STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1993

In re the Marriage of:

Andrew Lowe Billett, petitioner,
Respondent,

vs.

RuthAnne Billett,
Appellant.

Filed December 21, 2020
Affirmed
Cochran, Judge

Blue Earth County District Court
File No. 07-FA-17-3863

Steven P. Groschen, Kohlmeyer Hagen Law Office, Chtd., Mankato, Minnesota (for respondent)

Tami L. Peterson, Saxton Peterson Law Firm, Mankato, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

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

COCHRAN, Judge

In this marital-dissolution dispute, appellant-wife argues that the district court erred by (1) underestimating wife's need for attorney fees; (2) dividing the marital assets inequitably; (3) miscalculating husband's and wife's incomes for the purpose of spousal

maintenance; and (4) miscalculating husband's and wife's incomes for the purpose of child support. We affirm.

FACTS

Appellant RuthAnne Maihan Billett (wife) and respondent Andrew Lowe Billett (husband) were married in 1994. They have one minor son who was born in 2003. Husband petitioned for dissolution of the marriage in 2017.

The family predominantly relied on husband's income during the parties' marriage. Husband worked full-time for many years in upper management at a commercial printing company. Between 1994 and 2003, wife worked at a number of different jobs, including clerical jobs. Wife also took some college classes. Beginning in 2004, wife became a stay-at-home parent but did some occasional part-time work and also completed her college degree. After graduating from college in 2011 with a degree in information technology (IT), wife held a part-time IT-related position with husband's employer. From 2016 until the time of the dissolution trial, wife homeschooled the parties' son and did not work outside the home.

In March 2018, the district court granted wife's request for temporary need-based attorney fees and ordered husband to pay wife $5,000. The district court held a trial one year later, in March 2019. At trial, the parties disputed issues related to calculating each of their incomes, the division of the marital property, the amount of spousal maintenance and child support, and the amount of attorney fees.

Wife testified about her employment prospects. She discussed her plans to move from Minnesota to North Carolina with the parties' son after the family home sold. At that

time, wife did not know precisely where in North Carolina she would live. She testified that she intended to find a job after arriving in North Carolina and that she planned to seek out clerical positions rather than jobs in the IT field because she had no desire to work in IT. In response to further questions about her job prospects in North Carolina, wife testified that she had researched clerical jobs and found that they paid between $9 and $11 per hour but identified only one specific job opportunity.

On July 8, 2019, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment decree, dissolving the parties' marriage. The district court awarded joint legal custody of the minor child to husband and wife but awarded sole physical custody to wife. The district court also ordered the parties to enroll their child in a public or private school for the 2019-2020 school year, rather than have the child attend home school.

The district court awarded $428,076.47 in net marital assets to husband and $409,554.42 to wife. The district court also ordered husband to pay wife permanent spousal maintenance in the sum of $2,250 per month and child support in the sum of $1,255 per month. In calculating the maintenance and child-support awards, the district court considered both parties' monthly incomes and expenses. The court found that husband's net monthly income was $8,597. To determine wife's income, the district court considered wife's education, current unemployed status, previous job positions and salaries, plan to move to North Carolina, and testimony that she planned to find clerical work, as well as testimony from a vocational expert. The court imputed an income of approximately

$31,000 per year to wife based on a wage of $15 per hour, finding that wife "can obtain a job paying at least $15 per hour immediately upon her move to North Carolina."

The district court also ordered husband to pay wife $15,154 in need-based attorney fees and $1,353.75 in expert fees. The court determined that husband had the ability to pay the attorney-fees award if the payment was "structured correctly." The court then ordered husband to pay the attorney-fees award "in lieu of a property equalization payment." It noted that structuring the payment in this manner was "most convenient."

Wife subsequently moved for amended findings of fact or a new trial. She argued that the district court failed to properly account for the temporary-attorney-fees award in the property division, should have ordered husband to pay a property equalization payment of $9,261 in addition to wife's need-based attorney fees, and erred in determining husband's and wife's incomes for the purposes of spousal maintenance and child support. She further challenged the district court's order regarding the education of the parties' son, but husband and wife have since resolved that dispute. In an order dated October 25, 2019, the district court denied wife's motion in its entirety.

Wife appeals.

D E C I S I O N

Wife makes several arguments on appeal. She first contests the amount of her need-based attorney-fees award. Second, she challenges three aspects of the marital property division. Third, she argues that the district court abused its discretion in calculating her spousal-maintenance award. Finally, she contends that the district court abused its discretion in calculating the child-support award. We address each issue in turn.

