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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0138**

In re the Marriage of:
Renee Ann Glenn, petitioner,
Respondent,

vs.

Michael John Glenn,
Appellant.

**Filed December 16, 2008
Affirmed in part, reversed in part, and remanded
Larkin, Judge**

Isanti County District Court
File No. 30-F9-04-000361

Todd D. Donegan, Katherine O. Fossey, Parker, Satrom & Donegan, P.A., 123 South Ashland, Cambridge, Minnesota 55008 (for respondent)

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Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

On appeal in this marital-dissolution matter, appellant-father argues that the district court abused its discretion by (1) failing to admit expert testimony and related documents; (2) failing to value the parties' business (marital property); (3) overstating father's income for child-support purposes; (4) awarding permanent maintenance to respondent-mother; (5) awarding mother an inequitably large share of the marital assets; and (6) awarding mother need-based attorney fees. Because the district court did not abuse its discretion as to the admissibility of expert testimony and documents, the failure to value the parties' business, the permanent spousal-maintenance award, the marital-property division, and the attorney-fee award, we affirm the district court's determinations. But because the district court abused its discretion by determining appellant-father's child-support obligation without making a specific finding regarding his net income as defined by statute, we reverse the district court's child-support determination and remand for the specific calculations required by statute.

DECISION

The marriage of appellant Michael John Glenn and respondent Renee Ann Glenn was dissolved by judgment and decree on April 30, 2007 following a trial. This appeal follows.

I.

Appellant first argues that the district court abused its discretion by excluding the testimony and documents of Bryan Bayerkohler, a certified public accountant called by

appellant to testify as an expert witness regarding appellant's business expenses and past tax returns. Appellant attempted to introduce, through Bayerkohler, previously undisclosed business tax returns for the years 2000, 2001, and 2002, and a revised profit and loss statement that would supplement the statement originally received in evidence. Respondent objected on the ground of nondisclosure and because appellant had already testified regarding the original profit and loss statement.

The district court allowed Bayerkohler to testify but reserved ruling on respondent's objections, stating that the testimony would be stricken if the court agreed that there had been a discovery breach. The district court excluded Bayerkohler's testimony after concluding that respondent was severely and unfairly prejudiced by the lack of opportunity to adequately prepare cross-examination.

Appellant contends that because there was a six-week break in the trial, respondent had sufficient time to prepare for cross-examination of Bayerkohler, and therefore, the district court abused its discretion by excluding Bayerkohler's testimony. Appellant cites *Dennie v. Metro. Med. Ctr.*, 387 N.W.2d 401, 405 (Minn. 1986) to support his argument that the district court should have granted a continuance so that Bayerkohler could testify as an expert on the business. Failure to timely disclose an expert's identity should result in suppression only where the party's failure to disclose is shown to be inexcusable and disadvantageous to the opposing party. *Id.* at 406 (stating that suppression is "a serious sanction and should be imposed only in the most compelling circumstances"); see also *Krech v. Erdman*, 305 Minn. 215, 217, 233 N.W.2d

555, 557 (1975) (stating that a continuance is an adequate remedy unless the violation is willful and the damage done is permanent).

“Whether to receive evidence is discretionary with the district court.” *J.W. by D.W. v. C.M.*, 627 N.W.2d 687, 697 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Procedural and evidentiary rulings are within the district court’s discretion and are reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). Absent an erroneous interpretation of the law or an abuse of discretion, the district court’s ruling on whether to admit evidence will not be disturbed. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). “Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *Id.* at 46 (quotation omitted).

The supreme court has enumerated several factors that the district court should consider when deciding whether to suppress expert testimony, including:

- (1) the extent of preparation required by an opposing party in preparing for cross-examination or rebuttal of expert witnesses;
- (2) when the expert agreed to testify;
- (3) when the party calling the expert notified the opposing party of the expert’s availability;
- (4) when the attorney calling the expert assumed control of the case;
- (5) whether a party intentionally and willfully failed to disclose the existence of a trial expert; and
- (6) whether the opposing party sought a continuance or other remedy.

