STATE OF MINNESOTA

IN SUPREME COURT

A19-0448

Court of Appeals — Moore, III, J.

Charles Edward Honke,

Appellant,

vs.

Jennifer Hodapp Honke,

Respondent.

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S Y L L A B U S

In amending maintenance awards, district courts are required to consider whether the principal of a post-dissolution cash gift is an available financial resource for the recipient of spousal maintenance.

Reversed and remanded.

O P I N I O N

MOORE, III, Justice.

After nearly two decades of marriage and almost 5 years of dissolution-related court proceedings, appellant Charles Edward Honke moved to eliminate or amend a spousal maintenance award granted in favor of his former wife, respondent Jennifer Hodapp Honke. Charles's motion was prompted in part by two substantial cash gifts given to Jennifer by her parents after the divorce totaling $500,000. The district court determined that the spousal maintenance statute prohibited it from considering the principal of these cash gifts as a financial resource available for Jennifer's self-support. At the same time, the court imputed some income to Jennifer based on the potential investment returns from the cash gifts and amended the maintenance award accordingly. The court of appeals affirmed, determining that the district court did not abuse its discretion in deciding it could not consider the principal of the cash gifts as an available source of income for spousal maintenance. Because we conclude that post-dissolution gifts received by a maintenance recipient are a financial resource a district court may consider under the spousal maintenance statute, we reverse and remand to the district court for further proceedings on the maintenance award.

FACTS

Charles Edward Honke and Jennifer Hodapp Honke married in 1992. During the course of their marriage, Charles worked outside of the home while Jennifer worked full-time raising their three children. The couple separated in 2013 and formally divorced 3 years later.

In the couple's initial dissolution proceedings, the parties agreed that a maintenance award in favor of Jennifer would be appropriate, but they aggressively disputed the amount of the award. One point of contention between the parties was how to analyze annual cash gifts Jennifer's father gave to the couple over the course of the marriage and whether they would continue post-dissolution. As part of a 4-day trial, Jennifer's father testified that he would no longer give Jennifer an annual gift if it affected her maintenance award.

Ultimately, the district court issued a 96-page Final Judgment and Decree containing 44 conclusions of law. Based on this comprehensive analysis, the court awarded Jennifer a permanent monthly maintenance in the amount of $8,300 that would be reduced to $7,900 after 3 months. The court also declined to attribute any income to Jennifer based on the annual gifts she received from her father because they were an unreliable stream of income.

Over the course of the next 3 years, Jennifer received two cash gifts from her parents totaling $500,000 in addition to the annual cash gifts which totaled $59,300.[1] According to Jennifer and her parents, the two larger gifts were "legacy gifts" intended to be part of her inheritance. At the same time, Charles had a change in his employment status. Due to this change and the cash gifts Jennifer received, Charles moved to eliminate or amend the spousal maintenance award on the ground that there had been a substantial change of circumstances making the initial award "unreasonable and unfair." Minn. Stat. § 518A.39,

[1] Jennifer specifically received $3,300 in 2015, 2016, and 2017 from a trust and $24,700 in 2016 and 2017 directly from her parents.

subd. 2(a) (2020) (explaining that a maintenance or support award "may be modified upon a showing of one or more" factors "which makes the [award] unreasonable and unfair").

The district court granted Charles's motion in part, finding that both parties' incomes had substantially changed. As part of its calculation, the district court imputed some income to Jennifer based on the potential investment return of the legacy gifts received from her parents after the divorce. But the district court concluded that, as a matter of law, it could not require Jennifer to use the principal of those gifts for self-support. The court also declined to evaluate whether the annual cash gifts should be evaluated as part of Jennifer's income concluding that it was collaterally estopped from doing so by the original dissolution order.

The court of appeals reviewed the district court's decision on the legacy gifts for an abuse of discretion and affirmed, holding that Minnesota law was unclear on whether a court could "require a party receiving spousal maintenance to invade the principal of assets acquired after a dissolution to meet his or her financial needs." *Honke v. Honke,* No. A19-0448, 2020 WL 1983051, at *5 (Minn. App. 2020). Accordingly, the court concluded that the district court did not abuse its discretion when it refrained from requiring Jennifer to invade the principal of the legacy gifts she had received after dissolution. *Id.* It also concluded it was erroneous for the district court to find it was collaterally estopped from evaluating Jennifer's annual gifts as a source of income, but determined that the error was harmless because it was within the district court's discretion to not permit the parties to relitigate this issue. *Id.* at *4. The court of appeals agreed that the basis of the district court's earlier conclusion—that the annual gifts were *not* available as a dependable source

of income for Jennifer—applied to the post-dissolution annual gifts in the same way. *Id.* at n.5. We granted Charles' petition for review.