I. The district court did not abuse its discretion in determining the need-based attorney-fees award.

Wife argues that the district court erred in awarding her $15,154 in need-based attorney fees because it failed to consider the entirety of her need for attorney fees. We are not persuaded.

In a marital-dissolution case, the district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding," provided that the district court 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.

Minn. Stat. § 518.14, subd. 1 (2018). This court has stated that an award of need-based attorney fees under Minn. Stat. § 518.14, subd. 1, "rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999).

Here, wife did not request any specific amount of attorney fees. Instead, she submitted an affidavit from her attorney asserting that her attorney fees through submission of the post-decree filings totaled $63,377 and that she had paid $48,223 of that amount. She further testified at trial that she had around $15,000 in outstanding fees that she was

unable to pay. Based on that information, the district court concluded that wife was left with an outstanding balance of $15,154 in attorney fees. The court then made the specific findings required under Minn. Stat. § 518.14, subd. 1, including that wife did not have the means to pay the fees, that husband had the means to pay them, and that the fees were necessary for wife's assertion of her rights in the proceeding. The court consequently ordered husband to pay wife need-based attorney fees in the sum of $15,154.

Wife contends that the district court abused its discretion in its determination of wife's need-based attorney fees in the judgment and decree because it failed to expressly consider certain credit card debt that wife had incurred to pay her attorney.[1] Wife relies on *Bone v. Bone*, 438 N.W.2d 448 (Minn. App. 1989), for her argument that the district court erred by failing to make "specific findings" indicating that it considered the relevant credit card debt in determining wife's need for fees.

Wife's reliance on *Bone* is misplaced. First, *Bone* predates the 1990 amendment of Minn. Stat. § 518.14, subd. 1, into its current format requiring the statutory findings of fact. *See Geske v. Marcolina*, 624 N.W.2d 813, 817 n.2 (Minn. App. 2001) (addressing viability of pre-amendment caselaw). And, as noted above, the district court made the statutory findings now required. Second, *Bone* did not address the specific findings a district court needs to make regarding an attorney-fees award. Rather, *Bone* addressed whether a district court erred when it amended a marital property settlement. *Bone*, 438 N.W.2d at 452-53.

[1] While wife does not specify the amount of debt she acquired, the district court found in its order denying wife's motion for amended findings of fact or a new trial that wife had incurred approximately $8,500 in debt on a Discover credit card to cover part of her attorney fees.

And we are not aware of any caselaw requiring a district court to make the specific findings requested by wife.

In light of the evidence suggesting an outstanding balance of $15,154, and in the absence of a request from wife for a specific amount, it was reasonable for the district court to determine that $15,154 was the extent of wife's need. Accordingly, we conclude that the district court did not abuse its discretion by awarding wife $15,154 in need-based attorney fees.

II. The district court did not abuse its discretion in dividing the marital property.

Wife challenges three aspects of the marital property division. She asks us to reverse the district court on the grounds that it apportioned wife's need-based attorney fees as part of the property division, failed to account for a $5,000 withdrawal that husband made from the marital account, and abused its discretion by awarding husband more than one-half of the marital property. We conclude that none of these arguments require reversal.

A. Allocation of Attorney Fees

Wife argues that the district court abused its discretion by improperly apportioning the attorney-fees award as part of the property division. Specifically, she challenges the district court's order that husband pay wife $15,154 in need-based attorney fees "in lieu of a property equalization payment."

A district court has broad discretion over the division of property in a marital dissolution proceeding and will not be reversed absent an abuse of discretion. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). "A district court abuses its discretion

when it makes findings unsupported by the evidence or when it improperly applies the law." *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009) *and appeal dismissed* (Minn. Feb. 1, 2010).

Our precedent establishes that attorney fees acquired in a marital dissolution "are not part of the marital estate, and thus are not apportionable as property." *Bone*, 438 N.W.2d at 452; *see also Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn. App. 1984) (stating that "[a]ttorney's fees for the dissolution are not part of the marital estate" and "should not therefore be considered" in a property division).

