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STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0343

In re the Marriage of:
Kelly Susan LaPara, petitioner,
Respondent,

vs.

Timothy Michael LaPara,
Appellant.

Filed March 14, 2022
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge

Anoka County District Court
File No. 02-FA-18-1978

Beverly K. Dodge, Lindsay K. Fischbach, Barna, Guzy & Steffen, Ldt., Minneapolis, Minnesota (for respondent)

Shannon L. Ort, Tasya Rivera Martin, Terzich & Ort, LLP, Maple Grove, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this marital-dissolution appeal, appellant-husband argues that the district court abused its discretion by (1) including husband's income from summer-research grants in the calculation of his gross income, (2) awarding respondent-wife temporary spousal

maintenance, and (3) failing to include the spousal-maintenance award in wife's gross income—and not deducting it from husband's gross income—when calculating child support. We affirm the district court's inclusion of husband's summer-grant work in husband's gross income and the grant of temporary spousal maintenance, but reverse and remand the child-support determination because the district court erred by failing to include the spousal-maintenance award in the parties' gross incomes for purposes of calculating child support.

FACTS

Appellant Timothy Michael LaPara (husband) and respondent Kelly Susan LaPara (wife) were married in 2003 and have three minor children. Wife petitioned for dissolution of the marriage in 2018. Husband and wife reached agreements regarding custody, parenting time, and the division of property and debt. The remaining issues were submitted to the court for resolution at a trial held in the fall of 2020.

As of the time of trial, both husband and wife were employed by the University of Minnesota. Husband is a full-time tenured professor at an annual salary of $116,766. His employment as a professor requires him to work only nine months per year, but he elects to have his salary paid over 12 months. Husband also regularly receives income from grants for summer-research work. While the summer-research grants are not guaranteed, husband obtained grant income every year throughout the parties' marriage. His income from the grants averaged $35,690 between 2017 and 2020. The district court included this average in calculating husband's monthly gross income for the purpose of calculating child

support. The district court thus found that husband's monthly gross income was in the amount of $12,704.[1]

Wife works 30 hours per week as a scientist at the University and earns a monthly salary of $4,300 ($51,598 per year). Because wife works 30 hours per week and did not prove that she could not work full-time, the district court found that wife was "voluntarily employed on a less than full-time basis" and imputed the income from ten more hours of work per week at the same salary to wife. Thus, the district court found that wife's monthly gross income was $5,733.

The court found that the parties' reasonable monthly expenses for maintenance purposes were roughly equal. Husband claimed his reasonable monthly expenses were $5,890, which the court reduced to $5,300 after making an adjustment related to child-related expenses and other modifications. Wife claimed her monthly expenses were $7,812.87. The district court found that wife's proposed budget included several items attributable to the children, not to wife, and removed them to avoid double counting those expenses. The district court also found that several other expenses were "unreasonable." The district court determined that wife's reasonable monthly expenses were $5,635.31.

Wife sought an award of either temporary or permanent spousal maintenance in the amount of $1,405 per month.[2] The district court awarded temporary spousal maintenance

[1] Since October 2019, husband has had additional income from employment by a rental management company. However, the district court did not impute this income to husband for child-support purposes, and this income is not at issue on appeal.

[2] At trial, wife requested temporary spousal maintenance for seven years, approximately half the length of the parties' marriage. However, in her proposed findings of fact and

to wife for a period of seven years, but at the reduced rate of $424.88 per month. The district court explained that the parties "lived an upper-middle class lifestyle" during the marriage and "enjoyed a substantially comfortable marital standard of living." The district court noted an "ongoing potential hiring freeze" by wife's employer and that, even after she was able to return to full-time work, it would take time for wife to attain their marital standard of living. The district court also noted that wife was "left with relatively less financial cushion than" husband, that wife had "made contributions as a homemaker which furthered [husband's] employment" and had "foregone earnings, seniority, retirement benefits, and other employment opportunities" as a result, and that wife was "active in the acquisition, preservation, depreciation, and appreciation . . . of various marital property." Finally, the district court found that husband was "able to provide for [wife's] need-gap while also maintaining his own financial position."

