STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1009

In re the Marriage of:
John Alex Walker, petitioner,
Appellant,

vs.

Laura Margaret Walker,
Respondent.

Filed June 21, 2021
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-FA-18-2386

Sonja Trom Eayrs, Barnes & Thornburg LLP, Minneapolis, Minnesota; and

Michael P. Boulette, Taft, Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

Timothy D. Lees, Lees Family Law, Ltd., Edina, Minnesota (for respondent)

Considered and decided by Segal, Chief Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from a final judgment dissolving a 19-year marriage and two post-dissolution orders denying a new trial and granting attorney fees, appellant-husband challenges the district court's awards to respondent-wife of permanent spousal

maintenance, an upward deviation in child support, and need-based attorney fees. Because the district court clearly erred in its factual findings relating to husband's ability to pay and because the district court erroneously included the children's expenses when setting the amount of wife's spousal maintenance, we reverse in part and remand for further proceedings consistent with this opinion. But because the record supports the district court's decision to award an upward deviation in child support and need-based attorney fees, we affirm in part.

FACTS

Appellant John Alex Walker (husband) and respondent Laura Margaret Walker (wife) married in September 2000. The couple separated in January 2018, and husband petitioned for divorce in April 2020. They have four children, who, at the time of dissolution, were between the ages of 15 and 18. At the time of dissolution, husband worked as a senior director of pharmaceutical sciences at Upsher-Smith Laboratories Inc.[1] After they married, wife left her employer to work at home and care for their children. In January 2019, wife gained employment outside the home at Children's Minnesota as a grant writer.

The parties agreed on many issues. They agreed to joint physical and legal custody of the children and an equal division of the marital estate, with each receiving about $545,000. They also agreed on the extent of each party's nonmarital assets: husband's nonmarital assets were $415,000 and wife's were $598,000.

[1] Husband notes that his position was eliminated after entry of the dissolution judgment and, in 2020, he became a senior regulatory-affairs program manager at Medtronic.

But husband and wife disagreed on whether wife should receive spousal maintenance and, if so, the appropriate amount. And husband opposed wife's position that he should pay an upward deviation for child support and need-based attorney fees. In September 2019, the referee conducted a two-day bench trial, after which it issued findings of fact, conclusions of law, and an order for judgment and decree, which the district court adopted.

Spousal maintenance

In the written findings of fact, the district court first considered the parties' incomes. The district court found that husband earned a "gross income of $245,619 per year, or approximately $20,468.00 per month" and "[a]pproximately $10,010 per year or $834 per month is received as an automobile allowance." The district court added the car allowance to husband's gross income. The district court also added the average of three years of bonuses to husband's gross income. The district court concluded that husband's "total gross annual income for purposes of determining spousal maintenance and child support is $318,525 or approximately $26,544 per month."

The district court then found wife's "gross income of $68,994 per year or approximately $5,749.50 per month." While the district court discussed some before-tax and after-tax salary deductions for both husband and wife, the district court did not make an express finding of husband's or wife's net incomes, even though the parties submitted expert reports that calculated net income.

The district court next addressed husband's and wife's proposed budgets. Husband estimated his monthly expenses were $9,718. But the district court rejected some items in

husband's budget because the items were not "appropriate compared to the parties' marital standard of living." The district court found that husband's "reasonable total monthly budget is $9,305."

Wife estimated her monthly expenses were $11,803. The district court determined that while "most of Wife's claimed monthly expenses are appropriate and reflect the parties' marital standard of living . . . some are not." For example, the district court found that wife's proposed budget included "$1,725.00 per month for children's expenses." The district court noted that wife testified "many of her higher budget line items related to the costs of caring for the parties' four minor children." The district court also found that husband had agreed to pay for many of these line-item expenses, including "Tutor, Sports, Music Lessons, Hockey, and other Clubs/Camps." Still referring to the children's expenses in the wife's budget, the district court stated that it "removed these expenses from Wife's budget." But, without further explanation, the district court reduced "Wife's children's expenses by $1,415.00." In other words, the district court did *not* remove $310 that it had identified as "children's expenses" from wife's proposed budget. The district court concluded that wife's "reasonable monthly budget is $8,714, which leaves a monthly shortfall of $2,964" based on her gross income.