Here, the district court failed to follow that legal standard when it explicitly considered need-based attorney fees in its allocation of the marital property. In the judgment and decree, the district court allocated the marital assets and debts in a manner that resulted in a preliminary property award of $428,076.47 to husband and a preliminary award of $409,554.42 to wife. The district court then addressed the disparity between the two preliminary awards by ordering husband to pay wife's need-based attorney fees "in lieu of" any equalization payment. The court explained its reasoning as follows:

> The Court considered awarding a property equalization award from [h]usband to [wife;] . . . however, it is most convenient that in lieu of a property equalization payment, [h]usband pay [wife's] outstanding legal fees in the amount of $15,154.00. Such amount takes into consideration both the equalization payment and the attorney's fees request.

In doing so, the district court improperly apportioned wife's need-based attorney-fees award in its allocation of the marital property. This conclusion is confirmed by the district court's balance sheet which shows the distribution of the parties' marital property. The

balance sheet lists husband's subtotal property award as $428,076.47, then lists a $15,154.00 deduction for husband's responsibility for wife's need-based attorney-fees award, and finally reflects a resulting "total asset/debt allocation" to husband of $412,922.47. In other words, the balance sheet reflects that husband's final marital property award of $412,922.47 is equal to his preliminary award minus a deduction for the amount of need-based attorney fees ($428,076.47 – $15,154.00). Because caselaw makes clear that a court may not allocate attorney fees as part of a property division, the district court erred by apportioning wife's need-based attorney fees as part of the property division. *Bone*, 438 N.W.2d at 452; *Filkins*, 347 N.W.2d at 529.

Although we are persuaded that the district court erred by apportioning the need-based attorney fees in the property award, we decline to reverse on this ground because the court's error was de minimis. We have previously held that we will not reverse and remand where the district court's error was de minimis or where the appellant failed to show that the error was substantially prejudicial. *See, e.g., Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (stating that a district court's failure to account for $400 in value of land worth $99,000 and with $54,900 in equity was a de minimis error and declining to remand), *review denied* (Minn. Nov. 16, 2010); *Duffney v. Duffney*, 625 N.W.2d 839, 843 (Minn. App. 2001) (holding that understating father's monthly income by $20 to $25 was "de minimis and does not warrant a remand"). Here, the parties had a sizable marital estate that totaled nearly $840,000. The district court's error, in which it improperly allocated $15,154 in attorney-fee debt to husband, amounts to approximately two percent of the marital estate. In light of the marital estate's

total value, this amount is relatively insignificant. In sum, while we agree that the district court erred by apportioning the need-based attorney fees as part of the property division, we decline to reverse and remand on the grounds that the court's error was de minimis.

B. Failure to Account for a $5,000 Withdrawal by Husband

Wife also argues that the district court abused its discretion by failing to account for a $5,000 withdrawal made by husband from a joint bank account to pay an award of temporary attorney fees.

In a March 2018 order, near the start of the proceeding, the district court found that wife was in need of funds to pay her attorney and ordered husband to pay $5,000 in temporary attorney fees. This amount is separate from the final need-based attorney-fees award. In its March 2018 order, the district court stated, "To the extent [h]usband must use marital property to pay the attorney's fees it shall be accounted for appropriately." Husband then withdrew $5,000 from a joint account to make the payment to wife. Wife testified that she provided husband with a check in order to make the withdrawal.

The district court ultimately did not account for the $5,000 in its division of the marital assets and debts. Following the judgment and decree, wife requested that the district court order husband to pay her $5,000 from his share of marital property after division. The district court denied this request. The court determined that wife "agreed to have [husband] take the $5,000 from the account." Because the withdrawal date was prior to the estate valuation date, the court found that "[t]he dissipation of an account for any legitimate expense would be shared by the parties."

Wife contends that her consent to the withdrawal did not "signif[y] her willingness to forego any appropriate accounting for the payment from [the] joint account." She states that the district court's failure to account for the withdrawal from the joint account diminished the value of the marital account and "negates the previously granted temporary attorney fees award entirely." Accordingly, she maintains that "[h]usband should be required to pay the $5,000.00 temporary attorney fees award to [w]ife out of his share of the property settlement to make [w]ife whole." Husband counters that wife's consent to the withdrawal constituted a waiver of wife's right to have the withdrawal accounted for in the final property division.

