**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-0299**

In re the Marriage of:

Christina L. Suhsen, petitioner,
Respondent,

vs.

Karl W. Suhsen,
Appellant.

**Filed February 18, 2020**
**Affirmed in part, reversed in part, and remanded**
**Smith, Tracy M., Judge**

Dakota County District Court
File No. 19AV-FA-16-1893

Mary L. Hahn, Jacqueline A. Dorsey, Hvistendahl, Moersch, Dorsey & Hahn, P.A., Northfield, Minnesota (for respondent)

M. Sue Wilson, James R. Todd, M. Sue Wilson Law Offices, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Cleary, Chief Judge; and Smith, Tracy M., Judge.

**U N P U B L I S H E D  O P I N I O N**

**SMITH, TRACY M.**, Judge

In this marital dissolution dispute, appellant-husband Karl W. Suhsen argues that the district court abused its discretion by (1) awarding $2,500 in monthly permanent

spousal maintenance to respondent-wife Christina L. Suhsen, (2) ordering husband to maintain an annuity survivorship benefit for wife, (3) requiring husband to maintain a life-insurance policy with wife as the beneficiary, (4) assigning 75% of the marital debt to husband, and (5) declining to consider the income-tax consequences when apportioning husband's personal-injury award. Because the district court's findings are insufficient to allow for effective appellate review of the spousal-maintenance award, we reverse and remand on that issue. On all other issues, we affirm.

## FACTS

Husband and wife married in 1990 and remained married for over 25 years before wife filed a dissolution petition on July 13, 2016. Husband is 52 years old, and wife is 51 years old. They have two children, ages 15 and 18.

During their marriage, husband worked as an air traffic controller for the Federal Aviation Administration (FAA), where he was employed for about 19 years. When the dissolution action commenced, his income was $15,100 per month, or $181,200 per year. Wife worked as an elementary school teacher at the beginning of the marriage before leaving the workforce when the parties' daughter was born in 2001. She then cared for the children for the next 16 years. The parties' younger child has special needs and requires full-time care and supervision.

In May 2016, a few months before the dissolution action commenced, husband was injured in an automobile accident. Due to his consequent use of disqualifying medications, he lost the medical certification required to work as an air traffic controller. This change in husband's employment status led to prolonged dissolution proceedings, as it was initially

unclear whether he would qualify for disability or early-retirement benefits available to federal employees. This uncertainty, in part, led to multiple evidentiary hearings and resulted in the district court issuing (1) a partial decree on November 28, 2017; (2) a final decree on August 9, 2018; and (3) an amended final decree on December 21, 2018.

***August 2017 trial and resulting partial decree***

The district court held a trial on the financial issues[1] in this case on August 15, 16, and 21, 2017. Five witnesses testified: wife, husband, John Mandt, Johanna Clyborne, and Justin King. Mandt, a financial advisor, testified as an expert in "estimat[ing] an individual's projected federal benefits." Clyborne, an attorney and brigadier general in the Minnesota National Guard, testified as an expert on Federal Employees Retirement Systems (FERS) issues. King, a rehabilitation psychologist, testified regarding the vocational evaluation he conducted on wife.

Following the trial, the district court issued a partial decree on November 28, 2017. The partial decree decided many of the financial issues, including the division of financial accounts, marital debt, vehicles, and personal property. The district court found that the parties' marital debt totaled about $60,468. It decided that it was fair and equitable to allocate 75% of the marital debt to husband and 25% to wife. It also divided the marital financial accounts, which totaled $6,481,[2] by allocating 75% to husband and 25% to wife.

[1] The matter was bifurcated into financial issues and child-custody issues. This appeal involves only financial issues.

[2] This total excludes the parties' savings accounts for their children, which the district court ordered be held in husband's name but disbursed only by agreement of both parents or by court order.

The district court found that husband had a pending personal-injury claim related to his automobile accident and that he had refused to provide any information about it, "clearly . . . hiding the claim from discovery and at trial." The district court decided that, "[s]ince [husband] was not forthcoming," wife would be awarded 50% of all recoveries made by husband in connection with the accident. The court later revised this award in the amended final decree, discussed below.

