STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0800
A17-1036

In re the Marriage of:
Justin James Jurkovich, petitioner,
Appellant,

vs.

Rebecca Jean Jurkovich,
Respondent.

Filed March 19, 2018
Affirmed
Jesson, Judge
Dissenting, Schellhas, Judge

Washington County District Court
File No. 82-FA-15-3931

John M. Jerabek, Thomas Tuft, Letty M-S Van Ert, Tuft, Lach, Jerabek & O'Connoll, PLLC, Maplewood, Minnesota (for appellant)

Christopher D. Johnson, Samantha J. Graf, Johnson/Turner Legal, Forest Lake, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Jesson, Judge.

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

JESSON, Judge

Before their marriage of 17 years was dissolved, appellant Justin Jurkovich and respondent Rebecca Jurkovich lived an affluent lifestyle. While they stipulated to many

issues in the dissolution proceeding, spousal maintenance was a source of dispute. After considering the income of both parties, their standard of living, their monthly budgets, and other factors, the district court awarded Rebecca $9,955 per month in permanent spousal maintenance. Justin appealed the district court's decision to award permanent, instead of temporary, spousal maintenance. He argues that the district court abused its discretion by misapplying the statutory factors it must consider when awarding spousal maintenance. We disagree and affirm the district court.

FACTS

Respondent Rebecca Jean Jurkovich met appellant Justin James Jurkovich while still in undergraduate school, and they married in 1998, a year after her graduation. Both Rebecca and Justin worked early on in the marriage. Rebecca began work as a fire-claims adjuster, and after a couple of years, she became an in-house sales employee. Over the next several years, Rebecca moved on to other positions, which included mortgage underwriting and compliance auditing. Her salary for these positions ranged from the upper twenty thousands to the upper thirty thousands. Meanwhile, Justin started a mortgage company, Apollo Home Mortgage, in 1999.

In 2003 or 2004, Rebecca considered attending dental school, but Justin asked her if she could help him with Apollo Home Mortgage. The company was growing and he needed assistance in the office. She agreed, and they both worked together at Apollo Home Mortgage. However, there is no evidence that Rebecca received a salary or any compensation for this position, outside of funding for her 401K account.

As Justin's income significantly grew through Apollo Home Mortgage, so did the couple's expenses. They bought motorcycles, boats, recreational vehicles, and seasonal cars. Vacations and cruises were frequent, and the couple built a new house on a lake. They started going to nicer restaurants and collecting wine as a hobby. As the district court stated, the couple had a high standard of living.

In 2007, the mortgage industry plummeted. Justin was forced to dissolve Apollo Home Mortgage, and a separate company assumed its employees and business. While no longer the owner, Justin was retained at the successor business as a branch manager. Soon he moved to a different company. Rebecca, on the other hand, transitioned into a stay-at-home role after Apollo Home Mortgage dissolved, as the first of three children was born in 2008. Justin soon recovered from the collapse of the mortgage industry: he earned approximately $181,000 in wages in 2010 and then $298,000 in 2011. From 2012 through 2015, Justin's average annual income was $799,470. During this period, Rebecca worked part-time on occasion, but primarily remained at home to raise their children.

In 2015, Justin started working at Bay Equity as a regional sales manager and suggested to Rebecca that it would be good for her to start working again, hoping they would find more in common to discuss, given recent tension in the marriage. With Justin's help, Rebecca was hired as a business development manager at Bay Equity with a monthly income of $6,000. Justin was her direct supervisor. Working together did not resolve their relationship hurdles, and after 17 years of marriage, they separated in June 2015. At the time, Rebecca was 40 years old and Justin was 42.

After the couple decided to dissolve their marriage, Rebecca quit her position at Bay Equity and started working at a new company as a loan processor earning $4,583.33 a month. Shortly after, Rebecca moved to her now current position at American Mortgage & Equity Consultants, Inc., with the same job title and same gross monthly income. This position also includes incentives: she receives $100 per loan she closes as long as she closes 11 or more files a month.[1] Meanwhile Justin continued working at Bay Equity with a gross monthly income of $65,900.

Prior to going to trial in June 2016, the parties submitted stipulated findings of fact and conclusions of law. This set forth all of their assets, which included: a homestead; a townhome; three parcels of land; retirement accounts and plans, shared and sole bank accounts; three automobiles; a boat, multiple utility vehicles; and personal property valued at over $50,000. They agreed on most issues: Rebecca would have sole physical custody of the children while there would be joint legal custody; Rebecca would receive the homestead; Justin would receive the townhome; the parcels of land would be sold and the revenues split; Justin would receive the bank accounts and retirement accounts in his name; Rebecca would receive the shared accounts and retirement accounts in her name worth a total value of approximately $270,000;[2] and Rebecca would receive two of the automobiles and the utility vehicles. They did, however, reserve various financial issues, including amount and duration of spousal maintenance, for trial.