We need not decide whether the district court erred by failing to account for the $5,000 withdrawal from the joint account because, like the error discussed above, any error was de minimis and does not require reversal. *See, e.g., Risk ex rel. Miller*, 787 N.W.2d at 694 n.1 (refusing to remand for a de minimis error in a marital property award). We first note that if the district court had accounted for the withdrawal from the joint account, wife would not have received a full $5,000 payment from husband but rather $2,500, because wife was entitled to a one-half share of the joint account. Second, the amount at issue here—whether it is $2,500 or $5,000—comprises an even smaller percentage of the total marital estate than the amount of the need-based attorney fees discussed previously.[2]

[2] Even if the $2,500 amount is added to the need-based attorney-fees amount of $15,154, the total amount combined comprises less than three percent of the total marital estate. Any error therefore remains de minimis.

Accordingly, we similarly decline to reverse the district court's division of the marital property on the basis that it failed to account for the temporary-attorney-fees award.

C. Unequal Division of Marital Assets and Debts

Wife further argues that the district court abused its discretion by awarding husband more than half of the net marital property. We disagree.

In a marital dissolution, a district court has broad discretion to divide the parties' assets and debts. *Antone*, 645 N.W.2d at 100. The division must be fair and equitable, Minn. Stat. § 518.58, subd. 1 (2018), but it need not be mathematically equal, *Justis v. Justis*, 384 N.W.2d 885, 888 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). As noted above, we review a district court's division of marital assets and debts for an abuse of discretion. *Antone*, 645 N.W.2d at 100. An appellate court "will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though [the appellate court] might have taken a different approach." *Id.* A district court abuses its discretion in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Based on the district court's finding that wife could not support herself without spousal maintenance, wife argues that she is entitled to an equal division of the marital property or, alternatively, to a division that is weighted in favor of wife. She relies on *Kaste v. Kaste*, 356 N.W.2d 64 (Minn. App. 1984), for this proposition. In *Kaste*, the district court had found that the wife lacked sufficient resources to meet her needs and made a specific finding that "an equal distribution of marital property without additional

support or maintenance would be unfair." *Kaste*, 356 N.W.2d at 68 (emphasis omitted). Nevertheless, after awarding the wife spousal maintenance, the district court divided the marital property unequally, awarding the husband over $35,000 more in marital assets than the wife. *Id.* We reversed. We held that the district court's findings revealed that the district court at least intended to equally divide the property. *Id.* Because the record indicated that the wife needed at least half of the marital property and provided no evidence that the husband could not meet his needs if the marital property were equally divided, the district court's failure to make an equal division was an abuse of its discretion. *Id.*

Wife argues that the present case is analogous to *Kaste* because the district court in this case made "similar statements" about wife's inability to meet her needs such that she requires permanent spousal maintenance. The present case, however, is distinct from *Kaste*. While the district court found that wife required spousal maintenance, it did not make a specific finding that it would be unfair for wife to receive less than half of the marital property. Because the court here made no such statements, *Kaste* is not controlling on this issue.

The district court was well within its discretion when it unequally divided the marital property. The court made detailed findings with respect to the factors it was required to consider under Minn. Stat. § 518.58, subd. 1. For instance, it considered the age, health, employability, needs, occupation, and income of each party, as well as the contribution of each party to the amount and value of the marital property. The court further explained in its order denying wife's motion for amended findings or a new trial that each party received over $400,000 in assets. And it explained that the largest disparity

between the parties resulted from the different values of their respective cars and the checking accounts they had in their own names. Regarding the checking accounts, the court explained that wife was assigned more debt—the full balance of her Discover credit card—because she had used the Discover card to pay her own living expenses following the parties' separation. The court found that dividing the bank accounts based on who had the account in their name was "more convenient." Because the court considered the proper factors and gave a reasonable explanation based on the facts for the disparity between the parties' net property awards, it did not abuse its discretion in dividing the marital assets and debts.

III. The district court did not abuse its discretion in determining husband's and wife's incomes for the purpose of spousal maintenance.

Wife argues that the district court erred in calculating the incomes of both parties for purposes of determining spousal maintenance and thus failed to award sufficient spousal maintenance to meet wife's needs. An appellate court reviews a district court's original award of spousal maintenance for an abuse of discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses its discretion regarding spousal maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *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)). The court's determination of income for the purpose of spousal maintenance is a finding of fact that will be set aside only if it is clearly erroneous. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). In order to successfully challenge a district court's findings of fact, "the party challenging

the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

A. Wife's Income

After determining that a party seeking spousal maintenance has demonstrated a showing of need, a district court may award spousal maintenance "in amounts and for periods of time, either temporary or permanent, as the court deems just." Minn. Stat. § 518.552, subd. 2 (2018). In determining the amount of the award, the district court considers a variety of factors. *Id.* These include the financial resources of the party seeking maintenance, the party's ability to meet needs independently, the time needed for that party to acquire sufficient education in order to find appropriate employment, the party's age and physical and emotional condition, the standard of living established during marriage, and, in the case of a homemaker, the length of absence from employment and the extent to which any education or skills have become outmoded. *Id.*