The district court then discussed each of the spousal-maintenance factors. For example, the court determined that before their marriage, wife worked "in the field of continued medical educational training," but after the marriage the parties agreed wife would be "the primary parent to the parties' four (4) children." "[S]he cannot easily resume her previous career," but eventually obtained "her current full-time job with Children's

Minnesota." The district court determined that "if Wife had not left the workforce to care for the parties' daughters, she would be earning a higher income than she is earning now."

The district court determined that because of wife's monthly shortfall, she "cannot provide adequate self-support, after considering the standard of living established during the marriage." It also found that "[t]he vast majority of the parties' assets . . . are held in the form of non-liquid, pre-tax retirement assets, so Wife would incur taxes and steep penalties if she were to withdraw funds from those accounts." The district court concluded that "Husband has the ability to pay Wife *some* maintenance if necessary," and that wife had "proven her need by a preponderance of the evidence, and there is no reasonable question as to Husband's ability to pay." The district court awarded wife $2,964 in permanent, monthly spousal maintenance.

Child-support deviation

Using the husband's and wife's gross incomes, the district court determined that husband's presumptively appropriate guideline child-support obligation was $2,569 per month. Wife requested a $1,725 per month upward deviation from the guideline obligation to pay other expenses for the children, "which are above and beyond basic expenses covered by Guideline child support."

The district court noted that husband testified he was willing to pay for some of the children's expenses, citing the statutory factors for a child-support deviation, Minn. Stat. § 518A.43, subd. 1 (2020). The district court found that

> Husband has, by agreeing to pay for ongoing expenses for the children, effectively agreed that there is a basis for an upward deviation in child support. He clearly agrees that these are the

> types of things the children should be doing, and testified how much the children enjoyed doing them. They are clearly the types of things the children would be doing if the family were still together. . . . Father cannot claim that he is willing to pay these additional expenses while raising a credible challenge to the appropriateness of including [these expenses] as an upward deviation.

But the district court also found that some of the agreed-to expenses, such as car insurance for the children who were not yet driving, were "speculative," and omitted those items from the deviation amount. The district court ordered "a yearly deviation amount of $18,550, or $1,546 per month."

Attorney fees

The district court then addressed the parties' requests for conduct-based attorney fees and wife's request for need-based attorney fees. The district court found that conduct-based attorney fees were "inappropriate" because "in the big picture, neither party 'unreasonably contributed' to the length or expense of this proceeding." The district court found, however, that "Wife does not have the means to pay all of her attorneys' fees, but that Husband *does* have the means to pay them—or at least a portion of them." Following the submission of an affidavit on the amount of wife's attorney fees, the district court ordered husband to pay $40,000 of wife's legal expenses and fees.

Husband moved for amended factual findings and conclusions of law, or in the alternative for a new trial. The district court denied husband's motions, and husband appeals.

DECISION

I. The district court abused its discretion in determining the amount of spousal maintenance.

A district court may grant spousal maintenance if it finds that the spouse seeking maintenance "shows sufficient, reasonable need" and the inability to satisfy that need, either from property or another means of self-support, after considering the marital standard of living. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. 2007); *see* Minn. Stat. § 518.552, subd. 1 (2020). The central inquiry is "basically" about "the financial needs" of the party seeking maintenance and "her ability to meet those needs balanced against the financial condition" of the party from whom maintenance is sought. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). While wife's need for maintenance was disputed during district court proceedings, on appeal, husband challenges only the amount of maintenance awarded.

"The standard of review on appeal from a trial court's determination of a maintenance award is whether the trial court abused the wide discretion accorded to it." *Id.* at 38. "Maintenance awards are not altered on appeal unless the district court abused its wide discretion." *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). A district court abuses its discretion 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 (Minn. 1997).