[1] Rebecca testified that she believed she could close up to 15 files a month in the future, depending on the market and her ability.

[2] This amount includes Rebecca's IRA account valued at $202,587.45 and her 401(k) account valued at $17,703.56.

The parties proceeded to trial on June 1, 2016. The trial lasted one day and there were five witnesses: Rebecca's expert witness on finance, Justin's expert witness on finance, Rebecca's father, Rebecca, and Justin. The majority of the testimony focused on Rebecca's estimated budget for her and her children's monthly expenses. Rebecca put forth an estimated monthly budget of $15,918, and her expert witness testified that Rebecca would need spousal maintenance of $15,435 a month and child support of $2,414 a month to cover the budget, taking taxes into account. Justin's expert witness testified that Rebecca's estimated budget was excessive, and a more reasonable amount was between $10,273 and $11,773. Justin's witness did not testify to the appropriate duration of maintenance. No evidence of Rebecca's future potential earnings or potential job growth was provided at trial.[3] Nor were any vocational evaluations of Rebecca conducted.[4]

In September 2016, the district court issued its findings of fact and conclusions of law. The court held in favor of Justin on the issue of amount of spousal maintenance, finding that Rebecca's monthly expenses were $11,157.13.[5] Taking into account taxes and Rebecca's wages, the court found that Rebecca would need $3,254 in child support and $9,155 monthly in *permanent* spousal maintenance to cover her expenses. The parties were accustomed to a high standard of living, the court found. Justin was the primary provider, while Rebecca was "primarily a homemaker" and the court further pointed out that Rebecca

[3] On direct examination, Rebecca stated that she currently was working at "full capacity," but there was room for career growth at her current position. No evidence was submitted to expand on this potential career growth.

[4] A vocational evaluation may be used to determine a spouse's earning potential. *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 544 (Minn. App. 2006).

[5] The district court found that Justin's monthly expenses were $18,035.

stopped working and stayed at home so that Justin could build his business. As a result, the court determined that Rebecca's income was not nearly sufficient to maintain the standard of living established during the marriage.

In October 2016, Justin filed a motion for new trial, amended findings, and for an amended judgment. He requested that the findings be amended to reflect Rebecca's extensive work history and that she does have the means to be self-supporting. The motion requested that the spousal maintenance amount be reduced and that it should be temporary—not permanent—spousal maintenance. In January 2017, a hearing was held on the motion to amend findings or for a new trial. The hearing primarily focused on Justin's argument that permanent spousal maintenance was inappropriate because Rebecca is in her early 40s and currently employed with the means to better her situation. The district court stated permanent spousal maintenance was appropriate. The court reasoned Rebecca "doesn't stand a prayer of ever generating" enough income to reach her monthly budget. The court did issue amended findings that changed the child support from $3,254 to $2,686, which caused the spousal maintenance amount to increase from $9,155 to $9,955.

This appeal follows.

D E C I S I O N

Justin contends that the district court abused its discretion by granting permanent, instead of temporary, spousal maintenance. He does not contest the amount of spousal maintenance. This court reviews the district court's determination of the proper duration

of spousal maintenance for an abuse of discretion. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). And an abuse of discretion occurs when the district court makes findings unsupported by the record or when it improperly applies the law. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009), *and appeal dismissed* (Minn. Feb. 1, 2010).

Justin's arguments are numerous, but primarily fall within two categories: (1) the district court misapplied several of the spousal maintenance statutory factors and made findings for those factors that were unsupported by the record; and (2) the district court failed to properly weigh those factors. Finally, Justin argues that the district court abused its discretion by failing to include incentives to rehabilitate or failing to award temporary maintenance while reserving the issue of future maintenance. We address each argument in turn.

The district court properly applied the statutory factors regarding spousal maintenance.

District courts may grant temporary or permanent spousal maintenance after considering all relevant factors, including eight statutorily defined factors. Minn. Stat. § 518.552, subd. 2 (2016). In addition to setting forth necessary considerations, the statute dictates that when the factors justify permanent maintenance, nothing in the statute "shall be construed to favor a temporary award of maintenance over a permanent award." Minn. Stat. § 518.552, subd. 3 (2016). And this court has stated that the purpose of spousal maintenance "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). Within this context, as the district court was required to do, we now address each factor.