The partial decree also orders that husband pay wife $2,000 per month in temporary spousal maintenance. The district court found that wife was currently unemployed but was considering returning to teaching, that she was presently able to earn $2,000 per month, and that she has the capacity to earn up to $3,000 per month if fully employed. The partial decree contains no findings as to the parties' reasonable monthly expenses.

The partial decree reserved the issues of permanent spousal maintenance, child support, and distribution of husband's FERS pension account because, when the partial decree was issued, it was unclear how long husband could remain employed by the FAA, given his injury from the automobile accident. At the time of trial, he was exhausting available leave, receiving a smaller paycheck, and had applied for FERS "disability retirement" benefits. The following information regarding FERS disability retirement benefits was presented at trial.

Mandt testified that husband would likely qualify for FERS disability retirement, as opposed to deferred retirement or eligible retirement.[3] Under FERS disability retirement, a

[3] Husband was unlikely to qualify for the other types of retirement because he had not accumulated enough "good time." "Good time" generally means time controlling air

recipient receives an annuity that is computed based on the recipient's age and length of service. If husband were to qualify for disability retirement, Mandt testified, he would receive an annuity equal to 60% of his high three-year average (less any social security benefits he received) for the first twelve months. After the first twelve months, and continuing until he reached age 62, he would receive 40% of his high three-year average. At age 62—eligible retirement age—his annuity would be recomputed based on his actual service plus the service he would have completed had he worked until retirement age. Mandt estimated, based on factors including husband's age, years of service, and high-three income, that husband's FERS disability retirement annuity (1) would be $106,150 gross during the first twelve months, (2) would decrease to $64,684 gross after the first twelve months and remain at that amount until he reached age 62, and (3) would rise to $89,845 gross once he reached age 62.

Clyborne testified regarding ways that the district court could elect to treat husband's FERS annuity for the purposes of equitable distribution. She presented and explained a sample court order acceptable for processing (COAP) that she had drafted for the case—similar to a qualified domestic relations order—which directs the federal office of personal management (OPM) regarding how husband's FERS annuity (whether disability or retirement) should be allocated between the parties, if he qualified for it. She

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traffic, which he could no longer do since he lacked the requisite medical certification. He would have been eligible for retirement in May or April of 2018 had he been able to keep working or to use his available leave until that time, but his leave was almost exhausted at the time of the trial.

also testified that the district court could treat the FERS account as either an asset or an income stream and explained the effects of either choice on the dissolution proceedings.

Based on this information, the district court decided in the partial decree that, if husband were to receive retirement benefits out of the FERS account, they would be considered an asset. But, if he were to receive disability benefits out of the FERS account, they would be considered an income stream. Neither party contests this designation on appeal.[4]

***March 2, 2018 evidentiary hearing and resulting final decree***

On December 28, 2017, husband filed a motion for amended findings, a new trial, and modification of spousal maintenance. As to spousal maintenance, he claimed that he was unable to pay any because, beginning on January 1, 2018, the only income he would receive was $264.02 a month in VA benefits. On January 29, 2018, the district court denied husband's motion to amend the findings, reserved the motion for a new trial, and suspended husband's temporary spousal-maintenance requirement in light of his alleged inability to pay.

On March 2, 2018, the district court held an evidentiary hearing to discuss the equitable division of husband's FERS disability retirement benefits, although husband still did not know whether he had qualified for disability retirement. He had applied for and

[4] Wife argued in the district court that the FERS disability annuity should be treated as an asset as well, while husband wanted it treated as income. According to Clyborne, treating both the disability and retirement payments out of the account as an asset is the "preferred way to do it."

been denied social security disability benefits, but FERS disability retirement benefits relate more specifically to the ability to do the job of an air traffic controller.