Dennie, 387 N.W.2d at 406. “In situations where the failure to disclose is inadvertent but harmful, the court should be quick to grant a continuance and assess costs against the party who has been at fault.” *Id.* at 405 (quotation omitted). The crucial question is whether a party has been prejudiced to any appreciable degree by the late disclosure. *Id.*; *see also Phelps v. Blomberg Roseville Clinic*, 253 N.W.2d 390, 394 (Minn. 1977).

Instead of granting a continuance, the district court opted to first hear Bayerkohler’s testimony and then decide whether the testimony was admissible. Bayerkohler’s testimony was limited to whether certain of appellant’s expenses were correctly deducted for income-tax purposes. Bayerkohler did not testify about appellant’s monthly income or the value of the parties’ business. In fact, Bayerkohler testified that he was not familiar with appellant’s income or the business’s income, presumably because he had not had contact with the parties’ business records in over two years prior to trial.

Appellant failed to list Bayerkohler on the witness list until one hour before trial and failed to explain the late disclosure. The district court considered Bayerkohler’s testimony and the documents that appellant sought to admit and determined that this evidence was unfairly prejudicial to the respondent. The district court’s findings explain why the testimony and documents were prejudicial to respondent and that respondent did not have sufficient time to prepare for portions of Bayerkohler’s testimony that were “ripe for cross-examination.” The district court properly determined that the nondisclosure prejudiced respondent and did not abuse its discretion by excluding Bayerkohler’s testimony and exhibits.

II.

Appellant also claims that the district court abused its discretion by failing to determine the value of the parties' business—a part of the marital property. Appellant argues that the district court would have been able to assign a value to the parties' business if the district court had admitted Bayerkohler's testimony or if respondent had introduced evidence regarding the value of the business. Appellant's argument is not persuasive. At oral argument on appeal, appellant conceded that the district court placed no restrictions on Bayerkohler's testimony. Yet Bayerkohler never testified regarding the value of the business. Bayerkohler had not conducted a forensic investigation of the business. Appellant offered no evidence regarding the value of the business.

Conversely, respondent presented testimony regarding appellant's efforts to conceal his income and substantial information regarding appellant's financial situation. The district court made specific findings regarding appellant's attempts to conceal his income and divisions of company funds including:

- 1.) forming new business entities; 2.) setting up bank accounts under other entity names such as ATEQ Inc. d/b/a Glenn Roofing and Construction; 3.) using the company checkbook for all of his personal expenses and the personal expenses of his girlfriend; 4.) giving company checks to his girlfriend or himself as "reimbursements" for company expenses; 5.) accepting payments directly from customers; and 6.) cashing checks without recording the income on the company books by going to the bank of the customer to cash the check.

"A party cannot complain about a district court's failure to rule in the party's 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.” *Thompson v. Thompson*, 739 N.W.2d 424, 431 (Minn. App. 2007) (quotation omitted). Appellant’s own actions made it difficult for both respondent and the court to arrive at a valuation of the business. Appellant cannot complain because the difficulty he created resulted in the district court’s inability to value the business. The district court did not abuse its discretion by failing to assign a value to the business.

III.

Appellant next argues that because the district court determined appellant’s income based on evidence regarding his lifestyle and spending patterns the district court erred in its calculation of appellant’s child-support obligation. We review child-support determinations for an abuse of discretion, reversing only when the district court resolves the matter in a manner that is against logic and the facts on record or misapplies the law. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A determination of the amount of an obligor’s income for the purpose of child support is a finding of fact and will not be altered on appeal unless it is clearly erroneous. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002). A finding is clearly erroneous if a reviewing court is left “with a definite and firm conviction that a mistake has been made.” *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987).

In 2006, the child-support guidelines were replaced by the income-shares child-support calculations, and most of the child-support-related statutes were relocated from chapter 518 to chapter 518A (2006 & Supp. 2007). Generally, the provisions of the 2006 child-support statutes became effective January 1, 2007. 2006 Minn. Laws ch. 280, § 44,

at 1145. Because this action was filed before January 1, 2007, the previous child-support guidelines set out in Minn. Stat. § 518.551 (2004 & Supp. 2005) apply here.