The financial resources of the party seeking maintenance

The district court must consider "the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently." Minn. Stat. § 518.552, subd. 2(a). The district court explicitly considered this factor. It found that Rebecca's gross monthly income was $4,583.33, she did not have significant liquid assets outside of her retirement accounts to supplement her income, and that her income was not nearly sufficient to provide for her monthly expenses.

Justin argues the district court misapplied this factor because it failed to make findings as to whether the assets Rebecca received through the divorce were available to meet Rebecca's monthly needs. This argument is unsupported by the record. The district court found that, outside of her retirement accounts, "Rebecca is not receiving any significant liquid assets which might supplement her income." Inherent in this statement is that the court factored in the other assets and determined they lacked significance.

Justin points to *Rask v. Rask* to support his argument. 445 N.W.2d 849 (Minn. App. 1989). There, the district court awarded the spouse $2,000 a month in permanent spousal maintenance, but this court reversed its decision because, in part, the district court failed to mention available assets at all when discussing spousal maintenance and because the assets could be invested to help supplement her income. *Id.* at 853-54. But unlike *Rask*, the district court here explicitly stated that Rebecca would not receive any significant liquid

assets to supplement her income outside of her retirement accounts.[6] The district court did not abuse its discretion in addressing Rebeca's financial resources.

Educational and employment outlook and the resulting probability of becoming self-supporting

The district court must consider the educational and employment outlook of the party seeking maintenance and the probability of that party becoming fully or partially self-supporting. Minn. Stat. § 518.552, subd. 2(b). Here the district court found that Rebecca reestablished employment, with a gross monthly income of $4,583.33, and that this income was not enough to meet her monthly expenses. It further found that Rebecca would be unable to ever reach the earning capacity necessary to afford the monthly expenses. While Justin argues the district court never addressed Rebecca obtaining gainful employment and how it relates to the award of spousal maintenance, this is unsupported by the record. The district court explicitly referenced Rebecca's income and how it was not sufficient to reach the monthly expenses.

We also note the paucity of evidence, outside of the mere fact that Rebecca had a job, that she could fully self-support the lifestyle she had in the marriage. There is nothing to suggest that through additional education or employment opportunities, Rebecca would be able to earn enough to meet her monthly expenses. The financial experts did not testify to this effect. Nor did Justin introduce any vocational evaluations of Rebecca. Without

[6] Similarly, Justin argues that the finding that Rebecca does not have the ability to meet her own needs is clearly erroneous because it ignores the fact that Rebecca received substantial assets that would likely yield additional income for her. But as the district court found, the assets she received were not liquid. It was not clearly erroneous for the district court to determine Rebecca would not be able to meet her monthly expenses on her own.

any evidence showing Rebecca could one day independently meet her monthly expenses—expenses which Justin does not challenge on appeal—it was not clearly erroneous for the district court to reach the opposite conclusion.

Standard of living

The district court must consider the standard of living established during the marriage. Minn. Stat. § 518.552, subd. 2(c). Here, the district court found that the couple had a high standard of living and that the spousal maintenance amount is necessary to maintain that standard of living.

Justin argues that the standard-of-living factor is not a "trump card" that supersedes other relevant factors and that the district court was too focused on this factor. He cites to *Chamberlain v. Chamberlain* to support his argument. 615 N.W.2d 405, 411 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). There the appellant argued that the district court focused too much on the standard of living, and the rest of the factors did not support permanent maintenance. *Id.* at 411-12. But the *Chamberlain* court *rejected* appellant's argument and stated the affluent lifestyle was a relevant factor, and the district court had wide discretion in how it chose to weigh the factors. *Id.* at 412. In sum, the argument made in *Chamberlain* is similar to the argument Justin makes today and fails for the same reason. There is nothing to suggest the district court here applied the standard-of-living factor in an improper manner that would result in an abuse of discretion, but instead the district court found it was a relevant factor in its determination.

Duration of marriage and length of absence from the workforce

The district court must also consider "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." Minn. Stat. § 518.552, subd. 2(d). Here, the district court found the marriage was 17 years long and a long-term marriage. It also found that during the marriage Rebecca was primarily a homemaker. Justin takes issue with both of these factual determinations.

