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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0751**

In re the Marriage of: Colleen M. Doyle, petitioner,
Appellant,

vs.

Keith R. Klein,
Respondent.

**Filed June 17, 2013
Affirmed in part, reversed in part and remanded
Hooten, Judge**

Washington County District Court
File No. 82-F5-06-007572

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(for appellant)

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Considered and decided by Smith, Presiding Judge; Cleary, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant-obligee challenges the district court's amended order, which, on remand from this court, denied her request for permanent maintenance and awarded temporary spousal maintenance. Appellant argues that the district court abused its discretion by

finding that she is capable of obtaining full-time employment and becoming self-supporting by May 2013 through income from employment and investment. Appellant also argues that the district court abused its discretion by lowering the tax rate used to calculate her spousal maintenance to an amount not supported in the record and erred by considering respondent-obligor's motion to clarify the tax implications of the maintenance award.

We affirm the district court's findings regarding appellant's capability to work full-time after a few years of part-time employment and her anticipated part-time and initial full-time salary. We also affirm the district court's clarification of the tax implications of the maintenance award. But, because there is no evidentiary support for the district court's calculation of increases in appellant's full-time employment income, the taxes applicable to the maintenance calculation, and the finding that appellant will be self-supporting by May 2013, we reverse and remand for redetermination of the amount of the maintenance award and whether such maintenance should be temporary or permanent.

FACTS

Appellant Colleen Doyle and respondent Keith Klein were married in September 1988 and their marriage was dissolved in April 2008. Appellant was 45 years of age at the time of the judgment and decree, and has a bachelor's degree in business administration and a law degree from the University of Minnesota. She was admitted to the practice of law in 1990 and has maintained her law license since that time. After law school, appellant worked full-time for a year at West Publishing in research and

development, earning an annual salary of approximately \$30,000, but left the position in 1991 after the birth of the parties' first child. Appellant also performed legal consulting work between 1992 and 2003, earning between \$2,500 and \$10,000 per year. Other than this part-time legal consulting work, appellant was primarily responsible for the care of the parties' two children, both of whom have had multiple health issues. The parties' oldest child emancipated in 2009 and the youngest child emancipated in May 2012.

Respondent has a bachelor's degree in business administration and accounting, a master's degree in business administration, and is a certified public accountant. The district court found that respondent had a base salary of \$290,000 in 2007, plus bonuses and benefits. Respondent's base salary alone resulted in approximately \$24,167 of gross monthly income.

Appellant sought permanent spousal maintenance. Although she is licensed to practice law, appellant claims that she is not able to work full-time because several times each year, she has a serious reaction to undetermined allergens that requires her to go to the emergency room. She also claims to have a lifting restriction due to osteopenia, a thinning of the bones, and other non-symptomatic health concerns. Even though appellant did not work outside the home for most of the marriage, she was able to manage nonprofit entities in a volunteer capacity and remained physically active. In light of appellant's health concerns, the parties' neutral employment expert determined that appellant could perform "flexible," part-time legal work with an annual income of \$20,000 to \$25,000 as a paralegal or \$25,000 to \$40,000 as an attorney. Appellant's physician testified that full-time employment was not advisable because of her health

issues. Jan Lowe, respondent's vocational expert, concluded that appellant could find full-time employment as an attorney with an annual salary between \$65,000 and \$105,000.

In its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree dated April 8, 2008, the district court denied appellant's claim for permanent maintenance. Instead, the district court awarded appellant temporary maintenance beginning in August 2007, which gradually decreased each year due to anticipated increases in her salary and a decrease in her living expenses as the children emancipated. The maintenance award expired after May 2013. In awarding temporary maintenance, rather than permanent maintenance, the district court found that appellant would be capable of only part-time employment for a few years, earning an annual salary of \$20,000, and then, notwithstanding her health concerns, would be able to work full-time earning \$45,000. The district court also determined that each party will have annual investment income of \$16,537 from the proceeds of the sale of multiple homes. The district court reasoned that appellant would be able to meet her reasonable monthly expenses with her salary, along with her investment income, maintenance and child support. In an order issued in November 2008, the district court made numerous amended findings, including a finding that it overstated appellant's monthly expenses. Based upon its finding that appellant's reasonable monthly expenses were less than that set forth in its judgment and decree of April 8, 2008, the district court subsequently entered an amended judgment and decree incorporating the amended findings and recalculation of spousal maintenance. Both parties appealed.

