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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-442**

In re the Marriage of: Arlene Marie Drayna, petitioner,
Respondent,

vs.

Kenneth Jerome Drayna,
Appellant.

**Filed March 5, 2012
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge**

Washington County District Court
File No. 82CV0963

Christina C. Huson, Huson Law Firm, P.L.L.C., Maplewood, Minnesota (for respondent)

Kurt Robinson, Blaine, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and
Crippen, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

In this post-dissolution appeal, appellant husband challenges (1) the determination of his income and resultant child-support obligation; (2) the finding of the cost of health and dental insurance for the children; (3) the value of the homestead and resultant amount

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

of his non-marital interest in the homestead; and (4) the award of temporary maintenance to respondent wife. We affirm the district court's determination of husband's income and child-support obligation, the determination of the cost of health and dental insurance for the children, and the award of temporary maintenance. But, because the district court clearly erred in the valuation of the homestead, we remand for a correction in the computation of husband's non-marital interest and the amount of his lien on the homestead consistent with the parties' stipulation of the value of the homestead.

D E C I S I O N

Appellant Kenneth Drayna (husband) and respondent Arlene Drayna (wife) were married in May 1990. Wife petitioned for dissolution of marriage in January 2007. The marriage was dissolved by judgment entered on September 13, 2010, after an eight-day trial that spanned several months. Many issues were resolved by agreement or court order prior to trial.

Both parties filed post-trial motions that were denied by the district court. Husband now appeals, challenging the district court's findings used to determine his child-support obligation and contribution to the children's medical and dental coverage; the calculation of his non-marital interest in the homestead; and the sufficiency of the findings to support the award of temporary maintenance to wife. The parties have provided the transcript of only one of the eight days of trial for purposes of this appeal.

I. Standard of review

“When an appellant fails to provide a transcript, the reviewing court is limited to deciding whether the trial court's conclusions of law are supported by the findings.”

Mesenbourg v. Mesenbourg, 538 N.W.2d 489, 492 (Minn. App. 1995). This standard is applicable to husband's challenges that are not addressed in the record provided.

Regarding the record provided, this court views the record in the light most favorable to the district court's findings. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (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.* at 474. Rather, factual findings are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). "A district court has broad discretion to provide for the support of the parties' children, and that decision will only be reversed if the district court abused its discretion." *Hubbard Cnty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 226 (Minn. App. 2007).

This court reviews 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.

II. Calculation of husband's income and child-support obligation

During the marriage, the parties started and built up a refrigerated-unit rental business. During the pendency of the dissolution, the parties stipulated that husband would be awarded all interest in the business, valued at \$200,000.¹ The judgment

¹ The parties stipulated to a business appraiser and husband also retained a separate appraiser.

indicates that the district court credited the testimony of the parties' stipulated business appraiser that the income available to the parties from the business was approximately \$93,000 per year. Husband does not challenge that finding on appeal.

Rather than continue the business established during the marriage, husband created a separate corporation engaged in the same business. The district court found that husband did not provide any documentation regarding his current income from this business, and husband does not challenge that finding on appeal. The partial transcript provided for this appeal contains husband's testimony about his income. The testimony is ambiguous, in part because the questions and answers were imprecise in differentiating husband as an individual from his corporation. Husband was asked: "Are you engaged in any other income-earning activities other than renting out trailers?" Husband answered: "I do contract labor, too." Husband testified that driving a mail truck seven out of every 14 days is "one of the contract labors that I do." Husband was asked: "And how do you get paid?" He testified: "The company is paid for contract labor." Husband went on to testify that the amount the company is paid depends on the number of hours he works at \$24.85 an hour. He testified that he did not "have a clue" how much he had earned to date doing contract labor. He testified that he draws \$1,500 per month salary from his business.

From this record, plus evidence of husband's past earnings, bank deposits, and growth of the original business for which no record has been provided on appeal, the district court found that husband "has the ability to earn \$36,000.00 per year or \$3,000.00 per month from [his] business he is now operating and that such income will likely

increase over time as he grows the business.” The district court found that husband “testified that he does additional paid work, driving a mail truck 7 out of every 14 days, and is paid \$24.85 per hour, which equates to approximately \$2,982.00 gross income per month.” The district court used gross monthly income of \$5,982 for purposes of calculating husband’s child-support obligation.

On appeal, husband does not directly challenge the amount of income found by the district court and has not provided any argument about his actual income. Citing Minn. Stat. § 518A.32 (2010), which provides that “[i]f a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income,” husband argues that, because the district court did not make a finding that he is underemployed and because there is direct evidence of income from driving the mail truck, the district court could not determine his support obligation based on his potential income. But the district court did not establish husband’s child-support obligation based on potential income: rather the district court estimated husband’s income based on evidence in the record concerning the available income from the identical business operated during the marriage plus the additional income from contract labor that appears not to have been part of the marital-business income. Nothing in the cited statute precludes a district court from estimating income based on evidence in the record of income available from a business. We find no merit to husband’s challenge to the district court’s determination of his income. The statute merely sets out conditions under which a district court *must* set support based on potential income.

