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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2104**

In re the Marriage of: Larry Allan Keeler, petitioner,
Appellant,

vs.

Michelle Marie Keeler,
Respondent.

**Filed January 13, 2020
Affirmed
Larkin, Judge**

Mille Lacs County District Court
File No. 48-FA-17-1871

Tifanne E. E. Wolter, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for appellant)

Michelle M. Keeler, Milaca, Minnesota (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

In this appeal from the district court's judgment and decree dissolving the parties' marriage, appellant-husband challenges the district court's award of temporary spousal

maintenance to respondent-wife, its valuation of a marital business so as to include goodwill, and its order that he obtain life insurance to secure his spousal-maintenance obligation. We affirm.

FACTS

In August 2017, appellant Larry Allan Keeler (husband) petitioned for dissolution of his 25-year marriage to respondent Michelle Marie Keeler (wife). The case was tried on February 9, 2018. Husband was represented by legal counsel. Wife was self-represented. Wife testified that she sought spousal maintenance of \$800 per month for 12 years, but she did not submit evidence regarding her monthly living expenses. The district court allowed the parties to submit proposed findings after the trial. On February 22, wife submitted proposed findings indicating that she was willing to waive spousal maintenance.

On March 14, the district court held a hearing to determine wife's intentions regarding spousal maintenance. Wife clarified that she would waive maintenance only if husband agreed to transfer title of the parties' vehicles to their children. The district court informed the parties that it would keep the record open so they could negotiate an agreement regarding spousal maintenance. Husband's counsel agreed to file a letter with the court by March 30 regarding the parties' settlement efforts.

The district court informed the parties that if they did not reach an agreement, it would need average monthly living expenses from wife to determine the spousal-maintenance issue. Husband objected, arguing that he would be prejudiced by late submissions because he would not be able to cross-examine wife regarding whether the expenses were reasonable and necessary. The district court advised husband that the record

from the February 9 trial had been left open for submissions and that neither party was in any different position than when the trial ended. But to address husband's concern, the district court required wife to provide her monthly living expenses to husband's counsel by March 21, so husband could respond to her claimed expenses by the March 30 submission deadline.

Wife submitted her monthly living expenses to the court on March 20. On March 29, husband's counsel filed a letter indicating that the parties had not reached an agreement regarding spousal maintenance. Husband did not submit any information regarding his monthly expenses.

The district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree on April 23, 2018. It awarded wife temporary spousal maintenance of \$450 per month for 12 years. The district court also ordered husband to obtain and maintain a life insurance policy in a minimum amount of \$200,000 to secure his spousal-maintenance obligation.

When dividing the marital estate, the district court valued husband's business, Keeler Stucco. Husband testified that the value of the business's equipment was between \$1,500 and \$3,500. The court determined that Keeler Stucco had goodwill value beyond that of its equipment, and it concluded that wife was entitled to a portion of the business because she did its bookkeeping during the marriage and played a role in the success of the

company while she was married to husband. The district court ordered husband to pay wife \$2,000 as her share of the business.¹

Husband moved for amended findings and a new trial. After a hearing on that motion, the district court amended some of its findings regarding the value of Keeler Stucco, but it did not amend its finding that the business had goodwill value or its order that husband pay wife \$2,000 for her interest in the business. It also declined to amend its spousal-maintenance award. But the district court ordered a new trial on the life-insurance issue, recognizing that \$200,000 exceeded husband's total spousal-maintenance obligation. The purpose of the new trial was to ascertain the cost of life-insurance premiums and husband's ability to pay those premiums.

When the parties appeared in district court for the new trial on the life-insurance issue, husband's counsel indicated that the parties had agreed that husband would obtain and maintain a life-insurance policy in an amount necessary to secure payment of any outstanding spousal-maintenance obligation. The district court issued an order implementing that agreement on October 26. Husband appeals.

D E C I S I O N

I.

Husband contends that the district court abused its discretion by ordering him to pay spousal maintenance of \$450 per month for 12 years. We review the district court's

¹ The district court determined that wife's interest in Keeler Stucco was \$2,000, approximately half the value of the business, and therefore appeared to value Keeler Stucco at \$4,000.

decision to award spousal maintenance for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). The district court abuses its discretion when it makes findings unsupported by the evidence or improperly applies the law. *Id.* at 202 & n.3. Findings of fact regarding spousal maintenance are upheld unless they are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

In a dissolution proceeding, the court may grant spousal maintenance if it finds that the spouse seeking maintenance either “lacks sufficient property . . . to provide for [her] reasonable needs . . . considering the standard of living established during the marriage” or “is unable to provide adequate self-support, after considering the standard of living established during the marriage.” Minn. Stat. § 518.552, subd. 1 (2018); see *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (making need for maintenance a prerequisite for an award of maintenance). However, a spousal-maintenance award should not be limited to the recipient’s “bare necessities of life.” *Arundel v. Arundel*, 281 N.W.2d 663, 666-67 (Minn. 1979). Instead, the recipient “is entitled to maintain her present standard of living to the extent that [the obligor] is reasonably able to provide.” *Id.* at 667.