Clyborne testified again at this hearing and provided a revised draft COAP that accounted for the district court's decision to treat FERS retirement benefits as an asset and FERS disability benefits as income. She testified regarding the need for husband to elect and maintain an annuity survivor benefit for wife should he receive payments out of the FERS account, as the payouts would otherwise cease if husband died. Clyborne also explained the need for husband to maintain an existing Federal Employee's Group Life Insurance (FEGLI) policy with wife as the beneficiary. Clyborne testified that the FEGLI policy protects wife's marital share of the FERS account by covering the "gray period" that could potentially occur if husband was neither considered employed by OPM nor considered an annuitant for retirement purposes.

On August 9, 2018, the district court issued a final decree. The final decree dissolved the marriage; provided a method for distribution of husband's FERS retirement benefits upon husband's retirement; provided for distribution of spousal maintenance and child support to wife if husband receives FERS disability benefits; directed that, if husband receives FERS disability benefits, he shall elect and maintain the maximum possible annuity survivorship benefit for wife; and directed that husband maintain the FEGLI policy with wife as the beneficiary. The final decree reserved the amount of spousal maintenance and the distribution of proceeds from husband's personal-injury claim, still pending at that time.

On August 14, the district court issued a corresponding FERS annuity COAP directing OPM to act in a manner consistent with the final decree.

***October and November 2018 hearings and resulting amended final decree***

In October 2018, wife received information that husband had qualified for FERS disability retirement and that he had settled his personal-injury case. She accordingly filed a motion requesting that the district court determine spousal maintenance, calculate child support, and determine the distribution of proceeds from husband's personal-injury award.

The district court held a hearing on October 30, 2018, to discuss the now-concrete FERS disability retirement annuity and personal-injury award. At this hearing, wife asked that the temporary spousal maintenance award be reinstated retroactive to January 1, 2018, because husband's new attorney (his third in these proceedings) had sent wife's counsel a statement that reported the commencement date for husband's FERS disability annuity as February 6, 2018. Husband's counsel argued in response (and husband himself testified at the next hearing) that husband did not actually receive the first payment until June 2018.[5] The matter was left unresolved, and the district court eventually continued the hearing until November 30, 2018, because the parties did not have a breakdown of the personal-injury

[5] This claim raises some concern, as husband apparently never advised the district court of the June annuity payment because the final decree was issued August 9, 2018, and states that husband still did not know whether his FERS disability retirement application was granted. Wife pointed out this inconsistency between the August 9, 2018 final decree and husband's actual knowledge at the November 30 hearing, accusing husband of committing fraud on the court.

award, making it impossible to determine what portion of the award was subject to division as marital property.

At the November 30 hearing, the district court heard arguments regarding the appropriate amount of spousal maintenance, wife's request for attorney fees, and the distribution of the marital portion of the personal-injury award.

The district court issued an amended final decree on December 21, 2018. The amended final decree ordered $2,500 in monthly permanent spousal maintenance to wife, denied wife's request for attorney fees,[6] and awarded wife 40% of the portion of husband's personal-injury award that is for lost wages. It specifies that the net amount of the personal-injury award is $252,260, and 91.69% of that is for lost wages, so wife's share is $92,519.

Husband appeals.

## D E C I S I O N

Husband challenges the amended final decree on five grounds. He argues that the district court abused its discretion by (1) awarding $2,500 in monthly permanent spousal maintenance to wife, (2) ordering him to maintain an annuity survivorship benefit for wife, (3) requiring him to maintain a life-insurance policy with wife as the beneficiary, (4) assigning him 75% of the marital debt, and (5) declining to consider the income-tax consequences when apportioning husband's personal-injury award.

[6] In denying the request, the district court found that "the amount of attorneys fees incurred by both parties are extremely high in view of the issues. Both sides were each responsible for the high fees and have acted unreasonably in the course of this case."