We affirmed the district court's finding regarding appellant's monthly expenses, which were \$10,233 for appellant and the children, and \$8,015 for appellant after the children emancipated. *Doyle v. Klein*, No. A09-200, 2010 WL 771628, at *2 (Minn. App. Mar. 9, 2010). But we determined that the district court's finding "that appellant could earn \$45,000 after three years of part-time employment," was "incomplete" because it failed to credit either party's employment expert and because appellant's expected income was "insufficient to meet the reasonable monthly needs determined by the district court, particularly in light of the fact that both income figures represent gross income." *Id.* We also noted the district court's failure to "make a finding as to appellant's expected income or level of employment after five years." *Id.* Because of the lack of findings, we remanded this matter to the district court "for a determination of appellant's expected income after five years, consistent with her education and experience, and a determination of whether her expected income will allow her to meet her reasonable expenses." *Id.*

On remand, respondent filed a motion seeking relief relating to the tax ramifications of the amended judgment and decree and requesting clarification that the maintenance award was intended to be taxable to appellant and deductible by respondent on state and federal returns. Appellant filed a responsive motion requesting denial of respondent's motion, arguing that his motion was actually an untimely motion to amend the judgment and decree.

At the remand hearing, appellant called two professional career counselors from local law schools who testified about salary prospects for local entry-level attorneys.

Both testified that appellant would be perceived as an entry-level attorney given her experience and period away from legal employment. Respondent offered an updated report from Lowe, which included a chart that was based upon occupational data derived from the Minnesota Department of Employment and Economic Development (DEED) from the second quarter of 2010. This chart, which assumed a median salary of \$121,077 for a Minnesota attorney in 2010, was constructed to illustrate Lowe’s opinion that in three years from her start as a full-time attorney, appellant would be earning this median income. Utilizing a starting salary of \$65,000 for full-time employment in 2007, Lowe testified that appellant’s “likely income progression” as set forth in the chart, which showed an attorney’s anticipated income progression between 2007 and 2013 for a 20, 30 and 40 hour work week, respectively.

Year	Years of Recent Work Experience	Hourly	Annual Wage @ 20 hrs/wk	Annual Wage @ 30 hrs/wk	Annual Wage @ 40 hrs/wk
2007		\$31.25	\$32,500	\$48,750	\$65,000
2008	1	\$40.24	\$41,846	\$62,769	\$83,692
2009	2	\$49.22	\$51,192	\$51,192	\$102,385
2010	3	\$58.21	\$60,538	\$90,808	\$121,077
2011	4	\$59.37	\$61,749	\$92,624	\$123,498
2012	5	\$60.56	\$62,984	\$94,476	\$125,968
2013	6	\$61.77	\$64,244	\$96,366	\$128,488

The chart illustrates appellant’s earning capacity as an attorney, beginning in 2007 and identified as year “0,” with an anticipated annual salary of \$32,500 for a 20-hour work week, \$48,750 for a 30-hour work week, and \$65,000 for a 40-hour work week in

that year. Lowe determined that after 2007, appellant would receive a salary increase of \$18,692 or \$18,693¹ for each of the first three years of full-time employment from 2007 to 2010, followed by salary increases of only 2% per year after 2010.