Husband argues that the district court’s findings do not demonstrate that wife needs spousal maintenance. He notes that wife was self-sufficient during the three years preceding the trial and that her monthly net income is greater than her monthly budget. The district court recognized that wife had been self-sufficient since the parties’ separation. Nevertheless, the district court reasoned that spousal maintenance was appropriate because wife “suffer[ed] a permanent loss in career opportunity and income” that will “likely affect

her ability to become gainfully employed” as a result of her sacrifices from being a homemaker and doing the bookkeeping for Keeler Stucco throughout the marriage.

The district court also reasoned that wife is entitled to maintain the standard of living established during the marriage, finding that the parties enjoyed a “comfortable standard of living.” That finding largely was based on the fact that wife lived in a single-family home during the marriage and lived in an apartment at the time of trial. In its amended findings, the court identified several other circumstances demonstrating the parties’ standard of living, including the parties’ income of \$45,000 to \$55,000 per year, their collection of classic muscle cars, husband’s collection of hunting firearms, and his trips to Africa to hunt wild game.

Husband argues that the parties lived well beyond their means and frequently had to borrow money from his parents. The district court recognized that the parties had received occasional financial assistance from husband’s parents, but nevertheless found that husband’s income was the primary support for the parties’ lifestyle.

District courts have broad discretion in determining whether to award spousal maintenance. *Dobrin*, 569 N.W.2d at 202. We cannot say that the district court abused its discretion in reasoning that wife had a need for spousal maintenance based on her sacrifices and standard of living during the marriage.

Husband next argues that the district court abused its discretion because it did not adequately consider his ability to pay. When determining the amount and duration of spousal maintenance, the district court must consider a variety of factors, including “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) (2018). Husband argues that the district court made inadequate findings regarding his reasonable needs and net income.

The district court’s order notes the lack of evidence regarding husband’s monthly living expenses, but it faults husband for this deficiency. Husband argues that he did not have to provide evidence of his inability to pay because wife first had the burden to show need. *See Dobrin*, 569 N.W.2d at 202 (stating that the spouse seeking maintenance has the burden to show need). And husband disputes the district court’s description of the proceedings, asserting that although the district court allowed wife to submit a monthly budget, it did not allow him to do the same.

At the hearing on March 14, 2018, the district court did not explicitly tell husband that he should submit information regarding his monthly expenses. But it is apparent that the district court expected husband to do so because the court informed the parties that if they did not reach an agreement regarding spousal maintenance, it would need wife’s monthly living expenses to determine that issue, and it told husband to respond to wife’s expense submissions by March 30. Husband did not do so. Moreover, we have little reason to believe that husband would have submitted information regarding his expenses if the district court had been clearer in its instructions because at the hearing on husband’s motion for amended findings, husband’s counsel stated that husband purposely had not submitted information regarding his monthly expenses because his trial strategy was to rely on wife’s inability to prove up her request for spousal maintenance.

As to husband's income, husband faults the district court for failing to make findings regarding his net income. "In order to determine ability to pay, the court must make a determination of the payor spouse's net or take-home pay." *Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985), *review denied* (Minn. July 26, 1985). Husband notes that the record contains documentation regarding his employment income and that "[h]is net income from employment could have been easily calculated." He concludes that his "income information was readily available to the trial court with the given record to make a determination of his net income."

"[T]he district court is not required to make specific findings on every statutory factor [in Minn. Stat. § 518.552, subd. 2,] if the findings that were made reflect that the district court adequately considered the relevant statutory factors." *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004). Even though the district court did not specifically calculate husband's net income, its findings demonstrate that it adequately considered husband's ability to pay. The district court considered husband's gross monthly income from his current employment, as well as Keeler Stucco's earning capacity based on its net profits from 2014 and 2015. Earning capacity is an appropriate measure of income when the obligor's actual income is unjustifiably self-limited. *Melius v. Melius*, 765 N.W.2d 411, 415 (Minn. App. 2009). Here, Keeler Stucco's net profits decreased in 2016. The district court found, based on wife's testimony and the "lack of a plausible explanation for such a drastic decrease in income from one year to the next," that husband had "unjustifiably reduced his income from Keeler Stucco to make it look like the business was failing while the dissolution proceedings were pending."