A. The district court erred in considering husband's ability to pay spousal maintenance.

1. Failure to consider husband's net income

After the district court determines a spouse's need for maintenance, Minnesota law provides that the court must consider "all relevant factors" to determine the amount and duration of a maintenance award and lists eight nonexclusive factors. Minn. Stat. § 518.552, subd. 2 (2020). All eight statutory factors are relevant and "no single factor is dispositive." *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). Factor (g) is "the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance." Minn. Stat. § 518.552, subd. 2(g).

Husband's arguments focus on caselaw interpreting the ability of a spouse to pay maintenance while meeting his or her own needs and providing that "[i]n order to determine 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). In *Kostelnik*, the district court determined husband's income before business expenses and taxes, but did not make findings about his pre-tax, after-business-expense income, or his after-tax income. *Id.* On appeal, this court concluded that the spousal-maintenance award was "not based upon a finding of [husband's] disposable (take-home) income, and was unreasonably high." *Id.* We

remanded with instructions to "make a determination of [husband's] net income and award a reasonable amount of maintenance based upon that figure." *Id.*[2]

Husband argues that the district court abused its discretion in determining his ability to pay spousal maintenance while meeting his own needs because it failed to consider his net income. He argues that, after considering his monthly obligations for spousal maintenance and child support he is left with a net "deficit," while wife has "substantially more monthly income than she require[s]." Wife counters that the record includes evidence of tax returns and expert reports detailing net income for both parties and, based on this record evidence, argues that the district court adequately considered husband's ability to pay. Wife also argues that the district court's finding that "there is no reasonable question as to Husband's ability to pay" rested on its review of all of the statutory maintenance factors, therefore, the district court did not err.[3]

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[2] We note that, at the same time as the release of our opinion, this court is also releasing *Schmidt v. Schmidt*, ___ N.W.2d ___, ___, No. A20-0884, (Minn. App. June 21, 2021). *Schmidt* states that "the district court's failure to *consider* [appellant's] income-tax obligations when denying her request for spousal maintenance" was an abuse of discretion. *Schmidt*, slip op. at 9 (emphasis added). While the parties did not have the benefit of our analysis in *Schmidt*, we believe *Schmidt* clarifies the importance of considering net income when deciding on spousal maintenance.

[3] Both husband and wife cite unpublished (nonprecedential) decisions by this court. "Nonprecedential opinions and order opinions are not binding authority." Minn. R. Civ. App. P. 136.01, subd. 1(c); *see also Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 575 n.2 (Minn. 2009) ("[T]he unpublished Minnesota court of appeals decisions do not constitute precedent."). Perhaps more importantly, as the supreme court has reminded us, "each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties and, . . . accordingly, it is unwise to view any marital dissolution decision as enunciating an immutable rule of law applicable in any other proceeding." *Dobrin*, 569 N.W.2d at 201; *see also Honke v. Honke*,

Preliminarily, we observe that other caselaw establishes that "the district court is not required to make specific findings on every statutory factor if the findings that were made reflect that the district court adequately considered the relevant statutory factors." *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004) (citing *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 172 (Minn. 1976)); *see generally Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018) (holding "that the district court was required to *consider* only the *relevant* best-interest factors in [the parenting-time modification statute], and was not required to make specific and detailed findings on those factors" when not required by statute).

Still, *Kostelnik* is helpful because it highlights the need to *consider* net income in assessing a spouse's ability to pay, which is husband's precise argument. The record evidence includes the parties' tax returns, pay stubs, W-2 statements, and financial disclosures, along with testimony and reports from two experts and husband's own testimony about husband's and wife's net incomes. But, on this record, we are not persuaded by wife's argument that the district court's findings show it "adequately considered all of the relevant statutory factors."

