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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-200**

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

vs.

Keith R. Klein,
Respondent.

**Filed March 9, 2010
Affirmed in part and remanded
Klaphake, Judge**

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

Alan C. Eidsness, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Kathleen M. Picotte Newman, Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

This is an appeal from an amended judgment and decree that dissolved the parties' 19-year marriage, adopted the parties' partial marital termination agreement, and resolved various disputed issues, including spousal maintenance. Appellant Colleen Doyle challenges the district court's denial of her request for permanent spousal maintenance.

By notice of review, respondent Keith Klein argues that the district court abused its discretion in awarding appellant need-based attorney fees. We affirm the award of attorney fees but remand for further findings on appellant's ability to become self-supporting.

DECISION

Spousal Maintenance

The district court has “wide discretion” to determine the duration of a spousal maintenance obligation. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). This court will not find an abuse of discretion unless the district court's resolution of the issue is “against logic and the facts on record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We must uphold a district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

When determining the duration of spousal maintenance, the district court considers “all relevant factors,” including the ability of the party seeking maintenance to become self-supporting, consistent with the parties' marital standard of living. Minn. Stat. § 518.552, subd. 2 (2008). If there is uncertainty as to the need for permanent maintenance, the district court “shall” award permanent maintenance, leaving its order open for later modification. Minn. Stat. § 518.552, subd. 3 (2008).

Appellant challenges the district court's decision to award her five years of temporary maintenance, rather than permanent maintenance, based on its determination that she “will be able to fully self-support five years after the dissolution is final and after

the children are emancipated for one year.” Appellant argues that the district court’s findings underlying this determination are insufficient and erroneous.

A district court may exercise its discretion to deny permanent spousal maintenance if a party seeking maintenance has the ability to become self-supporting. *Maiers v. Maiers*, 775 N.W.2d 666, 669-70 (Minn. App. 2009). However, we can review a district court determination that the party seeking maintenance will become self-supporting only if the court’s findings sufficiently demonstrate that it considered the underlying factors that bear on the party’s ability to become self-supporting within the meaning of Minn. Stat. § 518.552. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (stating that effective appellate review of spousal maintenance decision is possible only when district court’s findings are sufficiently detailed). Those factors include the party’s expected independent income and the party’s reasonable expenses, as established by the marital standard of living. *See Erlandson*, 318 N.W.2d at 39 (comparing expenses and monthly salary when determining award of spousal maintenance); *see also Nardini v. Nardini*, 414 N.W.2d 184, 197 (Minn. 1987) (stating that “[b]eing capable of employment and being appropriately employed are not synonymous”). These required findings also establish the baseline from which the district court evaluates any subsequent motions to modify maintenance. *See Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (explaining importance of district court findings on the parties’ baseline circumstances).

Here, the district court’s findings regarding appellant’s expenses are sufficient. The court found that reasonable monthly expenses for appellant and the children totaled \$10,223. The district court never specifically indicated what portion of this total amount

was for appellant's personal monthly expenses, but by subtracting from that total the \$2,208 the court awarded her in monthly child support, it is clear that the court essentially found appellant's reasonable monthly expenses to be \$8,015.

The district court's findings regarding appellant's expected income, however, are incomplete. The court found that appellant, who has a license to practice law, but has never practiced, "has the education, experience and skills to become gainfully employed" as an attorney or other legal professional. Two employment experts offered evidence on the range of potential salaries that appellant would be able to earn, but the district court merely recited their testimony without specifically crediting either expert. *See Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997) (stating that recitation of testimony is not a finding of fact). The district court found that appellant could earn \$45,000 after three years of part-time employment. Annual earned income of \$45,000, even combined with the \$16,537 of investment income appellant is expected to receive each year, would be 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. Thus, appellant's income would have to increase substantially for her to be able to become self-supporting. Further, the district court did not make a finding as to appellant's expected income or level of employment after five years. For these reasons, we remand 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.

Attorney Fees

An award of attorney fees generally rests within the discretion of the district court and will not be disturbed absent an abuse of discretion. *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). A district court “shall award” need-based attorney fees if it finds (1) that the fees are necessary for the good-faith assertion of the party’s rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding; (2) that the party from whom fees are sought has the means to pay them; and (3) that the party to whom fees are awarded does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2008).

Respondent does not dispute that he is able to pay the \$23,950 in need-based attorney fees awarded to appellant. Nor does he contend that the fees were unnecessary to the good-faith assertion of appellant’s rights. Respondent argues, however, that appellant has the means to pay the fees herself because she was awarded a substantial property settlement. We disagree. As appellant points out, a significant portion of the funds awarded to her in the property settlement are unavailable to her because they are contained in retirement accounts or the investment account designated for the children’s education. And the fee award relieved appellant of only a fraction of the \$87,000 she still owed in attorney fees at the time of trial. Moreover, it is undisputed that appellant was unemployed at the time of trial, and the district court’s maintenance findings establish that she was dependent on respondent to cover her monthly expenses, which did not include attorney fees. The district court did not clearly err in concluding that appellant does not have the means to pay her attorney fees.

Respondent also claims that the district court erroneously found that he paid his attorney fees out of marital funds and improperly ordered him to pay the fees rather than awarding them from marital funds. The district court was required to award fees based on findings that the statutory factors were met. Minn. Stat. § 518.14, subd. 1. As respondent has not demonstrated that the district court improperly considered equitable factors in deciding how much and whether to award the requested fees, the district court did not abuse its discretion in making the award.

Affirmed in part and remanded.