“The [district] court shall derive a specific dollar amount for child support by multiplying the obligor’s net income by the percentage indicated” in the statutory guidelines. Minn. Stat. § 518.551, subd. 5(b). The district court’s first task is to determine the obligor’s net income. It is within the district court’s discretion to decide whether to accept or reject evidence of an obligor’s net monthly income. *See Nelson v. Nelson*, 291 Minn. 496, 497, 189 N.W.2d 413, 415 (1971) (explaining that evidentiary weight and witness credibility are the province of the fact-finder). Moreover, in situations where an obligor does not have “a steady, determinable flow of income,” courts have approved of calculating income by averaging an obligor’s income over a longer period of time or considering “cash flow in addition to paper income.” *Swick v. Swick*, 467 N.W.2d 328, 333 (Minn. App. 1991), *review denied* (Minn. May 16, 1991); *Coady v. Jurek*, 366 N.W.2d 715, 718 (Minn. App. 1985) (quotations omitted), *review denied* (Minn. June 27, 1985). “[T]he opportunity for a self-employed person to support himself yet report a negligible net income is too well known to require exposition.” *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984). A court can take into account the lifestyle of a sole business owner if the income figures offered by the owner do not comport with the evidence regarding the owner’s lifestyle. *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987), *see also Roatch v. Puera*, 534 N.W.2d 560, 565 (Minn. App. 1995) (holding that a district court may impute income when determination of actual income is impractical and that it was not clearly erroneous for the district court

to base income determination on business records, tax returns, and testimony regarding the parties' lifestyle).

The district court made detailed findings with regard to appellant's attempts to conceal his income through various methods. The district court also made detailed findings regarding appellant's erratic spending habits, particularly his gambling. For example, the district court found that appellant had withdrawn at least \$77,440 from the business for gambling expenses from January 2003 through October 2003 while representing to the court in 2004 that his income was \$15,000 per year. The district court also found that from the beginning of June 2006 to the end of October 2006, appellant wrote checks and withdrew cash from his business account in excess of \$200,000 for what appear to be personal expenses, signed a lease for a home with an in-ground swimming pool at \$2,000 per month and prepaid \$20,000 of rent in two separate checks for \$10,000 (dated October 1, 2006), and purchased a \$5,000 engagement ring for his girlfriend and \$12,000 worth of jewelry for himself.

Appellant claims that the district court "chose to reject the [a]ppellant's testimony about his income and excluded the testimony of the accountant" leaving only "the anecdotal observations of the [r]espondent and friends or family members" who described a pattern of spending but failed to provide financial data. But the district court has discretion to disregard testimony it finds not to be credible. *See Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) (stating that "[t]he finder of fact is not required to accept even an uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility"). A reviewing court gives

deference to both explicit and implicit credibility determinations made by the district court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court's findings of fact reflect its implicit credibility determination regarding appellant's testimony about his income. "[T]he life style and spending patterns satisfy the Court that his income is beyond the amount for the support maximum."

Appellant notes that by deduction, the district court necessarily determined that appellant's net income was at least \$7,360 per month (the adjusted child-support guidelines cap).¹ Appellant argues that the district court erred in its child-support determination because the district court's findings do not indicate that the district court made appropriate deductions from appellant's gross income when determining net income as required by statute.

Net income is defined as the obligor's total monthly income less federal- and state- income tax, social-security deductions, reasonable pension deductions, union dues, cost of dependent-health-insurance coverage, cost of individual or group health/hospitalization coverage or an amount for actual medical expenses, and the child-support maintenance obligation that is currently being paid. Minn. Stat. § 518.551, subd. 5(b). Because the district court's findings do not include specific calculations regarding its determination of appellant's gross and net income, we cannot determine that the district court complied with the required statutory calculation.

¹ As relevant to this appeal, the monthly income cap for application of the child-support guidelines was \$7,360 from July 1, 2006, to December 31, 2006. Cost of Living Adjustments to Child Support Guidelines, C9-85-1134 (Minn. Apr. 13, 2006) (Order).

The district court abused its discretion by determining appellant's child-support obligation without making a specific finding regarding appellant's gross monthly income and making the necessary statutory deductions to determine appellant's net income before calculating the specific dollar amount of appellant's child-support obligation. *See id.* While the district court is allowed to average income and/or consider cash flow when determining an obligor's income, the district court must determine the amount of gross income and take the mandatory statutory deductions before calculating the final child-support obligation. *Id.* The district court failed to do so.

