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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1014**

In re the Marriage of: Ronald Lee Henrichs, petitioner,
Respondent,

vs.

Charlene Lila Henrichs,
Appellant.

**Filed October 12, 2020
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Rice County District Court
File No. 66-FA-17-798

Mary L. Hahn, Hvistendahl, Moersch, Dorsey & Hahn, P.A., Northfield, Minnesota (for respondent)

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Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Ronald Lee Henrichs and Charlene Lila Henrichs were married for approximately 28 years before their marriage was dissolved. The district court awarded Charlene temporary spousal maintenance and evenly divided the parties' marital property. On appeal, Charlene raises ten issues. We conclude that the district court erred with respect to

two of those issues. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

The parties were married in March 1990. They separated in October 2013, and Ronald petitioned for dissolution of the marriage in March 2017.

While the parties were married, they jointly owned and operated a small HVAC business. Ronald performed services for customers at their locations; Charlene worked in the office and served as bookkeeper. Each party received wages from the business and distributions of the business's net income. In October 2017, the parties entered into a written agreement that ended Charlene's employment but provided her with income on a temporary basis while this dissolution action was pending.

The district court conducted a trial on three days in July and August of 2018. The parties and four other witnesses testified, and 85 exhibits were admitted into evidence. The district court issued its findings of fact, conclusions of law, judgment, and decree in December 2018. Charlene moved to amend the findings of fact and conclusions of law and for a new trial. In May 2019, the district court denied Charlene's motion for a new trial but amended some findings of fact and conclusions of law.

In the amended decree, the district court found that Ronald's after-tax income is \$4,403 per month and that his reasonable monthly living expenses are \$5,046. The district court found that Charlene could earn between \$14.90 and \$23.32 per hour and that her reasonable monthly living expenses are \$3,596. The district court awarded Charlene

temporary spousal maintenance of \$1,500 per month for 36 months. The district court assigned no value to the parties' business and evenly divided their marital property.

Charlene appeals and raises ten issues, which we have reorganized according to subject matter.

D E C I S I O N

I. Spousal Maintenance

Five of the ten issues raised by Charlene are concerned with the district court's award of temporary spousal maintenance.

Spousal maintenance is defined by statute to mean "an award . . . of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2018). "The purpose of a maintenance award 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." *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quotation omitted). If a party requests spousal maintenance, a district court engages in a two-step analysis.

First, the district court must consider whether the party seeking spousal maintenance has demonstrated a "showing of need." *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). Specifically, a district court must consider whether the spouse seeking spousal maintenance either:

- (a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2018). A party demonstrates a need for spousal maintenance if, considering the standard of living during the marriage, the party is unable to provide for his or her reasonable expenses. *Doherty v. Doherty*, 388 N.W.2d 1, 2-3 (Minn. App. 1986).

Second, if the party seeking spousal maintenance has “made a sufficient showing of need, . . . a court [must] consider the amount and duration of a maintenance award.” *Curtis*, 887 N.W.2d at 252. The award “shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors.” Minn. Stat. § 518.552, subd. 2. When setting the amount and duration of spousal maintenance, a district court must consider “all relevant factors,” including certain factors that are specified by statute. See Minn. Stat. § 518.552, subd. 2(a)-(h). But no single factor is dispositive. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

In general, this court applies an abuse-of-discretion standard of review to a district court’s decisions concerning the amount and duration of an award of spousal maintenance. *Id.* at 38.

A. Charlene’s Ability to Work

Charlene argues that the district court erred by finding that she is voluntarily unemployed and is able to work full-time.

Both parties presented evidence on this issue. Charlene testified that she worked at the parties' business from 1994 to 2017 for approximately 25 to 30 hours per week. She answered telephones, typed invoices, handled accounts payable and accounts receivable, and entered financial data into the business's accounting system. She testified that she has not searched for a new job since she stopped working at the parties' business in October 2017. She testified that she suffers from certain medical issues, including fibromyalgia, anxiety and depression, abnormal sleep patterns, and frequent panic attacks.