Justin argues that the marriage was not a long-term traditional marriage because, while it was 17 years long, Rebecca held significant jobs throughout the marriage. He contends the finding that the marriage was long-term was not justified, noting that the length of time until retirement age was significantly longer than the marriage. We disagree.

Whether the marriage is a long-term traditional marriage is more than a numbers game, and district courts may reach this determination by examining numerous factors. Here there was enough evidence to allow the district court to find this was a long-term traditional marriage. The record shows the marriage was 17 years long, it started from the time both parties were very young, they helped start each other's career, they had children together, Rebecca stopped working to raise the children, they built a home together, and they acquired many assets together. There is nothing to suggest the district court was clearly erroneous in its finding.[7]

[7] Justin directs us to *Gales v. Gales*, which involved an 11-year marriage, where the husband was ordered to pay permanent spousal maintenance. 553 N.W.2d 416, 417 (Minn.

Justin also contends that the district court made a clearly erroneous finding when it determined Rebecca was primarily a homemaker. Justin argues that she worked full-time for the majority of the relationship—10 out of the 17 years of the marriage—and that she was employed at the time of separation. A close examination of the record reveals that Rebecca worked full-time between the start of the marriage in 1998 until approximately 2004 when she helped Justin with his company. It is unclear, however, how much she worked once she started helping with the company in approximately 2004. But it is undisputed she did not receive a salary for this work. Rebecca then did not work full-time from late 2007 until 2015, the same year the marriage dissolution process began. Depending on whether Rebecca's work with Justin's company constitutes full-time work, she worked full time approximately either 6 or 10 years out of the 17-year relationship.

But this, too, is more than a numbers game. Beyond purely looking at the math to determine what fraction of the marriage Rebecca worked full-time, the district court properly considered that once the couple had children, it was Rebecca who stayed at home and raised them. And it was Rebecca who was asked to stop what she was doing to help Justin's business. Under the clearly erroneous standard of review, it was not an error for the district court to determine Rebecca was primarily a homemaker, because since

---

1996). The Minnesota Supreme Court reversed the district court's decision to order permanent maintenance because it did not believe it was a long-term traditional marriage where one spouse was dependent on the other, as the wife had pursued her own business career. *Id.* at 421. Here, Rebecca was dependent on Justin to cover their monthly expenses, as her monthly income was insufficient on its own. Through much of the marriage, she stayed at home to raise their children. And when she went back to work, she earned significantly less than Justin.

approximately 2003 or 2004, she primarily either helped with Justin's company or was a stay-at-home mother.

Loss of earnings and employment opportunities

The district court must consider the loss of earnings and employment opportunities forgone by the spouse seeking spousal maintenance. Minn. Stat. § 518.552, subd. 2(e). The district court found that the growth of Justin's business was in part due to Rebecca's sacrifice to work as an unpaid employee. The record supports this finding, as Rebecca testified that she decided to forgo dental school, at least in part, due to Justin asking her to help him with his business. She then helped his business and did not take a salary outside of enough to fund her 401K.

Justin argues that Rebecca did not lose any opportunities and was immediately hired when she decided to seek a job. But while Rebecca did return to the workforce, this does not change the fact that she gave up opportunities to help Justin's business. And we are troubled by the practical implications of Justin's argument: that a dependent spouse who finds employment at the end of a long-term marriage irretrievably undercuts a claim for permanent maintenance. This approach creates an incentive for continued dependency rather than steps toward independence, which Rebecca took here. The district court did not abuse its discretion when it determined that Rebecca did forgo opportunities.

Age and health

The district court must consider the age and health of the spouse seeking maintenance. Minn. Stat. § 518.552, subd. 2(f). The court found that Rebecca was 40 at the time of separation and did not make any findings of poor physical or emotional

conditions. Justin argues that the district court erred with this factor because there was nothing to suggest Rebecca's ability to earn was impacted by her age or health. But the court never stated that Rebeca's ability to earn was impacted by age or health, and Justin's argument rests on a false assumption that age or health must impact a spouse's ability to earn before permanent maintenance can be awarded. Justin's argument that the district court misapplied this factor is without merit.

Ability of spouse to meet own needs while meeting needs of spouse seeking maintenance

The district court must consider "the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance." Minn. Stat. § 518.552, subd. 2(g). The court found that Justin's monthly gross income was approximately $65,900 a month. Justin does not dispute that he has the ability to pay monthly support but contends that the district court focused too much on this factor.

