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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2197**

In re the Marriage of: Jamin Susanne Johnson, petitioner,  
Respondent,

vs.

David Weldon Schneider,  
Appellant.

**Filed March 8, 2011  
Affirmed  
Worke, Judge**

Kandiyohi County District Court  
File No. 34-FA-08-181

John H. Daniels, Jr., Willeke & Daniels, Minneapolis, Minnesota (for respondent)

David W. Schneider, Willmar, Minnesota (attorney pro se); and

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

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

**UNPUBLISHED OPINION**

**WORKE**, Judge

In this marital-dissolution dispute, appellant challenges the district court's  
(1) maintenance award, (2) valuation of the marital homestead, (3) classification of a  
financial account as marital property, (4) failure to prevent respondent from dissipating

marital assets, and (5) failure to order a remedy to remove his name from the homestead mortgage. Respondent challenges the amount and temporary nature of the maintenance award. We affirm.

## DECISION

### *Appellant's Arguments*

#### *Maintenance*

Appellant David Weldon Schneider challenges the district court's award of maintenance to respondent Jamin Susanne Johnson. 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). The district court abuses its discretion when its findings of fact are unsupported by the record or it improperly applies the law. *Id.* The district court's findings of fact will not be set aside unless they are clearly erroneous. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). "A finding is clearly erroneous if [we are] left with the definite and firm conviction that a mistake has been made," giving deference to the district court's credibility determinations. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (quotation omitted).

Appellant contends that respondent failed to demonstrate a need for maintenance. A maintenance award requires a showing of need. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). A district court may award maintenance if it finds that the spouse seeking maintenance "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.” Minn. Stat. § 518.552, subd. 1(a) (2010). “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.” *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004); *see also* Minn. Stat. § 518.552, subd. 2(c) (2010) (stating that a party’s reasonable needs for maintenance purposes are measured by the marital standard of living).

The district court determined that respondent lacked sufficient property to continue enjoying the standard of living maintained during the marriage. But the district court concluded that both parties are no longer capable of maintaining that standard of living, noting that: “To make one party whole, the other would have to suffer. This did not seem fair or equitable to either one of them.” The district court found that respondent’s reasonable monthly expenses of \$4,256 exceeded her monthly income of \$3,137, whereas appellant’s gross monthly income exceeded his expenses and child-support obligation by \$2,502. The district court awarded maintenance in the amount of \$700 per month after thoroughly evaluating the financial positions of the parties as well as appellant’s ability to afford paying maintenance. These findings are supported by the record.

Appellant also argues that the district court erred by failing to consider respondent’s nonmarital assets when awarding maintenance, specifically respondent’s savings bonds and investment accounts given to her as gifts by her father. But parties are generally not required to liquidate assets in order to meet expenses. *Bury v. Bury*, 416

N.W.2d 133, 138 (Minn. App. 1987). Accordingly, the district court did not abuse its discretion in this respect.

*Marital Homestead*

Appellant challenges the district court's valuation of the marital homestead. A district court's valuation of an asset is a finding of fact that will not be set aside unless clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001).

Appellant first argues that the district court undervalued the property at \$225,000 because respondent listed the homestead for sale at \$249,000. But the homestead did not sell, and respondent's listed sale price is immaterial to the determination of whether the district court's finding was supported by the record. In fact, appellant's own trial exhibit establishes that the marital homestead has an "expected sale[] price of \$225,000." Appellant's argument fails.

Appellant also contends that the district court failed to appreciate his "sweat equity" in the remodeling and expansion of the homestead when valuing the property. But the district court found that each party contributed considerable money and effort to the improvement of the home, and that these contributions were co-mingled. Although the district court awarded the homestead to respondent, appellant received considerable liquid assets to ensure that the property distribution was even. Accordingly, the district court did not abuse its discretion in valuing the marital homestead, or by awarding the home to respondent as part of the property distribution. *See Antone v. Antone*, 645

N.W.2d 96, 100 (Minn. 2002) (stating that an appellate court will affirm the district court's division of property "if it had an acceptable basis in fact and principle").

*Financial Account*

Appellant also argues that the district court erred by determining that his American Funds financial account was a marital asset. "All property obtained by either spouse during the marriage is presumed to be marital property, regardless of the form of ownership." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997); *see also* Minn. Stat. § 518.003, subd. 3b (2010). Whether property is marital or nonmarital is a question of law that we review de novo. *Antone*, 645 N.W.2d at 100.

