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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2107**

In re the Marriage of:
Debra Lynn Frazier, petitioner,
Respondent,

vs.

Richard Allan Frazier,
Appellant.

**Filed September 23, 2013
Affirmed
Bjorkman, Judge**

Mille Lacs County District Court
File No. 48-FA-11-2089

James Robert Spangler, St. Cloud, Minnesota (for respondent)

Richard W. Curott, Curott & Associates, LLC, Milaca, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Smith, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this marriage-dissolution appeal, appellant-husband challenges the district court's award of permanent spousal maintenance to respondent-wife, arguing that the district court abused its discretion by failing to make a specific finding of appellant's net

income and awarding maintenance that exceeds respondent's reasonable needs in amount and duration. We affirm.

FACTS

Appellant Richard Frazier and respondent Debra Frazier (n/k/a Debra Dalbec) married in 1996. During the marriage, the parties owned and operated a 100-acre dairy farm. Until their separation in August 2011, wife did the bookkeeping and other work on the farm.

On September 26, 2011, wife filed for dissolution. The district court issued a temporary order directing husband to pay spousal maintenance in the amount of \$1,000 per month.¹ On May 14, 2012, the parties appeared for trial on the issues of spousal maintenance and the division of marital property and debt.²

The district court issued its dissolution judgment on June 7. With respect to the division of marital property and debt, the district court found that the parties have \$806,595 in marital assets and \$1,014,668 in marital debt. The district court awarded husband all but \$25,000 of the marital assets, including the dairy farm, and assigned him all but \$31,486 of the marital debt. Neither party challenges this division on appeal.

With respect to spousal maintenance, the district court found that wife's reasonable expenses are \$2,600 per month, plus the expense of paying her portion of the

¹ The temporary award appears to have been based, at least in part, on an affidavit husband filed in response to wife's motion for temporary relief, in which he states that he "can continue to pay \$1,000 a month to [wife] unless and until the bank takes the cows."

² The parties resolved the issues of custody, parenting time, the value of marital property, and the amount of marital debt by stipulation.

marital debt, and that she earns about \$2,000 per month as a waitress. The district court also found that wife is not voluntarily underemployed even though she worked as a bookkeeper before and during the marriage and intends to pursue a degree in criminal justice. With respect to expenses, the district court found that the parties enjoyed a comfortable lifestyle during their marriage that was, to some extent, funded by debt. Based on these findings, the district court determined that wife needs \$1,000 per month in spousal maintenance.

The district court found that husband's reasonable expenses are \$2,150 per month, but it did not make a specific finding as to his income. Instead, the court found that husband's income "varies significantly" and determined that he has the financial ability to pay \$1,000 per month based on his January 2012 affidavit, the parties' 2011 income tax return, and his receipt of the parties' only income-producing assets. Specifically, the district court stated:

Based upon [husband's] testimony relating to temporary maintenance in that amount, he confirmed his prior affidavit that he could meet this amount so long as the bank did not take the cows. Further, as shown on the Parties' 2011 taxes (Exhibit 7), there are significant amounts available for such payment. While [husband] utilizes the taxable net amount from line 34 of Schedule F to claim net farm income of \$7,254 for the year, this includes \$54,636 of depreciation, \$28,477 for "casual labor" on top of the \$50,879 in labor hired, credit for \$44,435 in interest (shown on Schedule F), and exclusion of \$6,133 in a gain from sale of cattle (Form 4797). This constitutes only a part of the adjustments to income allowed for tax purposes, but clearly not to be included as reductions in obligations for spousal maintenance. While the Court acknowledges that running a farm can be expensive, [husband] has the ability to pay \$1,000/month in maintenance and since he is receiving the only income

producing assets, it is just that [wife] should receive a maintenance award.

Accordingly, the district court ordered husband to pay wife \$1,000 per month in permanent spousal maintenance.

