STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0338

In Re the Marriage of:

Lydia Alicea Stowell, petitioner,
Respondent,

vs.

Todd William Stowell, co-petitioner,
Appellant.

Filed November 13, 2012
Affirmed in part, reversed in part, and remanded
Chutich, Judge

Aitkin County District Court
File No. 01-FA-09-896

J. Lee Novelli, Binder Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Todd W. Stowell, Isle, Minnesota (pro se appellant)

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

U N P U B L I S H E D O P I N I O N

CHUTICH, Judge

In this appeal from the reopening of a marital dissolution judgment, pro se appellant Todd Stowell argues that the district court erred in reopening the dissolution and by including his military disability benefits as income for calculating spousal

maintenance. Respondent Lydia Stowell filed a notice of related appeal arguing that the district court erred by not requiring appellant to secure his spousal-maintenance obligation with life insurance. We affirm the district court's decision to reopen the judgment and decree and spousal-maintenance award. Because the district court failed to make findings as to why it did not require security for the maintenance award, we reverse and remand for further consideration.

FACTS

Appellant Todd William Stowell and respondent Lydia Alicea Stowell were married on March 20, 1981 in Brooklyn, New York. The parties have three emancipated children.

After 28 years, Todd and Lydia signed a stipulated agreement to end their marriage.[1] The parties hired an attorney to prepare the stipulation but did not have individual representation at the time of the dissolution. The stipulation stated that Lydia had monthly living expenses of $550 and no income, and that Todd had monthly living expenses of $3,000 with a net monthly income of $5,718. The stipulation granted Lydia $714 per month in spousal maintenance and $17,000 as her share of the marital equity in the homestead. On August 6, 2009, the district court entered an Order for Judgment and Judgment and Decree (judgment and decree) incorporating the parties' stipulation and dissolving their marriage.

On April 19, 2010, Lydia moved to reopen the judgment and decree on the basis of fraud under Minn. Stat. § 518.145, subd. 2 (2010). Lydia alleged that Todd verbally

[1] To avoid confusion, we refer to appellant and respondent by their first names.

abused her during the marriage, that he failed to fully disclose financial information during their marriage and the dissolution, that he would not allow her to retain an attorney during the dissolution, and that he coerced and pressured her into signing the stipulation without allowing her to read it. The court granted the motion, reopening the issues of property division, spousal maintenance, and security for spousal maintenance.

After a bench trial, the district court entered new findings of fact and conclusions of law. The district court analyzed the statutory factors set forth in Minn. Stat. § 518.552 (2010) to determine Lydia's spousal-maintenance award. When considering Todd's ability to meet his needs while meeting his spousal-maintenance obligation, the district court included Todd's military disability benefits as part of his income. Based on its analysis, the district court increased Lydia's spousal maintenance to $1,500 per month but did not require Todd to obtain a life-insurance policy to secure his maintenance obligation.

Todd now appeals, arguing that the district court abused its discretion by reopening the original judgment and decree, and by including his military disability pension in its income calculation to determine spousal maintenance. Lydia filed a notice of related appeal, arguing that the district court abused its discretion by not requiring her ex-husband to secure his maintenance obligation with life insurance.

D E C I S I O N

I. Reopening the Judgment and Decree

We review a district court's decision to reopen a dissolution judgment for an abuse of discretion. *See Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review*

denied (Minn. Feb. 21, 2001). The district court's findings as to whether the judgment was prompted by mistake, duress, or fraud will not be set aside unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998).

Minn. Stat. § 518.145, subd. 2, provides:

> On motion and upon terms as are just, the court may relieve a party from a judgment and decree . . . and may order a new trial or grant other relief as may be just for the following reasons:
>
> . . . .
>
> (3) fraud, . . . misrepresentation, or other misconduct of an adverse party.

"[T]he failure of a party to a dissolution to make a full and complete disclosure constitutes sufficient reason to reopen the dissolution judgment for fraud . . . ." *Doering v. Doering*, 629 N.W.2d 124, 129 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001). The party seeking relief from judgment bears the burden of proof. *Haefele*, 621 N.W.2d at 765.