ANALYSIS

District courts have "broad discretion regarding . . . spousal maintenance" and an award "will only be reversed on appeal if the court abused its discretion." *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). An abuse of discretion occurs when a district court makes "findings unsupported by the evidence" or when it "improperly appl[ies] the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). Further:

> Given the fact-dependent nature of the inquiry, we have said that a "trial court has broad discretion in deciding whether to award maintenance and before an appellate court determines that there has been a clear abuse of that discretion, it must determine that there must be a clearly erroneous conclusion that is against logic and the facts on record."

Curtis v. Curtis, 887 N.W.2d 249, 252 (Minn. 2016) (quoting *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997)). Finally, "statutory construction is a question of law, which we review de novo." *Lee*, 775 N.W.2d at 637.

A.

We begin first by addressing the scope of Charles's appeal. In Charles's petition for review, he asserted that the legal error in this case was the district court's determination "that Minnesota law *prohibited* it from determining [Jennifer's] need for maintenance by requiring her to invade the principal of" the $500,000 legacy gifts. Charles's brief similarly focuses entirely on his argument that it was legal error for the district court not to consider whether the legacy gifts are a financial resource under Minnesota's maintenance statute. Indeed, he asserts the issue presented revolves around the district court's ruling "that

Minnesota law prohibits courts from requiring a maintenance recipient to invade the principal of assets acquired after dissolution."

His petition and brief, however, assert that the amount at issue in this appeal is $559,300 which would include both the legacy and the annual gifts Jennifer received. Despite the fact that the district court and the court of appeals treated these two categories of payments as separate gifts because they are subject to separate legal principles and analysis, Charles combines them into one amount.[2] He then fails to make any legal arguments about the court of appeals' conclusion on the annual gifts, focusing his argument instead on the alleged error related to the legacy gifts.

If a party fails to brief an issue, we consider it waived. *State v. Williams*, 771 N.W.2d 514, 517 n. 2 (Minn. 2009). And "we do not address issues that were not raised in a petition for review." *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 757 (Minn. 2005). Here, Charles failed to request review of any alleged error related to the court of appeals' treatment of the annual gifts, and his brief similarly is silent on the legal conclusion regarding these gifts. Charles simply folded the annual gifts into the total amount at issue without specifically addressing the court of appeals' separate analysis on that issue. In

[2] The district court's conclusion that it was prohibited from considering the legacy gifts was listed under the heading "Amortization of Respondent's Legacy Gifts," while its treatment of the annual gifts was listed under the heading "Gifts as Income." It was in the legacy gifts section where the district court asserted "[t]here is a longstanding prohibition in Minnesota on requiring a maintenance recipient" to spend down the principal of their property for living expenses. There was no discussion of this prohibition in the annual gifts section. Similarly, the court of appeals discusses the annual gifts under a section enumerated "Collateral Estoppel" while discussing the legacy gifts under a section enumerated "Invading the Principal of Postdissolution Gifts." *Honke*, 2020 WL 1983051, at *3–4.

fact, the district court's reasoning related to the maintenance statute did not extend to the annual gifts at all. We, therefore, deem any argument related to the annual gifts to be waived. Thus, we continue our analysis based on the $500,000 legacy gifts alone.

B.

"Maintenance" is defined as "an award made in a dissolution or legal separation 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 (2020). A maintenance award may be granted if one spouse:

> (a) 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, or
>
> (b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2020). "[A]n award of maintenance 'depends on a showing of need.' " *Curtis*, 887 N.W.2d at 252 (quoting *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989)). These awards are "based on the notion that the marital relationship involves an economic partnership in which the spouses equally share the burdens and responsibilities of both marriage and dissolution." *Erlandson v. Erlandson*, 318 N.W.2d 36, 39 (Minn. 1982).