As an initial matter, wife argues that the first, second, third, and fifth issues fall outside this court's scope of review because husband failed to bring a motion for amended findings or for a new trial with respect to these issues. When a party does not bring a motion for a new trial or amended findings, appellate review is limited to substantive legal issues properly raised to and considered by the district court, as well as to whether the evidence supports the court's findings of fact and whether the findings of fact support the conclusions of law. *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 308-09, 311 (Minn. 2003); *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976). We conclude that, for the most part, the issues raised by husband can be reviewed within this narrow scope, as his arguments primarily concern whether the district court's conclusions are supported by adequate findings. We review each issue in turn.

## I. The district court's findings are insufficient to allow for effective appellate review of the spousal-maintenance award.

Husband's first challenge is to the district court's award of spousal maintenance. A district court abuses its discretion regarding spousal maintenance if its findings of fact are unsupported by the record, if it improperly applies the law, or if it resolves the question in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). "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).

"Maintenance" is statutorily defined as "an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2018). "Income" is defined by reference to "gross income" in Minn. Stat. § 518A.29(a) (2018), which includes "any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, . . . workers' compensation, unemployment benefits, annuity payments, . . . pension and disability payments, . . . and potential income under section 518A.32." *See Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009).

A district court may order spousal maintenance if it finds that the spouse requesting it lacks sufficient means to provide for their reasonable needs or is unable to provide adequate self-support. Minn. Stat. § 518.552, subd. 1(a)-(b) (2018); *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of maintenance requires a showing of need). If the movant proves need, the district court must then consider various factors to determine the amount and duration of maintenance. Minn. Stat. § 518.552, subd. 2 (2018). The statute provides eight non-exclusive factors:

> (a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
>
> (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;
>
> (c) the standard of living established during the marriage;

> (d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;
>
> (e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;
>
> (f) the age, and the physical and emotional condition of the spouse seeking maintenance;
>
> (g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and
>
> (h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

*Id.* "No single statutory factor is controlling and each case must be determined on its own facts." *Rask v. Rask*, 445 N.W.2d 849, 853 (Minn. App. 1989). Either party may move the district court for an order modifying a permanent maintenance obligation. Minn. Stat. § 518A.39, subd. 1 (2018); *Peterka*, 675 N.W.2d at 359.

Husband does not argue that wife failed to prove a need for permanent spousal maintenance. Rather, he argues that the district court abused its discretion by ordering maintenance in the amount of $2,500 because (1) the amount is unreasonably high and (2) the district court failed to consider the required statutory factors under Minn. Stat. § 518.552, subd. 2—specifically, the factor regarding husband's ability to pay. We begin with whether the district court failed to consider relevant statutory factors for setting a maintenance obligation.

Husband emphasizes that the district court made no findings regarding either party's monthly expenses, how those expenses compare to the marital standard of living, and, "most importantly," husband's ability to pay maintenance while meeting his own needs. Wife concedes that the district court did not include specific findings on each of the statutory factors but contends that this was not reversible error. She argues that detailed findings were unnecessary because husband "stipulated" to paying $2,000 in maintenance and the evidence in the record supports the maintenance award.

We note that, while the district court did find that husband "agreed" to pay $2,000 in monthly spousal maintenance, such agreement cannot be characterized a stipulation. The district court's finding appears to be based solely on a comment that husband's attorney made at the October 30 hearing. The agreement was never reduced to writing or signed by the parties, and, on appeal, husband argues that his attorney's statement of that number was a mistake. We thus decline to give the purported agreement the weight that wife argues is due.

We return to the absent findings. In *Stich v. Stich*, the supreme court held that a district court's findings were insufficient to allow for effective appellate review of a spousal maintenance award and remanded the case to the district court. 435 N.W.2d 52 (Minn. 1989). The supreme court explained that "[e]ffective appellate review of the exercise of [the district court's] discretion is possible only when the [district] court has issued sufficiently detailed findings of fact to demonstrate its consideration of all factors relevant to an award of permanent spousal maintenance." *Id.* at 53. It remanded the case because, although "[t]he [district] court did make findings with regard to the parties'

income," it "made no findings as to their separate expenses. Moreover, it made no specific finding with regard to [husband's] financial ability to provide maintenance." *Id.* In *Peterka*, this court stated that "[a] finding of a maintenance obligor's ability to pay maintenance is required to support an award of maintenance." 675 N.W.2d at 358.