While the district court received sufficient evidence to determine husband's ability to pay, its order and findings do not demonstrate that it actually considered the net-income evidence. This is so even though husband concedes that "net income can easily be determined from the reports by adding back support and maintenance amounts to cash flow

___ N.W.2d ___, ___, 2021 WL 2125821, at *4 (Minn. May 26, 2021). Thus, we do not discuss the unpublished decisions cited by either party.

totals." In a single line of its 40-page order, the district court addressed husband's ability to meet his own needs while paying spousal maintenance, stating that it "finds that Husband has the ability to pay Wife *some* maintenance if necessary." Later in the order, the district court also stated that "there is no reasonable question as to Husband's ability to pay," but provided no further detail. From these two brief statements, we are unable to conclude that the district court considered husband's net income when determining his ability to pay spousal maintenance. The order fails to mention or discuss husband's or wife's net incomes, despite ample record evidence, and only references gross income. We therefore conclude that the district court abused its discretion.

We only briefly address husband's argument about his budgetary "shortfall." Husband argues that the district court's decision puts him at a net "deficit" and gave wife "a significant surplus," after considering expenses, child support, and maintenance payments. The mere fact that husband may face a monthly deficit does not mean that the district court abused its discretion. *See Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) (affirming a maintenance award which created a monthly deficit for the payor-spouse). Both parties will sometimes have a budgetary shortfall after dissolution, even though a district court has determined net income, carefully reviewed the proposed budgets, and found all expenses reasonable. Because we are reversing and remanding the spousal-maintenance award, we need not further consider husband's perceived budgetary "shortfall."

2. Error in double-counting husband's car allowance

Because the district court adopted wife's expert's analysis of husband's gross salary, which already included the car allowance, the district court inadvertently double-counted the car allowance when it added it to husband's gross income. Husband asserts that this double-counting is reversible error. Wife agrees that the district court erred by double-counting the car allowance but contends that the error is *de minimis* and we should ignore it. She points out that the double-counting caused the district court to overstate husband's gross income by three percent, which she contends is harmless "in light of the vast income disparities between the parties."

We determine that the district court clearly erred by overstating husband's gross income by $834 per month. The rules of civil procedure direct us to ignore "any error or defect in the proceeding which does not affect the substantial rights of the parties." Minn. R. Civ. P. 61. Wife points to *Wibbens v. Wibbens*, where, because the maximum additional amount in dispute had a *de minimis* effect, we declined to remand to correct the error. 379 N.W.2d 225, 227 (Minn. App. 1985). In *Wibbens*, the district court erred by omitting a "mandatory" biennial cost-of-living adjustment in a child-support calculation. *Id.* This court determined that the "maximum additional support at stake is about $120" in total. *Id.* Because "the effect in this case is *de minimis*," we "decline[d] to remand for this technical error." *Id.*

Our caselaw does not prescribe a rigid method for differentiating between *de minimis* errors and those that affect the substantial rights of a party. But the district court's overstatement of husband's income by $834 is quantitatively far larger than other *de*

minimis errors discussed in caselaw. *See, e.g.*, *Duffney v. Duffney*, 625 N.W.2d 839, 843 (Minn. App. 2001) (district court's failure to include $25 per month of income); *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (district court's failure to account for $400 total in marital property), *review denied* (Minn. Nov. 16, 2010).

Far more importantly, the district court's error in double-counting husband's car allowance has a *quantitatively* significant effect. Both husband and wife submitted itemized budgets to establish their needs and the marital standard of living; in doing so, both parties included many itemized expenses far less than $834. Erroneously adding $834 per month to husband's gross income is important, in part because husband contends that he has a $1,300 monthly deficit after his net income, spousal maintenance, child support, and his needs are considered. The district court's error in determining husband's income also is significant because an $834 per month overestimate in husband's income has an ongoing, substantial effect when it is part of the baseline for subsequent review of the maintenance award. *See Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). Thus, even though the error only amounts to three percent of husband's gross income, the error in this case is not *de minimis*.

