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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0178**

In re the Marriage of:
Brian Arthur Johnson, petitioner,
Appellant,

vs.

Brenda Colleen Johnson,
Respondent.

**Filed September 30, 2013
Affirmed in part and reversed in part
Peterson, Judge**

Washington County District Court
File No. 82-FA-11-3505

Christopher Donley Johnson, Johnson & Turner, P.A., Forest Lake, Minnesota (for appellant)

Carla C. Kjellberg, St. Paul, Minnesota (for respondent)

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a spousal-maintenance award, appellant-husband argues that the district court erred by (1) including a percentage of husband's bonus income in the

maintenance award and (2) not including a step reduction in the maintenance award. We affirm in part and reverse in part.

FACTS

The parties' 29-year marriage was dissolved by a dissolution judgment and decree entered December 6, 2012. At the time of dissolution, appellant-husband Brian Arthur Johnson was age 55, and respondent-wife Brenda Colleen Johnson was 48.

Husband was employed by Warren Rupp, Inc. and earned \$102,000 in 2008, \$104,964 in 2009, \$145,361 in 2010, and \$141,789 in 2011. Effective January 2, 2012, his base salary was increased to \$115,000, and he became "eligible for an annual bonus targeted at 25% of base salary." Previously, appellant had been paid a base salary plus commissions. Effective March 27, 2012, husband's base salary was increased to \$117,300, which equals \$9,775 per month. The district court found that husband's monthly living expenses were \$2,891, as agreed by the parties.

At the time of trial, wife was unemployed and, except for \$1,757 earned in 2004, had earned no income from employment since 1994. Wife earned \$15,264 in 1992 and \$16,136 in 1993. Before the emancipation of the parties' daughter, wife stayed at home caring for the child. The district court found that wife had "few currently marketable skills and in all likelihood would qualify for no more than an entry level position in the employment market." The court found that wife's submitted budget of \$7,363.05 was excessive and that her reasonable monthly expenses were \$3,200. The court noted that because both parties were using \$100,000 from the equity in their current home and

proceeds from the liquidation of stock for down payments toward new housing, neither party was likely to have a mortgage payment.

Since about 2005, wife has suffered from a psychological problem that has been diagnosed as anxiety disorder with obsessive-compulsive features. Psychologist James Richardson testified that wife is “extremely anxious and preoccupied with her health symptoms” and that, when he talked to her about coming to his office for an appointment, attempting to give her directions to the office was a very confusing process that took about 15 minutes of him talking to her and another 20- to 25-minute conversation with an office manager and that, even after that, wife was very anxious about how she would locate the office building and get to her appointment on time. Richardson testified in a deposition that wife displayed

some real prominent symptoms of anxiety, indecisiveness, her sleep is disrupted, she’s got some mood disruptions, some irritabilities, some depression so a real broad spectrum of symptoms In the course of our discussion it was kind of apparent that she had started to feel like her doctors had kind of done her a disservice and was kind of paranoid about maybe they were holding back information and then as this kind of moved forward it became clear that she felt really alienated by her husband and her daughter and felt that they had kind of turned against her over the same symptoms.

Richardson recommended an intensive outpatient treatment program and individual counseling to modify wife’s behavior. Richardson testified that the treatment program would last four to six weeks and that the counseling would be a long-term process. Regarding the likelihood of success, Richardson testified:

[N]umber one, if you get a medication on board that’ll increase the success. Number two, if [wife] will stick with a

counseling program or an outpatient treatment program I think that she can substantially improve her coping skills that [will] allow her to tolerate the performance requirements in either an entry level training or an entry level job situation. Without doing these two things I think transition to steady, persistent, competitive full-time employment is small. If you participate with a full treatment program and everybody's moving in the same direction I think you're better than 50/50 in moving in a positive direction on that. I think that . . . once [wife] gets into a work environment if her symptoms get under control I think her confidence [will] build at that point, but [that will] take a while to get there. Rushing that and pushing too hard too fast, you get relapses and you get symptoms to embed and people wonder why cases aren't going anywhere and people get very rigid at that point and very protective and that's the one cautionary statement I would make is to take kind of a slow, prudent approach and make it a comprehensive treatment plan.

Richardson recommended that wife not return to employment until she was "fully ready" because beginning employment prematurely can result in job loss and a loss of confidence and self-esteem. According to Richardson, at the time of trial, wife was managing her symptoms "very poorly."

Vocational expert Obie Kipper, relying on Richardson's report and a consultation with wife, opined that, without treatment, wife was incapable of maintaining sustained gainful employment.

Vocational expert Jan Lowe testified that wife was capable of working in an entry-level basic job that paid \$8 to \$12 per hour. Lowe testified that, with some retraining, such as completing a one-year program for an office-assistant certificate, wife could increase her earnings to \$12 per hour and \$15 per hour after two years of experience. Lowe testified that Richardson's recommendations did not affect her opinion of wife's

earning capacity but would affect the timeline to allow wife to complete outpatient treatment, medication management and work-hardening simulations.