As in *Stich* and *Peterka*, the district court here did not make findings regarding the parties' separate expenses or the maintenance obligor's ability to pay while meeting his own needs. Without these findings, we cannot effectively review whether the evidence supports the court's findings of fact and whether the findings of fact support the conclusions of law. We accordingly reverse and remand the case to the district court on the issue of spousal maintenance. The district court may reopen the record at its discretion.

## II. The district court did not abuse its discretion by ordering husband to elect and maintain the FERS annuity survivorship benefit for wife.

Minnesota law specifically grants authority to the courts to award all or part of a survivor benefit to a former spouse, unless such is prohibited by the pension plan. Minn. Stat. § 518.581, subd. 1 (2018). The statute states:

> If a current or former employee's marriage is dissolved, the court may order the employee, the employee's pension plan, or both, to pay amounts as part of the division of pension rights that the court may make under section 518.58, or as an award of maintenance in the form of a percentage of periodic or other payments or in the form of a fixed dollar amount. The court may, as part of the order, award a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.

*Id.*

Husband's argument against the survivor annuity benefit is not entirely clear and seemed to change between his principal brief, reply brief, and oral argument. It appears, though, that he believes the district court abused its discretion by ordering him, and not wife, to bear the cost of maintaining the survivor annuity from his disability benefits.

Husband first appears to contend that, because the district court classified his FERS disability benefit as income, and survivor benefits are "property assets to be divided," the requirement that he maintain the survivor annuity "at a cost [to him] of at least 5% of his gross [disability] annuity payment" effectively divides his income as property. And something cannot be simultaneously treated as both income and property. *See Kruschel v. Kruschel*, 419 N.W.2d 119, 122 (Minn. App. 1988).

This argument lacks legal support. Husband cites no apposite authority for the proposition that a survivor benefit is an "asset to be divided"; he merely includes a "*see, e.g.*," citation to Minn. Stat. § 518.581. The statute defines "surviving spouse benefit" as "(1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement," or "(2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement." Minn. Stat. § 518.581, subd. 4 (2018). Rather than being an "asset to be divided," the surviving-spouse benefit instead appears to be a means of securing an asset. A requirement that a party provide security against nonpayment of the property settlement is "an inherent part of the property division." *Landwehr v. Landwehr*, 380 N.W.2d 136, 140 (Minn. App. 1985). At the March 2, 2018 evidentiary hearing,

Clyborne testified about the importance of the survivor annuity for this purpose. She explained:

> [T]he reason for [the survivor annuity] . . . is that upon dissolution of marriage Ms. Suhsen would become a former spouse. Retirement payout stops when the employee or the retiree dies, and so in order to ensure that the marital share of income stream still continues, you have to have the survivor benefit annuity in order to ensure that the marital share still continues to be paid out.

Husband offered no testimony to rebut that of Clyborne. He did not raise an argument to the district court about the survivor annuity causing "income [to] be divided as property." He has not shown that the district court abused its discretion by ordering this election.

Husband next contends that the district court issued conflicting orders regarding the survivor benefit. He points to the language in the amended final decree that states: "[Wife] is awarded the maximum possible annuity/survivorship rights available to a former spouse and [husband] shall timely make all necessary elections to establish and sustain the surviving spouse coverage for [wife] as former spouse." He contrasts this with the language in the earlier COAP that states: "The costs associated with providing this surviving spouse annuity coverage shall be divided equally between the Employee and the Former Spouse."

We discern no conflict between these two orders, though, as the first merely says that husband must make the election and does not discuss cost sharing. It appears that husband's underlying concern here, as expressed at oral arguments, is that the district court never devised a mechanism for him and wife to share the cost of electing the survivor benefit. But husband did not bring a motion for a new trial or amended findings on this

issue, and, within the scope of review applicable in that circumstance, we discern no reversible error because no substantive legal issues were properly presented to the district court on the question, the evidence supports the court's findings of fact, and the findings of fact support the conclusions of law. *See Brooks*, 481 N.W.2d at 124. We conclude that the evidence supports the district court's order that husband maintain the survivor annuity.