The district court stated that it arrived at the amount of the maintenance award by spreading one year of husband's average summer-grant income ($35,690) over seven years, reasoning that "even if [husband's] summer-grant work is too irregular and speculative to qualify as income, the money he actually received from those grants significantly contributed to the marital station the Parties enjoyed," and that this amount was "just, beneficial to [wife], feasible for [husband], and appropriate in this case."

On the issue of child support, the district court determined that husband had a net child-support obligation to wife of $1,911 per month. The district court did not consider

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order submitted to the court after trial, wife requested that spousal maintenance of $1,405 per month be awarded on a permanent basis.

the spousal-maintenance award when determining the parties' share of the combined parental income in calculating child support.

Husband now appeals the award of temporary spousal maintenance and the child-support calculation.

DECISION

Husband contends in this appeal that the district court erred by including his income from summer-research grants in the calculation of his gross income. Husband also argues that the district court erred because wife did not establish a need for the spousal-maintenance award and that the district court's method of calculating the amount and duration of the maintenance constitutes an abuse of discretion. Finally, husband claims that the district court erred because it failed, when calculating child support, to add the award of spousal maintenance into wife's income and deduct it from husband's income.

We review these issues for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion if it misapplies the law or makes findings that are "against logic and the facts on record." *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021) (quotation omitted). In determining whether a district court abused its discretion, this court reviews legal questions de novo and factual findings for clear error. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). In other words, clear error exists "if the reviewing court is left with the definite and firm conviction that a mistake has

been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted).

I. The district court did not abuse its discretion by including husband's summer-grant income in his gross income.

Husband contends that the district court erred by including his summer-grant income in his gross income for purposes of calculating child support. Determining each parent's gross income is the first step in calculating child support. Minn. Stat. § 518A.34(b)(1) (2020). Gross income is defined in the statute as including "any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions," and various other types of payments listed in the statute. Minn. Stat. § 518A.29(a) (2020). Husband argues that his grant income should not have been included in the calculation of his gross income because it was not a "periodic payment." He also argues that the income comes within an exemption in the statute for "compensation received by a party for employment in excess of a 40-hour work week." Minn. Stat. § 518A.29(b) (2020). We are not persuaded by either argument.

As the supreme court has noted, the term "periodic . . . generally means marked by repeated cycles, or happening or appearing at regular intervals." *Haefele v. Haefele*, 837 N.W.2d 703, 710 (Minn. 2013) (quotation omitted). Here, wife testified that husband has received summer-grant income annually since at least the beginning of the parties' marriage and the income thus can be characterized as both "repeated" and "happening at regular intervals." Husband argues that, notwithstanding this history, the grant income does not qualify as a periodic payment because the grants have become more difficult to

secure in recent years, are "voluntary and not mandated by his employer," and "do not provide guaranteed compensation."

The district court acknowledged that while "[husband's] summer-grant work is subject to contingency and uncertainty as to amount, duration, and availability," the district court found that "the opportunity for [husband] to engage in summer-research work has been regular over the course of the [p]arties' marriage" and the work is therefore periodic.

We conclude, on this record, that the district court's finding that his summer-grant income was a periodic payment is not clearly erroneous. As the district court noted, contingent and variable income may nonetheless be periodic so long as it occurs regularly. The statute itself includes "commissions" and "self-employment income" as examples of periodic payments, both of which can be subject to contingencies and variability. Minn. Stat. § 518A.29(a). As another example, this court has affirmed in numerous cases that annual bonuses can be periodic payments, even though the bonuses were "not guaranteed and [were] uncertain as to amount," as long as the record supported the determination that the bonuses were paid more or less on a regular basis.[3] *Desrosier v. Desrosier*, 551 N.W.2d 507, 509 (Minn. App. 1996); *see also Novak v. Novak*, 406 N.W.2d 64, 68 (Minn. App. 1987), *rev. denied* (Minn. July 22, 1987). *But see Sinda v. Sinda*, 949 N.W.2d 170, 176 (Minn. App. 2020) (affirming exclusion of bonuses from gross income where the evidence "provide[d] little basis for determining that wife regularly receives a dependable amount of bonus income").