In short, we are unable to determine whether the district court considered husband's net income when determining his ability to pay and the district court clearly erred in double-counting the car allowance when determining husband's gross income. Thus, we reverse the award of spousal maintenance and remand for further proceedings consistent with this opinion.

B. The district court erred by including children's expenses when determining wife's need for spousal maintenance.

Spousal maintenance is "an award made . . . from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2020). Maintenance is appropriate when a spouse cannot "provide for reasonable needs" or "is unable to provide adequate self-support." Minn. Stat. § 518.552, subd. 1(a), (b); *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).

Husband argues that the district court erroneously included the children's expenses when it determined wife's reasonable need before setting maintenance. He points out that wife's proposed expenses combined expenses for wife and the children in certain categories, like household expenses and travel, and included items that the district court described as "children's expenses." Husband acknowledges that the district court "removed" $1,415 of wife's proposed monthly children's expenses. But husband argues that "[t]he remainder of the children's expenses remained as part of [wife's] budget." As discussed above, the district court identified $1,725 in wife's proposed monthly budget as "children's expenses," yet removed only $1,415 before setting her budget at $8,714.

Wife argues that "there will always be some bleed-over or blurring of expenses" because of shared expenses between parents and children. She points to "mortgage payment[s], utilities, property taxes, and homeowner's insurance" as costs that "would be incurred by the obligee, with or without children," and contends that trying to "break out what portion is attributed to the children from dishwasher detergent, toilet paper,

toothpaste, and cleaning products . . . . would be speculative at best." Wife also notes that husband's budget included expenses for the children. Yet wife also concedes that "[s]pousal maintenance and child support are two separate issues, addressed by two separate statutes; in fact, two separate chapters."

While the law does not require strict delineation of a spouse's shared expenses for their children after dissolution, the district court erred by including children's expenses when it determined wife's reasonable monthly need before addressing the spousal-maintenance issue. Spousal maintenance is awarded to support and maintain the spouse who cannot meet needs independently. Minn. Stat. §§ 518.003, subd 3a, .552, subd. 1. While there may be some crossover between wife's, husband's, and the children's expenses, and the district court is afforded wide discretion in determining which expenses comprise a spouse's need, a district court errs when it sets the amount of spousal maintenance based on an assessment of need that includes itemized, child-only expenses.

Clear identification of need for spousal maintenance is important because a spousal-maintenance award is "the baseline circumstances against which [later] claims of substantial change are evaluated." *Hecker*, 568 N.W.2d at 709. As husband notes, the district court's order awards wife permanent spousal maintenance that includes the children's expenses "which will end over the next three years." Because the district court erred by including children's expenses when determining wife's need for maintenance, we reverse and remand for proceedings consistent with this opinion.

II. The district court did not abuse its discretion by awarding an upward deviation in child support.

Husband denies that he agreed to an upward deviation in child support, and requests that we reverse and remand child support "for review in light of the children's needs and his ability to pay." Wife counters that husband agreed to pay for certain activities and extracurricular expenses, and that the district court's decision follows the relevant statutory factors for a deviation.

After determining the presumptive child-support obligation, the district court may, at the parties' request, consider statutory factors to determine whether to depart from the child-support guidelines. Minn. Stat. § 518A.43 (2020); *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). The relevant statutory factors include "all earnings, income, circumstances, and resources of each parent," and "the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households." Minn. Stat. § 518A.43, subd. 1(1), (3).

The district court has "broad discretion" in determining child support. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion if it resolves the support question in a manner "that is against logic and the facts on record before this court will find that the trial court abused its discretion." *Id.* "Detailed findings by the trial court on the relevant statutory factors are necessary for proper appellate review." *McNulty v. McNulty*, 495 N.W.2d 471, 472 (Minn. App. 1993), *review denied* (Minn. Apr. 12, 1993).

Husband makes two arguments; we address each in turn.