## III. The district court did not abuse its discretion by requiring husband to maintain the FEGLI policy with wife as the named beneficiary.

Husband next argues that the district court's order that he maintain a FEGLI policy was an abuse of discretion because it is duplicative of the requirement that he maintain the FERS survivor annuity benefit.

District courts have broad discretion to consider whether the circumstances justify securing either a property award or spousal maintenance with a life-insurance obligation. *See Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987) ("The [district] court has discretion to consider whether the circumstances justifying an award of maintenance also justify securing it with life insurance."), *review denied* (Minn. Nov. 24, 1987); *Landwehr*, 380 N.W.2d at 140 (noting that a requirement that a party provide security against nonpayment of the property settlement is "an inherent part of the property division"). As to securing maintenance obligations with life insurance, courts assess the effect of a loss of maintenance on a maintenance obligee's ability to self-support when determining whether to require security. *See Kampf v. Kampf*, 732 N.W.2d 630, 635-36 (Minn. App. 2007) (holding that the district court abused its discretion by not requiring life insurance to secure maintenance for a 52-year old obligee with a high-school degree,

limited work experience, and expected income of $14,872 per year), *review denied* (Minn. Aug. 21, 2007).

Husband's argument is that maintaining the FEGLI policy is duplicative of maintaining the FERS survivor annuity. The district court was presented with the issue of whether the two were duplicative at multiple junctures and decided that they were not. Clyborne testified about the distinction between the two at the March 2, 2018 hearing, explaining that the FEGLI policy covers the "gray period" that would occur if husband died while he was not considered employed by OPM and not considered an annuitant for retirement purposes. This gray period could occur because OPM does not view qualification for disability benefits as long term; it requires annual recertification. The idea, Clyborne explained, is that the medical condition could change and the recipient could return to work with the federal government or elsewhere. This means that husband could become decertified and stop receiving the FERS disability annuity. If he is not yet eligible for retirement, Clyborne explained, "then there's no survivor benefit. And so if they don't get to the retirement piece, the marital share disappears, even though they would have gotten there had they lived long enough to get to the age where they can collect the retirement."

At the November 30, 2018 hearing, the need for the FEGLI policy came up again. Husband had stopped paying for FEGLI because he thought it had been rendered unnecessary once he qualified for FERS disability and elected the survivor benefit. After hearing testimony from husband, the district court asked for clarification as to why, "if [husband] has full survivor benefits, [there would] be a need for FEGLI?" Wife's attorney

informed the court that she would review the testimony in the record on the matter and get the district court that information. The district court agreed to allow the parties to make submissions on the matter in light of husband's testimony. On December 1, 2018, wife accordingly filed "Petitioner's Letter Brief Submission Following Court Hearing Dated November 30, 2018." The letter referred to Clyborne's March 2 testimony about the need for FEGLI, stating that "[i]t is not certain whether [husband] will retain disability status from year to year. If there is a gap in time between disability retirement and non-disability retirement, and if [husband] were to die during that time, [wife] would have zero protection other than FEGLI."

The amended final decree, issued about a month later, states in regards to FEGLI:

> OPM will only honor a court order that includes former spouse survivor annuity protection for an individual classified as an active employee or a retiree. This leaves the possibility of lost survivorship benefit during any period when [husband] leaves Civil Service employment and dies before retirement or disability. To prevent the loss of benefit and loss of [wife]'s interest in marital property, [husband] shall name [wife] as beneficiary of FEGLI . . . .

The amended final decree then includes language that was not present in the final decree about how husband discontinued the life insurance policy and orders him to reinstate it.