If a spouse is able to demonstrate adequate need for spousal maintenance, the district court will determine the amount and duration of the award based on "all relevant factors." Minn. Stat. § 518.552, subd. 2. Relevant factors include:

> (a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
>
> (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;
>
> (c) the standard of living established during the marriage;
>
> (d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;
>
> (e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;
>
> (f) the age, and the physical and emotional condition of the spouse seeking maintenance;
>
> (g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and
>
> (h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

Id. The list, however, is not exclusive because the statute requires consideration of "all relevant factors." *See Lee*, 775 N.W.2d at 636 (referring to "eight non-exclusive factors"). "[N]o single statutory factor for determining the type or amount of maintenance is

dispositive" and "each case must be determined on its own facts." *Erlandson*, 318 N.W.2d at 39; *see also Dobrin*, 569 N.W.2d at 201 ("[E]ach marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties.").

After a maintenance award has been issued, it "may be modified upon a showing of one or more of" eight statutory factors, "any of which makes the [award] unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a).[3] If a court finds that one or more of these factors are met and modifies the award, it does so using the same "factors for an award of maintenance" used in an initial maintenance order as those factors "exist at the time of the motion" to modify. *Id.*, subd. 2(e).

We have previously held that a district court cannot require a maintenance-seeking spouse to invade the principal of their marital property for self-support. *Curtis*, 887 N.W.2d at 254 ("Our cases suggest that a district court cannot require a maintenance-seeking spouse 'to invade the principal of the property [awarded to a spouse seeking

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[3] These eight factors are:

> (1) substantially increased or decreased gross income of an obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee or the child or children that are the subject of these proceedings; (3) receipt of assistance under the AFDC program . . .; (4) a change in the cost of living for either party as measured by the federal Bureau of Labor Statistics; (5) extraordinary medical expenses of the child not provided for under section 518A.41; (6) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs; (7) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or (8) upon the emancipation of the child, as provided in subdivision 5.

Minn. Stat. § 518A.39, subd. 2(a).

maintenance] to pay living expenses' " (alteration in original) (quoting *Lee*, 775 N.W.2d at 640 n.1)). We have never decided, however, whether a district court may consider the principal of assets obtained *after* dissolution as a financial resource available to pay for a maintenance recipient's living expenses. *See Honke*, 2020 WL 1983051, at * 5 ("[C]aselaw does not contain that same explicit protection for assets acquired by a party *after* a divorce that were not part of the property division award.").

Charles urges us to interpret section 518.552 in a way that requires district courts to always consider the principal of a post-dissolution cash gift as an available source of income when determining a maintenance award. Jennifer argues for the inverse of this bright-line rule and encourages us to completely forbid consideration of the principal of these cash gifts as a source of self-support. Both parties support their arguments with attempts at defining the phrase "financial resources" within section 518.552, subdivision 2(a), with citations to our precedent as well as nonbinding decisions from other states, and with various policy considerations. Although we find neither position thoroughly persuasive, we ultimately conclude, consistent with the position as argued by Charles, that the principal of post-dissolution gifts, including cash gifts, qualifies as a "financial resource" within Minnesota's maintenance statute.

C.

When considering the sufficiency of a maintenance award, Minnesota requires a district court to consider "all relevant factors including . . . the *financial resources* of the party" when making an initial maintenance award and upon a motion to amend. Minn. Stat. § 518.552, subd. 2 (emphasis added). The Legislature, however, did not define the

term "financial resources" within the statute. *See id.* Therefore, "we look to the common dictionary definition of the word or phrase to discover its plain and ordinary meaning." *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016) (citation omitted) (internal quotation marks omitted). "[I]f the phrase is not a term of art [and] lacks a technical meaning," it can be separated "into its component terms" and reconstructed "to determine its meaning." *Id.* (citation omitted) (internal quotation marks omitted) ("This separate-and-reconstruct method of interpretation is a corollary of our obligation to give words and phrases their plain and ordinary meaning.").

Charles urges us to find that the phrase "financial resources" within the maintenance statute must include the principal of post-dissolution cash gifts. Jennifer wants us to define the phrase "financial resources" to mean only the income produced by post-dissolution assets. We agree with the position taken by Charles and conclude that the phrase "financial resources" includes the principal of post-dissolution cash gifts.

