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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0135**

In re the Marriage of:
Gregory Joseph Parnell, petitioner,
Appellant,

vs.

Christine Melanie Parnell,
Respondent.

**Filed January 14, 2019
Reversed and remanded
Bjorkman, Judge**

Washington County District Court
File No. 82-FA-15-4676

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

Christine Melanie Parnell, St. Paul, Minnesota (pro se respondent)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Chief Judge; and
Worke, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this marital-dissolution appeal, husband challenges the district court's award of permanent spousal maintenance. Because the district court's findings of fact are insufficient to allow meaningful review of the maintenance award, we reverse and remand.

FACTS

Appellant-husband Gregory Parnell and respondent-wife Christine Parnell were married in August 1996. Wife worked as a real estate agent until their child was born in 2009. She was the child's primary caretaker until 2015, when she was incarcerated for violating her probation in connection with a 2014 alcohol-related conviction. During her incarceration, the parties separated and husband petitioned for dissolution of the marriage. Since the separation, the relationship between the parties has been acrimonious. Wife's abusive actions against husband resulted in felony convictions for stalking, second-degree burglary, and identity theft. These convictions currently preclude wife from working as a real estate agent.

At the time of the dissolution trial, wife was unemployed and husband worked as a machinist. The district court awarded wife \$1,000 in permanent monthly maintenance. The district court granted husband sole physical and legal custody of the child, and ordered wife to pay husband \$589 in monthly child support. Husband appeals.

DECISION

A district court may award maintenance if, in light of the marital standard of living, the spouse seeking maintenance lacks sufficient property to provide for his or her reasonable needs, or is otherwise unable to provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2018); *see Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007) (“Spousal maintenance is appropriate when the requesting spouse lacks sufficient property or is otherwise unable to provide adequate self-support for his or her reasonable needs in light of the standard of living established during the marriage.”), *review denied* (Minn.

Aug. 21, 2007). The statute provides a non-exhaustive list of factors relevant to determining the amount and duration of a maintenance award, including the obligor's ability to pay maintenance and continue to meet his own needs. Minn. Stat. § 518.552, subd. 2(g) (2018). There is no statutory preference for an award of temporary maintenance and uncertainty about the duration of an award is resolved in favor of a permanent award. Minn. Stat. § 518.552, subd. 3 (2018).¹ When addressing the amount and duration of a maintenance award, “[i]n essence, the district court balances the recipient’s needs against the obligor’s ability to pay.” *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009).

We review a district court’s determination regarding the amount and duration of a spousal-maintenance award for an abuse of discretion. *Id.* A district court abuses its discretion if it resolves a maintenance issue in a manner that is “against logic and the facts on the record,” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), misapplies the law, or makes findings of fact that are unsupported by the record, *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). But appellate review is possible only when the district court makes findings that are sufficiently detailed to show its consideration of “all factors relevant to an award.” *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *see Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 718 (Minn. App. 2009) (“Effective appellate review of an award of maintenance is possible only when the [district] court has issued sufficiently detailed

¹ We note that “permanent maintenance” is a “term of art,” and does *not* refer to the duration of the maintenance obligation but to the fact that, in subsequent proceedings to reduce or terminate the award, the burden of proof is on the payor of the award. *Poehls v. Poehls*, 502 N.W.2d 217, 218 (Minn. App. 1993); *see Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000) (setting forth this aspect of *Poehls*).

findings of fact to demonstrate its consideration of all factors relevant to an award.” (quotation omitted)), *review granted* (Minn. Sept. 29, 2009) *and appeal dismissed* (Minn. Feb. 1, 2010).

The district court found that husband’s monthly net income is \$5,340 and that he has monthly expenses totaling \$5,357. It made no express finding that all or part of husband’s reported expenses are reasonable. As to wife, the district court found her monthly income was limited to the \$900 she received in temporary maintenance and that she has reasonable expenses of \$2,060 per month. The district court found wife’s age (53), physical condition, and employment experience and skills provide her “the opportunity to turn her life around and be financially independent.” And the district court found it was “unclear” whether the four years wife stayed home to care for the child or wife’s criminal activity would impact her employment opportunities.

After specifically stating that husband “has limited resources with which he can provide [wife] maintenance,” the district court awarded wife permanent monthly maintenance of \$1,000:

While a totality of the factors lends to this conclusion, specifically important is the length of the marriage, the ability of [husband] to pay, and the fact that [wife] is in a position where she will need to start anew and likely does not have a full career ahead of her.

Husband first contends that the district court clearly erred in finding that he is able to pay the awarded spousal maintenance. This argument may have merit, but the district court’s findings do not permit us to conduct a meaningful review. The findings are deficient in at least three respects. First, there is no express finding that husband’s monthly

expenses are reasonable. The findings regarding husband's financial circumstances includes the incomplete recitation that husband "is able to meet the marital standard of living from his own income and resources. Accordingly, [husband] is." To the extent the district court intended to find husband's net income exceeds his reasonable expenses, it failed to do so.

Second, the district court did not explain why spousal maintenance should be permanent. Third, the district court made no findings as to why an award that leaves husband with a \$1,017 monthly deficit is just. We acknowledge that a maintenance award that leaves the obligor with a monthly deficit does not, in and of itself, demonstrate an abuse of the district court's discretion. See *Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) ("While we might prefer a somewhat smaller permanent maintenance award, the [district] court's determination that this level of maintenance is appropriate, given all the circumstances of the case, is not an abuse of discretion."). Nevertheless "[a] finding of a maintenance obligor's ability to pay maintenance is required to support an award of maintenance." *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004). And here the district court failed to explain how husband is able to pay an award that leaves him with a \$1,017 monthly deficit, especially considering wife's resulting monthly surplus.²

Under the circumstances, we are unable to meaningfully review the district court's findings. Accordingly, we remand to the district court to make appropriate findings or to

² The district court found wife is capable of earning at least \$1,254 per month working a minimum wage job. Combined with \$1,000 in spousal maintenance, her monthly income will exceed her reasonable monthly expenses by \$194.

reconsider its award of maintenance. See *Stich*, 435 N.W.2d at 53 (reversing and remanding a maintenance award because the award lacked adequate supporting findings of fact); *Hemmingsen*, 767 N.W.2d at 718 (“Remand for additional findings is appropriate when the district court fails to make adequate findings.”).

Husband next argues that the district court should have weighed the statutory factors against awarding wife spousal maintenance because any need for maintenance was the result of wife’s criminal conduct. This argument is unavailing. Spousal maintenance is awarded “without regard to marital misconduct.” Minn. Stat. § 518.552, subd. 2 (2018).³

In conclusion, we reverse the district court’s award of permanent spousal maintenance and remand to permit the district court to consider and to make findings of fact regarding the relevant statutory maintenance factors. We leave to the district court the decision whether to reopen the record.

Reversed and remanded.

³ Husband also contends that, as a matter of public policy, he should not be required to pay maintenance because of wife’s criminal offenses against him. Because husband failed to cite any supporting legal authority and because no error on this point is obvious, this argument is not properly before us. See *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that an “assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”); *Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family law appeal), review denied (Minn. Oct. 24, 2001). And even if we considered husband’s argument, it would fail on its merits. See Minn. Stat. § 518.552, subd. 2 (stating that maintenance is ordered without regard to marital misconduct); see also *Gales v. Gales*, 553 N.W.2d 416, 422 (Minn. 1996) (“However painful it may be for the parties, marriage dissolution is not a tort for which a victim can be compensated; penalizing the ‘perpetrator’ through the pocketbook by awarding permanent maintenance would subvert the underlying policy of no-fault divorce enacted by the legislature of this state.”).