[3] We also note that this court has upheld the use of averages in calculating gross income for support purposes. *See Veit v. Veit*, 413 N.W.2d 601, 606 (Minn. App. 1987).

We are similarly unpersuaded by husband's second argument that, even if the summer-grant income qualifies as a periodic payment, the income should nevertheless have been excluded from his gross income because it comes within the exemption in the statute for income from "employment in excess of a 40-hour work week" under Minn. Stat. § 518A.29(b). The statute sets out five criteria, all of which must be satisfied, for the exemption to apply. The statute provides that "[g]ross income does not include compensation received by a party for employment in excess of a 40-hour work week, provided that" all five of the following criteria are satisfied:

> (i) the excess employment began after the filing of the petition for dissolution . . . ;
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> (ii) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
>
> (iii) the excess employment is voluntary and not a condition of employment;
>
> (iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and
>
> (v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

Minn. Stat. § 518A.29(b)(2).

The district court reasoned that, because husband's position as a professor only requires him to work nine months per year, he is not employed 40 hours per week year-round and his summer work is therefore not "in excess of a 40-hour work week." *See id.* (b). Husband argues that his professorship is considered full-time employment by the University and that his summer-grant work is thus "in excess" of full-time employment and thereby falls within the exemption.

We need not determine, however, whether husband's summer-grant work is "in excess of a 40-hour work week." Even if the summer-grant income is deemed to be in excess of a 40-hour work week, husband cannot satisfy all of the criteria required to qualify for the exemption. For example, husband cannot show that his summer-grant work only "began after the filing of the petition for dissolution" as required by Minn. Stat. § 518A.29(b)(2)(i), or that the grant work "reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition" as required by Minn. Stat. § 518A.29(b)(2)(ii). Here, husband acknowledges that he has regularly performed summer-grant work and, although husband asserts that "the amount of work in securing these grants has become more difficult each year," he does not assert that the hours of the grant work itself have measurably increased. The requisite criteria are not satisfied, and we conclude that the exemption is not applicable.

We therefore discern no abuse of discretion by the district court with regard to including husband's summer-grant income in the calculation of his gross income.

II. The district court did not abuse its discretion by finding that wife was entitled to an award of spousal maintenance.

Husband next argues that the district court abused its discretion by awarding temporary spousal maintenance to wife. A district court may order spousal maintenance if it finds that the spouse seeking maintenance:

> (a) lacks sufficient property, including marital property apportioned to the spouse, 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 (2020). Maintenance may be awarded on either a temporary or permanent basis, and in an amount "as the court deems just . . . after considering all relevant factors." *Id.*, subd. 2 (2020). And district courts are accorded broad discretion regarding spousal maintenance. *Dobrin*, 569 N.W.2d at 202. The statute provides a non-exclusive list of eight relevant factors, but the overarching focus is on "the financial needs of [the spouse seeking maintenance] and her ability to meet those needs balanced against the financial condition of [the spouse from whom maintenance is sought]." *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

Husband asserts several challenges to the award of temporary spousal maintenance, claiming that the district court erred (1) in finding that wife had a need for temporary spousal maintenance; (2) by failing to consider the appropriate spousal-maintenance factors; and (3) because the district court's method of calculating the amount and duration of the maintenance award is not supported by the facts or law. We address each argument in turn.