Husband argues that the money he earns from driving the mail truck is not separate income to him. But nothing in the record provided shows that the marital business had similar income from contract work that was part of the income available to the parties from that business. “[P]arties to a marriage dissolution have a duty to disclose all assets and liabilities completely and accurately.” *Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001) *review denied* (Minn. Sept. 11, 2001). “On appeal, a party cannot complain about a district court’s failure to rule in [his] favor when one of the reasons it did not do so is because that party failed to provide the district court with 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 husband has failed to establish that the district court’s determination of his income is erroneous, he has also failed to establish any error in the calculation of his child-support obligation.

III. Determination of husband’s contribution to health and dental insurance premium

Husband asserts that, in calculating the parties’ contributions to health and dental care for the children, the district court’s finding of the cost of such coverage is inconsistent with the evidence contained in Exhibit 9, on which the district court purported to rely. Husband does not explain how he concludes that the district court’s findings are inconsistent with the exhibit and there is no testimony in the partial transcript provided concerning this issue.

The district court found that the cost of health insurance for the children is \$462 per month, and the cost of dental insurance for the children is \$26 per month, for a total cost of \$488 per month for both coverages. Wife, in her brief on appeal, provides a thorough, accurate review of Exhibit 9 and the calculations contained in or derived from the exhibit, demonstrating that the exhibit fully supports the district court's findings. Therefore, husband's argument on this issue is without merit.

IV. Maintenance

Husband challenges the district court's award of temporary maintenance for three years in the amount of \$1,000 per month, arguing that the district court failed to make specific findings regarding the grounds for spousal maintenance required by Minn. Stat. § 518.552 (2010) and erred in its determination of wife's necessary monthly expenses.

The district court may award spousal maintenance to a spouse who "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 to a spouse who "is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances[.]" Minn. Stat. § 518.552, subd. 1(a), (b). The statute requires a district court faced with a request for spousal maintenance to determine whether the party seeking maintenance is able to provide adequate self-support based on a variety of factors, including the possibility that a party not currently self-supporting will be self-supporting after a transitional period, or the length of an absence from employment. *See* Minn. Stat. § 518.552, subds. 1(b), 2(b), (d) (2010). But "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).

The district court made the following findings regarding maintenance: (1) wife is currently employed part-time, has a gross monthly income of \$1,720 and monthly expenses of approximately \$4,000; (2) wife was employed full-time at the time of the marriage but left her employment to stay at home with their children for six years; (3) it is reasonable for wife to become employed full-time within three years when taking the ages of the children and wife’s training, work history, and experience into consideration; and (4) husband’s monthly living expenses are approximately \$3,000.

Referencing evidence of the parties’ standard of living before and after their separation, the district court found that husband has the ability to meet his needs and pay the temporary spousal maintenance awarded. We conclude that the district court, which presided over this lengthy dissolution proceeding and was intimately familiar with the parties’ financial situation, made adequate findings demonstrating its consideration of the statutory factors.

Husband argues that the district court, in determining wife’s reasonable expenses, failed to consider that wife no longer has a mortgage payment because the mortgage was paid off during the pendency of the dissolution. But the record reflects that wife claimed reasonable expenses of \$5,070 per month. The district court explained its finding of wife’s reasonable expenses to be \$4,000 per month by noting that “some of the submitted expenses are subject to change due to the awards of the homestead and other assets of

marriage,” reflecting that the district court independently examined wife’s claimed expenses in light of the record. Husband’s failure to provide any record concerning wife’s expenses limits our review on this issue. Husband has not shown that the district court’s award of temporary maintenance is an abuse of discretion.

V. Determination of husband’s nonmarital interest in the homestead

During the pendency of the dissolution, the parties stipulated to the value of the homestead as \$206,000. On appeal, the parties agree that, at the time of the stipulation, the homestead was encumbered by a \$14,000 mortgage, which was paid off before the trial. The district court, however, erroneously found that, at the time of trial, the homestead was still encumbered in the amount of \$14,000. This error impacted the district court’s calculation of husband’s undisputed 19.73 percent nonmarital interest in the homestead. On appeal, wife argues that, because the market value of the homestead declined between the date of the parties’ stipulation and the date of trial, the stipulated value was no longer accurate. But we have no record of this argument having been raised at trial or of introduction of any evidence supporting devaluation of the homestead in the amount of \$14,000. And the stipulation that included the value of the homestead specifically provides that “no further testimony or evidence, or modification of the substance of the terms, shall be allowed” regarding the items stipulated to.

Wife also argues that this error is not reversible error, noting that application of the *Schmitz* formula to the unencumbered value of the homestead increases husband’s nonmarital interest by *only* \$2,762. But given the financial circumstance of these parties, we do not conclude that the error is harmless. We therefore reverse and remand with

instructions to the district court to (1) remove reference to the mortgage from findings of fact number 51 and (2) correct the value of the parties' equity and calculation of husband's nonmarital interest and amount of husband's lien on the homestead in conclusion of law number 11 accordingly.

Affirmed in part, reversed in part, and remanded.