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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0883**

In re the Marriage of:  
Charles Robert Aufenthie, petitioner,  
Respondent,

vs.

Heidi Christine Aufenthie,  
Appellant.

**Filed June 8, 2020  
Affirmed in part, reversed in part, and remanded  
Kirk, Judge\***

Lyon County District Court  
File No. 42-FA-17-299

William J. Toulouse, Quarnstrom & Doering, P.A., Marshall, Minnesota (for respondent)

Andrew M. Tatge, Samuel E. Courtney, Gislason & Hunter LLP, Mankato, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Rodenberg, Judge; and Kirk, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**KIRK**, Judge

In this marital-dissolution dispute, appellant-wife argues that the district court made several errors in determining the appropriate amount of spousal maintenance, dividing marital property, and denying her motion for need-based attorney fees. We affirm in part, reverse in part, and remand to the district court for further proceedings.

### FACTS

Appellant-wife Heidi Aufenthie and respondent-husband Charles Aufenthie married in 1997 and had two children. Husband petitioned to dissolve their marriage in March 2017, and the district court entered a stipulated partial judgment governing parenting time and custody in April 2018. The parties stipulated in October 2018 to the entry of a judgment dissolving their marriage and resolving certain property-division issues subject to the district court's final, posttrial determination. The district court conducted a two-day trial on the remaining issues and issued a judgment and decree in April 2019. The following is a summary of the evidence most relevant to the issues raised in wife's appeal.

#### *Spousal Maintenance*

Husband testified that he is a State Farm insurance salesman. He earned a greater income than wife throughout their marriage. His earnings were entirely commission-based, but he incorporated his business so he could establish a salary from his commission-based income. He and wife purchased a preschool in 2003 for wife to own and operate, which husband described as costing the parties more than the income it generated. The parties lived a costly lifestyle that left little, if any, surplus at the end of each month. Husband

represented that his monthly expenses total \$12,440, and were as follows: (1) \$1,600 for rent; (2) \$1,285 for the children's college and school tuition; (3) \$550 for health insurance; (4) \$275 for utilities; (5) \$160 for Vast internet and cable; (6) \$120 for cell-phone payments; (7) \$500 for credit-card payments; (8) \$1,700 for insurance; (9) \$750 for vehicle payments; (10) \$500 for the children's expenses; (11) \$2,500 for past-due federal taxes; (12) \$1,500 for attorney fees; and (13) \$1,000 for repayments of loans on life-insurance policies.

Wife testified that she has a bachelor's degree in K-12 physical education with a coaching minor, along with coaching and personal-trainer certifications. She represented that her monthly expenses totaled \$6,945, but an expert recommended a higher monthly budget of \$7,444.11.

Certified public accountant Eric Eben, the parties' tax consultant, also testified. He prepared a document summarizing the parties' respective incomes and expenses reported on their taxes for husband's insurance business, wife's preschool business, and other sources from 2014 through 2017. The insurance agency yielded an annual net income (taking into account an expense for "Owners Compensation") of \$162,790 in 2014; \$190,542 in 2015; \$175,842 in 2016; and \$196,494 in 2017. An office-rental property yielded net income of \$11,408 in 2014; \$9,685 in 2015; \$9,947 in 2016; and \$9,278 in 2017. Husband's interest in a limited-liability partnership yielded net incomes of \$9,652 and \$9,778 in 2014 and 2015, but net losses of \$2,734 and \$12,076 in 2016 and 2017. The document also included an apparent attribution of the corporation income, LLP income, rental income, and salary to husband for those years: \$275,950 in 2014; \$285,588 in 2015;

\$258,862 in 2016; and \$270,939 in 2017. The four-year average was \$272,834, or \$22,736 per month. Wife's preschool meanwhile yielded \$9,088 in net income to wife in 2014; \$21,546 in 2015; \$20,557 in 2016; and \$19,180 in 2017. The four-year average totaled \$20,093, or \$1,674 per month.

### ***Camp Proceeds***

Robert Aufenthie, husband's father, testified that he and four others formed Kawinogan's Camp LLC (the camp) in 1982 to rent a secluded Canadian property. Robert eventually came to own a one-fifth share in the camp. Sometime around 2007, he verbally transferred his share to husband.