Charlene introduced the testimony of a certified rehabilitation counselor, Justin King, who had examined Charlene to determine "what sort of work is appropriate for her given her age, her education, her experience, [and] her medical impairments." King testified that no employer could reasonably accommodate Charlene's conditions and that she "would not be a reliable employee to any employer in the competitive labor market." But Ronald introduced the testimony of a qualified rehabilitation specialist, Kathryn Schrot, who also had evaluated Charlene. Schrot testified that Charlene said that she did not have any medical restrictions, that her skills were current, and that she was "employable in an administrative type of capacity, such as a bookkeeping clerk." Schrot further testified that Charlene could be expected to earn between \$14.90 and \$23.32 per hour.

The district court credited Schrot's testimony and found it to be more persuasive than King's testimony. The district court noted that King's testimony was "based entirely on [Charlene's] belief that she is disabled" but that Charlene had introduced "no medical diagnoses that says that she is unable to work."

Charlene contends that the district court did not appreciate that she has been absent from the competitive job market and that her skills are outdated. She also challenges the district court's reliance on Schrot's testimony, noting that Schrot did not consult with Charlene's physicians and made conclusions about Charlene's skills that were contradicted by King's testimony. Charlene also contends that the district court overlooked her numerous health issues, which limit her ability to work.

The district court emphasized the absence of a determination by any of Charlene's physicians that she could not work. On appeal, Charlene does not contend that there is such a determination in the record. Rather, Charlene relies primarily on King's review of her medical records. But the district court found King's assessment to be less persuasive than that of Schrot. Given the nature of the conflicting evidence, we decline to second-guess the district court's determination that Schrot's testimony was more persuasive than King's testimony because the district court is in a better position from which to resolve conflicting evidence. *See* Minn. R. Civ. P. 52.01; *La Point v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017).

Thus, the district court did not clearly err by finding that Charlene is voluntarily unemployed and is able to work full-time.

B. Reduction of Charlene's Expenses

Charlene argues that the district court erred in its findings of fact concerning some of her living expenses. Before ruling on a request for spousal maintenance, a district court must find the parties' reasonable monthly expenses in light of the marital standard of living.

Chamberlain v. Chamberlain, 615 N.W.2d 405, 409-12 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

Charlene’s primary challenge is to the district court’s finding that her housing expenses and food expenses should be reduced by half because she shares an apartment with her adult son. Charlene testified that she lives in a three-bedroom apartment with her adult son, who contributes \$400 to the monthly rent of \$1,335 but contributes nothing to the monthly food expenses of \$500. This court has stated that spousal maintenance must be determined “without considering the needs of the adult children.” *Musielewicz v. Musielewicz*, 400 N.W.2d 100, 103 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). But Charlene contends that it is unfair to require her to expect a greater contribution from her adult son but to not require Ronald to expect a similar contribution from his partner, with whom he shares a home.

Ronald testified that he lives with a woman and two of her children, that the woman does not contribute anything toward his monthly housing expenses of approximately \$2,876, but that the woman pays for all of his groceries, which are a \$400 item in his list of reasonably monthly expenses. Ronald likely did not set his housing expenses with his partner and her children in mind; he testified that, since the parties separated, he has lived in the marital homestead and has continued paying the mortgage loan, property taxes, and insurance premiums. The evidence is balanced in the sense that each party receives a \$400 benefit from an adult who is sharing the party’s home—Charlene in the form of a \$400 contribution to her rent payment and Ronald in the form of his partner’s assumption of all of his food expenses of \$400. In the particular circumstances of this case, we cannot

conclude that the district court clearly erred in its findings concerning the parties' respective housing and food expenses, even if we accept Charlene's theory that Ronald's partner should be treated in the same manner as her adult son.

Charlene also challenges the district court's finding that her reasonable monthly expenses should not include a \$542 contribution to a health-savings account. Charlene testified that the annual deductible on her health-insurance policy is \$6,500 and that, if she were to incur out-of-pocket medical expenses in that amount, she would need to withdraw an average of \$542 per month from her health-savings account to pay those out-of-pocket medical expenses. But she also testified that she is not actually making those contributions and has not actually incurred out-of-pocket medical expenses of \$6,500. Ronald testified that he has a health-savings account but does not make any new contributions to it and that he pays out-of-pocket for medical expenses that are not covered by his health insurance. Given the evidence, the district court did not clearly err by finding that Charlene's reasonable monthly expenses do not include contributions to her health-savings account.

C. Parties' Standard of Living

Charlene argues that the district court erred by reasoning that the standard of living that the parties enjoyed during the marriage should not be used to determine the amount of spousal maintenance.