We also note that there is a realistic possibility of a motion to modify appellant's child-support obligation before all of the parties' children reach the age of majority. The parties' three minor children were ages 12, 10, and 9 when the district court issued its child-support order. If a motion to modify is filed, the district court will need to know appellant's income at the time of the original child-support order.

Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify. Unless a support order provides a baseline for future modification motions by reciting the parties' then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified.

Maschoff v. Leiding, 696 N.W.2d 834, 840 (Minn. App. 2005) (citation omitted).

For these reasons, we reverse the district court's child-support determination and remand for a specific determination of appellant's gross income, net income, and child-support obligation according to the guidelines set forth in Minn. Stat. § 518.551, subd. 5(b). On remand, the district court retains discretion to reopen the record and consider additional evidence on this issue.

IV.

Appellant next challenges the district court's order for permanent spousal maintenance. An appellate court reviews a district court's 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 regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id.* "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact "shall not be set aside unless clearly erroneous"). 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." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

In its determination of the amount and duration of a spousal-maintenance award, the district court is to consider the statutory factors set forth in Minn. Stat. § 518.552, subd. 2 (2004). This process essentially balances the recipient's needs against the obligor's ability to pay. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001). Relevant factors include among others: (1) the petitioning spouse's ability to meet his or

her needs independently; (2) the time necessary for the petitioning spouse to acquire sufficient education or training to find appropriate employment and the probability of becoming fully or partially self-supporting; (3) the standard of living established during the marriage; and (4) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property. Minn. Stat. § 518.552, subd. 2. No single factor is dispositive, and the district court must weigh the facts of each case to determine whether maintenance is appropriate. *Weikle v. Weikle*, 403 N.W.2d 682, 687 (Minn. App. 1987), *review denied* (Minn. June 30, 1987). There is an expectation that the party seeking spousal maintenance demonstrate need. *See Dobrin*, 569 N.W.2d at 202 (“[i]mplicit in Minn. Stat. § 518.552 is that the spouse seeking maintenance demonstrate the need therefor”).

The district court adequately considered these factors and found that: “Given [respondent’s] age, lack of training and experience, lack of education, contribution towards building the business, lack of retirement accounts, and years spent as a homemaker and mother, [respondent] is in need of permanent spousal maintenance from [appellant].”² The district court’s findings of fact are supported by the record and it properly applied the law. The district court did not abuse its discretion by ordering permanent spousal maintenance.

² In amended finding XVIII, the district court incorrectly stated respondent’s age at the time of trial and mistakenly reversed the party designations in the last sentence stating “Respondent [appellant] is in need of permanent spousal maintenance from Petitioner [respondent herein].” These typographical mistakes in the finding of fact amount to harmless error. Minn. R. Civ. P. 61 (requiring courts to disregard any error or defect from the proceedings “which does not affect the substantial rights of the parties”).

Appellant also argues that the district court abused its discretion by awarding respondent so much spousal maintenance that there is “virtually no requirement that she contribute to her own support.” Appellant claims that (1) respondent’s experience working for the family business makes her more marketable and that by attempting to start her own roofing company, respondent demonstrated her ability to support herself, (2) if respondent lost her job solely due to absenteeism caused by the dissolution trial, she could find full-time employment at a similar rate of pay, and (3) the district court ignored respondent’s valuable nonmarital property as a source of income. Appellant’s arguments do not lead us to conclude that the district court abused its discretion.

First, the district court determined that respondent worked primarily as a homemaker and towards building the business that the district court awarded to appellant. Second, the district court reviewed respondent’s employment prospects and determined that they are limited due to her time as a homemaker, her lack of training and education, and her efforts to contribute to the family’s business during their 12-year marriage while raising the parties’ children. The district court may consider the length of a homemaker’s absence from employment as well as loss of earnings, retirement benefits, and employment opportunities. Minn. Stat. § 518.552, subd. 2(d). The district court’s findings indicate that it factored these considerations into its determination that respondent required permanent spousal maintenance.