Justin points to *Rask*, where this court stated it was an abuse of discretion when the district court "concentrated on the maximum amount it determined appellant could afford to pay respondent and still meet his basic needs." 445 N.W.2d at 853. But it is unclear why Justin believes the district court concentrated on the maximum amount he could afford when the court—faced with conflicting testimony about the amount of maintenance Rebecca needed—sided with Justin. Because there is nothing to suggest the district improperly focused on this factor or the maximum Justin could afford as in *Rask*, the district court did not improperly weigh this factor.

Contribution of each spouse

The district court must consider "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." Minn. Stat. § 518.552, subd. 2(h). The district court found that Rebecca's sacrifice helped grow Justin's business and allowed Justin to earn a high level of income. Justin argues that this business failed, so Rebecca's contribution to the business "while meritorious, ultimately resulted in a net zero gain to the both parties because the company failed." This is contradicted by the record. The business did fail, but Justin was maintained by the company that overtook his business in a managerial position, and he continued to earn a high level of income. Diminishing Rebecca's contribution to that company, while ignoring that Justin went on to have a very successful career after his company was acquired, is not supported by the record.

The district court acted within its discretion when weighing the factors.

Apart from challenging the statutory factors on an individual basis, Justin also contends that the district court abused its discretion in how it weighed the factors. He argues that the court focused too much on the couple's high standard of living and Justin's large income, instead of on Rebecca's potential earning capacity in light of her youth, work history, and educational background.

Justin contends this case is more akin to cases where this court affirmed the district court's decision to order temporary spousal maintenance. For example, in *Hall* v. *Hall*, the spouse seeking maintenance was 39 years old, the marriage was 18 years long, and she

worked sporadically throughout the marriage but was working at the time of separation. 417 N.W.2d 300, 303 (Minn. App. 1988). In *Napier v. Napier*, the marriage was approximately 20 years long, the spouse seeking spousal maintenance was 41 years old, and she also worked only sporadically throughout the marriage. 374 N.W.2d 512, 514 (Minn. App. 1985). Similarly, in *Buhr v. Buhr*, the marriage was approximately 25 years long, the spouse seeking maintenance did not have a college degree but worked both full-time and part-time during the marriage. 395 N.W.2d 433, 434 (Minn. App. 1986). Each of these cases has similarities to the case at hand, but all also have factual differences—as different marriages lasting over a decade are bound to have. For example, all three involved much lower standards of living than what is present here. *Hall*, 417 N.W.2d at 301; *Napier*, 374 N.W.2d at 514; *Buhr*, 395 N.W.2d at 434.

And as Rebecca points out, there are also cases with similar facts where the district court awarded permanent maintenance. For example, in *Chamberlain* the marriage was 20 years long, both spouses worked full-time at the time of separation, one spouse earned significantly more than the other, they had numerous assets, a more than $1 million homestead, and the couple had a high standard of living. 615 N.W.2d at 407-08.

These cases with similar facts to a varying degree, but with different results, illustrate the difficulty of using caselaw to compare sets of facts in spousal maintenance cases when those cases involve different versions of an evolving statute. *See Gaines*, 553 N.W.2d at 418-20 (stating that the spousal-maintenance statute evolved significantly in the 1980s, as the result of several amendments). Moreover, the Minnesota Supreme Court has cautioned: "[w]e take this opportunity to remind counsel that each marital dissolution

proceeding is unique and centers upon the individualized facts and circumstances of the parties and that, accordingly, it is unwise to view any marital dissolution decision as enunciating an immutable rule of law applicable in any other proceeding." *Dobrin v. Dobrin*, 569 N.W.2d 199, 201 (Minn. 1997). As a result, the court reiterated the wide discretion district courts have: "the 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." *Id.* at 202.

Justin has not met this threshold. While he has pointed out cases with similar facts that reached different results, this is not sufficient, especially when those different results were impacted by the evolution of the statute. These cases fail to establish that the district court here abused its discretion by either making findings unsupported by the record or misapplying the law. *Hemmingsen*, 767 N.W.2d at 716.

The district court acted within its discretion by not including incentives or reserving jurisdiction to later examine the issue.

Justin contends that awarding permanent spousal maintenance was an abuse of discretion as it eliminates any incentive for Rebecca to be independent. Justin points to *Passolt v. Passolt* to support his argument. 804 N.W.2d 18, 25 (Minn. App. 2011). There, the spouse seeking maintenance was making only $3,000 annually but had an educational background. *Id.* at 19. At trial, evidence showed the potential income the spouse could earn if she started working. *Id.* at 20. The district court granted permanent spousal maintenance. *Id.* at 21. This court reversed because, in part, the district court failed to

consider all of the required factors. *Id.* at 25. In remanding the case, this court noted that, "[s]tep reductions may be appropriate to provide employment incentives for a rehabilitating spouse." *Id.* The facts here are distinguishable from *Passolt* where the wife had an educational background but was not fully utilizing it, because here Rebecca was already working full-time and using her educational background.

