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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-33

In re the Marriage of: David J. Hughes, petitioner,
Appellant,

vs.

Colleen C. Ryan,
Respondent.

Filed November 16, 2010
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Washington County District Court
File No. 82-F0-07-004069

Susan M. Lach, Messerli & Kramer, P.A., Minneapolis, Minnesota (for appellant)

Colleen C. Ryan, West Lakeland Township, Minnesota (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

LARKIN, Judge

This appeal arises from the dissolution of the marriage of appellant-father and respondent-mother. Father argues that the district court erred in three respects: by awarding sole physical custody of the parties' minor children to mother; by awarding

mother permanent spousal maintenance in the amount of $3,300 per month; and by awarding mother child support in the amount of $1,614 per month. We affirm in part, reverse in part, and remand.

FACTS

Appellant-father David Hughes and respondent-mother Colleen Ryan were married on May 18, 1991. They have four minor children, whom they adopted from Guatemala. Mother was the children's primary caretaker during the marriage. Father was, and continues to be, employed as a pharmacist.

The parties separated in January 2007, and father filed for dissolution on September 21. The case was tried on December 22, 2008, and October 5, 2009. Prior to trial, the parties had serious difficulties communicating with each other. Each party testified at length regarding the other's behavior. Mother had father arrested on fabricated domestic-assault charges and was sanctioned for substantially increasing the length and expense of the dissolution proceeding. Father and his current girlfriend created a poster of mother and used it for target practice. At least two of the children saw this poster. The district court noted, "Each party has engaged in unbecoming behavior. . . . Each has called the other abusive and/or profane names. Neither side can fairly claim the ethical high ground in this case." Despite their differences, father admitted during cross-examination that he and mother had cooperated to facilitate their children's attendance at various activities during the summer before trial.

A court-appointed parenting consultant testified at trial. The parenting consultant recommended that father receive physical custody of the children during the school

months and that the children reside with mother during the majority of the summer. She testified that she based this recommendation on concerns about mother's ability to include father in parenting decisions. The district court also received a custody evaluation, which was prepared by a family court counselor. The evaluation recommended that father and mother be awarded joint legal custody and that mother receive sole physical custody.

The district court received several exhibits from father, including a listing of his monthly expenses, a pay stub from his employer, and an appraisal of the marital home. Mother offered no exhibits at trial and no testimony regarding her reasonable monthly expenses. But mother did testify regarding her current employment, explaining that she worked an average of five hours per day as a private nurse, earning $10 per hour.

In November 2009, the district court issued its Order for Judgment and Judgment and Decree dissolving the parties' marriage. The district court awarded the parties joint legal custody. But the district court awarded sole physical custody to mother, with parenting time to father. The district court also awarded mother child support in the amount of $1,614 per month and permanent spousal maintenance in the amount of $3,300 per month. This appeal follows.

D E C I S I O N

I.

Father claims that the district court erred by awarding sole physical custody to mother, arguing that the district court's custody findings are unsupported by the record. The guiding principle in all custody determinations is the best interests of the child.

Minn. Stat. § 518.17, subd. 3(a)(3) (2008); *Durkin v. Hinich*, 442 N.W.2d 148, 152 (Minn. 1989). Appellate review of custody decisions is limited to a determination of whether the district court abused its broad discretion by making findings unsupported by the evidence or by improperly applying the law. *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008).

In making its best-interests determination, the district court must consider all relevant factors, including 13 statutorily enumerated best-interest factors. Minn. Stat. § 518.17, subd. 1(a) (2008) (listing factors that must be considered). The district court made express findings on all of the statutory factors except, "the permanence, as a family unit, of the existing or proposed custodial home." *See id.*, subd. 1(a)(8). But the district court referenced this factor in its finding regarding "the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity." *See id.*, subd. 1(a)(7).

Father argues that several of the district court's custody-related findings are unsupported by the record. But the record refutes his argument. Moreover, several of the challenged findings have no bearing on the custody determination. For example, father argues that the district court's findings relating to the children's Guatemalan heritage are unsupported by the record. Although it is true that these findings are unsupported by the record, whether Guatemala really is a "beautiful country with a rich, long history which includes major parts of the Mayan civilization" is not relevant to the custody determination. This unsupported finding therefore does not affect father's substantial rights, and it is not a basis for reversal. *See* Minn. R. Civ. P. 61 ("The court at every

stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties); *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) ("Where a decisive finding of fact is supported by sufficient evidence and is adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained."); *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, an appellant must show both error and prejudice resulting from the error).