The district court awarded wife \$4,000 per month in permanent spousal maintenance, which is approximately 41% of husband's base salary. As additional maintenance, the district court awarded wife 41% of any bonuses received by husband. Pursuant to correspondence by the parties, the district court issued an amended order correcting typographical errors, and judgment was entered. This appeal followed.

D E C I S I O N

I.

Husband argues that the district court erred in awarding wife a percentage of his bonuses for spousal maintenance because the \$4,000 maintenance award was sufficient to meet wife's reasonable monthly living expenses of \$3,200.

This court's review of a maintenance award is limited to determining whether the district 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). "[M]aintenance is awarded to meet need" and "depends on a showing of need." *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). But in determining a maintenance award, the district court must consider the marital standard of living. *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) ("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.").

The district court considered the marital standard of living in determining that wife was “entitled to permanent maintenance in an amount that will meet her monthly budget.” The district court also referred to the marital standard of living in determining wife’s reasonable monthly living expenses, and wife does not challenge the district court’s finding that her reasonable monthly expenses were \$3,200. Rather, she argues that an award of a percentage of husband’s bonus income was necessary for her to meet those expenses based on a projected-cash-flow analysis that “showed that an award of \$4,790.00 would give [wife] cash after taxes of \$3,188, which is \$18.00¹ short of her monthly expenses.” But in calculating wife’s pretax cash flow, the analysis subtracts \$5,000 per year for a retirement plan and \$6,274 per year for health and life insurance. Because the district court disallowed wife’s claimed expense for retirement and savings, the \$5,000 is income available to wife. The expense for health and life insurance should not have been subtracted because expenses for those items were included in the budget submitted to the district court by wife and, thus, are accounted for in the district court’s determination of wife’s reasonable monthly expenses. The projected-cash-flow analysis, therefore, understates wife’s pretax cash flow by \$11,274 per year. Because that amount is greater than the \$790 per month difference between the \$4,000 that wife was awarded and the \$4,790 that wife claimed she needed, the projected-cash-flow analysis suggests that a maintenance award of \$4,000 per month is sufficient to meet wife’s reasonable

¹ The \$18 figure is a computational error; \$3,188 is \$12 short of wife’s \$3,200 in reasonable monthly expenses.

monthly expenses. Accordingly, we reverse the district court's award of a percentage of husband's bonus income.

II.

Husband argues that the district court abused its discretion by not implementing a step reduction in the maintenance award.

The district court's broad discretion in establishing maintenance extends to the use of step reductions. *Schreifels v. Schreifels*, 450 N.W.2d 372, 374 (Minn. App. 1990). A district court does not abuse its discretion unless it arrives at "a clearly erroneous conclusion that is against logic and the facts on record." *Dobrin*, 569 N.W.2d at 202. "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." *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Aug. 21, 2007). We view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

A maintenance award will not be reversed if it has a "reasonable and acceptable basis in fact and principle." *DuBois v. DuBois*, 335 N.W.2d 503, 507 (Minn. 1983). When there is uncertainty as to an obligee's ability to become self-supporting, the court "shall" award permanent maintenance and leave the order open for later modification. Minn. Stat. § 518.552, subd. 3 (2012); *see* Minn. Stat. § 645.44, subd. 16 (2012) (stating that "[s]hall" is mandatory).

Husband argues that “there is uncertainty as to *when*, not whether [wife] will return to work, *based entirely on her willingness to receive treatment and to rehabilitate herself vocationally.*” Appellant’s argument mischaracterizes the evidence in the record. Wife has long-term, significant psychological issues that, at the time of trial, prevented her from being employed and caused anxiety about performing normal activities. Richardson, Kipper, and Lowe all agreed that, without successful treatment, wife was unlikely to be capable of maintaining employment. Richardson testified that medication would increase the likelihood of successful therapy, but his testimony did not identify a medication to help wife control her symptoms. Richardson opined that, with a medication and wife’s commitment to counseling or a treatment program, there was a “better than 50/50 [chance] in moving in a positive direction.” Richardson’s testimony, which the district court specifically found credible, supports the court’s finding that a treatment program was not guaranteed to be successful, and it is contrary to appellant’s claim that the success of treatment depends solely on wife’s willingness to participate in treatment. The evidence supports the district court’s findings that “[wife] is currently incapable of self-support” and that “[i]t would be speculative to award maintenance based on whether [wife] could contribute to her self-support after pursuing an intensive treatment program.” The district court did not abuse its discretion in declining to impose a step reduction in the maintenance award. *See Schreifels*, 450 N.W.2d at 374 (reversing step reduction when there was significant doubt as to whether obligee would be able to increase income sufficiently to fill gap that would result from step reduction).

Affirmed in part and reversed in part.