More importantly, *Passolt* does not stand for the proposition that a trial court abuses its discretion by failing to include these incentives to rehabilitate. It instead states that it may be appropriate for the district court to consider the possibility of step reductions when it undertakes the issue of the spouse's potential earning capacity. Justin does not point to any caselaw that suggests it is an abuse of discretion for a district court not to provide these incentives, nor do we find any. And here there is a lack of evidence in the record on vocational issues or Rebecca's potential earning capacity, which prevents us from analyzing whether incentives could be proper in this case. In fact, this court has held it is an abuse of discretion to award step reductions when it is merely speculative whether a party's financial situation would change. *Schreifels v. Schreifels*, 450 N.W.2d 372, 374 (Minn. App. 1990) (stating it was an abuse of discretion to include step reductions when the reductions were based on the uncertain assumption the spouse's income would increase in the future). Here the district court acted within its discretion by declining to include incentives for Rebecca to become independent.

Justin also argues that a more appropriate result would be to award temporary maintenance for several years and for the district court to reserve the issue of maintenance for further determination at the expiration of the temporary maintenance. But the issue

before us is not whether awarding temporary maintenance while reserving the issue of future maintenance would be a better decision. The question is whether the decision to instead award permanent maintenance is an abuse of discretion. And we do not determine it is an abuse of discretion because: (1) there was no evidence that Rebecca's financial situation would change; (2) there is a statutory preference for permanent maintenance in the face of uncertainty; and (3) the pivotal case on this distinction, *Maiers*, supports this result.

Awarding temporary maintenance and reserving the issue of future maintenance, while an option, is one the district court may decline to apply in the absence of evidence suggesting Rebecca's financial situation would change. Rebecca's current job includes incentives and bonuses, but it will not be enough to close the gap between her income and expenses. Justin continuously points to this job as a factor the district court did not properly take into account. But the mere fact Rebecca is employed is not enough. No evidence infers that Rebecca's financial situation would change. There was no expert testimony on that subject and no vocational evaluations. While Rebecca's earning capacity could increase, this is only speculation and not grounded in the record. It was not an abuse of discretion for the district court to decline to award temporary spousal maintenance while reserving the issue of future maintenance, in a case where there is no evidence suggesting the situation will change.

This determination is further supported by the statutory preference for permanent maintenance when there is uncertainty as to whether permanent maintenance is necessary. The spousal maintenance statute states "[w]here there is some uncertainty as to the

necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3 (2016); *see also* Minn. Stat. § 645.44, subd. 16 (2016) (stating that "'[s]hall' is mandatory"). Here, the district court found there was no evidence that Rebecca would ever be able to independently support her expenses, meaning there was uncertainty regarding whether Rebecca would ever reach a financial level where she would not require maintenance. Because there is a statutory preference for permanent maintenance when there is uncertainty regarding whether a spouse needs it, awarding temporary maintenance while reserving the issue of future maintenance is not appropriate in light of the court's findings. *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987) ("That the trial 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.").

Finally, this distinction between permanent maintenance and temporary maintenance while reserving the issue of future maintenance is highlighted in *Maiers*. In *Maiers*, where a 17-year marriage was dissolved, the district court found that the wife would no longer need support at some point in the future. 775 N.W.2d at 667-69. This court held that the district court's award of temporary maintenance, while reserving the issue of future maintenance, was proper because the issue was when—not whether—the spouse would no longer need maintenance.[8] *Id.* at 669-70. This stands in contrast to cases

[8] In *Maiers* this court distinguished its determination from that of *Nardini*, 414 N.W.2d 184. In *Nardini* the Minnesota Supreme Court reversed the district court's award of temporary spousal maintenance because it was uncertain whether the spouse would ever become self-supporting. *Id.* at 198-99.

requiring permanent maintenance where it is unclear whether a spouse would ever not require maintenance. *Id.* at 668 ("With respect to the duration of an award of spousal maintenance, a district court must order permanent maintenance if the court is uncertain that the spouse seeking maintenance can ever become self-supporting.") (internal quotations omitted). Here, the district court's findings make it clear it was uncertain whether—not when—Rebecca would ever not require maintenance. Thus, the award of permanent maintenance was consistent with our decision in *Maiers*.[9]