Need for Spousal Maintenance

Husband argues that the district court abused its discretion in awarding spousal maintenance because wife has not shown a need for spousal maintenance and the award would, in fact, leave wife with a "substantial monthly surplus." Husband asserts, based on the report of his financial expert, that "[wife's] after-tax monthly income [without

maintenance] would be $6,490 (based on a receipt of the court-ordered child support of $1,911)"—significantly more than wife's reasonable monthly expenses of $5,635.31.[4]

Husband's argument, however, fails to take into account that the district court deducted child-related expenses in determining wife's reasonable monthly expenses. In reducing wife's claimed monthly expenses, the district court deducted expenses for childcare, school lunches, the children's extracurricular activities and other school-related expenses, along with portions of wife's budget for groceries, phone, dining out, clothing, and recreation. The district court explained that these expenses were being deducted from wife's monthly expenses because they were attributable to the children and were "already accounted-for within the statutory child-support guidelines." The district court correctly noted that wife's monthly expenses were "being considered for the purposes of spousal support, not child support," and reduced them accordingly to avoid "double-count[ing]." Husband's argument that child support should be added to wife's income when the children's expenses were deducted from her reasonably monthly budget compares apples to oranges and is erroneous.

The record shows that wife's current gross monthly income is $4,300 working part-time; if wife were to work full-time, her gross monthly income would be $5,733. Using husband's own value for wife's "after-tax cash flow" (but not including child support),

[4] Husband's expert calculated that wife's monthly "after-tax cash flow" working full-time would be $6,290, assuming monthly child support of $1,711. Husband added an additional $200 per month based on the district court's award of $1,911 per month in child support to reach his estimate of $6,490.

wife would earn $4,579 per month after tax, if she was working full-time. And wife's reasonable monthly expenses as found by the district court are $5,635.31, leaving a gap of $1,335.31 per month between her expenses and her current 30-hour-per-week gross earnings of $4,300. The record thus supports the district court's finding that wife had need for temporary spousal maintenance and we reject husband's argument that child-support payments should have been considered in calculating wife's income.[5]

Spousal-Maintenance Factors

For his second argument regarding maintenance, husband argues that the district court erred because it did not adequately consider the statutory factors for determining the amount and duration of a spousal-maintenance award set out in Minn. Stat. § 518.552, subd. 2. The statute provides:

> The maintenance order shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors including:

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[5] Husband also argues that the district court "did not make a finding regarding [wife's] net income" or monthly deficit. Instead, it considered her gross income and reasonable monthly expenses. This court recently held that

> a district court must consider the spouse's net or after-tax income (rather than gross or pre-tax income) if there is evidence in the record of the spouse's anticipated income-tax obligations and if the difference between the spouse's gross income and net income may be determinative of the spouse's need for spousal maintenance.

Schmidt v. Schmidt, 964 N.W.2d 221, 224 (Minn. App. 2021). Here, however, considering wife's after-tax income would likely increase the gap between wife's income and her expenses and thus favor wife, not husband. Husband has not shown prejudice arising from the alleged error and wife has not asserted this as an issue on appeal. We therefore decline to consider the alleged error.

> (a) the financial resources of the party seeking maintenance, . . . ;
>
> (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, . . . ;
>
> (c) the standard of living established during the marriage;
>
> (d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment . . . ;
>
> (e) the loss of earnings, . . . and other employment opportunities foregone by the spouse seeking maintenance;
>
> (f) the age, and the physical and emotional condition of the spouse seeking maintenance;
>
> (g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and
>
> (h) the contribution of each party . . . [to] the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment.

Minn. Stat. § 518.552, subd. 2. The statute requires the district court to consider these factors, but the 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).

The district court here addressed the eight statutory factors in its findings of fact and conclusions of law. For example, the district court discussed wife's financial resources and that wife has "relatively less financial cushion" than husband.[6] The district court found that wife works less than full-time and "has foregone earnings, seniority, retirement

[6] Husband takes issue with this wording, arguing that "[a]n exhaustive search of caselaw provides no basis to make an award of spousal maintenance because one party is left with a 'relatively less financial cushion than the other.'" However, given the context of that statement in the district court's discussion, we understand the comment as addressing factors (a) and (g) under the statute. Minn. Stat. § 518.552, subd. 2(a), (g).