The term "financial" is defined by direct reference to the word "finance." *Merriam-Webster's Collegiate Dictionary* 435 (10th ed. 2001) (defining "financial" to mean "relating to finance or financiers"); *Concise Oxford English Dictionary* 532 (11th ed. 2009) (defining "financial" to mean "relating to finance"). Finance, when used as a noun, refers to "money or other liquid resources." *Merriam-Webster's Collegiate Dictionary* 435; *see also Concise Oxford English Dictionary* 532 (defining finance to mean "the management of large amounts of money" and "monetary support"). A "resource" is "a stock or supply of materials or assets." *Concise Oxford English Dictionary* 1225; *see also Merriam-Webster's Collegiate Dictionary* 994 (defining "resource" to mean "a source of

supply or support: an available means"). Post-dissolution cash gifts are assuredly a "source" of "money" and qualify as a "financial resource" within the plain meaning of the term. We reject Jennifer's restricted definition of "financial resources" because there is simply no reference to "income-producing" or "income-producing assets" within the plain definition of the phrase.[4]

Based on this definition, we conclude that district courts are required to consider whether the principal of post-dissolution cash gifts is a source of income available for a maintenance recipient's self-support.[5] It was, therefore, legal error for the district court to

[4] No case cited by either party dissuades us from this conclusion. All of our precedents cited by the parties dealt with either marital property awards; pre-dissolution, non-marital property; or the income of the payor spouse. *See Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984) (implicitly recognizing that a maintenance-seeking spouse could use the income from a pre-dissolution, non-marital family trust for self-support); *Curtis*, 887 N.W.2d at 254–55 (considering the income potential of a stock portfolio awarded as part of a marital property award); *Erlandson*, 318 N.W.2d at 40 (considering the investment income from a non-marital, pre-dissolution personal injury award as a source of income); *Lee*, 775 N.W.2d at 639 (calculating the income of the payor spouse to determine his ability to pay maintenance).

[5] The parties also urge us to apply decisions from other states in defining "financial resources." Those states, however, do not have Minnesota's version of a spousal maintenance statute and thus those decisions do not alter our obligation to apply the plain meaning of a statute enacted by the Legislature. *See Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012). For example, Charles urges us to rely on a Wisconsin Supreme Court decision in support of his argument. *See Lemm v. Lemm*, 241 N.W.2d 593, 595 (Wis. 1976). The Wisconsin Supreme Court did not need to interpret "financial resources" and its decision is inapplicable here. *See id.* Meanwhile, Jennifer urges us to rely on a Missouri Court of Appeals' decision in support of her argument. *See Brueggemann v. Brueggemann*, 551 S.W.2d 853, 857 (Mo. Ct. App. 1977). But that decision did not involve the interpretation of "financial resources" and is inapplicable to the plain language of our statute. *See id.* We are not persuaded by either parties' arguments that are based on foreign precedent.

conclude that it was prohibited from considering the principal of Jennifer's post-dissolution legacy cash gifts as a financial resource available for her self-support.

This conclusion, however, does not *mandate* that a district court, when amending a maintenance award, require a maintenance-seeking spouse to invade the principal of a post-dissolution cash gift. Nor does this conclusion create a bright-line rule regarding how a district court exercises its discretion in evaluating the financial resources represented by these gifts because "each marital dissolution is unique and centers upon the individualized facts and circumstances of the parties." *Dobrin*, 569 N.W.2d at 201. A district court is simply required to take into account the principal of these gifts, along with other "financial resources" of the parties and all the other circumstances, as a "relevant factor" when determining the amount and duration of an amended maintenance award.

Divorce and its related proceedings, like the dispute before us today, often present complicated factual records and can be difficult to thoroughly analyze. Consequently, our legal system gives broad discretion to district courts, who are called upon to scrutinize financial exhibits such as paychecks, bills, investment returns, expenses, and evaluate often-disputed testimony to determine the propriety of a maintenance award. We commend the district court for its thoroughness and attention to detail in sifting through a dense record and amicably dealing with the parties in this unfortunately protracted and acrimonious case. But because the district court erroneously concluded that it had no discretion to determine the relevance—if any—of the principal of Jennifer's post-dissolution legacy gifts in determining the duration and amount of the amended maintenance award, we remand this case to that court for further proceedings.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.