Husband testified that he did not initially pay his father for the camp share. Husband sold his share in the camp for \$150,000, payable in three \$50,000 installments. Husband claimed he took \$10,500 in beef as part of that payment, gave wife cash in the amount of \$10,000, and paid his father \$30,000. He testified that he used some of the proceeds to pay for expenses related to the divorce proceedings. He confirmed that he "may have written a check out of [his] business account or [his] personal account" to pay the expense and then "used the cash for something else." He explained he could not live on \$3,000 every two weeks given the automatic withdrawals from his accounts, and so he used the cash "to survive." He identified the need to pay for gas, groceries, and furnishings for his new apartment. He paid \$7,000 of wife's credit-card debt, \$11,000 for expert testimony, \$9,000 for a custody evaluation, \$6,000 for therapy services for the parties' minor children, \$15,000 in attorney fees, \$15,000 in rental and furnishing costs, \$5,000 on a vacation,

\$18,000 in additional living costs, and \$12,000 for expenses associated with a limited liability partnership before its sale.

Husband could not recall how certain funds could be traceable from cash into a bank account and eventually out as check transfers. He admitted that the majority of the expenses he listed as having been paid by the camp's sale proceeds were actually paid by check, and that the cash-on-hand freed up his business or personal checking accounts to write those checks. He guessed that the cash was put in his safe "until [he] needed it," but he also admitted that it was "already gone" at the time of trial. He also testified that he would frequently give wife cash to pay the children's expenses: "I would give her . . . \$1,000 to go school shopping and whatever number that she needed, we just dealt with cash."

#### ***Dependent Tax Exemptions***

The parties had two minor children during the litigation whom the parties had previously claimed as dependents. By the parties' agreement, wife's home became the primary residence of the children, and husband was awarded parenting time for less than 50% of the year.

#### ***Home Valuation and Insurance Proceeds***

The parties purchased their home in 2016, when its appraised value was \$360,000. But a 2018 appraisal determined the home's value as of August 22, 2018, to be \$312,000. Husband thought the appraisal drastically undervalued the home. Sometime in 2018, the home's roof suffered hail damage which "totaled" the roof. Husband submitted a claim to the insurance company, received a check, endorsed it, and then sent it to wife.

### ***Additional Tax Liabilities***

Wife elected to file her 2017 taxes as “Married Filing Separately,” a decision that caused husband to owe \$10,384 more in taxes on his income than he would have owed if he and wife had filed jointly. Wife admitted that she did not consult with husband before filing separately. Before the parties separated, they had always filed joint tax returns. But husband also admitted that he sold his 2012 Chevy Silverado—marital property—without wife’s consent. His 2017 taxes listed a gross sales price of \$22,228. Eben testified that he prepared a document, exhibit 115, that accounted for the difference between husband’s actual 2017 tax filings and an alternative tax column that deleted “the tax consequence of a sale of a vehicle” and “the sale of some investment assets.” The difference was \$10,368, accounting for both state and federal taxes.

### ***Motion for Attorney Fees***

Wife moved for an award of need-based attorney fees, arguing that an award was appropriate because she lacked the means to pay her fees while husband had more-than-adequate resources to do so. Husband responded that wife’s fees were not necessary for the good-faith assertion of her rights, that husband lacked the means to pay the fees, and that wife *did* have the means to pay.

### ***District Court Awards Wife Spousal Maintenance***

The district court determined that wife’s average gross monthly income was \$1,674, and that her income was insufficient to meet her expenses. It determined that wife’s reasonable monthly expenses totaled \$7,539, leaving her with a monthly budgetary shortfall of approximately \$6,100 after taxes. The district court found that wife was

voluntarily underemployed, but that it could not impute income to her because there was no evidence presented regarding her employment potential, prevailing job opportunities, or earnings levels in her community. The district court found it unlikely that she would obtain additional education to further employment, but noted that she already possessed “the necessary training and education to find employment that is self-sustaining.”

The district court meanwhile determined that husband’s average gross income was \$259,963 per year, or \$21,664 per month. It reduced husband’s claimed monthly expenses from \$14,240 to \$10,602. The district court reached this figure based on the following items: \$1,600 for rent; \$550 for health insurance; \$275 for utilities; \$160 for Vast internet and cable; \$120 for cell-phone bills; \$500 for other insurance; \$750 for car payments; \$500 for attorney fees; \$1,500 for past-due tax payments; \$500 for loan repayments; \$1,847 for child support; and \$800 in miscellaneous expenses. Without a specific determination of husband’s net income, the district court found, “After taxes and after paying his reasonable monthly expenses, as noted above, [husband] has approximately \$2,600.00 in net income per month remaining.” It concluded that husband had the ability to pay spousal maintenance in the amount of \$2,500 per month. The district court awarded wife that amount as permanent spousal maintenance.