benefits, and other employment opportunities" due to the marriage, and that she has "made contributions as a homemaker which furthered [husband's] employment." The district court noted that "due to the [global COVID-19] pandemic and the uncertainty around an ongoing potential hiring freeze at [wife's] employer, a need for spousal [maintenance] exists for [wife] to cover the time between her current part-time work and her full-time employment." The district court further commented that it "will likely also take a while[,] . . . even once working full-time," for wife to achieve the "upper middle-class lifestyle" standard of living the couple enjoyed during their marriage. The district court, however, also found that wife likely did not need additional education or training to become self-sufficient and that the duration of the parties' marriage "was too short to award [wife] permanent maintenance," and thus awarded only temporary maintenance. Finally, the district court balanced wife's needs against husband's ability to meet his own needs, finding that "[husband] is adequately able to provide for [wife's] need-gap while also maintaining his own financial position." The district court thus did consider the relevant statutory factors and we reject husband's argument to the contrary.

Method of Calculating the Amount and Duration of Maintenance

For his final argument regarding the maintenance award, husband contends that the district court's method of calculating the amount and duration of the maintenance was an abuse of discretion. "The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances." *Peterka*, 675 N.W.2d at 358. However, unlike the calculation of child support, Minnesota law does not prescribe a specific formula

or rigorous guidelines for calculating spousal maintenance. The statute authorizes the district court to award maintenance "in amounts and for periods of time . . . as the court deems just." Minn. Stat. § 518.552, subd. 2. The district court thus has "wide discretion" in determining the amount of maintenance, and "each case must be determined on its own facts." *Erlandson*, 318 N.W.2d at 38-39.

The district court here calculated the amount of temporary spousal maintenance by spreading one year of husband's average summer-grant income—$35,690—over seven years—approximately half the length of the marriage—because this income "significantly contributed to the marital station the [p]arties enjoyed." While this methodology is open to question, that does not mean that the award constitutes an abuse of discretion. Husband here has a significantly higher income than wife and, as noted by the district court, wife currently works three-quarter time and may not be able to increase her hours immediately to full-time employment. The amount of the maintenance awarded is also a relatively modest sum, equaling the average amount husband receives from a single year of summer-grant income, spread over seven years. Based on this record, we discern no abuse of discretion by the district court in either the amount or duration of the temporary spousal-maintenance award.

Further, even if we agreed with husband that the district court's method of calculating spousal maintenance was an abuse of discretion, such an error would "require reversal only if [it] resulted in prejudice." *See Sinda*, 949 N.W.2d at 176 (applying harmless-error analysis to spousal-maintenance award); *see also* Minn. R. Civ. P. 61 (defining "harmless error" as error that "does not affect the substantial rights of the

parties"). Husband contests the district court's calculations, but the only prejudice he asserts is that wife does not need spousal maintenance. And the award, which is substantially less than the gap between wife's reasonable monthly expenses and her current gross earnings, is well-supported by the district court's analysis of the spousal-maintenance factors discussed above. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (noting that an otherwise correct determination will not be reversed "simply because it is based on incorrect reasons"). Thus, any abuse of discretion by the district court in its method of calculation would be at most harmless error.

III. The district court abused its discretion by excluding the spousal-maintenance award from its child-support calculation.

Finally, husband argues that the district court's child-support calculation was in error because it excluded spousal maintenance from the parties' gross incomes. Wife agrees that spousal maintenance should have been considered in calculating child support. Under Minn. Stat. § 518A.29(a), wife's gross income should include "spousal maintenance received under a previous order or the current proceeding." And, under Minn. Stat. § 518A.29(g) (2020), husband's gross income should exclude "[s]pousal maintenance payments . . . ordered payable to the other party as part of the current proceeding." The district court here neither included the spousal-maintenance award in wife's gross income nor deducted it from husband's when determining the parties' gross income for child-support purposes. This constitutes a misapplication of the law. And one of the ways a district court can abuse its discretion is to misapply the law. *Honke*, 960 N.W.2d at 265. Thus, the district court abused its discretion when setting child support. We therefore

reverse in part and remand for the district court to amend its child-support calculations to include the amount of spousal maintenance paid to wife in her gross income and to exclude that amount from husband's gross income.

Affirmed in part, reversed in part, and remanded.