not specifically raised in the district court. *See Prahl*, 627 N.W.2d at 704; *see also Berger*, 308 Minn. at 428, 242 N.W.2d at 837; *Tomscak*, 352 N.W.2d at 465-66.

and, second, not reserving the issue of spousal maintenance in light of the likelihood that Frank would retire three or four months after trial and would experience a significant reduction in income. Therefore, we remand the matter to the district court for further consideration of Frank's request for spousal maintenance, as described above in part III. If the district court denies Frank's request for spousal maintenance after such reconsideration, the district court shall reserve jurisdiction over the issue of spousal maintenance, as described above in part IV.

Affirmed in part, reversed in part, and remanded.