After reviewing additional evidence on remand, the district court concluded that

as an entry level associate, [appellant] has the ability to earn approximately \$50,000 if she worked full-time. However, due to the children's health issues and history of being employed on a part-time basis after the children were born, this Court finds it reasonable for [appellant] to enter the workforce on a part-time basis, which will result in a reasonable earning potential of \$25,000 per year. This income is increased to \$41,537 when [appellant's] investment income is included.

Next, the district court determined that part-time employment "can give way to transitioning to full-time employment after the oldest child has been emancipated for two years and the youngest child is within a year of emancipation and more able to provide care for himself." Despite Lowe's report the district court found that appellant's "ability to earn as much or more than an entry level full-time attorney in 2011 is unlikely."

Instead, the district court concluded that appellant had the ability to earn an annual salary of \$45,000 as of May 2011, which, when added to her investment income of \$16,537, resulted in an annual gross income of \$61,537. The district court then noted that, after considering applicable income taxes of 25%, appellant's net income would be \$46,152 or \$3,846 per month. The district court deducted this amount from appellant's

¹ Although the chart showed a salary increase for appellant's full-time employment of \$18,692 for the time period from 2007 to 2008, the next salary increase from 2008 to 2009 is \$18,693, followed by a salary increase of \$18,692 for the time period from 2009 to 2010.

reasonable expenses of \$8,015, finding a monthly budget shortfall of \$4,169. Citing Lowe's testimony, the district court then concluded that by May 2012, appellant's earnings would increase by \$23,692 to \$68,692, or \$85,229 when considering investment income. Based on these calculations, appellant experienced a monthly shortfall of \$2,689 after deducting 25% for taxes. Finally, the district court noted that Lowe's chart showed that appellant's salary would increase an additional \$18,693, and that appellant would earn an annual gross salary of \$87,385 by June 2013, or \$103,922 with investment income. After deducting taxes, appellant would earn a net income of \$77,941, or \$6,495 per month, with a monthly shortfall of approximately \$1,520 per month. The district court concluded that this "shortfall is low enough for [appellant] to be able to make it up, even if that means borrowing against or restructuring" the more than \$700,000 worth of assets in the marital property distribution.²

Appellant moved for amended findings and/or a new trial. In an order filed February 28, 2012, the district court concluded that it erred in increasing appellant's 2012 salary by \$23,692, and that it should have been increased by \$18,693 for each successive year pursuant to Lowe's chart. Based upon this new salary calculation, the district court

² The initial remand order also addressed respondent's amended motion regarding tax implications of his maintenance and support obligations. The district court concluded that it had jurisdiction to clarify its intent in the original and amended decrees "as to the tax implications regarding [respondent's] spousal maintenance and child support obligations," and explained that the maintenance schedule was "intended to be completely independent of any contingencies relating to the children." While the district court ruled that maintenance was deductible by respondent and income for appellant, it denied respondent's request to claim the minor children as dependents on tax returns between 2008 and 2010 given his failure to pay unreimbursed medical expenses as required by the decrees.

recalculated appellant's anticipated annual income from employment and investments. Without specifically noting it was doing so, or analyzing the issue, the district court utilized a reduced estimated tax rate of 7.5%, instead of the 25% rate applied to prior calculations. As before, the district court found that, given the new calculations, appellant would be largely self-supporting by June 2013 and could make up any shortfall "by borrowing against or restructuring her assets, or reducing her monthly budget." Appellant's request for permanent maintenance was again denied as the district court determined that temporary maintenance would expire after May 2013. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by refusing to order permanent maintenance because her ability to be fully self-supporting is uncertain and because she will be unable to meet her reasonable budget after May 2013. She asserts that the district court exceeded the scope of remand in calculating appellant's expected salary, erred by implementing step reductions given the uncertainty of her future salary, abused its discretion by altering her estimated tax rate from 25% to 7.5% without evidentiary support, and erred by determining that she should cover budgetary shortfalls by borrowing against or restructuring her assets.