Moreover, although husband presented some information regarding his employment income, he did not offer testimony or evidence expressly setting forth his historic net income. Instead, he provided his hourly rate of pay for a 40-hour work week and Keeler Stucco's net profits from 2016. The district court noted its concern that despite its "efforts to alleviate potential prejudice to [husband] while maintain[ing] a complete and accurate record for the Court, [husband] has continued to attempt to restrict the Court's ability to consider relevant and necessary information." Given husband's failure to present direct evidence of his net income, he cannot complain that the district court did not make a finding on net income. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003); *see also Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (finding no abuse of discretion where the district court declined to make findings on the parties' expenses in child-support case when nonmoving party failed to submit her expenses to the court).

In sum, under the circumstances of this case, the district court did not abuse its discretion by ordering husband to pay wife temporary spousal maintenance of \$450 per month.

II.

Husband contends that the district court erred by determining that Keeler Stucco had value beyond that of its assets. A determination regarding the specific value of an asset

is a finding of fact that appellate courts review for clear error based on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). We do not reweigh the evidence or find our own facts. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The valuation of assets does not have to be exact—“it is only necessary that the value arrived at lies within a reasonable range of figures.” *Fick v. Fick*, 375 N.W.2d 870, 873-74 (Minn. App. 1985).

When valuing a business, the district court may consider a variety of factors, including goodwill. *Nardini v. Nardini*, 414 N.W.2d 184, 189-90 (Minn. 1987). “Goodwill value is a transferable property right which is generally defined as the amount a willing buyer would pay for a going concern above the book value of the assets.” *Roth v. Roth*, 406 N.W.2d 77, 80 (Minn. App. 1987).

Husband testified that the value of Keeler Stucco’s equipment was between \$1,500 and \$3,500. As support for its implicit finding that Keeler Stucco had an additional goodwill value of \$500, the district court indicated that wife testified that the business had a good reputation in the community. But wife did not provide such testimony at trial. The only time she mentioned the business’s reputation was during the hearing on March 14, 2018, when she was not under oath and was simply clarifying her intentions regarding spousal maintenance. Thus, wife’s trial testimony does not support the district court’s finding regarding Keeler Stucco’s reputation.

Nevertheless, the district court’s valuation was also based on evidence—including testimony and income statements—that Keeler Stucco was a successful business that generated significant income for the parties throughout the marriage. Although Keeler

Stucco's profits decreased in 2016, the court noted that husband quit a job in 2014 to return to stuccoing and had stucco work scheduled for 2018. Based on this evidence, the district court's valuation of Keeler Stucco was within a reasonable range of figures.

In sum, given the record as a whole, the low value attributed to goodwill, and the resulting award of an additional \$250 in marital property to wife, we cannot say that the district court reversibly erred in valuing Keeler Stucco. *See Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (concluding that error in the valuation of marital property was de minimis), *review denied* (Minn. Nov. 16, 2010).

III.

Lastly, husband contends that the district court abused its discretion by ordering him to secure his spousal-maintenance obligation with a life-insurance policy. When the district court orders spousal maintenance, the court "may require sufficient security to be given for the payment of [it]." Minn. Stat. § 518A.71 (2018). "The [district] court has discretion to consider whether the circumstances justifying an award of maintenance also justify securing it with life insurance." *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987). This court reverses the district court's decision on life insurance only when there is an abuse of that discretion. *See Maeder v. Maeder*, 480 N.W.2d 677, 680 (Minn. App. 1992) (affirming district court's order to secure maintenance with life insurance because there was no abuse of discretion), *review denied* (Minn. Mar. 19, 1992).

Husband argues that the district court abused its discretion because it did not make factual findings regarding his insurability and the cost of insurance. The district court

normally should make factual findings on those two issues when determining whether to secure a maintenance obligation with life insurance. *Lee v. Lee*, 775 N.W.2d 631, 642-43 (Minn. 2009). However, after the district court granted husband's request for a new trial on the life-insurance issue, husband's counsel informed the court that the parties had agreed that husband would maintain a life-insurance policy in an amount necessary to secure any outstanding spousal-maintenance obligation. The district court's order reflects that agreement. Husband cannot now complain that the district court did not make proper findings. *See Eisenschenk*, 668 N.W.2d at 243; *see also Mattson v. Mattson*, 903 N.W.2d 233, 241 n.9 (Minn. App. 2017) (noting that settlement agreements to resolve dissolution proceedings are generally considered to be binding contracts), *review denied* (Minn. Dec. 27, 2017).

In sum, the district court did not abuse its discretion by ordering husband to maintain life insurance in an amount consistent with the parties' agreement.

Affirmed.