Husband moved for a new trial or amended findings. Following a hearing, the district court issued an amended judgment, denying husband's motion for a new trial, amending certain findings of fact, and reaffirming the spousal-maintenance award. Specifically, the district court amended its findings regarding husband's ability to pay spousal maintenance:

As shown on the Parties' 2011 taxes (Exhibit 7), there are significant amounts available for such payment. While [husband] utilizes the taxable net amount from line 34 of Schedule F to claim net farm income of \$7,254 for the year, this includes \$54,636 of depreciation, \$4,335 for "casual labor" on top of the \$50,879 in labor hired, credit for \$44,435 in interest (shown on Schedule F), and exclusion of \$6,133 in a gain from sale of cattle (Form 4797). This constitutes a part of the adjustments to income allowed for tax purposes, but *which are ambiguous for purposes of maintenance. [Wife] testified that many personal expenses were used as farm deductions.*

(Emphasis added.) And the district court further found:

Additionally, there may be income due to sale of cows. This is reflected in the tax forms as capital gains. At least some of the income from this source is likely to continue.

Given the limited testimony, it is impossible to determine exactly where the discrepancies lie between the claimed "farm income" and the actual income derived from the farm. Even if a particular number cannot be determined, an examination of the parties' lifestyle confirms that the amount of "farm income" listed on taxes was not reflective of the actual disposable income generated by the farm.

Going forward, the Court finds that without [wife] also working on the farm or providing bookkeeping services, [husband] will be able to generate a slightly reduced but comparable income to previous years. [Husband] also earns income as an auctioneer.

While the Court acknowledges that running a farm can be expensive, [husband] does have the ability to pay \$1,000 per month in maintenance and since he is receiving the only income producing assets, it is just that [wife] should receive a maintenance award.

In its accompanying memorandum, the district court described the evidence of husband's income as "sparse" and "not thorough enough to make a specific finding." The district court further stated that it believed that the parties were "purposely evasive," and that husband's claimed annual income of \$7,254 "seem[ed] to be a gross understatement" and "evidence[d] a lack of candor with the Court." Finally, the district court concluded that "[w]hile there is not evidence sufficient to make a specific finding of [husband's] exact income moving forward, there is sufficient evidence that he will be able to pay [wife] \$1,000 per month." This appeal follows.

DECISION

We review a district court's spousal-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 if its findings of fact are clearly erroneous. *See Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). Findings of fact are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006) (quotation omitted). A district court also abuses its discretion if its

factual findings are not sufficiently detailed. *Stevens v. Stevens*, 501 N.W.2d 634, 637 (Minn. App. 1993).

In determining the amount and duration of a maintenance award, the district court is required to consider eight statutory factors, which relate to the financial resources and needs of the parties. Minn. Stat. § 518.552, subd. 2 (2012).³ To be sufficient, the district court's findings must reflect that the court considered all the relevant factors. *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004). The primary consideration in determining a maintenance award is the financial needs of the spouse seeking the maintenance, and his or 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).

I. The district court did not abuse its discretion by failing to determine husband's net income.

Husband argues that the district court's findings are insufficient because they do not reflect that the court adequately considered his financial ability to pay spousal maintenance. *See* Minn. Stat. § 518.552, subd. 2(g) (requiring a district court to consider "the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance"). We disagree.

A district court's consideration of financial ability generally begins with a determination of net income. *See Schreifels v. Schreifels*, 450 N.W.2d 372, 373 (Minn. App. 1990) ("In order to properly consider the financial ability of a spouse, the court

³ None of the statutory factors specifically requires the district court to consider net income.

must determine the spouse's net or take-home income.”). But where, as here, the parties did not provide the district court with sufficient evidence to make a specific net-income finding, courts consider other evidence of a party's ability to pay spousal maintenance. *See Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 719 (Minn. App. 2009) (noting that district court may estimate income based on past earnings and earning capacity or impute income when actual income cannot be determined), *review granted* (Minn. Sept. 29, 2009) *and appeal dismissed* (Minn. Feb. 1, 2010); *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987) (stating, in child-support context, that district court can take into account the lifestyle of a self-employed spouse if the income figures offered do not comport with the evidence of the spouse's lifestyle).