In determining the amount of wife's spousal-maintenance award, the district court recognized that wife planned to move to North Carolina after the parties' house sold and determined that wife could "obtain a job paying at least $15 per hour immediately upon her move to North Carolina." Wife argues the district court erred both by finding (1) that she could immediately earn any income after arriving in North Carolina, and (2) that she could obtain employment at $15 per hour. Neither argument is persuasive.

The district court based its determination that wife could obtain a job paying at least $15 per hour immediately upon her move to North Carolina on its review of wife's

employment history and education. It found the following facts relevant: between 1999 and 2003, wife earned between $12 and $13.50 an hour working clerical jobs; wife has primarily been a stay-at-home parent since 2004, but has worked some part-time jobs; wife earned a bachelor's degree in IT in 2011 and graduated summa cum laude; wife worked part time from 2013 to 2015 as an independent contractor for the company at which husband is employed and earned $40 per hour during that period; and wife has not worked in any capacity outside the home since 2015. The court further found, in its order denying wife's motion for amended findings of fact or a new trial, that wife worked part time in 2010 earning $15 per hour. The court recognized that wife had been homeschooling the parties' son for the last several years and therefore had been unable to work outside the home during the day, but concluded that wife would be able to work outside the home again upon moving to North Carolina because the parties' son would be attending public or private school in North Carolina.

Wife argues that the court's determination that she could earn an income *immediately* after moving to North Carolina was "inappropriate speculation." She contends that the district court should have relied on her testimony that she needed to wait until after the parties' home sold and she moved to North Carolina to secure a job and that, accordingly, the district court should have imputed an income of $0 for wife when calculating spousal maintenance. She further suggests that the district court could have revisited "the obligation when [w]ife actually obtained employment and her income was a known fact." Alternatively, wife argues that the district court "should have included a step

decrease in spousal maintenance, allowing for a reasonable time for [w]ife to find employment following the dissolution."

We conclude that the district court did not clearly err by finding that wife could immediately earn income in North Carolina. The court reviewed wife's education, employment history, and employment prospects and determined that wife could immediately begin earning an income "without any additional training or skillset." Furthermore, there is no indication that wife was unable to search and apply for jobs via the internet or telephone before she moved to North Carolina. She also had ample time during the pendency of the dissolution proceeding and prior to the sale of the parties' home to search for jobs. It was not unreasonable for the court to find that she could secure a job before she moved and therefore begin earning an income immediately upon arriving in North Carolina.

Wife also argues that the district court abused its discretion when it found that she could earn $15 per hour. In particular, she argues that the only evidence the court received about her potential income in North Carolina was her own testimony that "she could obtain [clerical] positions earning between $9 and $11 per hour." She contends that "[n]othing in the record supports the [d]istrict [c]ourt's finding that [she] can earn $15.00 per hour in rural North Carolina."

Based on the limited salary information in the record regarding clerical positions in North Carolina, it was not unreasonable for the court to settle on a wage of $15 per hour. Wife testified that she had researched clerical job opportunities in North Carolina and that they paid $9 to $11 per hour, but she specifically identified only *one* opportunity—an

opening at a church in the area where she planned to move. The court rejected her testimony on this point based on evidence that she had earned a higher wage than that in similar jobs between 1999 and 2003. Given the great deference this court accords to a district court's credibility determinations, we will not disturb this finding. *See Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009) ("When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal."). Furthermore, the wage of one job opportunity in North Carolina cannot be taken to adequately represent the wages of other clerical jobs in the area. Wife cannot be heard to complain about the district court's failure to rule in her favor "when one of the reasons it did not do so is because [she] failed to provide . . . the evidence that would allow the district court to fully address the question." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

Because wife failed to provide adequate evidence about her potential future income working in North Carolina, the district court needed to consider the other available evidence of wife's potential income. As described above, the court made extensive findings with respect to wife's education and employment history. The district court found that wife earned between $12 and $13.50 an hour working clerical jobs between 1999 and 2003. The court further found that wife made $15 per hour in 2010 doing part-time IT work. While wife's testimony at trial may imply that husband had some influence over her wage for that position, which was an internship with husband's employer, it is not clearly erroneous to assume wife would be able to obtain a job at the same wage on her own. The

district court's finding that wife could make $15 per hour was reasonably based on the evidence at trial.