Appellate review of a district court's maintenance award "is limited to whether the trial court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (quotation omitted); *see also Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009) (holding that

an appellate court will not reverse a maintenance award absent an abuse of the district court's "broad discretion"). A district court does not abuse its discretion unless it resolves the matter in a manner "that is against logic and the facts on record." *Dobrin*, 569 N.W.2d at 202. "Findings of fact are not clearly erroneous unless [an appellate court is] left with the definite and firm conviction that a mistake has been made." *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012) (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. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

The maintenance statute provides that a district court "may" order temporary or permanent maintenance "as the court deems just," based on two alternative grounds:

[I]f [the district court] finds that the spouse seeking maintenance:

(a) 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, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subs. 1–2 (2012). "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." *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quotation omitted). In making a

maintenance award, the district court must consider all relevant factors, including eight factors enumerated in Minn. Stat. § 518.552, subd. 2. “The issue is, in essence, a balancing of the recipient’s need against the obligor’s ability to pay.” *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001); *see also Erlandson v. Erlandson*, 318 N.W.2d 36, 39–40 (Minn. 1982) (noting that, under maintenance statute, “the issue is basically the financial needs of [one spouse] and her ability to meet those needs balanced against the financial condition of [the other spouse]”). “[N]o single statutory factor . . . is dispositive,” and “each case must be determined on its own facts.” *Erlandson*, 318 N.W.2d at 39. “Where 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).

I. Did the district court exceed the scope of this court’s remand instructions?

Appellant argues that the district court exceeded the scope of remand by considering and raising the amount of imputed salary in 2012, when the remand instructions required “determination of appellant’s expected income after five years, consistent with her education and experience, and a determination of whether her expected income will allow her to meet her reasonable expenses.” *Doyle*, 2010 WL 771628, at *2. “A district court’s duty on remand is to execute the mandate of the remanding court strictly according to its terms.” *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009) (quotation omitted). “When the trial court receives no specific directions as to how it should proceed in fulfilling the remanding court’s order, the trial

court has discretion to proceed in any manner not inconsistent with the remand order.”
Id. at 110–11 (alteration and quotation omitted).

Appellant advances an unreasonably technical interpretation of this court’s instructions. In order to comply with this court’s instructions regarding a determination of appellant’s expected income after five years, the district court was required to state the grounds upon which appellant’s expected annual income was calculated, given her education and experience. *See* Minn. Stat. § 518.552, subd. 2(b) (providing for consideration of “the probability, given the party’s age and skills, of . . . becoming fully or partially self-supporting”). The district court reasonably considered appellant’s education and experience, and the effect of her experience upon any increases in her salary as an attorney. There is nothing in the district court’s findings on remand that are an explicit violation of this court’s instructions.

II. Did the district court clearly err by finding that appellant would obtain part-time and eventually full-time employment?

Appellant’s primary contention is that the district court should have awarded permanent maintenance given the uncertainty regarding her potential to become self-supporting. Appellant notes various aspects of the record, including the length of time since her last full-time employment, her sporadic history of consulting work, and her uncertain health issues. However, the district court, in thoughtful and extensive findings of fact and conclusions of law, concluded that, given the medical needs of her unemancipated child and history of part-time employment, appellant could work part-time earning \$25,000 per year until May 2011, at which time she could return to full-time

employment as an attorney earning an annual salary of \$45,000. In so finding, the district court rejected the testimony of appellant's physician that her physical condition prohibited her from employment, noting that her "condition has not precluded her from maintaining an active lifestyle including involvement in nonprofit organizations, the community, skiing and hiking, and the homeschooling of the children." The district court observed that "[h]er time and involvement in these activities evidences that she is physically and mentally capable of being employed at a minimum in a flexible part-time capacity."

The district court noted that "although [appellant's] health concerns are significant, none of them prevent her from becoming employed on a part-time basis, or eventually on a full-time basis." This is supported by the finding that, consistent with testimony from appellant's physician, appellant's severe allergic reactions are less frequent and that appellant is able to "recover within a few hours or a day." Based upon our review of the record, there is substantial evidence supporting the district court's findings and conclusions regarding appellant's capacity for part-time and full-time employment.