Third, the district court did, in fact, consider respondent’s nonmarital property, including artwork, and determined that it did not have income-producing capability. Specifically, the district court found that respondent “has a non-marital interest in her

Salvador Dali art work (six signed lithographs), Les Kouba wild life prints and prints by other artists, and some furniture. The nonmarital claims have been accommodated in the property division herein. None of the nonmarital property has income-producing capability.” The district court’s findings with regard to respondent’s ability to support herself are not clearly erroneous.

Appellant cites two cases to support his contention that because the district court awarded respondent the homestead free and clear of any encumbrances, the court abused its discretion in also awarding spousal maintenance. *See Rohling v. Rohling*, 379 N.W.2d 519, 524 (Minn. 1986); *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). Both cases are distinguishable, however. The mere fact that the district court awarded respondent the homestead does not preclude the court from determining that respondent also requires spousal maintenance. Moreover, though the parties did not address the question here, it is possible that the award of the homestead to respondent was, at least partially, in the nature of child support. *Cf. Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986) (stating that “noncash contributions [to a custodial parent] can be considered in some cases to be in the nature of child support”).

Appellant next argues that the district court’s finding that respondent’s reasonable monthly expenses are \$5,397 based on respondent’s submitted budget is erroneous. Appellant’s argument is without merit. The district court considered the evidence and determined that respondent’s “reasonable monthly expenses for herself and her minor children according to the standard of living she enjoyed during the marriage are

\$5,397.00.” The district court factored in respondent’s expenses as well as her gross and net income before she became unemployed and based its finding on the record.

Appellant also takes issue with the district court’s construction of the “standard of living enjoyed during the marriage.” Appellant argues that the couple’s lifestyle during the marriage was based on debt and living beyond their means. While appellant advances a meritorious argument, it does not lead us to conclude that the district court abused its discretion. The “fabricated lifestyle” does not render the district court’s findings with regard to respondent’s reasonable expenses erroneous where the district court based its finding on an exhibit that specifically listed respondent’s needs. The district court did not abuse its discretion when it found that respondent’s reasonable expenses were \$5,397.

Appellant finally argues that the district court failed to make findings sufficient to allow a conclusion that the appellant has the ability to pay spousal maintenance, and failed to even state that conclusion. Appellant further notes that the district court neglected to consider appellant’s reasonable expenses or to assess whether appellant could maintain the “standard of living enjoyed during the marriage” and that by ignoring this requirement, the district court erred. Again, appellant’s argument lacks merit. Although the district court did not make specific findings regarding appellant’s ability to pay the award, its failure to do so is not fatal because other findings in the district court’s order provides sufficient detail to facilitate this court’s review. *See Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999) (noting that a lack of specific findings with regard to obligor’s ability to pay attorney fees is not necessarily fatal where the district court’s findings reasonably imply that the district court considered the relevant factors). The

district court explained the difficulty of determining appellant's actual income due to his various efforts to conceal income. As discussed in the previous section, the district court made detailed findings based on the evidence with regard to appellant's lifestyle and spending habits. The district court's findings are not clearly erroneous and support a conclusion that appellant has the ability to pay the spousal maintenance awarded. The district court did not abuse its discretion when it awarded permanent spousal maintenance to respondent.

V.

Appellant argues that the district court's marital-property division constitutes an abuse of discretion. "A trial court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. [An appellate court] will affirm the trial court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted). A district court abuses its discretion regarding a property division if its findings of fact are "against logic and the facts on [the] record." *Rutten*, 347 N.W.2d at 50.

Appellant argues that the district court's property division was erroneous in four ways. First appellant challenges the award of the homestead, valued at \$188,000 and free of a mortgage or lien, to respondent. Second, appellant challenges the district court's decision to award appellant the business and to use the business's value to offset the value of the homestead without assigning a value to the business. Third, appellant claims that the district court disregarded the marital assets respondent sold during the parties'

separation. Fourth, appellant challenges the district court's denial of appellant's "motion" to reduce child-support arrears because respondent signed an agreement to forgive \$23,450 of appellant's support arrears in exchange for a \$700 check.