Appellant argues that the district court clearly erred in concluding that appellant failed to overcome the presumption of marital property under Minn. Stat. § 518.003, subd. 3b ("The presumption of marital property is overcome by a showing that the property is nonmarital property."). Appellant contends that the following testimony proves that the account is nonmarital:

[ATTORNEY:] Your wife listed four investments – a W.C.I., husband's American Funds, Vanguard Fund, and a Janus Fund as being marital property. She places values of 14,000, 16,000, 3,000, and 11,000. Are those approximately correct?

[APPELLANT:] No. And the Janus [account] that she's referring to doesn't exist anymore and hasn't existed since 2005 when I closed that account and transferred the money to the American Funds account. So if you look at that lowest Janus [account], eleven grand, or whatever it is.

....

[APPELLANT:] All of that went to American Funds.

This testimony simply does not demonstrate that the American Funds account was nonmarital property. Thus, the district court did not err in concluding that the account was marital property under the presumption of Minn. Stat. § 518.003, subd. 3b.

#### *Dissipation*

Appellant also alleges that the district court failed to prevent respondent from dissipating marital assets during the dissolution proceeding. Appellant did not raise this issue during trial or during posttrial motions; therefore, appellant is precluded from arguing the issue for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court need not consider an issue not raised before, and addressed by, the district court).

#### *Mortgage Obligation*

Finally, appellant argues that the district court should have ordered respondent to remove appellant as an obligor of the homestead mortgage. But appellant failed to raise this issue before the district court and, again, is precluded from arguing the issue for the first time on appeal. *See id.*

#### ***Respondent's Arguments***

Respondent also challenges the district court's maintenance award, which we review for an abuse of discretion. *See Dobrin*, 569 N.W.2d at 202 (noting that a district court abuses its discretion by misapplying the law or issuing findings unsupported by the record). Factual findings, including determinations of income, will not be set aside unless clearly erroneous. *Schallinger*, 699 N.W.2d at 22.

Respondent asserts that the district court abused its discretion by finding that appellant's annual income is only \$75,000. Appellant is an attorney and started a new practice during the pendency of the dissolution proceedings. With no concrete evidence to establish appellant's income, the district court imputed income to appellant based on his previous earnings and the number of former clients appellant represents at his new firm. This was a reasonable projection by the district court; thus, the district court's determination of appellant's income is supported by the record.

Respondent also argues that the district court failed to allot for her retirement contributions in assessing her income and expenses. But the district court made it clear that the parties would not be able to maintain the standard of living enjoyed during the marriage, and ordered both parties to make financial sacrifices accordingly. Additionally, the district court was aware of respondent's retirement contributions, as evidenced both by the district court's detailed award of retirement assets to respondent and the court's discussion of nonmarital assets awarded to respondent. The district court did not abuse its discretion in awarding the ordered amount of maintenance to respondent.

Respondent finally challenges the district court's award of temporary maintenance for five years instead of permanent maintenance. If there is uncertainty about the need for permanent maintenance, "the [district] court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3 (2010). This statute "leaves little room for the exercise of discretion where the need for permanent maintenance is in question." *Bolitho v. Bolitho*, 422 N.W.2d 29, 32 (Minn. App. 1988). "That the [district] court retains jurisdiction over a temporary award does not make

temporary maintenance an acceptable alternative when it is uncertain that the spouse seeking maintenance can ever become self-supporting.” *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987).

Respondent argues that the district court’s findings justifying the temporary award are not supported by the record. The district court found that respondent was capable of being self-sufficient at the time of dissolution, but at a level well below the standard of living enjoyed during the 15-year marriage. Absent a finding that respondent will be capable of becoming self-sustaining up to the parties’ standard of living during the marriage, respondent argues that there is uncertainty about the need for permanent maintenance and, thus, the district court abused its discretion by awarding temporary maintenance.

But the uncertainty mentioned in the statute refers to *if* the party seeking maintenance will become self-supporting, not to *when* this will happen. *Maiers v. Maiers*, 775 N.W.2d 666, 669 (Minn. App. 2009). Here, the district court found that respondent, age 43, is well-educated with a bachelor’s and a master’s degree, and that she maintains a steady career. Accordingly, the district court did not abuse its discretion by awarding temporary, rather than permanent, maintenance to respondent. *Cf. id.* at 669-70 (affirming a five-year temporary maintenance award when the district court was uncertain whether recipient would become self-supporting within five years); *Aaker v. Aaker*, 447 N.W.2d 607, 611 (Minn. App. 1989) (affirming temporary maintenance for a 39-year-old spouse based on her age, education, and ability to obtain further education), *review denied* (Minn. Jan. 12, 1990); *Hall v. Hall*, 417 N.W.2d 300, 303, 301 (Minn.



App. 1988) (affirming three-year temporary maintenance award after an 18-year marriage for a 39-year-old spouse who had a high school diploma and intended to pursue a college degree).

**Affirmed.**