III. Did the district court clearly err by finding that appellant would be self-supporting by May 2013?

Appellant argues that the district court, on remand, erred in its calculation of her anticipated salary increases for her full-time employment after May 2011. These calculations were ostensibly based upon the testimony of respondent's vocational expert, Jan Lowe, and her chart, which "was constructed to illustrate [appellant's] career

progression earning capacity as a Lawyer.” We have held that the district court has “broad discretion in assessing the credibility of witnesses and the weight to be given their testimony.” *Park-Lake Car Wash, Inc. v. Springer*, 394 N.W.2d 505, 514 (Minn. App. 1986). This court does “not engage in a redetermination of facts but defer[s] to the district court’s credibility determinations and to *findings that are supported by the record.*” *Rutz v. Rutz*, 644 N.W.2d 489, 493 (Minn. App. 2002) (emphasis added), *review denied* (Minn. Jul. 16, 2002). Appellate review of maintenance awards is limited to whether the district court abused its discretion by making findings unsupported by evidence or by improperly applying the law. *Dobrin*, 569 N.W.2d at 202.

In an explanation of her chart, Lowe’s report notes that the salary increases for 2007 through 2013 may be adjusted one year by “mov[ing] each cell ahead, thus showing the same numbers for the time period 2008 to 2014.” The report also “[s]moothe[s]” data between 2007 and 2010 and assumes 2% wage inflation increases between 2011 and 2013. At the remand hearing, Lowe explained that she “smoothed the data through the chart” by not making “any discrimination between what [appellant] would earn for part-time or full-time other than just on an hourly basis.” However, Lowe’s chart was constructed by utilizing the DEED data for the second quarter of 2010 to determine the median salary for Minnesota attorneys and then adjusting her salary increases from an assumed starting salary of \$65,000 in 2007 so that it would equal the median salary for Minnesota attorneys by 2010. On cross-examination, Lowe admitted that she (1) did not know how many attorneys were surveyed to obtain the information in her report; (2) did not “know all of the specifics of how [DEED] do[es] their work as research statisticians”;

and (3) “assumed, for purposes of [her] chart, that if [appellant] began work in 2007, by 2010 she would be making exactly the 50 percent level of all of the attorneys in the State of Minnesota.”

We agree with appellant that Lowe’s chart and explanatory testimony does not support the district court’s calculation of appellant’s anticipated gross salary increases and the resulting maintenance calculations. Lowe testified, consistent with the chart, that appellant could earn an annual salary of \$65,000 as a starting attorney, and also stressed that “[p]eople typically get to median level earnings with three to five years of work experience of an occupation.” However, on cross-examination, she admitted that she did not know if this latter assertion applies to the practice of law in Minnesota, and the chart itself does not include data prior to 2010. Instead, without citing to any official data or underlying foundational support, the increases set forth on the chart between 2007 and 2009 are entirely a product of the unsubstantiated and general assumption that after three years of full-time employment, appellant would earn the median salary of an attorney in the Twin Cities. Lowe also acknowledged that she had the earnings for attorneys in the Twin Cities’ area, “dating from 2006 to 2010,” and that those numbers showed that there was only a 2% increase in attorney salaries from year to year.

Additionally, even if there had been foundational support for Lowe’s assumption regarding salary increases for attorneys during their first three years of full-time employment, there is no evidentiary support in the record for the district court’s actual calculation of appellant’s salary increases. Significantly, the district court erred by utilizing the specific dollar amount of the salary increases as set forth in Lowe’s chart for

an attorney starting at \$65,000, when it had already found that appellant's initial full-time starting salary was \$45,000. By doing so, the district court's calculations resulted in an approximate 42% increase of appellant's starting salary within her first year of full-time employment, followed by an additional 29.35% increase the second year, so that by the end of her second year of full-time employment, appellant would have almost doubled her starting full-time salary.³ Utilizing the aggressive salary increases set forth in the chart for an attorney starting full-time employment at \$65,000 per year only results in a 28.76% salary increase in the first year followed by a 22% increase in the second year.⁴