***District Court Classifies Expenses Paid from Camp’s Sale Proceeds***

The district court found that the camp was marital property; that husband paid his father \$30,000 for his interest in the camp after the dissolution proceedings began; and that husband sold the camp for \$150,000 prior to the dissolution proceedings. The district court found that husband received \$46,500 of the first \$50,000 sale installment in cash with the

remainder as an in-kind payment, and that he gave \$10,000 in cash to wife. It further found that the following expenses paid from the proceeds were proper: the \$10,000 payment to wife; a \$10,500 beef purchase; a \$7,000 payment of Wife's credit-card debt; \$15,000 for apartment rent; an \$11,000 expert fee; a \$9,000 custody-evaluation fee; a \$6,000 child-counseling fee; \$12,000 in property expenses; \$15,000 in attorney-fee payments; and \$6,000 for mental-health services. It found that husband's \$30,000 payment to his father, \$5,000 for a vacation, and \$18,000 in miscellaneous living expenses were *not* proper.

***District Court Awards Dependent Tax Exemptions to Husband***

The district court found that the parties' two minor children could be claimed for dependency exemptions on income tax. The district court considered the parties' financial resources and concluded that awarding the child-dependency exemptions to husband would not negatively impact wife's ability to provide for the children's needs. It also concluded that husband would receive a greater tax benefit and that the impact of the exemptions on the parties' abilities to claim premium tax credits or subsidies was unknown. It awarded both exemptions to husband.

***District Court Awards Homestead and Insurance Proceeds to Wife***

The district court found that the parties' home was worth \$330,000 as of June 30, 2017, and it awarded the property to wife per the parties' stipulation. It also found that the parties had received a payment of \$9,945.43 for a home-insurance claim husband submitted in October 2018 for damage to the roof, and awarded those funds to wife.



***District Court Attributes Additional Tax Liability as Expense to Husband***

The district court found that wife filed her 2017 taxes as “Married Filing Separately,” resulting in an additional tax liability of \$10,384 to husband. It found that the parties had previously filed jointly and that wife filed separately without consulting husband. It awarded the added liability as an expense to husband in its property division.

***District Court Denies Wife’s Request for Need-Based Attorney Fees***

The district court found that wife did not have the means to pay her attorney fees and that she incurred her fees during the good-faith assertion of her rights without contributing unnecessarily to the length or expense of proceedings. But it found that husband did not have the means to pay wife’s attorney fees because husband’s monthly budget left him a minimal \$125 monthly surplus and he could not reasonably liquidate assets. It denied wife’s request for need-based attorney fees and granted in part her request for conduct-based attorney fees in the sum of \$9,307.40.

***Summary of Property Division***

The district court divided assets and debts beyond those summarized above. In total, the district court awarded assets totaling \$595,588 and debts totaling \$478,852 to husband. It meanwhile awarded assets totaling \$420,288.52 and debts totaling \$322,824 to wife. Based upon the parties’ net awards—\$116,736 to husband and \$97,464.52 to wife—the district court ordered husband to pay wife a \$9,500 equalizer payment.

Wife appeals.

## DECISION

### **I. The district court abused its discretion by limiting the spousal-maintenance award based on clearly erroneous findings.**

Wife argues that the district court erred by limiting its spousal-maintenance award to \$2,500 per month. We review a district court's spousal-maintenance decision for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion if it resolves the matter in a manner "that is against logic and the facts on record." *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016) (quotation omitted). We review legal questions de novo, but we review findings of fact for clear error. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted).

A district court may order spousal maintenance if it finds that the spouse requesting maintenance either:

(a) lacks sufficient property . . . to provide for reasonable needs of the spouse considering the standard of living established during the marriage . . . 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 . . . .

Minn. Stat. § 518.552, subd. 1 (2018); *see also Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of spousal maintenance requires a showing of need). The district court may award spousal maintenance "in amounts and for periods of time, either temporary or permanent," as it deems just and after considering "all relevant factors."

