STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2342

In re the Marriage of:
Jayne Sturdevant Gagne, petitioner,
Respondent,

vs.

Thomas Walter Gagne,
Appellant.

Filed August 31, 2010
Affirmed
Willis, Judge[*]

Hennepin County District Court
File No. 27-FA-08-4389

Glenn P. Bruder, Mitchell, Bruder & Johnson, Bloomington, Minnesota (for respondent)

David D. Himlie, St. Louis Park, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Willis, Judge.

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

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellant challenges the district court's amended dissolution judgment, arguing that the district court abused its discretion by not awarding him temporary spousal maintenance. Because the district court considered the standard of living established during the parties' marriage and did not clearly err in finding that appellant was capable of providing for his own reasonable needs, it did not abuse its discretion by declining to award spousal maintenance to appellant. We affirm.

FACTS

Appellant Thomas Walter Gagne and respondent Jayne Sturdevant Gagne were married in 1982. They are the parents of three adult children, two of whom are college students. From the start of their marriage, the parties anticipated that they both would work outside the home. Appellant, who has a background in information technology and computer programming, stopped working full time in January 2001, and his last significant part-time employment ended in December 2004. At all relevant times, respondent has been employed full time as a registered nurse at the Hennepin County Medical Center.

In 2005, respondent used nonmarital funds inherited from her mother to make the down payment on a lake cabin. In 2006, respondent obtained an additional, part-time position providing medical care to nursing-home patients so that she and appellant could afford the cabin and maintain their standard of living. Respondent repeatedly asked

appellant to look for work, but he refused to do so. Appellant did not conduct a job search until after respondent petitioned for dissolution in March 2008.

After the district court ordered the sale of the parties' homestead and equal division of the proceeds, divided their remaining property and debts, and denied temporary or permanent maintenance to either party, appellant moved for amended findings or a new trial, arguing that he was entitled to temporary maintenance because he was unable to support himself in a lifestyle similar to that enjoyed by the parties during their marriage. Appellant claimed that a new trial was warranted because the district court abused its discretion in denying him temporary maintenance, made errors of law, and made findings not justified by the evidence.

In response to appellant's motion, the district court changed the valuation of and distribution of certain items of property, but it reaffirmed its decision to deny an award of spousal maintenance to either party. It concluded that appellant was not a traditional homemaker because the parties did not agree that one spouse would be the wage earner while the other stayed home; rather, appellant refused to actively seek employment because he wished to be a "house husband." The court found that appellant was capable of providing for his own support and that respondent did not have the ability to pay maintenance. This appeal follows.

D E C I S I O N

In dissolution cases, the district court has broad discretion regarding an award of spousal maintenance, and we review its decision for an abuse of that discretion. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). A district court abuses its discretion when it

improperly applies the law or makes findings unsupported by the evidence or when its decision "is against logic and the facts on record." *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009); *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. Sept. 28, 2005). The district court's findings of fact, including its determination of income for maintenance purposes, will not be set aside unless they are clearly erroneous. *Schallinger*, 699 N.W.2d at 22. A finding of fact 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). Questions of law, including statutory construction, are reviewed de novo. *See Lee*, 775 N.W.2d at 637. Error is not presumed on appeal, and reversible error must be shown by the party claiming it. *See Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999).

Spousal maintenance is "an award made in a dissolution . . . proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2008). A district court's decision regarding spousal maintenance involves a two-step analysis: First, the district court must determine whether maintenance payments to the party seeking maintenance are appropriate. The court "may grant a maintenance order for either spouse" if, after taking into account the standard of living established during the marriage, it finds that the spouse seeking maintenance (a) lacks sufficient property to provide for his or her

"reasonable needs" or (b) is unable to provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2008).

Second, if maintenance is appropriate, the district court must order maintenance in the amount it deems just after considering all relevant factors. *Id.*, subd. 2 (2008) (setting forth a non-exclusive list of factors, including the parties' abilities and resources, the standard of living established during the marriage, the duration of the marriage, and the parties' contributions to the marriage). No single statutory factor is dispositive, but "the essential consideration is the financial need of the spouse receiving maintenance, and the ability to meet that need, balanced against the financial condition of the spouse providing the maintenance." *Novick v. Novick*, 366 N.W.2d 330, 334 (Minn. App. 1985).

1. The district court did not abuse its discretion by denying appellant temporary spousal maintenance.

Appellant argues that the district court abused its discretion by denying him temporary spousal maintenance because the court failed to consider the standard of living established during the parties' marriage and clearly erred by finding that appellant has the ability to provide adequate self-support and meet his own reasonable needs.

It is apparent from the district court's order that the court did consider the standard of living established during the parties' marriage. *See* Minn. Stat. § 518.552, subd. 1 (requiring the district court to "consider[] the standard of living established during the marriage" under both clauses (a) and (b) when deciding whether maintenance should be awarded). The parties' proposed budgets both appear to have been based on the standard

of living established during the marriage. The district court reduced both budgets; in fact, it reduced respondent's budget by more than appellant's.

Appellant alleges that respondent will continue to own the lake cabin and enjoy the same standard of living that she had during the marriage, while his own standard of living will suffer. But the district court found that respondent's earnings at her full-time job would not support her at the standard of living established during the marriage; rather, she will be able to afford to maintain that standard only if she keeps working at a second job.

