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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0017**

In re the Marriage of: Richard T. Hudgins, petitioner,
Appellant,

vs.

Margaret Foster Hudgins,
Respondent.

**Filed March 9, 2020
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-FA-240295

Matthew L. Fling, St. Louis Park, Minnesota (for appellant)

Glenn P. Bruder, Mitchell, Bruder and Johnson, Eden Prairie, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In an appeal from an order awarding spousal maintenance, appellant husband argues that the district court abused its discretion when it: (1) awarded respondent wife \$1,782.23 in monthly spousal maintenance because the award rendered the husband unable to meet

his own financial needs, and (2) declined to conduct an evidentiary hearing on spousal maintenance. We affirm.

FACTS

In 1971, appellant husband, Richard Hudgins, and respondent wife, Margaret Hudgins, were married. During the marriage, husband served as a member of the U.S. Marine Corps and was stationed in Virginia. Wife stayed at home to raise the couple's two children. Husband retired from the U.S. Marine Corps in 1990 and found private employment. At that time, the couple earned a monthly income of approximately \$6,300—\$2,800 of which came from husband's U.S. Marine Corps pension. In 1995, the parties separated and husband eventually moved from Virginia to Minnesota.

On August 6, 1998, husband obtained a default judgment and divorce decree in Hennepin County District Court. Husband failed to inform wife of the proceeding. The judgment and decree reserved jurisdiction over spousal maintenance and child support.

From 1998 to 2005, husband paid wife \$2,375 per month despite there being no formal order for child support or spousal maintenance. In 2005, when their youngest child turned 18, husband decreased his monthly payment but continued to pay wife \$1,575 in spousal maintenance. Husband also paid the premiums on three life insurance policies, which named wife as the beneficiary. During this time, wife believed the couple were still married, albeit separated.

Husband failed to inform the U.S. Marine Corps of his 1998 divorce and as a result, wife, who is disabled, continued to receive medical insurance as a military spouse. However, in 2010, wife received notice from the U.S. Marine Corps that her medical

coverage had been terminated. Just prior to the termination of wife's medical insurance, husband sent a fraudulent divorce decree, dated May 3, 2010, to the U.S. Marine Corps. These events coincided with husband's remarriage. The district court determined this fraudulent decree was sent to the military in order to transfer his military benefits from wife to his new wife upon his remarriage.

In January 2014, husband lost his job and entered retirement. At some point after 2014, husband reduced his payments to \$975 per month—paying \$475 to wife directly and \$500 to their son with directions to transfer the money to the wife. The district court determined this payment scheme was designed to hide from his new wife that husband was still making payments to wife. Later the same year, wife filed a motion in Hennepin County District Court for permanent spousal maintenance, which was dismissed for lack of service. Wife then refiled the motion in 2016. At a motion hearing in September 2016, the district court granted a continuance pending discovery as to the current income of both parties. After several months of discovery, husband requested an in-person evidentiary hearing on income, but acknowledged that the decision to grant such a hearing rested in the discretion of the court. The district court denied husband's request but asked for additional written submissions. During this time, husband reduced his monthly payments to \$500 per month.

In November 2017, following a re-opening of the record and more discovery, the district court concluded that wife had a monthly income of \$1,163 and reasonable monthly expenses of \$2,945.23—leading to a monthly deficit of \$1,782.23. The district court

further concluded that husband had a monthly income of \$4,440.24 and reasonable monthly expenses of \$4,750—leading to a monthly deficit of \$309.76.¹

The district court ordered husband to pay wife permanent spousal maintenance in the amount of \$1,782.23 per month. This figure was to be secured by one or more life insurance policies maintained by husband. The district court concluded that because husband's standard of living was higher than wife's, and he could still work, he had the ability to satisfy his maintenance requirements while still meeting his reasonable needs. The district court also noted that wife was physically disabled, in a "great deal of pain" from her medical conditions, and was unable to work. Husband appeals.

D E C I S I O N

I. The district court did not abuse its discretion when it awarded wife \$1,782.23 per month in spousal maintenance.

Husband argues that the district court abused its discretion when it awarded wife \$1,782.23 per month in spousal maintenance because this award allowed wife to meet her budgetary needs while preventing husband from meeting his monthly needs.²

¹ Husband reported \$4,775 as his monthly expenses in 2016 and \$6,720 as his monthly expenses in 2017. The district court determined that because husband offered very little explanation for his increased expenditures, his reported increase was not credible and therefore adjusted the figure to \$4,750.

² Husband also argues that the district court abused its discretion when it awarded wife \$1,782.23 per month in spousal maintenance because the district court did not take into account that husband's personal debt—amassed after the 1998 judgment and degree but before wife made her application for spousal maintenance—made husband unable to meet his expenses. However, at oral argument, husband's attorney candidly conceded that the district court's failure to consider this debt was not an abuse of discretion. We appreciate counsel's candor on this point.

An appellate court examines a district court's determination as to the amount of spousal maintenance for an abuse of discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We will uphold a district court's findings of facts unless they are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

A district court may award spousal maintenance if it determines that the spouse seeking maintenance is in need of support. Minn. Stat. § 518.552, subd. 1 (2018); *see also* *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of spousal maintenance requires a showing of need). Should the district court find one party in need of support, it must consider eight separate criteria to determine the appropriate amount and duration of spousal maintenance. Minn. Stat. § 518.552, subd. 2 (2018). The parties agree that the particular factor at issue in this case is “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). When making an initial award of spousal maintenance after maintenance was reserved in a dissolution judgment, the district court must base its determination on “the facts and circumstances existing at the time the [spousal maintenance] application is made, as if the entire [divorce] action had been brought at the later date.” *Harder v. Harder*, 251 N.W.2d 703, 704 (Minn. 1977).

To support his proposition that a district court abuses its discretion in awarding spousal maintenance that creates a monthly deficit for the payor, husband relies on an

unpublished opinion, *McCallum v. McCallum*, A07-2221, 2008 WL 5136909, at *3 (Minn. App. Dec. 9, 2008).³

Husband is correct to suggest that a district court abuses its discretion when it orders spousal maintenance that the obligor simply cannot afford to pay. *Beckstrom v. Beckstrom*, 385 N.W.2d 402, 402 (Minn. App. 1986). In *Beckstrom*, we determined that a husband, whose sole source of income was \$751 a month from a pension, could not continue to pay \$200 per month in spousal maintenance to his wife (who earned five-times his income) while meeting his own needs. *Id.* at 402.

In the present case, the district court extensively considered each factor listed in Minn. Stat. § 518.552, subd. 2, including the ability of husband to meet his needs while meeting those of wife, when it determined that wife was entitled to \$1,782.23 per month. When the district court analyzed the ability of husband to provide maintenance, it determined that husband had a reasonable monthly budget of \$4,750 and a monthly income of \$4,440.24. Based on this budget, the district court acknowledged that husband faced a monthly deficit of \$309.76, but noted that he was able to work, had access to many military benefits and the cash values from life insurance policies, and had been previously able to pay \$1,575 per month to wife. Accordingly, the district court awarded wife \$1,782.23 per month in spousal maintenance, which, according to husband, left him with a total monthly deficit of \$2,091.99.

³ As an unpublished opinion, *McCallum* has no precedential value. See Minn. Stat. § 480A.08, subd. 3(c) (2018) (stating that “[u]npublished opinions of the court of appeals are not precedential”).

Unlike in *Beckstrom*, where we determined that the district court abused its discretion when it awarded spousal maintenance because there was no possibility that a husband could cover his reasonable monthly expenses and still pay the awarded figure, we do not conclude that the district court's determination that there was a reasonable possibility that husband could pay the awarded amount while covering his reasonable monthly expenses was clearly erroneous.

The district court made detailed findings on all factors listed in Minn. Stat. § 518.552, subd. 2. Based on these findings, it concluded that because husband's standard of living was higher than wife's, husband was able to work, and husband could subsidize spousal maintenance payments through the cash values of the life insurance policies, husband would be able to fulfill his spousal maintenance obligations despite the award leaving him with a monthly deficit. *See Justis v. Justis*, 384 N.W.2d 885, 891–92 (Minn. App. 1986) (noting that a spousal maintenance award is not an abuse of discretion simply because it leaves a spouse with a monthly deficit), *review denied* (Minn. May 29, 1986). Although, undoubtedly, there may be circumstances in which a district court abuses its discretion by awarding spousal maintenance in an amount that forces one party into penury, we are not persuaded that this case is one of those circumstances.

Because the district court carefully weighed all of the factors listed in Minn. Stat. § 518.552, subd. 2, when it determined wife's spousal maintenance award, and made a reasonable finding that husband would be able to fulfill his spousal maintenance obligations, the district court did not abuse its discretion when it determined that husband

would be able to pay wife \$1,782.23 per month in spousal maintenance while still meeting his own needs.

II. The district court did not abuse its discretion when it failed to conduct an evidentiary hearing.

Husband argues that the district court erred when it refused to hold an in-person evidentiary hearing on the issue of spousal maintenance and instead elected to proceed based solely on the affidavits of the parties and the deposition of wife. An appellate court reviews a district court's decision whether or not to hold an evidentiary hearing for abuse of discretion. *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007).

In general, family court motions are “decided without an evidentiary hearing, unless the district court determines that there is good cause for a hearing.” *Id.* (citing Minn. R. Gen. Pract. 303.03(d); *Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001)).⁴ Although no definition of good cause has yet been articulated, we have stated that failure to show good cause justifies denying an evidentiary hearing. *Id.*

Husband argues that good cause existed to hold an evidentiary hearing because the divorce decree was entered by default and therefore no evidentiary hearing has ever been

⁴ The “good cause” language and caselaw relate to a pre-2012 version of the Minn. R. Gen. P. and the current rule does not include any language related to “good cause.” However, since neither party, nor the court, addressed the issue of whether the current version of the rule creates a different standard, we decline to do so here. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that an appellate court generally will not consider matters not argued to and considered by the district court).

held in the matter and “[t]he issue of spousal maintenance would not, in an original proceeding, be determined on the basis of affidavits.” Wife responds that this argument ignores the fact that husband did not inform wife of the divorce proceeding in the first place. She also argues that a trip from Virginia to Minnesota, a state she has never visited, to attend such a hearing would be a significant burden due to her disability and subject her to a significant expense.

Both parties concede that an evidentiary hearing is not required by statute and instead the decision to hold an evidentiary hearing is firmly within the discretion of the district court. The district court determined that husband’s recantation of the discretionary nature of the rules regarding evidentiary hearings constituted a waiver of his right to an evidentiary hearing. Although husband’s mere recitation of the general rules does not constitute a valid waiver of his right to seek an evidentiary hearing, in light of the discretionary nature of evidentiary hearings, we conclude that this error is not sufficient to show that good cause actually existed to hold an in-person evidentiary hearing. *See* Minn. R. Civ. P. 43.05 (when a party makes a motion “based on facts not appearing of record, the court may hear the matter on affidavits” and “may direct that the matter be heard wholly or partly on oral testimony or depositions”); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (“[A reviewing court] will not reverse a correct decision simply because it is based on incorrect reasons.”).

Fundamentally, an evidentiary hearing under these circumstances is not required under Minn. R. Gen. P. 303.03(d) and husband has not been prejudiced by the lack of an in-person hearing. Over the course of a total of 13 months of discovery, husband and wife

both submitted affidavits and various documents related to expenses, benefits, incomes, and assets. Husband also had the opportunity to depose wife over the phone. It is not clear what additional information would be gathered from requiring that wife, who is disabled and has never been to Minnesota, travel to Minnesota for an in-person hearing after already being deposed. Acknowledging these considerations, the district court determined it had acquired sufficient information from the parties over the course of the proceeding to analyze and balance all of the factors it is required to consider before awarding spousal maintenance under Minn. Stat. § 518.552, subd. 2. Based on this record, we conclude that husband has failed to show good cause existed to justify an evidentiary hearing and has failed to show that he was prejudiced by the lack of an evidentiary hearing; it is not clear what additional information could be garnered from an in-person hearing that was not already discovered.

As a district court has the discretion to deny a request for an evidentiary hearing, and the record before us shows that sufficient evidence was gathered without an in-person hearing to support the district court's determination that wife was entitled to \$1,782.23 per month in spousal maintenance, we conclude that the district court did not abuse its discretion when it denied husband's request for an evidentiary hearing.

Affirmed.