Minn. Stat. § 518.552, subd. 2 (2018). Although the statute lists several factors, “the issue is basically the financial needs of [the maintenance obligee] and her ability to meet those needs balanced against the financial condition of [the maintenance obligor].” *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). Wife challenges the district court’s findings regarding husband’s ability to meet his needs while paying maintenance in an amount sufficient to meet wife’s reasonable needs, and wife’s ability to meet her needs and her ability to become self-supporting. We address the arguments separately.

**A. The district court made clearly erroneous findings regarding husband’s ability to pay spousal maintenance.**

Wife argues that the district court erred when it determined husband’s ability to pay because it failed to determine husband’s net income and miscalculated his budget. We review a district court’s findings relating to ability to pay for clear error. *See Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004); *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

We first conclude that the district court failed to properly determine husband’s net income. Minnesota Statutes section 518.552, subdivision 2(g), requires the district court to consider “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.” And to determine a party’s ability to pay, the district 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). Here, the district court determined husband’s average *gross* income to be \$259,963 per year, but it made no explicit determination of his after-tax net income.

Even so, the district court's determinations of husband's gross monthly income and his monthly expenses, together with its determination of remaining "net income" per month, allow us to deduce what the district court necessarily considered to be his net monthly income.

The district court found that husband's monthly income was \$21,664 and that his reasonable expenses were \$10,602 per month. For the moment, we disregard a separate error in the district court's calculation of husband's expenses. Subtracting \$10,602 from \$21,664 yields \$11,062. The district court also found that, "[a]fter taxes and after paying his reasonable monthly expenses, as noted above, [husband] has approximately \$2,600 *in net income per month remaining.*" (Emphasis added.) We need only subtract this supposed remainder of \$2,600 from \$11,062 to arrive at \$8,462, which is the tax liability the court necessarily assumed in determining husband's remainder "after taxes" and "expenses." And dividing \$8,462 by \$21,664 yields an effective tax rate (rather than marginal) of 39%.

Because the district court failed to determine husband's net income, it gave no explanation of how it calculated husband's tax liability or the 39% effective tax rate implied by its calculations. And we find no clear record support for such a high tax liability. The record instead suggests a significantly lower tax rate. Eben's testimony and exhibit 127, for instance, estimated husband's 2019 tax liability by assuming husband's monthly income as \$23,590 and provided alternatives in which husband's spousal-maintenance payments were either deductible or non-deductible. The highest effective tax rate, even assuming husband's payments were not deductible, was 32.7% ([State \$1,831 + Federal \$5,881] / \$23,590). Eben's cash-flow projections also indicated much lower effective tax

rates based on different spousal-maintenance obligations. The district court erred by failing to explicitly determine husband's net income, and its implicit finding is clearly erroneous because it lacks record support.

We next conclude that the district court clearly erred by miscalculating husband's monthly expenses. The district court reduced husband's line-item budget as follows, but it miscalculated the aggregate of the expenses it found. It found the following expenses to be proper: \$1,600 for rent; \$550 for health insurance; \$275 for utilities; \$160 for Vast internet and cable; \$120 for cell-phone bills; \$500 for credit-card payments; \$500 for other insurance; \$750 for car payments; \$500 for attorney fees; \$1,500 for past-due tax payments; \$500 for loan repayments; \$1,847 for child support; and \$800 in miscellaneous expenses. These amounts total \$9,602, not \$10,602, as the district court found.

Additionally, the district court failed to reduce husband's health-insurance costs from \$550. Husband testified at trial that the monthly cost without coverage for wife would reduce from \$550 to \$272. And the district court made specific findings as to husband's health-insurance costs when determining child support: \$79 for dependent medical insurance, \$22 for dependent dental insurance, \$144.70 for single medical, \$11.60 for single dental, and \$10.88 for single vision. These total \$268.18 (\$269), contradicting the district court's finding of \$550 in medical expenses. Properly calculated, husband's monthly expenses should be reduced from \$10,602 to \$9,321 ( $\$10,602 - \$1,000 - \$281$ ).

**B. The district court made clearly erroneous findings regarding wife's ability to self-sustain or become self-sustaining.**

Wife also argues that the district court abused its discretion by finding that she had the necessary training and education to find self-sustaining employment without record support. Minnesota Statutes section 518.552, subdivision 2(a), requires consideration of the financial resources of the party seeking maintenance and the party's ability to meet her needs independently. Subdivision 2(b) meanwhile requires consideration of "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."

