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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0457**

In re the Marriage of:
Sandra Jean Lonneman, petitioner,
Appellant,

vs.

Jon Francis Lonneman,
Respondent,

County of Scott, intervenor,
Respondent.

**Filed January 14, 2013
Affirmed as modified; motion denied
Crippen, Judge***

Scott County District Court
File No. 70-FA-07-20406

Sandra Jean Lonneman, Pine Island, Minnesota (pro se appellant)

James P. Conway, Jaspers, Moriarty & Walburg, P.A., Shakopee, Minnesota (for
respondent)

Patrick J. Ciliberto, Scott County Attorney, Shakopee, Minnesota (for respondent county)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Crippen,
Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant challenges the district court's findings of fact and conclusions of law bearing on the modification of respondent's child-support obligation and the denial of appellant's motion for spousal maintenance. Because appellant failed to demonstrate reversible error, we affirm except as modified to remove the 12% parenting-expense adjustment from the basic child-support obligation. We also deny respondent's motion to strike portions of appellant's brief, addendum, and appendix.

FACTS

During their marriage, the parties owned and operated a food-distribution corporation and held a controlling interest in a second company that owned a commercial warehouse. Respondent Jon Lonneman was the president and chief executive officer (CEO) of the food-distribution corporation, and appellant Sandra Lonneman was unemployed during much of the parties' marriage. The parties are the parents of two minor children.

The marriage of the parties was dissolved in 2008. After the dissolution, appellant received a property settlement consisting of funds and all of the parties' interests in the two businesses. Appellant later closed the food-distribution corporation, and the commercial warehouse owned by the second company was repossessed by a bank. The dissolution decree awarded the parties joint legal custody of their children and appellant sole physical custody, subject to respondent's reasonable parenting time. Respondent was ordered to pay child support.

In July 2011, respondent filed a motion for a reduction of his child-support obligation, and appellant filed a motion for spousal maintenance. An evidentiary hearing was held over a period of three days, and both parties testified regarding their incomes, expenses, assets, and debts. The district court subsequently issued an order granting respondent's motion to modify child support and denying appellant's motion for spousal maintenance. The court imputed income to both parties, applied a 12% parenting-expense adjustment, and calculated child support pursuant to the child-support guidelines. The court found that appellant is not in need of spousal maintenance and that, even if she was, none would be awarded because respondent is financially unable to pay maintenance.

This appeal followed. Respondent has filed a motion with this court to strike portions of appellant's brief, addendum, and appendix.

D E C I S I O N

1. Income and Expenses of the Parties.

The district court enjoys broad discretion in ordering child support or awarding spousal maintenance. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002) (child support); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (spousal maintenance). A reviewing court will uphold a child-support or spousal-maintenance determination unless the district court abused its discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record. *Putz*, 645 N.W.2d at 347; *Rutten*, 347 N.W.2d at 50. A district court's findings of fact will only be set aside if they are clearly erroneous in that the reviewing court "is left with the definite and firm conviction that a mistake has been

made.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted).

The reviewing court views the record in the light most favorable to the district court’s findings and defers to the district court’s credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Appellant challenges the district court’s findings regarding the parties’ incomes, expenses, assets, and debts for the purpose of determining child support and spousal maintenance.

Respondent’s income. “If 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.” Minn. Stat. § 518A.32, subd. 1 (2010). “For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.” *Id.* Determination of potential income must be made according to one of three methods, two of which are relevant in this case:

(1) the parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;

....

(3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.

Id., subd. 2 (2010).

The district court found that respondent is voluntarily underemployed and underpaid and calculated his potential income using the third method articulated in Minn.

Stat. § 518A.32, subd. 2. Appellant argues that the district court should have calculated respondent's potential income using his probable earnings level, giving consideration to his previous position as president and CEO of a corporation. But as the district court pointed out, the court was provided no evidence on which to gauge respondent's "probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community," and thus the court could only calculate respondent's potential income using the third method. *Id.*, subd. 2(1). The district court's calculation of respondent's income is supported by the record and is not clearly erroneous.

Appellant's income. The district court determined that appellant had not rebutted the presumption that she can be gainfully employed on a full-time basis and, therefore, imputed potential income to her using the third method articulated in Minn. Stat. § 518A.32, subd. 2. Appellant argues that she rebutted the presumption by presenting evidence and testimony that she is unable to work full-time due to her health and the special needs of the parties' children. But the district court was in the position to judge appellant's credibility, and it discounted her claim that she cannot work full-time. Appellant also argues that the district court presumed that she has the job skills of a CEO and that this assumption was in error. Even if we were to accept this argument, the calculation of appellant's potential income would not change because the district court based its calculation on the current federal minimum wage, not on the probable earnings level of a CEO. The district court's calculation of appellant's income is supported by the record and is not clearly erroneous.