We acknowledge that the district court had a difficult decision regarding the duration of maintenance, as well as several tools available to reach different results. Indeed, the possibility of different results, any of which may be affirmable on appeal, is inherent in a question on which the district court exercises its discretion. Its conclusion is not necessarily what this court would have done, but this court reviews for an abuse of discretion and is not the initial decision maker. *See Chamberlain*, 615 N.W.2d at 412 ("While a different result is supportable, and we might have reached a different result, on

[9] Justin also contends that the district court relied on improper purposes—compensatory and punitive—of the spousal maintenance statute. Justin points to *Gales* as an example where the district court improperly ordered permanent spousal maintenance by misinterpreting the purpose of spousal maintenance. 553 at 421-22. In *Gales*, the district court made a finding that one of the spouses suffered emotional distress due to the separation. *Id.* The Minnesota Supreme Court reversed the district court's decision to order permanent spousal maintenance, in part because the purpose of spousal maintenance is not punitive—so the finding of emotional suffering was improper. While *Gales* illustrates that the district court's reliance on an improper purpose may result in an abuse of its discretion, the court here did not focus on an improper purpose. The district court did not make any findings or conclusions of law that suggested it was punishing Justin or compensating Rebecca. In fact, one of the two major issues at trial was the amount of maintenance, and the court sided with Justin, not Rebecca, on this issue.

this record we cannot say an award of permanent maintenance is an abuse of discretion."). Here the district court did not abuse its discretion in awarding permanent spousal maintenance.[10]

Affirmed.

[10] And we remind the parties that while the maintenance is labeled permanent, it is not set in stone, but can be modified. *See Poehls v. Poehls*, 502 N.W.2d 217. 218 (Minn. App. 1993) (noting that "permanent maintenance" is a "term of art," which does not mean maintenance cannot end, only that the burden in later proceedings to reduce or terminate the award is on the obligor). Minnesota Statutes section 518A.39 (2016) allows parties to seek modification of spousal maintenance under a variety of circumstances, including a substantial change of gross income of one of parties.

SCHELLHAS, Judge (dissenting)

I respectfully dissent from the majority's affirmance of the district court's award of permanent spousal maintenance of $9,955 per month to respondent Rebecca Jurkovich.

Appellant Justin Jurkovich does not dispute the amount of the spousal-maintenance award. He argues that the district court abused its discretion in awarding permanent spousal maintenance to Rebecca, at age 41, following the parties' 17-year marriage because the record lacks any evidence that Rebecca's physical or emotional conditions impacts her ability to earn, Rebecca has a bachelor's degree, she worked full time for approximately ten years during the marriage, and she obtained employment immediately after a seven-year hiatus from the work force. I agree.

The parties separated in 2015, and the district court dissolved their marriage in 2016. In April 2015, Rebecca began employment at Bay Equity as a business development manager, with a starting income of $72,000 annually. She reasonably left that employment due to the parties' dissolution because Bay Equity also employed Justin. In March 2016, Rebecca became employed at Axia, earning $55,000 annually. In May 2016, after the president of AMEC contacted her, Rebecca left her employment at Axia and became employed at AMEC as a senior loan processer, earning a base salary of $55,000 annually and receiving a signing bonus of $1,500, an additional bonus at six months, as well as an incentive package based on the number of files closed each month. On cross-examination, Rebecca acknowledged that she had the potential to earn an additional $18,000 in bonus income and a total annual salary of $73,000. She also testified that she "anticipate[d] continued career growth in [her] current position."