The district court did not explain the basis for its conclusion that wife already had the ability to self-sustain. It *did* find that wife had a pre-kindergarten teaching license, a grade 7-12 coaching certificate, a personal-trainer certificate, and a grade K-12 physical-education certificate. But the district court also noted that there was no evidence in the record regarding wife's "employment potential, prevailing job opportunities, or earnings level in the community." In light of the district court's findings that wife's gross monthly income was \$1,674, that her employment did not provide sufficient income, and that wife needed maintenance, there is no evidence in the record supporting the district court's conclusion that she could close the gap between her own income and her reasonable expenses. This portion of the district court's analysis is clearly erroneous.

### C. Conclusion

The district court's findings either lack evidentiary support or are contrary to the evidence and the district court's own findings. The district court's calculations regarding husband's reasonable expenses were incorrect, an error that exaggerated his expenses and understated his ability to pay. The error was compounded by the district court's failure to determine his net income, and its assumption of an excessive effective tax rate. These errors require us to reverse and remand for additional proceedings so that the district court can determine husband's net income, properly calculate his expenses, and reexamine the appropriate amount of spousal maintenance in light of husband's available resources.

We recognize that we have addressed narrow issues that were part of the district court's broader consideration of the factors enumerated in section 518.552, subdivision 2. But taking a broader view of the parties' circumstances only further demonstrates the central importance of these core issues. Here, the parties' standard of living during the marriage, *see* Minn. Stat. § 518.552, subd. 2(c), was established upon the earnings of two spouses with greatly disparate incomes. The district court recognized that the parties would not be able to fund that lifestyle after the dissolution, citing their separate households, separate expenses, and debts. The district court recognized that wife's budgetary shortfall would be approximately \$6,100 without maintenance, and that she would suffer a shortfall even *with* a \$2,500 spousal-maintenance award. But at the same time, husband, as the higher-earning spouse, suffered no budgetary shortfall under the current order even with his \$2,500 spousal-maintenance obligation.

Based on the determinations of the parties' incomes and reasonable expenses, the terms of the district court's order allows husband to meet all of *his* expenses while not providing wife with the means to pay her reasonable expenses. The record supports the district court's recognition that the parties' marital standard of living was not tenable postdissolution. But despite recognizing the need for the parties to tighten their belts, the district court here allowed husband comfortable slack while permitting wife only vicelike constraint. The effect of the district court's errors served only to increase the postdissolution disparity in the parties' respective budgets.<sup>1</sup>

We think the disparity is obvious even if we were to consider a substantial improvement in wife's circumstances. Were she to more than double her monthly income from \$1,674 to \$3,500, for instance, her monthly income including a \$2,500 spousal-maintenance payment would be \$6,000, a sum still insufficient to meet her reasonable monthly expenses of \$7,539. Reducing husband's monthly income of \$21,664 by his \$2,500 maintenance obligation and the overstated \$8,462 tax liability still leaves husband with \$10,702, more than enough to meet his properly calculated monthly expenses of \$9,321.<sup>2</sup>

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<sup>1</sup> The district court observed that “[*b*]oth parties will . . . likely have to face the same harsh reality of others in their circumstances,” and that “*both* parties” would need to make difficult decisions to establish responsible budgets. (Emphasis added.) But given the parties' respective budgets and incomes, we think it would have been more accurate to say that wife would have had to face a harsher reality and more difficult decisions—particularly where the district court's maintenance decision allows husband to enjoy more money than he needs to meet his reasonable expenses and wife is left with substantially less money than she will need to meet her reasonable expenses, as found by the court.

<sup>2</sup> We note that some of husband's substantial expenses are temporary and are likely to disappear in a few short years, such as his child-support obligation, owed taxes, loan



We observe last that the appropriate award was and remains discretionary with the district court. But we also observe that the discretionary weighing of numerous factors to differing circumstances across the state's multiple judicial districts lends itself to a high degree of variability in spousal-maintenance awards. In *Rye v. Cook*, for instance, the district court ordered spousal maintenance in the amount of \$19,500 per month, an amount that was roughly 58% of the obligor's net income. No. A13-1414, 2014 WL 1758277, at \*3-5 (Minn. App. May 5, 2014). We reversed and remanded that award due to certain errors affecting the district court's income and expense findings, *see id.*, but it serves merely as an example of a spousal-maintenance case litigated in the Fourth District with a *high* permanent award following a long-term, high-income, disparate-earnings marriage. This case was litigated in Lyon County, but similar to *Rye*, the district court here addressed a long-term, high-income, disparate-earnings marriage. And even working from husband's understated and implied net monthly income of \$13,202 (\$21,664 - \$8,462), the district court's spousal-maintenance award was a mere 19% of husband's net income (\$2,500 / \$13,202).