Spousal maintenance. The district court is permitted by statute to grant spousal maintenance if this is suggested by evidence on the needs of a spouse and the inability of this spouse to provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2010). A court should consider all relevant factors when determining the duration of payment and amount of spousal maintenance, including “the financial resources of the party seeking maintenance,” “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance,” and “the standard of living established during the marriage.” *Id.*, subd. 2 (2010).

The district court determined that appellant had not met her burden of showing that she is in need of spousal maintenance. Appellant argues that the district court erred by considering the property and funds that she received after the marriage dissolution and by omitting items from her calculated monthly living expenses when it denied her request for spousal maintenance. Appellant claims that the business interests that she received after the dissolution were nonmarital property. Even if we were to accept her claim, Minn. Stat. § 518.552, subs. 1, 2, require a court to consider all of the property and financial resources of a party seeking maintenance, whether marital or nonmarital. Appellant maintains that the district court erred by considering the funds that she received after the dissolution because she used them to purchase a home, and thus the funds are not available to meet her living expenses. The district court was aware of appellant’s use of the funds, stating that appellant had used some of her dissolution funds to buy her current home outright and that she does not have a mortgage, which decreased her living expenses and her need for spousal maintenance. Appellant argues that the

district court erred when calculating her monthly expenses by omitting her medical bills and that these bills are evidence of her need for spousal maintenance. But appellant testified that her medical bills have been paid from a trust fund created by her mother's estate. The district court's finding that appellant had not shown that she is in need of spousal maintenance is supported by the record and is not clearly erroneous.

The district court also found that, even if appellant had shown that she is in need of spousal maintenance, no maintenance would be awarded because respondent is financially unable to pay maintenance. Appellant challenges this finding, arguing that respondent has assets that the district court failed to consider and that no documentation was produced regarding respondent's debts. However, respondent testified regarding his assets and debts, and the district court was in the position to judge the credibility of this testimony. The district court's finding that respondent is financially unable to pay spousal maintenance is supported by the record and is not clearly erroneous.

Other arguments. Appellant challenges additional findings of fact by the district court, but upon review of these assertions, in each instance appellant merely supports inferences based on evidence in the record that are different than those made by the district court. Appellant has not demonstrated that the district court abused its discretion by reaching clearly erroneous conclusions that are against logic and the facts on record.

Finally, appellant argues that the district court failed to consider the marital standard of living when setting child support and denying an award of spousal maintenance. But the financial situations of the parties have changed drastically since the marriage dissolution, indicating that the marital standard of living is no longer

sustainable. The district court did not abuse its discretion by declining to impose an amount of child support and spousal maintenance in keeping with the standard of living enjoyed by the parties during their marriage.

2. Parenting-Expense Adjustment.

Appellant argues that the district court erred by applying a 12% parenting-expense adjustment when calculating child support. Application of a statute to the undisputed facts of a case involves a question of law, which this court reviews *de novo*. *Branch v. Branch*, 632 N.W.2d 261, 263 (Minn. App. 2001).

“The parenting expense adjustment . . . reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses.” Minn. Stat. § 518A.36, subd. 1(a) (2010). For the purpose of determining whether to apply the adjustment, “the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order.” *Id.*; *see also Hesse v. Hesse*, 778 N.W.2d 98, 103 (Minn. App. 2009) (stating that, for the purpose of determining whether to apply the adjustment, parenting time is determined by the terms of the court order scheduling parenting time, regardless of whether that parenting time is exercised). If a child-support obligor has less than 10% parenting time, no adjustment is applied, and if the obligor has between 10 and 45% parenting time, the basic child-support obligation is adjusted downward by 12%. Minn. Stat. § 518A.36, subd. 2 (2010). If the obligor has between 45.1 and 50% parenting time, parenting time is presumed to be equal. *Id.* “Every child support order shall specify the

percentage of parenting time granted to or presumed for each parent.” *Id.*, subd. 1(a). “If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment.” *Id.*, subd. 1(b) (2010).

The dissolution judgment is the only court determination that addressed parenting time, awarding appellant sole physical custody of the parties’ children subject to respondent’s reasonable parenting time. It is undisputed that the decree does not specify a percentage of parenting time, violating Minn. Stat. § 518A.36, subd. 1(a), or even contain a parenting-time schedule from which a percentage could be determined. Additionally, the decree does not indicate whether a parenting-expense adjustment was applied when calculating respondent’s child-support obligation at the time of dissolution. The district court erred by applying a 12% adjustment when there was no court order from which to determine that respondent has between 10 and 45% parenting time, and respondent’s basic monthly child-support obligation should therefore be modified to remove the adjustment.¹

Respondent moves to strike the portions of appellant’s brief, addendum, and appendix. Because none of the challenged items adversely affect our determination of the case, we deny the motion.

Affirmed as modified; motion denied.

¹ Application of the child-support guidelines without a parenting-expense adjustment results in a basic monthly child-support obligation of \$826.