Father also argues that the district court abused its discretion by finding that both mother's negative attitude toward father and father's current girlfriend and the parties' ability to cooperate were improving. But father testified on cross-examination that the parties had "helped each other" when asked about transportation arrangements for the children during the summer preceding trial. Father also testified that if the children lived with him they would have quality parenting time with mother, and mother testified, "I don't want my kids to not have a dad. That makes me sad." The district court was in a position to observe father and mother during trial and to evaluate their testimony. The testimony from both parties acknowledging their recent ability to cooperate provides support for the district court's finding that the parties' relationship was improving.

We recognize that the evidence clearly shows that mother has interfered with the children's relationship with father. The district court's findings acknowledge this interference and describe "the disposition of each parent to encourage and permit frequent and continuing contact by the other parent" as "one of the most pivotal" factors in this case. But even if mother's negativity has not completely subsided, the district

court was not required to award father custody as a result. *See Lemcke v. Lemcke*, 623 N.W.2d 916, 920 (Minn. App. 2001) (stating that a finding of parental alienation does not preclude award of custody to offending parent because "[c]hildren are not responsible for their parents' misconduct, and their best interests should not be sacrificed merely to punish a misguided parent"), *review denied* (Minn. June 19, 2001). And mother's attitude was only one of the many factors that the court was required to consider in determining the children's best interests. *See* Minn. Stat. § 518.17, subd. 1(a)(13) (listing "the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child" as one factor to be considered).

Father also argues that the district court's finding regarding mother's mental health was erroneous. The district court found that both parties were mentally fit but noted that it was "concerned about the mental health of [mother] at the first attempt at a trial on December 22, 2008. The evidence seemed to indicate she was out of touch with reality based on her extreme hatred for [father] and his girlfriend. It appears that time has significantly lessened her anger." While mother's psychological profile suggests that "she is harboring underlying resentment, anger and hurt about the way her marriage ended and may in fact be acting in a somewhat subtle, but retaliatory manner," the family court counselor nonetheless recommended that mother be awarded sole physical custody of the children. This recommendation supports the finding that mother is mentally and physically fit to parent the children.

The district court considered all of the statutory best-interest factors and made a thoughtful decision regarding difficult circumstances. Although father may disagree with

the district court's findings on several custody factors, the record supports the findings and those that are unsupported are irrelevant and therefore nonprejudicial. Moreover, "[t]hat the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

> In arriving at [a custody determination] the [district] court is vested with broad discretionary powers and in the absence of a showing of arbitrary action in awarding custody of a child, [an appellate] court will not interfere. It should be kept in mind that a [district] court, unlike an appellate court, has the opportunity to see the parties as well as their witnesses, hear their testimony, observe their actions, and weigh the evidence in the light of those factors. In the absence of a clear abuse of discretion the action of the [district] court must be affirmed.

Molto v. Molto, 242 Minn. 112, 114, 64 N.W.2d 154, 156 (1954). We discern no basis to interfere with the district court's discretionary decision in this case and therefore affirm the district court's custody award.

II.

Father claims that the district court erred by awarding mother 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). The 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.* (quoting *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

An award of spousal maintenance depends on a showing of need. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). Maintenance may be awarded if the court 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) (2008).

Father assigns error to several of the findings that underlie the district court's spousal-maintenance award. Father argues that the record does not support the district court's finding that "[t]he parties had a very comfortable, but not extravagant, standard of living." We are not persuaded. Father submitted a copy of his earnings statement from his employer that lists his hourly wage at $58 per hour, and he testified that this wage is comparable to what he earned during the marriage. The court also received an appraisal of the parties' marital home which shows a market value of $460,000.[1] And mother testified that the children are enrolled in private school, as they had been during the marriage. Both parties testified that the children were, and continue to be, involved in multiple after-school activities. In addition, the parties owned two automobiles during the marriage that were paid in full. While the couple has significant credit-card debt, father testified that much of this debt was incurred after the parties separated. This record

[1] The district court made additional findings about the township in which the home is located. These findings are unsupported by the record. But these general findings about the township are irrelevant to a determination of the parties' standard of living during the marriage. Accordingly, the erroneous findings are not prejudicial and not a basis for reversal. *See Hanka*, 276 N.W.2d at 636 (stating that "[w]here a decisive finding of fact is supported by sufficient evidence and is adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained").

adequately supports the district court's determination that the marital standard of living was "comfortable."