A. The district court's findings support an upward child-support deviation.

Husband argues that "the [district] court never made explicit findings as to the children's expenses outside certain delineated categories," and "[a]s a result the district court could not determine the extent to which those 'extra' expenses may, in fact, have already been met through guideline support." Wife asserts that husband "expressly agreed" to pay extracurricular expenses.

The district court determined that, based on the child-support guidelines, husband's child-support obligation totaled $2,569 per month. The district court also found that husband agreed to pay the children's extracurricular expenses that were *not included* in the presumptive amount of child support. While the district court omitted some "purely speculative" expenses submitted by wife, the district court determined a monthly upward deviation of $1,546 was warranted. We reject husband's argument for two reasons.

First, in discussing wife's request for an upward deviation, the district court noted the request was made to "apply toward additional expenses incurred on behalf of the parties' four (4) minor children *which are above and beyond basic expenses* covered by Guideline child support." (Emphasis added.) This statement introduced the district court's findings for an upward child-support deviation, and reasonably implies that the district court found that these expenses were "beyond basic expenses covered by Guideline child support" amount.

Second, as wife argues, "The trial court considered the factors under Minn. Stat. § 518A.43, subd. 1, expressly incorporating the statutory language in its Judgment and Decree." The district court detailed the relevant factors in its order, and found that the

deviation amount was "appropriate" under the statute "because it considers and reflects (i) the earnings and circumstances of each parent; and (ii) the standard of living the children would enjoy if the parties continued to live together." While perhaps not as expressly as would be ideal, the district court did find that the children had expenses outside the guideline amount, which the children would enjoy if the parents were currently living together. *See* Minn. Stat. § 518A.43, subd. 1; *Haefele*, 837 N.W.2d at 714.

B. Husband's net income and agreement to pay

Husband next argues that "the failure to make any findings regarding [his] net income precluded any meaningful consideration as to whether the upward deviation was within [his] ability to pay." And he contends that his agreement to "pay certain expenses was tied to his trial position that [wife's] needs could be met through $2,719 in total monthly support, not the $7,044 actually ordered."

Wife counters that "there was no testimony from [husband] placing any caveat or qualification on his agreement to pay those expenses." The record support's wife's view. When husband testified that he would pay for the children's extra expenses, his testimony was not conditional. Husband included $1,000 a month for "children's activities," which included car insurance for two of the children, camp for three of the children, tutoring for two of the children, an orchestra trip, music lessons, art classes, and hockey. He agreed that he was "voluntarily agreeing to be responsible for and pay directly certain expenses."

In the dissolution judgment, the district court found that husband testified he was willing to pay for the children's extracurricular activities on top of the child-support award. While husband's budget included only $1,000 for these activities, the district court

determined the annual estimated expense of these items based on record evidence. The district court then reduced that amount to $1,546, after excluding some items proposed by wife. The record evidence supports the district court's finding, which also follows caselaw affirming upward deviations in child support to cover "extracurricular activities such as music and dance lessons, and summer camps." *McNulty*, 495 N.W.2d at 472. Thus, the district court did not err by determining that the $1,546 deviation in child support was appropriate.

We reject husband's net income argument. The child-support caselaw does not require consideration of net income. Rather, a guideline child-support obligation depends on "gross income" as defined by Minn. Stat. § 518A.29 (2020), and a deviation considers "all earnings, income, circumstances, and resources of each parent." Minn. Stat. § 518A.43, subd. 1(1). Here, the district court relied on husband's testimony that these extra expenses were part of the marital standard of living and that he agreed to pay for them. We therefore affirm the upward deviation in child support.

III. The district court did not abuse its discretion by awarding need-based attorney fees to wife.

Husband argues that the district court abused its discretion when it ordered him to pay some of wife's attorney fees. He contends that "where [wife] held property sufficient to pay her own fees, she cannot reasonably be said to be unable to pay them." Wife counters that record evidence supports the award and that the district court did not abuse its discretion in making the award.