Our remand today focuses only on the errors affecting the district court's discretionary decision. Upon a proper determination of husband's net income and proper calculations of his expenses, we leave it to the district court to determine the appropriate amount of the spousal-maintenance award.

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repayments, and attorney fees. Once husband is relieved of these obligations, the disparity between husband's and wife's financial circumstances will become even more pronounced.

**II. The district court's findings that husband properly paid certain expenses from the camp's sale proceeds are not clearly erroneous.**

Wife argues that the district court's finding that husband spent \$101,500 of the camp's sale proceeds on proper expenditures is clearly erroneous. Husband argues that the district court's findings are supported by the record and rest upon credibility determinations. We review factual findings for clear error. *Kampf*, 732 N.W.2d at 633.

Wife argues that inconsistencies in husband's deposition testimony and trial testimony render the district court's findings untenable. In his deposition, husband testified that he had been paid the \$150,000 in full—and in cash—by December 2017. Husband said he never deposited the majority of those funds into an account. Husband denied having paid for counseling services, a custody evaluation, expert-witness services, attorney fees, or credit-card debt with cash. Husband also testified at trial that he did not pay for these services or debts with cash.

Wife acknowledges that husband presented exhibit 12 to the district court, which is an itemized listing of where the \$150,000 was apportioned. But because husband testified that he paid for those items via his corporate account, wife therefore infers that husband likely stashed away money or otherwise diminished the amount through untraceable expenditures. Wife overlooks that husband provided explanatory testimony at trial regarding why he paid with checks for the majority of exhibit 12's line items. Husband's counsel examined him as follows:

- Q: [S]o the money was used to pay these bills, you may have written a check out of say your business account or your personal account instead?
- A: Ah yes.

Q: And then you used -- the cash instead -- you used the cash for something else then?  
A: Yes . . . .

Husband's testimony offers at least some explanation reconciling his testimony that he was paid in cash, did not deposit the cash, and paid numerous family-related debts via check. The district court reviewed the parties' evidence, and it apparently credited husband's testimony. The assignment of evidentiary weight and determinations of witness credibility are matters left to the district court's discretion. *See Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009). Regardless of whether the evidence may have supported a determination that husband dissipated marital assets, we generally do not substitute our judgment for that of the district court. *See Arundel v. Arundel*, 281 N.W.2d 663, 667 (Minn. 1979); *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) ("That the record might support findings other than those made by the [district] court does not show that the court's findings are defective."). Although the record would easily support a different determination, the district court's findings are not clearly erroneous. We therefore affirm on this issue.

### **III. The district court abused its discretion by awarding husband the tax-dependency exemptions.**

Wife argues that the district court abused its discretion by awarding both dependent tax exemptions to husband because there was no evidence concerning the tax benefit accruing to either party from the exemptions. Husband argues that the district court's decision properly considered the appropriate statutory factors and should be affirmed. We review the district court's allocation of tax exemptions for an abuse of discretion. *See*

*Hansen v. Todnem*, 891 N.W.2d 51, 63-64 (Minn. App. 2017), *aff'd on other grounds*, 908 N.W.2d 592 (Minn. 2018).

Minnesota Statutes section 518A.38, subdivision 7(a) (2018), affords the district court the discretion to allocate income-tax dependency exemptions and to require one parent to release dependency exemptions to the other. To determine such an allocation, “the court *shall* consider” four factors:

- (1) the financial resources of each party;
- (2) if not awarding the dependency exemption negatively impacts a parent’s ability to provide for the needs of the child;
- (3) if only one party or both parties would receive a tax benefit from the dependency exemption; and
- (4) the impact of the dependent exemption on either party’s ability to claim a premium tax credit or a premium subsidy under the federal Patient Protection and Affordable Care Act . . . including the federal Health Care and Education Reconciliation Act of 2010 . . . and any amendments to, and any federal guidance or regulations issued under, these acts.

*Id.*, subd. 7(b) (emphasis added). If allocations are contested, the district court “must make findings supporting its decision on the allocation.” *Id.*, subd. 7(f). Here, the district court considered the parties’ financial resources and concluded that awarding the dependency exemptions to husband would not negatively impact wife’s ability to provide for the children’s needs. It found that the impact of the exemptions on either party’s ability to claim a premium tax credit or premium subsidy was “unknown” but that “[g]iven the parties’ respective incomes, [husband] would receive a greater tax benefit from the dependency exemptions.”