The district court considered husband's argument that the FEGLI policy was unnecessary before ordering it in the amended final decree. According to Clyborne's testimony, the FEGLI policy covers a specific situation not covered by the survivor annuity. And it is not entirely improbable that the specific situation could arise. Husband must reapply annually for FERS disability benefits, and he has been deemed "disabled" in

a rather narrow sense, as the certification only applies to his ability to do the job of an air traffic controller. In fact, the evidence shows that he applied for social security disability benefits and was denied, and the district court found that "[i]t would appear that [husband] is capable of finding other employment, if necessary." The district court found Clyborne's testimony credible, and husband presented no evidence to refute it. Based on this record, the district court acted within its discretion by requiring the FEGLI policy to protect wife's marital share of the FERS account.

## IV. The district court did not abuse its discretion by assigning husband 75% of the marital debt.

A district court must "make a just and equitable division of the marital property." Minn. Stat. § 518.58, subd. 1 (2018). Marital debts are apportionable as property. *Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn. App. 1984). A distribution need not be "mathematically equal" to be equitable. *Justis v. Justis*, 384 N.W.2d 885, 888 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). The district court's decision on distribution of marital property is afforded "broad discretion" and an appellate court will affirm the property division "if it had an acceptable basis in fact and principle," even if it might have done it differently. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Husband argues that the district court abused its discretion by assigning 75% of the marital debt to him and 25% to wife. He argues that the district court erred by failing to explain why it found that this division was "fair and equitable." The district court assigned the debt in the partial decree, and its decision appears identically in the amended final decree.

Wife argues that the district court did not err and that this case is analogous to *Justis*. In *Justis*, this court held:

> While the [district] court did not make an express finding that it was awarding a disproportionate share of the marital property to respondent, we find, in reviewing the judgment and decree, that the court made the findings required by Minn. Stat. § 518.58 as well as findings that justify the disproportionate division.

384 N.W.2d at 888. This court decided that the unequal distribution ($131,516 in marital assets to the wife, $115,593 in marital assets to the husband, and the entire $30,000 of the marital debt to the husband) was equitable as supported by the record because the evidence showed that the wife's vocational skills were outmoded, her license was out of date, and she had been out of the workforce for many years. *Id.* at 887-88. Additionally, she had received a homestead that was in need of repairs, was the custodian of five young children, was unable to work for the immediate future, and received almost no liquid assets in the property division. *Id.* at 888. The husband, on the other hand, was "in a better position to acquire future capital assets." *Id.*

Here, the district court found that wife had been out of the workforce for over 16 years caring for the parties' children—one of whom has special needs and requires full-time care—and that she would need time to gain suitable employment. Wife testified at trial about her return to substitute teaching, her efforts to reinstate her teaching license, and the numerous applications she had submitted to various positions. The district court initially found her current earning capacity was $2,000 per month and found that, if fully employed, she could earn up to $3,000 per month. It found that husband's income, based

on full-time work as an air traffic controller, was $15,100 per month, or $181,200 per year. At the time of the trial and when the partial decree was issued, it was unclear whether husband would be able to remain employed by the FAA, but the district court found that "[i]t would appear that [husband] is capable of finding other employment, if necessary."

The district court updated its findings on the parties' employment in the amended final decree to reflect that wife was currently working two different part-time jobs. It found that her earnings were $2,289.77 per month and her earning capacity, if she were fully employed, remained at $3,000. It found that husband was receiving a gross monthly FERS annuity payment of $7,989 per month and maintained that he was capable of finding other employment.

The findings on the parties' earning capacity suggest that the district court did not abuse its discretion by assigning husband a greater share of the marital debt. Though neither party is in an ideal position to pay off the debt, husband seems to be in a better position. *See Filkins*, 347 N.W.2d at 529 ("Considering [husband]'s greater ability to pay and the nature of the debts, it is not inequitable to make him pay them."); *see also Hattstrom v. Hattstrom*, 385 N.W.2d 332 (Minn. App. 1986) (holding that the district court did not abuse its discretion by allocating $21,000 of marital debt to husband and $412 to wife after equal property division, when husband earned substantial income and received substantial benefits and wife was unemployed), *review denied* (Minn. June 30, 1986). Further, the district court's division of marital property must be viewed holistically. Here, much of the marital property was equally divided, but husband was also awarded 75% of the parties' checking and savings accounts ($4,861.20) and one of the parties' houses (the other two

were sold), whereas wife was renting a home. Even though the district court did not explain its rationale for the debt division, its decision is supported by the record and is equitable in light of the property division as a whole.