Because wife failed to meet her burden to provide sufficient evidence of her potential income in North Carolina, and the other evidence in the record suggests $15 per hour is a reasonable estimate, the district court's finding is not clear error. The district court did not abuse its discretion in determining wife's income for the purpose of computing spousal maintenance.

B. Husband's Income

Wife also argues that the district court erred in its calculation of husband's income by excluding potential future bonuses that husband might receive.

A district court may consider "bonuses which provide a dependable source of income" when calculating future income for the purpose of spousal maintenance. *McCulloch v. McCulloch*, 435 N.W.2d 564, 566 (Minn. App. 1989) (quoting *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987)). A district court does not err in omitting bonuses from its income calculation where a party's prospects for receiving future bonuses are "too speculative." *Id.*

At trial, the parties disagreed as to whether husband's future bonuses should be considered in calculating his income. Husband testified that although he had received some substantial bonuses in the past, his employer changed the bonus structure in 2016, making bonuses more difficult to achieve. The district court also heard testimony from a longtime employee of husband's company who stated that employees now receive bonuses "probably 30 percent of the time or less" and are "not ever supposed to expect to get a

bonus." Based on this testimony, the district court determined that the likelihood of husband receiving income bonuses in the future was too uncertain to consider in its determination of spousal maintenance. The district court accordingly determined that "bonuses can no longer be presumed and are awarded less frequently," and so declined to include them in husband's income.

Wife contends the district court erred because "it is possible for [h]usband to receive bonuses in the future, as he has frequently in the past." She argues that if husband's chances of receiving future bonuses are questionable, the district court should have awarded her spousal maintenance that "included a percentage of [h]usband's bonus if and when there was one received." But a district court is not required to consider bonus income where bonuses are too speculative. Moreover, the "base-plus-a-percent" award sought by wife is disfavored. *McCulloch*, 435 N.W.2d at 567. Given the testimony at trial, it was not clear error for the district court to find that husband's prospects of receiving a bonus in the future are too unpredictable to consider in its determination of husband's income.

In sum, the district court did not clearly err in determining either party's income and therefore did not abuse its discretion in calculating spousal maintenance.

IV. The district court did not abuse its discretion in determining husband's and wife's incomes for the purpose of child support.

Wife also argues that the district court erred in calculating both her income and husband's income for the purpose of child support. A court's determination of income for child-support purposes "must be based in fact and will stand unless clearly erroneous."

Newstrand v. Arend, 869 N.W.2d 681, 685 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Dec. 15, 2015).

Wife again argues that the district court should have included husband's potential bonuses when it determined husband's child-support obligation. Minnesota statutes provide that "gross income" is used to establish child support obligations. Minn. Stat. § 518A.34(b)(1) (2018). Gross income is defined as "any form of periodic payment to an individual" and can include bonus income. Minn. Stat. § 518A.29(a) (2018); *Desrosier v. Desrosier*, 551 N.W.2d 507, 509 (Minn. App. 1996). But, as discussed above, a district court need not consider potential bonus income where the income is not a regular, dependable form of payment. *Desrosier*, 551 N.W.2d at 509. Accordingly, for the same reasons discussed with respect to the spousal-maintenance calculation, the district court did not abuse its discretion by disregarding husband's potential future bonuses in its calculation of husband's child-support obligation.

Turning to wife's income, wife asserts that the district court erred in its consideration of wife's earning potential in North Carolina. Under Minn. Stat. § 518A.32, subd. 2(1) (2018), a district court may determine a party's potential income for child-support purposes according to "the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community." Wife argues that the phrase "in the community" under Minn. Stat. § 518.32A, subd. 2(1), required the district court to consider wife's earning potential in "rural North Carolina" and that the court's reliance on evidence of wife's past and potential income in Minnesota was therefore

erroneous. However, as discussed earlier regarding the spousal maintenance award, wife failed to present sufficient evidence from which the district court could determine her potential income in North Carolina. The district court therefore did not commit clear error when it relied on the other evidence in the record to determine wife's potential income in North Carolina.

Affirmed.