Wife focuses on the third factor, arguing that no evidence demonstrates that husband required the exemptions to support the children or that he is the only one who would benefit from the allocation. She emphasizes that the district court explicitly found that “there was no evidence regarding the benefit [husband] will receive from the exemption[s].” Our review of the record discloses no evidence regarding the tax benefit accruing to husband or wife based on the exemptions. And husband offers no record support for the district court’s weighing of this factor, arguing only that it “concluded that [he] would receive a greater tax benefit from the dependency exemptions.” The district court could not determine “if only one or both parties” would receive a benefit in the absence of supporting evidence. *Id.*, subd. 7(b)(3). The finding on this factor is unsupported by the record. We reverse on this issue and remand for further proceedings.

**IV. The district court abused its discretion by attributing \$9,945.43 in insurance proceeds to wife in addition to the home’s \$330,000 value.**

The district court determined that the reasonable value of the home was \$330,000 “as of June 30, 2017,” and that husband received and had not used \$9,945.43 in insurance proceeds for roof repair. It awarded the insurance proceeds to wife because she was the party awarded the home. Wife argues that the district court abused its discretion by valuing the house at \$330,000 *and* attributing the insurance proceeds to her as a separate asset of that value in its division of assets. Husband argues that the district court acted within its discretion by treating the insurance proceeds as a separate asset. “District courts have broad discretion over the division of marital property and appellate courts will not alter a district

court's property division absent a clear abuse of discretion or an erroneous application of the law." *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005).

Wife is correct that the district court improperly attributed the insurance payment to her as an asset separate and in addition to the value of the home. The district court determined the home's value as of June 30, 2017, and credited husband's testimony regarding hail damage and an insurance payout. Because the district court's valuation of the home as of June 2017 preceded the 2018 hail storm prompting the insurance claim, it is against logic and the facts in the record to attribute the \$9,945.43 to wife as an asset separate from the \$330,000 home value. *See Curtis*, 887 N.W.2d at 252. The district court overvalued the assets awarded to wife by this \$9,945 in its final calculation of marital property, consequently affecting its final equalizer award. We reverse and remand on this issue.

**V. The district court did not abuse its discretion in its allocation of tax obligations.**

Wife argues that the district court erred by attributing the additional tax liability caused by her 2017 filing status as an expense to husband, and by failing to account for the tax liability caused by his sale of the parties' Chevrolet Silverado. We review a district court's determination that a party dissipated assets for an abuse of discretion. *See Rohling v. Rohling*, 379 N.W.2d 519, 522-23 (Minn. 1986); *see also Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) ("A trial court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion.").

Minnesota law imposes a fiduciary duty upon dissolution parties during the pendency of dissolution proceedings “for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets.” Minn. Stat. § 518.58, subd. 1a (2018). If the district court finds that, during dissolution proceedings, a party

transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred.

*Id.* The district court is authorized to “impute the entire value of an asset and a fair return on the asset to the party who transferred, encumbered, concealed, or disposed of it.” *Id.* We address the filing-status and vehicle-sale issues separately.

**A. The district court did not abuse its discretion by attributing the filing-status liability to husband as an expense.**

The district court found that wife, without consulting husband, unreasonably elected to file her 2017 taxes as “Married Filing Separately,” creating an additional \$10,384 tax liability attributable to husband as an expense. Wife argues that the district court abused its discretion by attributing the additional tax liability as an expense to husband because she exercised a statutory right, the decision is unsupported by the record, and her filing was not a dissipation of marital assets as defined by statute. We disagree.

First, the district court’s conclusion is supported by the record. Exhibit 117 is husband’s supplemental answers to wife’s interrogatories and document requests. He stated that his taxes were increased by \$11,384 due to wife filing separately without

notifying him. Husband also testified at trial that wife's decision to file "Married Filing Separately" caused him "to pay an extra \$10,384." Eben calculated that amount based on the difference between joint and separate filings.