## V. The district court did not abuse its discretion by declining to consider income-tax consequences when apportioning husband's personal-injury award.

Husband's final argument is that the district court abused its discretion by not considering income-tax consequences when it divided the marital portion of husband's personal-injury award. Wife counters that the tax consequences were too speculative for the district court to consider and also notes that the equitableness of the division is supported by the district court's finding that husband had "unclean hands" in regards to the personal-injury award.

Under Minnesota law, "it is within the [district] court's discretion to consider the tax consequences of its [marital property] award." *Maurer v. Maurer*, 623 N.W.2d 604, 607 (Minn. 2001) (quoting *Aaron v. Aaron*, 281 N.W.2d 150, 153 (Minn. 1979)). However, the supreme court has "repeatedly stated that the [district] court should not speculate about possible tax consequences." *Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984) (citing *O'Brien v. O'Brien*, 343 N.W.2d 850 (Minn. 1984); *Aaron v. Aaron*, 281 N.W.2d 150 (Minn. 1979)). "The court must have sufficient information that the actual tax liability resulting from the property division can be calculated with a reasonable degree of certainty." *Id.*

At the November 30, 2018 hearing regarding the personal-injury award, husband's attorney argued that the taxes on the personal-injury award would be "substantial." The

district court responded: "Well, you know, the taxes are what the taxes are. . . . I'm not going to figure out what that number is." When husband's attorney replied that husband would be forced to bear the entire tax burden, the district court responded that husband should have provided the court with something from a tax accountant that gave a number for the tax amount. Husband's attorney then referenced a "pro forma tax return on that amount, which I did provide." The district court indicated that it would review this form, but the calculations therein were never discussed on the record. Wife's attorney argued that the form that husband's attorney referenced was only the attorney's own "Fin Plan calculation," which "assumes the entire payment in this calendar year with absolutely no deduction." The calculation has no probative value, she argued, as there are many possible ways to reduce tax implications.

Husband references the calculation in the above form in his appellate brief when he says that a "post-trial submission" estimated the taxes at $166,897. This figure, though, appears to represent his own attorney's calculation, and the record contains no information as to how it was generated. Thus, it does not appear that husband presented the district court with sufficient information to assess the reliability of his lawyer's calculation of the projected tax liability from the division of the personal-injury award with a reasonable degree of certainty.

Further, as wife argues, the district court balanced the equities when it divided the personal-injury award and was "troubled" by husband's evasiveness regarding the personal-injury lawsuit throughout the dissolution proceedings. The district court stated at the November 30, 2018 hearing:

> The other thing is, in terms of an equity distribution, I always have been troubled by the fact that at trial in this case, Mr. Suhsen was consistently asked about the automobile suit, what was going on, and was evasive and was not forthcoming about this what ended up being a half a million dollar lawsuit pending at the time of the dissolution trial. And so for somebody to come in and ask the Court to act in equity. You know, the old saying always used to be if you wanted equitable relief, you had to come in with clean hands. *Mr. Suhsen doesn't come to this court with clean hands on this.*

(Emphasis added.) Despite this concern, the district court awarded wife less of the personal-injury award than she requested. She requested 50% of the portion of the award for lost wages, and the district court awarded her 40% of the portion of the award for lost wages. The district court balanced the equities and did not abuse its discretion by declining to consider speculative tax consequences when it divided the personal-injury award.

In sum, we reverse and remand on the issue of spousal maintenance, noting that the district court may reopen the record at its discretion. On all other issues, we affirm.

**Affirmed in part, reversed in part, and remanded.**