Thus, with regard to the calculation of appellant's anticipated salary increases for her full-time employment, the district court erred in two respects. First, the district court erred in accepting, without any foundational support, Lowe's assertion that attorneys starting at a salary well below the median will earn a median salary within three years of full-time employment, particularly in light of the other conflicting testimony by Lowe and the other employment experts that supported a conclusion that attorney salaries have not significantly increased or increased by only 2% during the time period between 2006 and 2009. Second, the district court took the purported evidence of Lowe with regard to

³ The percentage calculations for the district court's salary increases for a \$45,000 starting full-time salary are as follows: (1) for 2012, the salary increase of \$18,693 divided by \$45,000 equals 41.54%; (2) for 2013, the salary increase of \$18,693 divided by \$63,693 (\$45,000 plus \$18,693) equals 29.35%.

⁴ The percentage calculations for Lowe's increases for a \$65,000 starting full-time salary are as follows: (1) for 2008, the salary increase of \$18,693 divided by \$65,000 equals 28.76%; (2) for 2009, the salary increase of \$18,693 divided by \$83,693 (\$65,000 plus \$18,693) equals 22%.

salary increases for a full-time attorney starting at \$65,000 and misapplied it to appellant, who was found to have a starting full-time salary of \$45,000.

Other than the chart's assumption that a beginning attorney would have salary increases of \$18,692 or \$18,693 per year for the first three years of full-time employment from 2007, the only other evidence of salary increases for Minnesota attorneys was that between 2006 and 2010, annual attorney salaries only increased 2%. In applying this percentage increase to appellant, who was found to be able to earn \$45,000 as of May 2011, her salary would increase only by \$900 more in 2012 and \$918 more in 2013. Obviously, with these increases in salary and her annual investment income of \$16,537, she would not be able to meet her monthly expenses of \$8,015, or her annual expenses of \$96,180. Because the record does not support the district court's calculation of appellant's expected salary increases after 2011 and the corresponding finding that appellant would be self-supporting by May 2013, we reverse these findings as unsupported by the record.

IV. Did the district court abuse its discretion in considering the tax rate applicable to the maintenance calculation?

Appellant argues that the district court erroneously altered the tax rate applicable to its maintenance analysis. "It is within a court's discretion to consider the tax consequences of its actions." *Dahlberg v. Dahlberg*, 358 N.W.2d 76, 82 (Minn. App. 1984); *see also Maurer v. Maurer*, 623 N.W.2d 604, 607–08 (Minn. 2001) (stating that the district court has the discretion whether to consider the tax consequences of a marital property award). The district court may consider the tax consequences of a maintenance

award when it has a “reasonable and supportable basis for making an informed judgment as to the probable liability.” *Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007) (quotation and alteration omitted), *review denied* (Minn. Aug. 21, 2007). A district court “should not speculate” regarding the tax consequences of its decision. *Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984) (noting that the district court properly refused to address tax consequences of property division because there was insufficient evidence on which to make an informed decision). Respondent stresses that the calculation of net income must only be determined within “a reasonable range of figures.” *Schreifels v. Schreifels*, 450 N.W.2d 372, 373 (Minn. App. 1990) (quotation omitted).

The district court applied a tax burden of 25% in its initial remand order, but did not explain the reasoning for that particular rate. In its subsequent order of February 28, 2012, the district court implicitly utilized a 7.5% tax rate in calculating maintenance. The actual rate of 7.5% is not explicitly discussed, and there is no evidence supporting application of this lower rate. Because the district court did not explain its reasoning or set forth any evidence supporting the decrease to the spousal maintenance taxes from 25% to 7.5%, and because such a decrease has a substantial effect upon the maintenance calculation, we conclude the district court abused its discretion in its calculation of appellant’s tax liability.