By husband's own admission, the only documentary evidence of his net income is the parties' 2011 tax return, which shows very limited taxable income from the dairy operation. We have repeatedly recognized the limitations of reported income from self-employment. *See Knott v. Knott*, 358 N.W.2d 493, 496 (Minn. App. 1984) (stating that it is “virtually impossible” to determine a self-employed spouse's net monthly income from annual tax returns because of the business and depreciation deductions taken for the spouse's farm); *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984) (recognizing that “the opportunity for a self-employed person to support himself yet report a negligible net income is too well known to require exposition”).

As the district court observed, the \$7,254 of farm income noted in the tax return does not account for all of husband's income. The record reflects that husband had at least \$16,387 in income from farming, auctioneering, and the sale of cows in 2011, and

that there was no reason to believe those income streams would cease. The district court also observed that some of the parties' tax deductions may not be appropriate deductions for purposes of determining spousal maintenance. *See Knott*, 358 N.W.2d at 496.

The district court also considered the parties' comfortable lifestyle during their 16-year marriage. As wife testified, "[w]e never didn't have something that either one of us wanted. If you wanted to go buy something, you went and bought it you know. . . . Everything was comfortable. There was never a worry about money. If you wanted it, you did it." Finally, husband admitted in his January 2012 affidavit that he was able to pay \$1,000 per month "until the bank takes the cows." And husband testified at trial that the bank had not yet taken the cows.

Husband contends that the district court's frustration with the lack of information submitted by the parties does not relieve the court of its obligation to make findings regarding his net income. This argument rings hollow. First, Minn. Stat. § 518.552, subd. 2, does not require the court to consider a party's net income. Second, the parties, not the district court, are responsible for providing evidence that would allow the court to rule in their favor. *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). And "[o]n 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." *Id.*

In sum, the district court's amended judgment reflects that despite the parties' failure to submit the evidence necessary to make a specific finding of husband's net

income, the district court thoroughly considered his financial ability to pay spousal maintenance. Accordingly, we will not disturb the district court's exercise of its discretion in awarding wife \$1,000 per month in spousal maintenance.

II. The district court did not abuse its discretion with respect to the amount and duration of spousal maintenance.

Husband first contends that the amount of spousal maintenance awarded by the district court is excessive. A maintenance recipient's "needs are often determined by considering her income and available resources versus her reasonable monthly expenses." *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000); *see also* Minn. Stat. § 518.552, subd. 2(a) (requiring the district court to consider "the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently").

The district court found that wife's reasonable expenses are \$2,600 per month, plus "a monthly expense for payment of her portion of the marital debt," and that her income is approximately \$2,000 per month. Based on these numbers, the district court determined that wife "has financial need of \$1,000 per month." Given wife's responsibility for \$31,486 of the marital debt, we conclude that the district court did not clearly err in finding that she needs \$400 per month in addition to the \$600 per month necessary to cover her reasonable expenses, which are not contested on appeal. Moreover, to the extent this award effectively places a greater burden on husband to pay toward marital debt, the district court's finding that the marital debt is "extensively"

related to the farm, an income-producing asset awarded entirely to husband, amply justifies that result.

Husband next argues that the district court should not have awarded permanent maintenance because wife is currently enrolled in college, anticipates completing her degree in five years, and intends to meet her own financial needs when she gets her degree. The district court has “wide discretion” to determine the duration of a spousal-maintenance obligation. *Erlandson*, 318 N.W.2d at 38. But “[w]here there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.” Minn. Stat. § 518.552, subd. 3 (2012). The statute “requires that a [district] court order permanent maintenance if the court is uncertain that the spouse seeking maintenance can ever become self-supporting.” *Aaker v. Aaker*, 447 N.W.2d 607, 611 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990).

Wife was 44 years old at the time of trial, and the district court found that she is unable to earn sufficient income to support her needs. Although she has enrolled in college courses and expresses a desire to become self-supporting, there remains uncertainty regarding when, if ever, she will be able to do so. On this record, we discern no abuse of discretion in the district court’s award of permanent maintenance.

Affirmed.