In considering the third statutory factor (the standard of living established during the marriage), the district court stated that the parties "would pay themselves more income in a given year than they actually made" and that they "would finance this by taking out what has been described as a 'never-ending loan.'" The district court reasoned that "any

standard of living that they established would have been a false one and not actually based on what they were making in the business.”

Charlene contends that “the standard of living reflected in the owners’ distributions from the business income was not a false one, but rather was commensurate with what was reasonably available to be paid.” But her own brief cites evidence that, in the years 2015, 2016, and 2017, the business made distributions that exceeded net income by an average of approximately \$7,000 per year. Charlene contends that the business improved its financial position during that time period. But that time period was after the parties had separated in October 2013. She cites no such evidence for the time period before the parties’ separation. The district court’s reasoning is supported by the testimony of Ronald’s expert forensic accountant as well as the testimony of the bookkeeping contractor who replaced Charlene, who testified that Ronald and Charlene distributed more money to themselves than was available, that the business continually used a line of credit to finance the distributions, and that the business struggles to make payroll and pay vendors. In light of this evidence, the district court did not abuse its discretion by reasoning that the parties’ actual marital standard of living was exaggerated and could not be replicated after the dissolution.

D. Ronald’s Ability to Pay

Charlene argues that the district court erred by finding that Ronald has a diminished ability to pay spousal maintenance in the future because of his age and physical condition.

The district court found that Ronald “is not in good physical health due to the physical demands of his work” and that, because “[t]he Business income rests squarely on

[his] ability to work,” his “declining physical health will directly impact the Business’ revenue, which in turn will reduce [his] individual income.” In making that finding, the district court credited Ronald’s testimony and also relied on his medical records and a written report of a chiropractor. In considering the seventh statutory factor (Ronald’s ability to meet his own needs while also meeting Charlene’s needs), the district court stated that Ronald is in “the twilight of a career as a heating and air conditioning installer” and that it “would be grossly unfair to award the permanent spousal maintenance that [Charlene] is requesting” because such an award “would require [Ronald] to continue working despite his physical disabilities.”

Charlene contends that the district court’s reasoning is speculative and that the record shows the business to be in good financial condition. But she does not confront the evidence that Ronald’s physical condition will affect his income in the future. Instead, she simply contends that any change of circumstances can be addressed in a request for a modification of spousal maintenance. The district court did not make a clearly erroneous finding of fact in light of the evidence and did not abuse its discretion in considering the seventh statutory factor.

E. Temporary Spousal Maintenance

Charlene argues that the district court erred by awarding temporary spousal maintenance instead of permanent spousal maintenance.

“Where 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. Accordingly, an award of permanent spousal maintenance is proper if

“it is uncertain that the spouse seeking maintenance can ever become self-supporting.” *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987). But if the only uncertainty is when (not whether) a recipient of spousal maintenance will become self-supporting, a district court should award temporary spousal maintenance. *Maiers v. Maiers*, 775 N.W.2d 666, 668-69 (Minn. App. 2009). “An award of temporary maintenance is based on the assumption that the party receiving the award not only should strive to obtain suitable employment and become self-supporting but that he or she will attain that goal.” *Nardini*, 414 N.W.2d at 198. In light of this body of caselaw, an award of temporary spousal maintenance implies that the recipient presently is not self-supporting but is expected to become self-supporting and, thus, has an obligation to make reasonable efforts to increase his or her earning capacity to become self-supporting. See *Hecker v. Hecker*, 568 N.W.2d 705, 708-10 (Minn. 1997); *Maiers*, 775 N.W.2d at 668.

The district court determined that an award of temporary spousal maintenance for 36 months would allow Charlene to find suitable employment and become self-supporting over a period of time. The district court stated that it limited maintenance to 36 months because Charlene could have searched for employment in the prior 14 months but chose not to do so. The district court also stated that it would be “grossly unfair” to award permanent spousal maintenance to Charlene because such an award would require Ronald “to continue working despite his physical disabilities” while she could “sit back and do nothing.”

Charlene contends that permanent spousal maintenance is appropriate on the ground that she is unable to maintain employment. But the district court found that Charlene is

capable of working. We have concluded that that finding is not erroneous. *See supra* part I.A. Charlene testified that she has not attempted to find employment since she stopped working at the parties' business in October 2017, which undermines her argument that she is unable to find employment. Given the evidence and the district court's findings, the only uncertainty is when (not whether) Charlene will become self-supporting. *See Maiers*, 775 N.W.2d at 668-69. Thus, the district court did not err by awarding temporary spousal maintenance.