Second, we acknowledge that the filing of joint tax returns is permissive, not compulsory. *See* 26 U.S.C. § 6013(a) (2018) ("A husband and wife *may* make a single return jointly . . . ." (emphasis added)). But wife cites no legal support for the proposition that the district court is precluded from fashioning an equitable remedy merely because her act of filing a separate tax return was allowable. Wife does not challenge the district court's finding that she filed separately without consulting husband. Nor does she challenge the district court's determination that the parties' 2017 tax obligations were marital debts. Because wife's actions increased a marital debt, she effectively encumbered marital assets.

This court has addressed similar issues in unpublished opinions. In *Toso v. Toso*, No. A12-1033, 2013 WL 2923639, at \*7 (Minn. App. June 17, 2013), we held that the district court did not abuse its discretion by assigning a tax debt to a party who filed his tax return separately despite having been ordered to file jointly. In *Tiedke v. Tiedke*, No. A18-1492, 2019 WL 3545816, at \*8 (Minn. App. Aug. 5, 2019), we affirmed the district court's denial of a party's request to equally divide the additional tax liability incurred by separate tax filings. We affirmed the district court's decision because the party's evidence did not "clearly prove the difference in tax liability" between the parties' separate filings and a hypothetical joint filing. *Id.* This case is distinguishable from *Toso* because the district court here had not ordered the parties to file a joint tax return, but the *Toso* decision supports the proposition that additional tax liability resulting from separate filings is



properly assignable in equity. *See* 2013 WL 2923639, at \*7. *Tiedke* is likewise distinguishable because, in this case, husband provided evidence of the specific amount of the increased tax liability whereas the *Tiedke* appellant did not. 2019 WL 3545816, at \*8. The *Tiedke* opinion supports husband's position because it recognizes that the assignment of tax liability may be appropriate *upon proper proof*. *See id.* These cases are merely persuasive authority, but both support husband's position.

Because wife filed her 2017 taxes separately without consulting husband, and because her filing increased a marital debt, we discern no abuse of discretion in the district court's assignment of the additional liability. We affirm on this issue.

**B. The district court did not abuse its discretion by declining to find a \$10,368 tax liability as a result of husband selling the Silverado.**

The district court found that husband traded in the parties' Chevrolet Silverado without wife's consent and awarded the vehicle's \$22,228 value to husband. Wife argues that the district court then abused its discretion by failing to attribute a resulting \$10,368 tax obligation as an award to husband or an expense to wife.

Husband admitted to selling the Silverado without wife's consent and acknowledged a tax liability associated with the sale. But exhibit 115, to which wife cites in support of her argument regarding the specific \$10,368 tax liability, concerns *both* the sale of the Silverado *and* "the sale of some investment assets." The taxable-income difference Eben accounted for totals \$22,916, *not* \$22,228, a difference of \$688 which presumably accounts for the sale of "investment assets." The additional tax consequence attributable to the Silverado sale is therefore *not* \$10,368. Wife bore the burden of

demonstrating a dissipation of assets. Minn. Stat. § 518.58, subd. 1a. And where the record does not clearly establish the additional tax liability attributable solely to the Silverado's sale, the district court did not abuse its discretion by failing to find and assign the additional tax liability.

**VI. The district court abused its discretion in denying need-based attorney fees.**

Wife argues that the district court abused its discretion by denying need-based attorney fees because husband could have paid those fees from the camp's sale proceeds. We review the district court's decision regarding need-based attorney fees for an abuse of discretion. *See Schallinger v. Schallinger*, 699 N.W.2d 15, 24 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). We reject wife's principal argument because we have affirmed the district court's findings regarding husband's use of a portion of the camp's sale proceeds. But because the district court reached its attorney-fee decision based on findings we have separately deemed erroneous, we discern a separate abuse of discretion in the district court's attorney-fee decision.

Minnesota Statutes section 518.14, subdivision 1 (2018), directs that the district court "shall award attorney fees, costs, and disbursements" necessary to allow a party to proceed if it finds:

- (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
- (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and
- (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

The district court's attorney-fee analysis is necessarily interconnected with its maintenance analysis. Concerning the third element, the district court found in its maintenance analysis that husband would have approximately \$125 available in his monthly budget. But it arrived at this figure based on its clearly erroneous findings regarding husband's monthly budget and the excessive effective tax rate it assumed. Because the district court's findings regarding husband's ability to pay assumes an incorrect and understated budgetary surplus, the district court abused its discretion by concluding that husband did not have the means to pay *any* of wife's attorney fees. We reverse on this issue and remand for further consideration, in light of the district court's determinations of the other issues on remand.

On remand, the district court may, in its discretion, reopen the record.

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