Here, Lydia brought a motion to reopen the judgment and decree on the basis of fraud. The district court found that a "pattern of nondisclosure permeate[d] this case and resulted in an inequitable division of the marital estate" because Todd withheld information about, and access to, the parties' finances during the marriage and dissolution. The district court specifically found that Todd did not disclose the value of his retirement account, which the judgment and decree awarded to Todd in its entirety. Because parties to a dissolution have a duty to make a full and accurate disclosure of their assets, the district court concluded that Todd's nondisclosures justified reopening the judgment and decree on the basis of fraud. *See Doering*, 629 N.W.2d at 129–30; *see also*

Ronnkvist v. Ronnkvist, 331 N.W.2d 764, 765–66 (Minn. 1983) (stating that "parties to a marital dissolution proceeding have a duty to make a full and accurate disclosure of all assets and liabilities").[2]

Todd's primary argument on appeal is that Lydia's allegations of nondisclosure are false. By granting Lydia's motion, however, the district court implicitly concluded that Lydia's claims of fraud are credible. We give great deference to the district court's credibility determinations based on the parties' affidavits. *See Hestekin*, 587 N.W.2d at 310; *see also Thompson v. Thompson*, 739 N.W.2d 424, 428–29 (Minn. App. 2007) ("When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal."). Because the record supports its finding of fraud, the district court properly granted Lydia's motion to reopen the judgment and decree.

II. Military Disability Benefits

This court reviews a district court's spousal-maintenance award for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Findings of fact, including determinations of income for maintenance purposes, must be upheld unless they are clearly erroneous. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004); *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). But this court reviews de novo questions of law related to a spousal-maintenance award. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

[2] The district court cited the fraud-on-the-court standard as articulated in *Kornberg v. Kornberg*, 542 N.W.2d 379, 387 (Minn. 1996), but ultimately applied the correct standard for ordinary fraud.

Todd contends that the district court erred by including his military disability benefits in his income calculation when considering his ability to pay spousal maintenance. We disagree. Under Minnesota law, "[m]ilitary . . . disability benefits may be considered as 'income' in setting child support and maintenance awards," even though they "may not be divided as a marital asset." *Sward v. Sward*, 410 N.W.2d 442, 444 (Minn. App. 1987); *see also* Minn. Stat. § 518A.29(a) (2010) (including "military and naval retirement, pension and disability payments" in a party's gross-income calculation for the purposes of child support).

Todd argues that *Sward* has been overruled by the United States Supreme Court's decision in *Mansell v. Mansell*, 490 U.S. 581, 109 S. Ct. 2023 (1989). Todd's reliance on *Mansell* is misplaced, however, because *Mansell* addressed a different issue: whether state courts may treat military retirement pay, which has been waived to receive disability benefits, as divisible property upon divorce. *Id.* at 583, 109 S. Ct. at 2025. At the time *Mansell* was decided, "[v]eterans who became disabled as a result of military service [were] eligible for disability benefits," but if the veteran chose to receive disability benefits, the veteran had to "waive[] a corresponding amount of his military retirement pay," to prevent double payment. *Id.*, 109 S. Ct. at 2026. The Supreme Court held that states could not treat military retirement pay "as *property divisible* upon divorce" when the pay has been waived. *Id.* at 594–95, 109 S. Ct. at 2032 (emphasis added). The Court did not decide, however, that military retirement or disability pay could not be considered income for purposes of spousal maintenance.

Because *Mansell* is distinguishable, Todd has not shown that the district court erred by including his disability payments as income for the purposes of determining his spousal-maintenance obligation.

III. Security for Spousal Maintenance

Whether to require security for a maintenance award is within the discretion of the district court. *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987); *see also* Minn. Stat. § 518A.71 (2010) (permitting the court to require security for the payment of spousal maintenance). "Factors justifying security for a spousal-maintenance award include the obligee's age, education, vocational experience, and employment prospects." *Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Here, the district court concluded that Todd "need not obtain a life insurance policy to secure his spousal maintenance obligation," but provided no explanation for this conclusion.

Lydia argues that the same factual findings that support the district court's award of spousal maintenance also require security for that obligation; specifically, that she is 55 years old with a high-school-equivalency degree and two years of cosmetology school. Lydia contends that her circumstances are similar to the obligee's circumstances in *Kampf v. Kampf*. There, we ruled that the district court abused its discretion by not requiring security when the obligee was "52 years of age with a high-school equivalency degree, limited work experience, and an ability to earn $14,872 per year after training." *Id.* Although the facts of this case are similar to *Kampf*, because the district court provided no explanation of its decision, we are unable to determine whether the district

court properly exercised its discretion by not requiring security for Todd's maintenance obligation.

Therefore, we reverse and remand the matter of security to the district court to readdress the question of whether to require Todd to secure his spousal-maintenance obligation and, on remand, to make findings of fact explaining whatever result is reached. Whether to reopen the record on remand shall be discretionary with the district court.

Affirmed in part, reversed in part, and remanded.