Father also argues that the district court lacked sufficient financial information to determine mother's monthly expenses for the purposes of calculating spousal maintenance. There is merit to this argument. Maintenance may be granted if the district court finds that the spouse seeking maintenance, "lacks sufficient property . . . to provide for [his or her] reasonable needs." Minn. Stat. § 518.552, subd. 1(a). The record contains no evidence regarding mother's reasonable needs. Yet, the district court found that "[mother's] reasonable monthly living expenses are $6,186." We have reviewed the record and find no support for this finding.

Father further argues that the district court's finding regarding his monthly expenses is incorrect. Father submitted a monthly expense list claiming expenses of $4,295 without the children and $7,620 with the children. The district court found that father's reasonable monthly expenses are $5,142. But the district court's findings do not explain how the district court determined this amount.

The district court abuses its discretion regarding spousal maintenance if its findings of fact are unsupported by the record. *Dobrin*, 569 N.W.2d at 202 (quoting *Sefkow*, 427 N.W.2d at 210). "Appellate [courts] set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman*, 748 N.W.2d at 284 (quotation and citation omitted). The district court's

finding regarding mother's monthly expenses is unsupported by the record, and the district court's finding regarding father's monthly expenses is inconsistent with the record. We therefore conclude that the district court's findings regarding the parties' reasonable monthly expenses are clearly erroneous, and we reverse the resulting spousal-maintenance award.

Father also challenges the permanent duration of the spousal-maintenance award. If there is uncertainty about the need for permanent maintenance, "the court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3 (2008); *see* Minn. Stat. § 645.44, subd. 16 (2008) (stating that "'[s]hall' is mandatory"). 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).

Here, the district court found that mother is not currently able to adequately support herself and that she needs the help of father to meet her needs. The district court further found that "its award herein will be adequate to enable [mother] to meet her reasonable monthly needs," and designated the spousal-maintenance award as permanent. But this finding and designation are based on the district court's findings regarding the parties' reasonable monthly living expenses, which we have determined to be erroneous. Therefore, on remand, after re-addressing the parties' reasonable monthly expenses at the

marital standard of living, the district court shall re-address the duration of the maintenance award in light of those findings.

III.

Father claims that the district court erred in its determination of child support. We review a child-support order for an abuse of discretion and consider whether the district court reached a clearly erroneous conclusion that is against logic and facts on the record. *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008).

Father argues that the district court failed to make the findings necessary to support its award of child support. A district court must make specific findings showing that it considered all the factors relevant in determining child support. *Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986). "Meaningful appellate review is possible only when the [district] court issues sufficiently detailed findings showing its consideration of all relevant factors." *Merrick v. Merrick*, 440 N.W.2d 142, 145 (Minn. App. 1989) (reversing the district court's child-support award after concluding that its findings were insufficient to enable the court to determine whether the district court properly considered the relevant factors). "While the record may support a [district] court's decision, it is nevertheless inadequate if that record fails to reveal that the [district] court actually considered the appropriate factors." *Moylan*, 384 N.W.2d at 865. District courts "have broad discretion in child support matters, and effective appellate review can be accomplished only with sufficiently detailed findings on the appropriate factors. A de novo review of the record by this court is inappropriate." *Merrick*, 440 N.W.2d at 146.

The district court's dissolution decree contains only two sentences regarding child support: "[father] shall pay $1,614[] per month to [mother] as and for child support. Payment shall be made in equal shares on the 1st and 15th days of each month beginning on November 1, 2009." The district court did not make any findings explaining how it determined the amount of child support or demonstrating that it complied with the statutory process for computation of child-support obligations set forth in Minn. Stat. § 518A.34 (2008). Even if the district court did not deviate from the presumptive support obligation under Minn. Stat. § 518A.34, it was still required to make written findings that state each parent's gross income, each parent's parental income for determining child support, and "any other significant evidentiary factors affecting the child support determination." Minn. Stat. § 518A.37, subd. 1 (2008). Because the district court failed to make findings in support of its child-support award, we cannot determine whether the district court complied with the statutory process for calculating child support. We therefore reverse the child-support award and remand for a child-support determination that is supported by findings that demonstrate compliance with the applicable statutory requirements.

Father also argues that the district court's determination of mother's income should have been based on her potential full-time income. Minn. Stat. § 518A.32, subd. 1 (2008) states:

> If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably

> presumed that a parent can be gainfully employed on a full-time basis.

But if a parent stays at home to care for a child subject to the child-support order, the district court may consider several factors, including the parties' parenting and child-care arrangement before the child-support action, when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis. Minn. Stat. § 518A.32, subd. 5(1) (2008). On remand, the district court should consider the application of these principles, as is appropriate.

Affirmed in part, reversed in part, and remanded.

Dated:

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Judge Michelle A. Larkin