V. Did the district court err in denying appellant’s claim for permanent spousal maintenance?

In light of our analysis, the district court erred to the extent that appellant was only awarded temporary maintenance through May 2013. While the record does not support a

termination of maintenance as of May 2013, the district court may yet determine that, at some point in the future, appellant may become self-supporting. “An award of temporary maintenance is based on the assumption that the party receiving the award not only should strive to obtain suitable employment and become self-supporting but that he or she will attain that goal.” *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987). While “[a] district court does not err by awarding temporary spousal maintenance and reserving jurisdiction after finding that the recipient of maintenance will become self-supporting, even if it is uncertain when the recipient will become self-supporting,” *Maiers v. Maiers*, 775 N.W.2d 666, 669–70 (Minn. App. 2009), section 518.552, subdivision 3, “leaves little room for the exercise of discretion where the need for permanent maintenance is in question.” *Reinke v. Reinke*, 464 N.W.2d 513, 516 (Minn. App. 1990) (quotation omitted). On remand, the district court should consider these guidelines and determine whether, in light of appellant’s monthly budget and evidence of salary increases for attorneys of approximately 2% since 2010, appellant is entitled to temporary or permanent maintenance.⁵

⁵ Given our conclusion, we need not specifically address appellant’s argument that the district court erred by concluding that it would be reasonable for her to borrow against or restructure assets in order to cover monthly budgetary shortfalls as part of the step-down calculation. For purposes of remand, we highlight the finding in the amended decree that the majority of appellant’s property award is retirement and investment accounts. Also, appellant’s investment income is already calculated into her income. These considerations are inconsistent with the district court’s conclusion that appellant may utilize her remaining property award to cover deficiencies in her monthly budget. *See Flynn v. Flynn*, 402 N.W.2d 111, 114, 116 (Minn. App. 1987) (noting that majority of property distributed to maintenance obligee was not liquid in discussing obligee’s financial resources and affirming award of permanent maintenance), *review denied* (Minn. Nov. 24, 1987).

VI. Did the district court err by addressing respondent’s motion to clarify the tax implications of his maintenance and support obligations after the time to appeal the amended judgment and decree had expired?

Finally, appellant argues that the district court erred by addressing respondent’s motion seeking, among other relief, clarification of whether the maintenance award was intended to be taxable to appellant and deductible by respondent. She asserts that the motion was “a disguised motion for amended findings of the Amended Decree.”

The conclusion of law that sets forth the step-down maintenance schedule in the amended decree does not specifically address the tax implications of the maintenance award. Appellant asserts that respondent failed to bring a motion to reopen the amended decree pursuant to Minn. Stat. § 518.145, subd. 2 (2012). However:

[T]he clarification of a judgment does not constitute an amendment of it or the findings upon which it is based. Neither does it result in a judgment differing from that originally ordered. On the contrary, such a clarification serves only to express more accurately the thought which, at all times, the judgment was intended to convey.

Stieler v. Stieler, 244 Minn. 312, 319–20, 70 N.W.2d 127, 132 (1955). “A court has jurisdiction to interpret and clarify a judgment which is ambiguous or uncertain on its face, even after the time for appeal has passed.” *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). “Whether language is ambiguous is a question of law to be decided initially by the trial court; if language is reasonably subject to more than one interpretation, there is ambiguity.” *Id.*

We agree that the amended decree is ambiguous insofar as it does not explicitly set forth the tax implications of the maintenance award. While maintenance findings in the

amended judgment and decree indicate that appellant “will have to include spousal maintenance for tax purposes,” it does not specifically state that appellant has to pay state and federal income taxes on such maintenance or that respondent is entitled to a deduction for the payment of maintenance. The first remand order simply clarified the tax implications of the maintenance as set forth in the district court’s prior amended judgment and decree. The district court did not err by providing such clarification.

Affirmed in part, reversed in part and remanded.