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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-447**

In re the Marriage of:

Yolanda Joleen Sweat, petitioner,
Respondent,

vs.

Michael Gene Sweat,
Appellant.

**Filed May 16, 2011
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-FA-07-7379

Kathryn A. Engman, Nordaune & Friesen, PLLC, St. Louis Park, Minnesota (for respondent)

Deno W. Berndt, Berndt Law Offices, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Michael Gene Sweat challenges the judgment dissolving the parties' marriage, arguing that the district court abused its discretion by declining to take

appellant's monthly property-equalization payments into account when determining his ability to pay spousal maintenance. We affirm.

D E C I S I O N

Appellant and respondent Yolanda Joleen Sweat agreed to a property settlement in which appellant assumed ownership of the couple's business and the commercial property that houses the business. They agreed that appellant owed respondent \$161,434.50 as an equalization payment but did not agree on the terms of payment. Instead, they submitted the terms of payment to the district court to decide, along with respondent's requests for spousal maintenance and attorney fees.

The district court allowed appellant to amortize the property-equalization payment over 15 years, granted respondent permanent spousal maintenance of \$2,000 per month, and denied respondent's request for attorney fees. Appellant argues that the district court abused its discretion by not including appellant's monthly property-equalization payments in its calculation of his reasonable expenses when determining his ability to pay spousal maintenance.

We review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion in setting maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id.* at 202 & n.3. A party challenging the findings must show that, despite viewing the evidence in the light most favorable to the district court's findings, the record requires the definite and firm conviction that a mistake was made. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the

record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.*

A spousal-maintenance award is appropriate when one spouse demonstrates that he or she lacks sufficient property to provide for his or her reasonable needs or is otherwise unable to reasonably provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2010). When determining the amount and duration of spousal maintenance, the district court must consider eight statutory factors and, in essence, balance the recipient's need against the obligor's ability to pay. *Id.*, subd. 2 (2010); *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). But in considering a party's ability to meet his or her reasonable needs, "[c]ourts normally do not expect spouses to invade the principal of their investments to satisfy their monthly financial needs." *Fink v. Fink*, 366 N.W.2d 340, 342 (Minn. App. 1985). When reviewing the evidence regarding spousal maintenance, we defer to the credibility determinations of the district court. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

In making its award of permanent spousal maintenance, the district court considered that the parties married when respondent was 16 years old, that respondent has not completed high school, and that respondent's professional experience is limited to the 25 years she spent contributing to the couple's business as its office manager and bookkeeper. The district court also noted that through the property settlement appellant received the couple's main source of income and that the property respondent received is non-income producing.

The district court ordered appellant to pay respondent the property-equalization sum within 90 days after the entry of the judgment, but also provided that “assuming he is unable to refinance . . . to obtain a full or partial payment to [respondent],” appellant could pay the equalization sum in monthly installments. The district court continued:

[T]he [c]ourt will not factor the property payments into [appellant’s] obligations because to do so would be tantamount to allowing [appellant] to avoid his maintenance obligation by affording him the ability to pay his property settlement in a structured manner. [Appellant] cannot have it both ways. If he cannot afford the property, he should sell it and satisfy the amount due and owing to [respondent].

We conclude that the district court did not abuse its discretion by refusing to take into consideration appellant’s property-equalization payments when determining appellant’s ability to pay spousal maintenance. If appellant’s property-equalization payments were included as a reasonable expense in the determination of spousal maintenance, the payment, in effect, would be counted twice: once as part of the one-time property settlement and once as a monthly expense. *See Kruschel v. Kruschel*, 419 N.W.2d 119, 122 (Minn. App. 1988) (concluding that basing a maintenance obligation on a property award inappropriately redistributed the property as income); *Justis v. Justis*, 384 N.W.2d 885, 891 (Minn. App. 1986) (holding that debt apportioned to the appellant in a property settlement could not be used to reduce his net income for purposes of calculating child support because it would defeat the property settlement), *review denied* (Minn. May 29, 1986).

In a similar case involving a property settlement, in which one spouse was awarded the couple’s income-producing business but was ordered to pay the other spouse

an equalization payment, we affirmed the district court's decision not to include the debt the business-owning spouse incurred to make the equalization payment when the district court determined the income available to pay child support and spousal maintenance because it was personal debt incurred to satisfy the property settlement. *Fulmer v. Fulmer*, 594 N.W.2d 210, 214 (Minn. App. 1999). We stated that “reducing [the business-owning spouse's] available income . . . would very probably reduce [the other spouse's] award of spousal maintenance . . . , causing her to partially finance payment of her property award.” *Id.* The same would be true here. Not only would respondent have to wait 15 years for her portion of the property settlement to be fully satisfied, but she would be providing the financing for the payments.

Moreover, if the district court included the property-equalization payments as an expense when determining spousal maintenance, respondent's maintenance amount would be reduced and respondent would be required to invade the property settlement to meet her monthly needs. But “[c]ourts normally do not expect spouses to invade the principal of their investments to satisfy their monthly financial needs.” *Fink*, 366 N.W.2d at 342.

Finally, we note that 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 v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004). And a party's reasonable monthly expenses for maintenance purposes are based on the marital standard of living. Minn. Stat. § 518.552, subs. 1, 2(c); *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 410 (Minn. App. 2000),

review denied (Minn. Oct. 25, 2000). A payment from one spouse to the other to equalize the distribution of marital property is not an expense that would have been incurred as a married couple. For these reasons, we conclude that the district court did not abuse its discretion when it did not consider appellant's property-equalization payments in determining his ability to pay spousal maintenance.

Affirmed.