

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0722**

In re the Marriage of:  
Susan Lee Wood, petitioner,  
Respondent,

vs.

Brad Wesley Wood,  
Appellant.

**Filed April 15, 2019  
Reversed and remanded  
Halbrooks, Judge**

Dakota County District Court  
File No. 19AV-FA-16-2345

Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Susan Wood, Sleepy Eye, Minnesota (pro se respondent)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges the district court's award of spousal maintenance, arguing that the district court abused its discretion by failing to base its award on the parties' net

incomes and by awarding excessive spousal maintenance to wife. We reverse and remand for further proceedings.

## **FACTS**

Appellant-husband Brad Wesley Wood and respondent-wife Susan Wood married in 1981 and have four adult children. Wife filed for dissolution in August 2016 and sought spousal maintenance. The district court held a two-day bench trial.

At the time of trial, husband was employed as a full-time lineman for Freeborn-Mower Cooperative. Husband provided copies of his pay stubs to the district court. Based on the paystubs, the district court found that husband earned \$6,824.13 in base gross wages per month and an average of \$654.31 in overtime per month for a total of \$7,478.44. The district court found that husband's reasonable monthly expenses were \$4,655.

Wife was unemployed at the time of trial, having just been laid off from her position at Workforce Services. But based on an expert's vocational assessment, the district court imputed \$2,860 per month in gross income to wife. The district court found that wife's reasonable monthly expenses were \$5,825.

The district court dissolved the marriage and divided the marital property. The district court analyzed the statutory factors for awarding spousal maintenance pursuant to Minn. Stat. § 518.552, subd. 2 (2018), and determined that the factors favored an award of spousal maintenance to wife. Noting that wife "is unable to provide adequate self-support based on the standard of living established during the marriage," the district court awarded temporary spousal maintenance to wife in the amount of \$2,700 per month for five years.

In determining the maintenance award, the district court stated that it was “unable to calculate the anticipated net income of [wife] for the purposes of determining spousal maintenance. In lieu of using net income, the Court therefore finds it is equitable to use the parties’ gross incomes to determine spousal maintenance in this case.” The district court reasoned that, after deducting the parties’ reasonable monthly expenses from their gross incomes, husband had \$2,823.44 in income remaining, but wife had “a monthly deficit of \$2,965.” The district court noted that husband “earns a monthly income sufficient to meet his needs as well as the needs of [wife]” and concluded that “an equitable award of \$2,700 per month to [wife] in maintenance will leave each party closer to meeting their own needs.”

Husband moved for amended findings of fact, contending that the district court erred by using the parties’ gross incomes instead of net incomes and by awarding maintenance in the amount of \$2,700. The district court granted husband’s motion in part, and denied it in part.<sup>1</sup> The district court noted that spousal maintenance “was a central issue in this case” and that “the parties should be expected to introduce evidence of their respective net incomes.” Neither party had introduced evidence of wife’s net income. The district court stated that while it “agree[d] with [husband’s] premise that the use of net income would result in a more accurate determination of the parties’ needs and, therefore, the spousal maintenance award,” it could not be expected to “divine new evidence from the actual evidence submitted by the parties at trial.” The district court reasoned that the use of gross

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<sup>1</sup> The district court’s amended findings concerned matters that are not the subject of this appeal.

incomes was reasonable because it allowed the parties to include costs such as health-insurance premiums and “other mandatory paycheck deductions” as part of the parties’ monthly expenses that would have been struck had the district court relied on net incomes. The district court did not modify the amount of the maintenance award in its amended order. This appeal follows.

## D E C I S I O N

Husband asserts that the district court erred in its determination of the amount of wife’s spousal maintenance. We review an award of spousal maintenance for an abuse of discretion. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). During a dissolution proceeding, a district court may award spousal maintenance if it finds that, in light of the marital standard of living, the maintenance-seeking spouse “lacks sufficient property, including marital property apportioned to the spouse, to provide for [the] reasonable needs of the spouse” or “is unable to provide adequate self-support . . . through appropriate employment.” Minn. Stat. § 518.552, subd. 1 (2018); *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of spousal maintenance depends on a showing of need).

If the district court concludes that an award of spousal maintenance is appropriate, it must consider all relevant statutory factors before setting the amount and duration of the award. The factors include (1) the financial resources of the party seeking maintenance and that party’s ability to meet his or her needs independently; (2) the time required for the party seeking maintenance to acquire sufficient education or training to find appropriate employment; (3) the marital standard of living; (4) the length of the marriage and, “in the

case of a homemaker, the length of the absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished”; (5) the loss of employment opportunities and benefits foregone by the party seeking maintenance; (6) the age and health of the party seeking maintenance; (7) the ability of the spouse from whom maintenance is sought to meet his or her own needs while meeting the needs of the spouse requesting maintenance; and (8) the contribution of each party to the acquisition and preservation of the marital property and the contribution of a spouse as a homemaker. Minn. Stat. § 518.552, subd. 2. “No single factor is dispositive.” *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009).

Husband contends on appeal that, because the district court did not determine the parties’ net incomes, it did not properly evaluate his ability to pay the maintenance award. When awarding spousal maintenance, the district court must consider “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.” Minn. Stat. § 518.552, subd. 2(g). In effect, the district court balances the maintenance-seeking spouse’s needs against the payor spouse’s ability to pay. *Maiers*, 775 N.W.2d at 668. “In order to determine ability to pay, the court must make a determination of the payor spouse’s net or take-home pay.” *Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985), *review denied* (Minn. July 26, 1985). We have reversed spousal-maintenance awards when, “based on an analysis of the obligor’s net income, we concluded the amount of the award was unreasonably high.” *Rask v. Rask*, 445 N.W.2d 849, 854 (Minn. App. 1989) (concluding that an award consuming 54% of the obligor’s net income is unreasonably high).

Husband argues that the maintenance award of \$2,700 per month is unreasonable because it consumes nearly 70% of his net income, which he asserts, based on his paystubs, is approximately \$3,875. Using husband's gross income, the district court determined that, after paying his reasonable monthly expenses, husband has \$2,823.44 left over each month to pay the maintenance award. But husband's income tax liability, which could significantly affect the amount of income available to pay a spousal-maintenance award, was not factored into the determination of husband's reasonable monthly expenses. *Kostelnik*, 367 N.W.2d at 670.

We sympathize with the district court's struggles with an incomplete record. But without factual findings on both parties' net incomes, we are unable to fully review the reasonableness of the maintenance award. *Id.* Accordingly, we reverse and remand for the district court to reopen the record to calculate husband's net income and to receive evidence of wife's net income, whether based on her imputed income or some other source, and to recalculate maintenance, if appropriate. Because we reverse the award of spousal maintenance, we do not reach the other related issues raised on appeal.

**Reversed and remanded.**