By contrast, what appellant argues will be his standard of living is based on his anticipated income from a single, full-time job. Neither party will be able to maintain the standard of living enjoyed during their marriage from his or her earnings at a single, full-time position because the parties' standard of living during the marriage was supported by two incomes—both earned by respondent—and included shared housing; with the sale of the homestead, they will now need to pay for separate housing. *Cf. Maiers v. Maiers*, 775 N.W.2d 666, 670 (Minn. App. 2009) (explaining that reduced standards of living by both parties is often one of "the realities of dissolution"). Because appellant does not cite and we find no authority requiring a party to work at a second job in order to pay maintenance to her former spouse, who is fully employable but refuses to work, we find no merit in appellant's suggestion that respondent's income from her additional, part-time position should be considered in establishing the parties' reasonable needs.

Although appellant was not employed at the time of trial, "a district court may determine that [a party seeking maintenance], who is capable of full-time work but is not

working full time, could independently meet [his] needs." *Melius*, 765 N.W.2d at 416. The district court found that appellant's estimate of $4,357 in monthly living expenses overstated his reasonable needs because he did not explain why he needed a health-club membership, did not demonstrate the cost of medical insurance, and did not explain what was included in his job-search expenses. The district court found that appellant's reasonable needs were "somewhere between $3,222 and $4,222 per month." This finding is not challenged on appeal.

Appellant incorrectly asserts that the district court found that he was capable of earning only $2,359 per month, which means that he would have a monthly shortfall of between $863 and $1,863. The finding that appellant cites states that appellant *asserted* that his earning potential is $2,359 per month, based on an annual income of $28,309 projected by his expert witness, Phillip Haber, Psy. D., a vocational psychologist. The district court did not state that it was adopting Dr. Haber's testimony that appellant was capable of earning only $28,309 per year.

Dr. Haber evaluated appellant and submitted a written report that was admitted as an exhibit at trial. The report shows that appellant graduated from the University of Minnesota in 1981 with a bachelor's degree in business administration and later obtained additional education through his employment in various computer-related fields. Dr. Haber administered an I.Q. test and found that appellant had a "high average range of verbal intelligence" and a "superior range of performance intelligence." Dr. Haber opined that appellant was "capable of sustained occupational activity within [the] Twin Cities regional economy" and was capable of obtaining employment at an annual salary

of approximately $28,309[1]; by spending a year and a half at a community or technical college, appellant could increase his likely earning potential to $31,304; and by spending two years in a baccalaureate program, he could increase his likely earning potential to $48,202.

Dr. Haber attached appellant's employment history to his report. Appellant's previous employment included earning $25 per hour as an instructor at Brown College in 2004, which at 40 hours per week is $52,000 annually[2]; $48,000 per year as a programmer and analyst at Hadley Companies in 2000 and 2001; $35,000 per year as a warehouse and operations analyst at Damark from 1997 to 2000; and $35,000 per year as a technical-support worker at General Mills from 1983 to 1995.

Dr. Haber testified that appellant approached the testing in a defensive manner, which caused Dr. Haber concerns about the overall validity of appellant's testing profile. Dr. Haber also stated that although appellant had not been employed full time since 2001, "there is certainly nothing wrong with his B.A. and there is nothing wrong with a near superior intellect." Dr. Haber testified that he was surprised by appellant's low scores on the computer-programmer aptitude test, which he explained was a product of appellant's slow test-taking—appellant's answers to the questions were very good, but his care in

[1]This calculation was based on an hourly wage of $13.61, which is an average of the wages at three positions for which Dr. Haber deemed appellant "suitably qualified": sales clerk at a home-improvement center ($11 per hour); customer-service representative ($14.13 per hour); and computer-support help-desk worker ($15.71 per hour). These positions would pay $22,880, $29,390, and $32,677 per year, respectively.

[2]Although the employment history states that appellant's employment with Brown College ended in December 2005, appellant testified, and his resume reflects, that the employment ended in December 2004.

answering questions caused him to move slowly and lowered his total score. Dr. Haber testified that computer programmers in the Twin Cities area have an average annual income of approximately $70,000.

In its role as fact-finder, the district court was not required to accept Dr. Haber's opinions. *See Rainforest Cafe, Inc. v. State of Wis. Inv. Bd.*, 677 N.W.2d 443, 451 (Minn. App. 2004). But even Dr. Haber's report and testimony, especially concerning appellant's employment history, support a conclusion that appellant is capable of earning more than $28,309 annually. To meet his reasonable needs, appellant would need to earn between $3,222 and $4,222 per month—that is, between $38,664 and $50,664 annually—which he has done previously. Further, appellant has been employed as a computer programmer, and a computer programmer can expect to earn substantially more than $50,664 annually.

The district court expressly found that appellant is able to provide for his own support. The court stated that appellant "has the ability, skills, experience and earning capacity to provide adequate income to meet his necessary monthly expenses" and that his "choice not to seek full-time employment does not mean that he lacks the capacity to be self-supporting." We conclude that the district court's finding that appellant is capable of providing for his own reasonable needs is not clearly erroneous.

Because we conclude that the district court considered the standard of living established during the parties' marriage and did not clearly err in finding that appellant is able to meet his own reasonable needs, it did not abuse its discretion by denying appellant's request for temporary spousal maintenance.

2. Respondent's ability to make maintenance payments is irrelevant.

Appellant argues that the district court's finding that respondent is unable to pay maintenance is clearly erroneous. But a party's ability to pay maintenance is relevant to only the second step of a maintenance analysis, which involves a determination of how much maintenance should be paid if maintenance is appropriate. *See* Minn. Stat. § 518.552, subds. 1, 2. Because we affirm the district court's finding that appellant is capable of independently meeting his own reasonable needs and therefore maintenance is not appropriate, respondent's ability to pay is irrelevant, and we do not address this issue.

Affirmed.