In a dissolution proceeding, 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," so long as three requirements are met. Minn. Stat. § 518.14, subd. 1 (2020). The district court must find "(1) that the fees are necessary for the good faith assertion of the party's rights . . . ; (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." *Id.* We review the award of attorney fees for abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

The district court found that "Wife does not have the means to pay all of her attorneys' fees, but that Husband *does* have the means to pay them—or at least a portion of them," and directed wife to submit an affidavit detailing her fee request. Wife submitted an affidavit documenting $67,361.56 in legal expenses and fees, and asked the district court to award $40,000. The district court found "that the entire amount was necessary for [wife's] good faith assertion of her rights" and awarded $40,000.

Husband does not contest the district court's finding that the fees were necessary for the good-faith assertion of wife's rights. Still, husband contests the second and third requirements and argues that the district court did not state the required findings with specificity. "Conclusory findings on the statutory factors do not adequately support a fee award." *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001). But we will not overturn an award "where review of the order reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case and had access to the parties' financial records." *Id.* (quotations omitted). We

consider whether this record shows that the district court considered evidence on the two contested requirements.

As for husband's ability to pay, wife argues that "there was ample evidence upon which the [district] court could rely in concluding that [husband] had the ability to contribute to [wife's] attorney's fees." Wife points to evidence that husband received an inheritance of $380,000, which was "presumptively liquid" because husband had spent "approximately $79,000 by the time of trial." Thus, the record supports the district court's determination that husband had the ability to pay "a portion" of wife's attorney fees.

As for wife's ability to pay her own fees, husband contends that our caselaw has rejected "the notion that 'need' under Minn. Stat. § 518.14 is synonymous with a bare disparity in the parties' finances." He cites two cases to establish this point of law, but neither case is otherwise helpful. In both cases, we affirmed a district court's decision to deny attorney fees.

First, in *Schallinger v. Schallinger*, the appellant asked us to overturn the district court's denial of a fee award. 699 N.W.2d 15, 24 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). We affirmed the district court after concluding that the record evidence established that the appellant could pay her own fees and, in fact, had already paid her own fees. *Id.* Here, there is no evidence that wife had already paid her own attorney fees.

Second, in *Burns v. Burns*, we affirmed the denial of an attorney-fee award, noting that "[a]lthough appellant's earning capacity is somewhat greater than respondent's, respondent received substantial marital assets, including a $37,000 cash award." 466 N.W.2d 421, 424 (Minn. App. 1991). Here, the district court found that husband's

earning capacity is more than three times that of wife's, and the district court also found that wife would incur tax penalties if she used her nonliquid assets to pay attorney fees. Moreover, the *Burns* court's reference to "earning capacity" evokes the pre-1990 attorney-fee statute, which required consideration of "the financial resources of the parties." *Berenberg v. Berenberg*, 474 N.W.2d 843, 849 (Minn. App. 1991) (discussing Minn. Stat. § 518.14 (1988)). But as husband notes, the legislature has since "remove[d] any comparative analysis" from the attorney-fee statute. 1990 Minn. Laws ch. 574, § 10 at 2129-30. Thus, *Burns* offers little to assist our review.

The record shows that wife's assets following dissolution were largely "non-liquid, pre-tax retirement assets" and that she needed her share of the proceeds from the sale of the marital home to purchase a new home. Also, wife received both a loan of $25,000 and a separate gift of $20,432 from her parents. Wife testified that she "had to go into debt and [] use[] some of the money that [she] received from [her] parents" to pay for her ongoing attorney fees. Record evidence reasonably supports the district court's determination that wife lacked the ability to pay "at least a portion" of her legal fees. We therefore find no error in the district court's exercise of its discretion.

In conclusion, we reverse and remand the amount of spousal maintenance because the district court erred in its analysis of husband's ability to pay and included child-only expenses when assessing wife's need. The district court may reopen the record to address these matters at its discretion. We affirm the district court's decision to award an upward deviation in child support and to award need-based attorney fees to wife.

Affirmed in part, reversed in part, and remanded.