This case is somewhat in a "league of its own," given Justin's monthly earnings of approximately $65,000. But it also is in a league of its own because in no published case in Minnesota has a spouse been awarded permanent spousal maintenance at age 41, after a 17-year marriage, when the facts clearly show that the spouse has the ability to earn a substantial income now and in the future. *See, e.g.*, *Curtis v. Curtis*, 887 N.W.2d 249, 250, 257 (Minn. 2016) (reversing and remanding issue of spousal maintenance when district court awarded no maintenance to unemployed spouse when parties separated after 22 years of marriage); *Dobrin v. Dobrin*, 569 N.W.2d 199, 199 (Minn. 1997) (reversing permanent-spousal-maintenance award after two-and-one-half-year marriage); *Gales v. Gales*, 553 N.W.2d 416, 417, 422 (Minn. 1996) (reversing permanent award of maintenance for 34-year-old spouse after 12-year marriage, and concluding that award of rehabilitative maintenance of no longer than five years was appropriate under facts and circumstances of case); *Nardini v. Nardini*, 414 N.W.2d 184, 185, 197−99 (Minn. 1987) (reversing five-year award of spousal maintenance after 31-year marriage, and remanding for permanent award to 56-year-old spouse, who had been out of labor market for 29 years and suffered from severe chronic skin disease); *Passolt v. Passolt*, 804 N.W.2d 18, 19, 25 (Minn. App. 2011) (remanding question of spousal maintenance after court awarded permanent maintenance to 52-year-old spouse after 30-year marriage based on court's misunderstanding of caselaw, and remanding the question of step reduction in maintenance), *review denied* (Minn. Nov. 15, 2011); *Maiers v. Maiers*, 775 N.W.2d 666, 667−68 (Minn. App. 2009) (affirming five-year award of spousal maintenance with reservation under section 518.552, subdivision 3, to spouse who was not self-supporting at time of dissolution after nearly 17-

year marriage); *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 407, 412 (Minn. App. 2000) (affirming permanent-spousal-maintenance award to 50-year-old teacher after 20-year marriage but concluding that $2,000-per-month award was excessive and reversing and remanding amount of award), *review denied* (Minn. Oct. 25, 2000); *Duffey v. Duffey*, 432 N.W.2d 473, 474−77 (Minn. App. 1988) (affirming permanent-spousal-maintenance award for 43-year-old spouse after 20-year marriage when spouse did not work outside home during marriage and had completed only one year of college); *Hall v. Hall*, 417 N.W.2d 300, 301 (Minn. App. 1988) (affirming temporary instead of permanent award of maintenance to 39-year-old spouse after 18 years of marriage).

I mention the above caselaw mindful of the supreme court's admonition in *Dobrin*, that "each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties and that, accordingly, it is unwise to view any marital dissolution decision as enunciating an immutable rule of law applicable in any other proceeding." 569 N.W.2d at 201. In this case, the facts and circumstances support only an award of temporary maintenance. The record contains no evidence to support uncertainty about Rebecca's ability to be self-supporting.

Although only of persuasive value, I note that the State of New Jersey amended its spousal-maintenance (alimony) statute in 2014. *See* 2014 N. J. Laws ch. 42, § 1. Among other changes, New Jersey eliminated permanent spousal maintenance, changing it to open-duration alimony. *Id.* Open-duration alimony is now awarded only in long-term marriages, which are defined as 20 years or more. N. J. Rev. Stat. § 2A: 34−23 (2016). Under New Jersey law, marriages of less than 20 years are subject to "limited duration alimony." *Id.*

And, while not at issue in the case before us, alimony can be ended or reduced when an obligor reaches the federal retirement age of 67. *Id.*

In this case, as support for a permanent award of maintenance to Rebecca, the district court characterized the parties' 17-year marriage as a long-term marriage. Unless the permanent award of maintenance is reversed, Justin could very well pay spousal maintenance to Rebecca for a period of time greatly exceeding the length of the marriage. This reality makes the marriage and resulting spousal-maintenance award akin to an annuity, which it is not. *See Kaiser v. Kaiser*, 290 Minn. 173, 184, 186 N.W.2d 678, 685 (1971) (noting that "[t]he purpose of alimony is to care for the wife's needs after divorce, not to provide her with a lifetime profit-sharing plan" (quoting Homer H. Clark Jr., *The Law of Domestic Relations in the United States*, § 14.9, at 460) (1968)); *see also Snyder v. Snyder*, 298 Minn. 43, 53, 212 N.W.2d 869, 875 (1973) (quoting this facet of *Kaiser*); *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007) (citing this aspect of *Snyder*), *review denied* (Minn. Aug. 21, 2007). Under Minnesota law, "an award of maintenance 'depends on a showing of need' but even an unemployable spouse 'is not by that fact alone necessarily entitled to maintenance.'" *Curtis*, 887 N.W.2d at 252 (quoting *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989)).

I would reverse the district court's permanent award of spousal maintenance and remand for a temporary award of maintenance for a period not exceeding ten years. At the very least, the case should be remanded to the district court with instructions to leave the permanent award of maintenance open for later modification under Minn. Stat. § 518.552, subd. 3 (2016). *See Maiers*, 775 N.W.2d at 668 (stating that "with a reservation of

jurisdiction, a subsequent request to extend spousal maintenance would be based on the factors applicable to awarding maintenance in the first instance, not the standards for a modification of spousal maintenance").