With regard to appellant's first two challenges, the district court noted that the homestead's \$188,000 value was offset by *both* the \$88,187.71 in child-support arrears that appellant owed as of November 27, 2006 and the value of the business. The child-support arrears off-set alone diminishes the value of the business to approximately \$100,000. Although the district court did not place an exact value on appellant's business, the court explained its failure to do so by stating that "[n]either party has submitted sufficient evidence as to the value of this business." The district court went on to explain that it is clear that the business provides a very significant free cash flow to appellant.

The district court acknowledged that it could not assign a firm number to the business's value but nevertheless attempted to assess the business's value by considering evidence on cash flow and spending habits; this was necessary for equitable property division. It is clear from the district court's reasoning that the court based its findings on the record. The court's findings are not clearly erroneous. Therefore, the district court did not abuse its discretion when it awarded the respondent, who has physical custody of the parties' three minor children, the homestead and offset its value by the nebulous value of the business and the significant sum of child-support arrears.

Appellant's third challenge concerns the district court's failure to consider property that respondent sold during the parties' separation and is without merit. The

district court considered the evidence presented on this issue and found that it did not need to adjust the disposition of assets to account for this sale. The district court's finding is not clearly erroneous.

Appellant's fourth challenge is that the district court erred when it failed to reduce appellant's child-support arrears by \$23,450 pursuant to an agreement signed by both parties. This argument is without merit. The district court considered evidence on this issue and determined that the parties' agreement was a product of duress.

Not only does appellant fail to cite a single case in support of his argument that the district court erred in its marital-property division, but appellant also fails to identify how the district court's findings are erroneous. Instead, appellant makes a blanket statement that "[t]he trial court's conclusion that it is equitable to assign all the debt to [appellant] and all the homestead equity to the [respondent] cannot stand without some determination of the value of the business." The district court's findings are not clearly erroneous and its division of marital property is not an abuse of discretion.

VI.

Appellant's final argument is that the district court abused its discretion by requiring appellant to pay respondent's attorney fees. On review of an award of need-based attorney fees, "[t]he standard of review for an appellate court examining an award of attorney fees is whether the district court abused its discretion." *Gully*, 599 N.W.2d at 825. *But cf.* Minn. Stat. § 518.14, subd. 1 (2004) (stating that the district court "shall" award attorney fees if the statutory findings are made); *Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999) (stating that Minn. Stat. § 518.14, subd. 1 "requires the

court to award attorney fees if the fees are necessary to allow a party to continue an action brought in good faith, the party from whom fees are requested has the means to pay the fees, and the party seeking fees cannot pay the fees”). Appellant argues that Minn. Stat. § 518.14 requires findings that the party seeking fees lacks the resources to pay the fees and that the party ordered to pay has the resources to do so. The district court made the requisite findings. *See Gully*, 599 N.W.2d at 825-26 (explaining that even though the district court did not make separate findings as to Gully’s ability to pay attorney fees, “the language used by the court reasonably implies that the court believed Gully had the ability to pay [the other party] attorney fees”).

Appellant reiterates that the district court did not make an accurate determination of appellant’s income, and therefore, it could not have assessed appellant’s ability to pay respondent’s attorney fees. The district court explained the difficulty of determining appellant’s income and made several findings as to appellant’s attempts to conceal his income. However, the district court also made detailed findings regarding appellant’s lifestyle, which support a conclusion that appellant has the ability to pay spousal maintenance. The district court also based its determination on the fact that respondent is unemployed and has physical custody of the parties’ three minor children. The findings are not clearly erroneous. The district court did not abuse its discretion in awarding respondent need-based attorney fees.

The district court did not abuse its discretion with regard to its (1) exclusion of Bayerkohler’s testimony and exhibits; (2) failure to value the parties’ business; (3) permanent spousal-maintenance award; (4) marital-property division; and

(5) attorney-fee award, and we therefore affirm in part. The district court did abuse its discretion by failing to make a specific finding regarding appellant’s gross income and by failing to demonstrate that it made the necessary statutory deductions to arrive at appellant’s net income before determining appellant’s child-support obligation. We reverse the district court’s child-support determination and remand for a child-support determination that includes a net-income calculation in compliance with Minn. Stat. § 518.551, subd. 5(b).

Affirmed in part, reversed in part, and remanded.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals