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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0613**

In re the Marriage of:
Zondra A. Thompson, petitioner,
Respondent,

vs.

Eric L. Thompson,
Appellant.

**Filed January 21, 2020
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Carlton County District Court
File No. 09-FA-17-1940

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Jacob J. Baker, Leah L. Fisher, Hal J. Spott, Hanft Fride, P.A., Duluth, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant-husband challenges a marital-dissolution judgment. Although the parties stipulated to custody of their minor child and parenting time, they disputed the valuation and division of marital assets and debts and the amount of temporary spousal maintenance

and child support. Husband argues the district court abused its discretion in determining his income for the purpose of calculating temporary spousal maintenance and child support, by reducing his budget and adjusting medical-insurance payments, and by awarding him the business instead of ordering the parties to sell it. We affirm in part, reverse in part, and remand to the district court to make necessary factual findings about husband's 2018 business expenses.

FACTS

Zondra Thompson (wife) and Eric Thompson (husband) married in July 2001, and had two children, one of whom was emancipated at the time of dissolution. They resided in their Esko home until May 2017, when the parties began living separately. The parties sold their home in August 2017. Wife filed for dissolution on September 8, 2017.

Wife was 42 years old at the time of dissolution, a certified occupational therapy assistant, and is employed by a school district and a nonprofit organization that provides residential support services for people with developmental disabilities. Husband was 42 years old at the time of dissolution, an insurance agent, and has had his own insurance-services business since 2003. Husband's income is based on commissions.

After the parties stipulated to some issues, the district court conducted a two-day evidentiary hearing in August and September 2018 to address disputed issues involving the parties' income and expenses, temporary spousal maintenance, child support, division of sale proceeds from their marital home, division of other real property, expenses for their minor child's medical-insurance coverage, valuation and division of the insurance-services

business, division of retirement benefits, and valuation and division of the parties' motor vehicles.

Wife and husband testified at the evidentiary hearing, and the district court received 51 exhibits, including the parties' tax returns for 2015 and 2016, husband's historical 1099 earnings from 2010 through 2017, and a neutral business-valuation report prepared by an accounting firm hired by the parties in response to a district court order.

The district court issued findings of fact and conclusions of law, and upon wife's motion, amended its written decision. The parties moved for amended findings and, after a hearing, the district court again amended its judgment and decree.

Relevant to the issues on appeal, the second-amended judgment and decree included findings of fact in support of temporary spousal maintenance, child support, and asset and debt division. The district court addressed the eight statutory spousal-maintenance factors. *See* Minn. Stat. § 518.552, subd. 2 (2018). For the first factor, wife's financial resources, the district court found that her net monthly income is \$2,004 and her monthly living expenses are \$3,354. It also found that wife's monthly income is "insufficient to meet her monthly expenses." On the second factor, the time necessary for wife to acquire education or training to gain appropriate employment, the district court found that wife is working full-time with her current certification and hopes to earn bachelor's and master's degrees and become a registered occupational therapist. The district court also found that wife "should be able to complete both degrees in less than ten years."

For the third factor, the district court found that the standard of living during the marriage was "middle-class." On the fourth factor, the duration of marriage and impact on

wife's earning capacity, the district court found the parties' marriage lasted 17 years and "without further education," wife's income "is not expected to see a measurable increase." For the fifth factor, opportunities forgone by wife, the district court found wife "chose not to pursue higher education while the parties' children were younger so that she could provide care for them." On the sixth factor, the district court found wife "enjoys good physical and mental health."

For the seventh factor, husband's ability to meet his own needs while meeting wife's needs, the district court found husband's net monthly income is \$5,806 and his monthly living expenses are \$4,264. On the eighth factor, each party's contribution to marital property, the district court found that both parties contributed to acquisition and preservation of marital property but that wife "is the only party who contributed to retirement."

Based on all eight factors, the district court determined that wife was in need of temporary spousal maintenance and husband had the ability to meet his own needs and meet wife's needs. The district court ordered husband to pay temporary spousal maintenance of \$1,200 per month for seven years and set husband's monthly child-support obligation at \$228, and wife's monthly child-support obligation at \$76.

In evaluating each party's separate budget, the district court found the estimated monthly expenses of each to be "excessive." In relevant part, the district court reduced husband's budget by eliminating \$500 in monthly retirement savings and stated that amount was "excessive at this time given his other monthly obligations."

The district court also divided assets and debts. The district court awarded wife half of the sale proceeds from the parties' marital home, her retirement account valued at \$50,944, and the debt on her two credit cards, amounting to \$74,006 in assets and \$7,815 in liabilities. The district court awarded husband half of the sale proceeds from the parties' marital home, the insurance-services business valued at \$125,000, two motor vehicles valued at \$20,325, an investment account valued at \$93, and the debt on his credit card, amounting to \$168,352 in assets and \$18,720 in liabilities. The district court ordered husband to make an equalization payment of \$40,585.50 to wife within one year of the entry of the second-amended decree.

Husband appeals.

D E C I S I O N

I. The district court's determination of husband's income requires a limited remand for further findings on his net earnings from 2018.

"A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). District courts must "make thorough and accurate findings of fact regarding the obligor's monthly net income." *Putz v. Putz*, 645 N.W.2d 343, 348 (Minn. 2002). When an income determination is challenged on appeal, "we look to both the court's findings and the evidence of record to ascertain whether there has been clear error." *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009).

A. Business expenses

Self-employment income is one component of an individual's gross income. See Minn. Stat. § 518A.29 (2018) (defining "gross income" to include income from self-employment). Minnesota Statutes section 518A.30 (2018) defines income from self-employment as "gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." The party seeking to reduce gross receipts has the burden of proving the amount of the expenses and, "if challenged, that the expense is ordinary and necessary." *Id.*; see also *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009) (stating the definition of "gross income" in Minn. Stat. § 518A.29 applies to calculations of spousal maintenance).

The business-valuation report by Kolquist, Seitz & Goldman, LLC (Kolquist report) valued the insurance-services business at \$125,000 and summarized the business's gross receipts, expenses, and net profits dating back to 2014. The Kolquist report relied on husband's self-reported financial information and tax documents. The district court also received into evidence the parties' 2015 and 2016 tax returns, including Schedule C for the insurance-services business, which stated the business's claimed expenses and net profit. The Kolquist report and the parties' tax returns stated different amounts for the business's net profits for 2015 and 2016. The only documentation the district court received for business expenses and earnings in 2014, 2017, and 2018 was the Kolquist report and an exhibit summarizing husband's 1099 statements for 2014 and 2017. The parties had not yet filed their 2017 taxes at the time of the evidentiary hearing.

Testimony established that, in April 2015, the insurance-services business took out a loan secured by the parties' home and purchased a client list from another agent for \$198,000. The parties repaid the loan when they sold the marital home. The parties agree that the new client list increased husband's commissions in 2015 and 2016, in part because he transferred clients to new plans.

Husband raises two issues regarding the district court's findings of his business expenses. First, husband argues that the district court did not make sufficient findings about his 2015 and 2016 business expenses. The district court's findings mirrored the 2015 and 2016 net profit stated in the parties' tax returns without separate findings about husband's claimed business expenses. Wife argues that the district court's decision to use the net profit stated in the parties' tax returns implicitly demonstrates that the district court accepted the business expenses claimed as credible and rejected husband's other evidence of business expenses for those years.

We agree with wife. While the district court did not expressly state why it rejected husband's other evidence of business expenses for 2015 and 2016, it is not required to do so. By adopting the net profit stated in the parties' tax returns, the district court determined husband's earnings for 2015 and 2016 by subtracting ordinary and necessary business expenses from gross earnings, which tracks the statutory definition. *See* Minn. Stat. § 518A.30. We conclude that the district court's findings of husband's net earnings for 2015 and 2016 are supported by the evidence and not clearly erroneous.

Second, husband argues that the district court abused its discretion when it did not subtract any business expenses from his 2018 gross receipts to determine his earnings for

that year. Husband argues that a remand is required because there are no findings of fact about his 2018 business expenses. Wife argues that remand is unnecessary because we can infer that husband failed to prove his 2018 business expenses.¹

When a party offers evidence of business expenses and a district court fails to make any findings about the expenses, this court cannot review the district court's income determination and we must reverse and remand for further consideration. See *Davis v. Davis*, 631 N.W.2d 822, 828 (Minn. App. 2001) (remanding “for reconsideration of mother’s legitimate business expenses” when district court made no findings about mother’s business expenses outside insurance, taxes, and social security).

Husband relies on *Schisel*, which offers important guidance. 762 N.W.2d at 272. *Schisel* held that the district court’s “failure to make specific findings as to appellant’s claimed business expenses” required reversal and remand of the child-support determination. *Id.* In *Schisel*, the appellant was a self-employed real estate broker with a commission-based income. *Id.* Appellant introduced evidence of business expenses without challenge by respondent. *Id.* The district court subtracted “various sums” from appellant’s gross income but did not make any specific findings about her business expenses, including “whether there were any such expenses nor, if there were, the extent to which they were deductible.” *Id.* This court reversed and remanded after determining that the district court “must decide what expenses, if any, are allowable deductions.” *Id.*

¹ We also note that the district court found husband’s 2018 gross receipts were \$96,800. The parties agree that this must be a typographical error because the evidence indicated husband’s gross receipts for 2018 were \$96,000. While this may be a de minimis error, our decision to reverse and remand allows the district court to correct this error.

Here, the second-amended decree includes no factual finding of husband's business expenses for 2018. At the evidentiary hearing, husband claimed business expenses for 2018, supported his claim with evidence, and wife challenged some of his evidence. To determine husband's income for the purposes of determining his support obligations, the district court used 2018 gross receipts, but it did not subtract any business expenses. The district court made no findings about which of husband's business expenses it considered, if any, or whether any claimed expenses were ordinary and necessary. On this record, we refuse to infer that the district court rejected all of husband's claimed business expenses. Therefore, we reverse and remand for the district court to make findings about husband's 2018 business expenses and whether any expenses should be subtracted from 2018 gross receipts. On remand, the district court may reopen the record at its discretion.

B. Average earnings

Husband makes two arguments supporting his position that the district court erroneously calculated his income by averaging earnings. We consider each argument in turn. First, husband contends that the district court should have relied solely on evidence of his 2018 income because his income has been steadily decreasing. Typically, courts look to an individual's current income to determine child support. *See Merrick v. Merrick*, 440 N.W.2d 142, 146 (Minn. App. 1989) (stating "[c]urrent net income must be determined for purposes of setting child support" under the prior child-support statute). This same principle may be applied to determine spousal maintenance.

Even so, when an individual's income fluctuates, the district court may decide to average several years of earnings to find income for the purposes of determining ability to

pay spousal maintenance. *Veit v. Veit*, 413 N.W.2d 601, 606 (Minn. App. 1987) (“An average takes into account fluctuations and more accurately measures income.”). “[T]he opportunity for a self-employed person to support himself yet report a negligible net income is too well known to require exposition.” *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984).

Here, the district court found that husband’s “business is a commissioned sales business and the gross receipts from commissions fluctuate annually.” The district court averaged husband’s 2015 net profit, 2016 net profit, and 2018 gross receipts. The district court’s determination of husband’s fluctuating income is supported by record evidence, so we reject husband’s argument that his income was “steadily decreasing.” In fact, husband testified that his income has fluctuated “[e]very year I’ve been in the business” and that sales is “a constant up and down.” The district court’s decision to average husband’s earnings was well within the district court’s discretion. *See Veit*, 413 N.W.2d at 606.

Second, husband argues that, even if averaging earnings was appropriate, the district court “arbitrarily excluded” his 2014 and 2017 income. Wife argues that the district court had good reason to exclude husband’s 2014 income and husband did not provide “sufficient and reliable” evidence of his 2017 income.

The district court explained that it excluded 2014 “[b]ecause [husband’s] 2014 income did not include a book of business the parties purchased in 2015, [therefore] it is not fair and equitable to include [husband’s] 2014 income to determine his average gross monthly income.” The district court also found that “[t]he parties have not yet prepared their 2017 income taxes.” Although the district court did not explicitly state the reason it

excluded husband's 2017 income from the average, it is reasonable to infer that it did so because the district court relied on the parties' tax returns to determine earnings in 2015 and 2016 and the parties submitted no tax returns for 2017. We conclude that the district court's decision to average husband's net profit from 2015 and 2016 and exclude husband's earnings from 2014 and 2017 is not clearly erroneous because it is supported by record evidence.

II. The district court did not err when it adjusted husband's budget by rejecting claimed monthly expenses for retirement savings and ordered husband to reimburse wife for medical-insurance payments.

A. Retirement savings

The district court found that husband's proposed retirement expense was "excessive at this time given his other monthly obligations." The district court also found that wife "is the only party who contributed to retirement" during the marriage. Husband argues that the district court erred when it excluded \$500 per month in retirement savings from his budget but allowed wife's budget to include a monthly retirement contribution. Wife argues that husband had not contributed to a retirement plan since 2012, so it is not reasonable to include this expense in his budget. Wife also contends that she saved for retirement during the marriage and accumulated more than \$50,000 in her 401(k) by the time of the dissolution.

In *Kampf v. Kampf*, this court held that including retirement savings in wife's monthly expenses was reasonable because "the parties' savings and retirement planning were an integral part of their standard of living during the marriage." 732 N.W.2d 630, 634 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Here, record evidence

established that husband did not save for retirement. Husband testified that he “didn’t have a so-called retirement account labeled that way. It was more of just money into, like, a stock trade account or savings account.” Husband testified that he “cash[ed] out all of [his] savings” around 2012. Husband also testified that “[a]s of right now [he] can’t” pay child support or maintenance arrears, and that he cannot afford to save for retirement, but he wants to do so once the divorce is resolved. We conclude that the district court did not err by excluding retirement savings from husband’s monthly budget.

B. Medical-insurance payments

The district court found that husband did not secure health-insurance coverage for the parties’ minor child until August 1, 2018, and was required to reimburse wife \$477 for the medical-insurance payments she made to him.² Husband argues that the district court erred because the record demonstrates he obtained healthcare coverage for the minor child in July instead of August.

Some procedural history provides context. In March 2018, the district court heard both parties’ motions for temporary relief. On May 22, the district court filed a temporary order requiring husband to “immediately obtain healthcare coverage for the minor children” and for wife to pay husband \$106 for medical insurance for March, April, May,

² In the parties’ briefs to this court, wife states she paid “insurance premiums” and husband states wife had incurred “insurance expenses.” The record indicates that wife made medical-insurance payments directly to husband.

and June (for a total of \$424) and then \$53 a month for July and subsequent months.³ There is no dispute that wife made these payments of \$477 for March through July 2018.

Both parties filed additional motions about the minor child's healthcare coverage. Husband's motion included documents showing he paid for insurance, and that the plan's eligibility date was July 1. Wife filed an affidavit that detailed her attempts to get insurance information from husband during June and July without success. Husband testified at the evidentiary hearing that he knew that he needed to provide coverage because the minor child's coverage went "through the end of May, so we needed to get coverage starting June 1st." Husband testified he was unable to get insurance for June, but was able to "get the coverage going" with "a July 1st effective date." Husband testified he "did not receive a bill until . . . August 13th or 14th" and he "paid the bill the next day." We conclude that the district court's finding is based on record evidence and is not clearly erroneous.

III. The district court did not err when it awarded husband the insurance-services business.

The district court adopted the Kolquist report's valuation of the insurance-services business, awarded the business to husband, and ordered husband to pay wife an equalization payment. Husband argues that the district court should have ordered a sale because the insurance-services business has "dramatically and rapidly deteriorated in value" over the last few years and a sale would provide the most accurate valuation. Husband also argues that he cannot pay the equalization payment without selling the

³ The decrease was due to the oldest child emancipating in June 2018.

business. Wife argues that the district court did not abuse its discretion by finding the value of the insurance-services business was \$125,000 and awarding the business to husband.

District courts must divide assets in a “just and equitable” way. Minn. Stat. § 518.58, subd. 1 (2018). The Minnesota Supreme Court has delineated three ways to dispose of marital property when the parties disagree: (1) the court can divide the asset; (2) the court can order sale and divide the proceeds; or (3) the court can determine the asset’s value, give one party the asset and require the party receiving the asset to pay the other party a “just and equitable share of the value of the asset.” *Nardini v. Nardini*, 414 N.W.2d 184, 188 (Minn. 1987).

We begin by noting that the district court’s determination of market value “should be sustained if it falls within the limits of credible estimates made by competent witnesses.” *Hertz v. Hertz*, 229 N.W.2d 42, 44 (Minn. 1975). This court will not disturb a “trial court’s determination of the value of a business in a dissolution proceeding” unless it is clearly erroneous. *Bury v. Bury*, 416 N.W.2d 133, 137 (Minn. App. 1987).

Husband’s argument implicitly concedes that the district court’s valuation of the insurance-services business is supported by evidence presented at the evidentiary hearing, specifically, the Kolquist report. When asked at the hearing whether he agreed with the Kolquist report’s valuation of the business, husband answered, “Yeah, I mean, [the accountant] knows what he’s doing.” When asked what price husband would list the business at if he chose to sell it, husband responded, “Well, I guess if [the accountant is] saying it’s worth 125, I guess you start somewhere around there.”

On appeal, husband does not argue that the Kolquist report's valuation is flawed or that the accounting firm is unqualified. *See Campion v. Campion*, 385 N.W.2d 1, 6 (Minn. App. 1986) (affirming the district court's adoption of one party's expert valuation when the expert's qualifications were not challenged). Instead, husband argues that he will need to sell the insurance-services business in order to pay the equalization payment, resulting in a forced sale of the business.

Minnesota statutes require the district court to divide property in a "just and equitable" way, and the district court employed one of the three permitted division methods. *See Nardini*, 414 N.W.2d at 188; Minn. Stat. § 518.58, subd. 1. Even if husband needs to sell the business to satisfy the equalization payment, the district court did not abuse its discretion when it found the value of the insurance-services business and awarded it to husband.

Affirmed in part, reversed in part, and remanded.