II. Agreement for Temporary Relief

Charlene argues that the district court erred in two ways with respect to the agreement between the parties that provided Charlene with financial support during the pendency of the dissolution action.

In October 2017, the parties and their counsel signed a written agreement in which they agreed that the parties' business would, on a temporary basis, pay for Charlene's health insurance and life insurance premiums, pay her \$500 per month for certain living expenses, pay her "\$1,000 per month, representing compensation for her consulting services with the business's new bookkeeper," and pay her \$2,000 per month for her share of the business's expected profits.

At trial, Charlene sought to enforce the agreement because Ronald had not made all payments described in the agreement. The district court ruled that Ronald is not obligated to pay Charlene the \$1,000 consulting fee because she had not performed any consulting services. The district court also ruled that Ronald could deduct \$5,246 from the amount

due because Charlene had committed fraud by transferring that amount of money from the business to herself without justification and without Ronald's knowledge.

A. Consulting Fee

Charlene first challenges the district court's finding that Ronald is not obligated to pay her a monthly \$1,000 consulting fee. She contends that the agreement required her to merely be available for consultation but did not necessarily require her to perform consulting services each month. The language of the agreement supports Charlene's contention. It provides in paragraph 4 that Charlene "shall cooperate in turning over the business books and records, including passwords, but shall continue to maintain the status quo for bookkeeping until the new bookkeeper is secured." The bookkeeping contractor who replaced Charlene testified that Charlene's consulting services were limited to a two-week period after the transition and that she had had no communication with Charlene since then. But the new bookkeeper also testified that Charlene never refused to cooperate with or assist her and, to her knowledge, is still available for any consultation that is needed.

In light of the plain language of the agreement, the relevant question is whether Charlene breached the obligations in paragraph 4 of the agreement. The district court did not make any findings on that issue. Rather, the district court focused on the amount of services Charlene performed. Thus, the district court erred by ruling that Charlene is not entitled to \$1,000 per month in consulting fees after October 15, 2017, without considering whether Charlene breached the agreement. On remand, the district court should make findings as to whether Charlene fulfilled or breached the obligations stated in paragraph 4.

B. Reduction for Fraudulent Transfers

Charlene argues that the district court erred by reducing the amount owed to her by the amount of money that she fraudulently transferred from the business to herself. The evidence supports the district court's ruling. Ronald's expert forensic accountant testified that Charlene wrote four checks to herself but recorded them on the business's records as payments to vendors. Thus, the district court did not err by adjusting the amount due to Charlene under the agreement to account for the funds that Charlene wrongfully took from the business.

III. Value of Marital Assets

Charlene argues that the district court erred with respect to its division of two marital assets: the marital homestead and the parties' business.

A. Homestead Valuation Date

Charlene argues that the district court erred by using the parties' date of separation as the valuation date for the homestead.

A district court "shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference . . . unless the court makes specific findings that another date of valuation is fair and equitable." Minn. Stat. § 518.58, subd. 1 (2018). A district court has broad discretion in dividing property and in setting reasonable valuation dates. *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002).

The district court found that it was fair and equitable to set the property valuation date for the homestead at the date of separation because Ronald remained in the homestead

after that date and was solely responsible for all maintenance and expenses related to the homestead thereafter. Meanwhile, Charlene moved into an apartment and paid rent with marital assets. Charlene argues that the date of the pre-hearing conference should be the valuation date of the homestead because the parties remained co-owners of the property up to that date and because money generated by the parties' jointly owned business was used to pay the expenses of the homestead. The district court's reasoning is logical inasmuch as any increase in the value of the homestead after the separation would be attributable to Ronald's efforts and expenditures from that date forward.

Thus, the district court did not abuse its discretion by determining that the valuation date of the homestead is the date of separation.

B. Value of Business

Charlene argues that the district court erred by ignoring the value of used vehicles when finding the value of the parties' business.

The district court found that the value of the parties' business is zero because its assets could be sold for only pennies on the dollar. Indeed, Ronald testified that the business's tools, equipment, and inventory have *de minimis* value. But Ronald also testified that the business owns a 2002 Ford F-250 pickup truck, a 2012 Ford van, and a 2008 Ford van, and he provided estimated prices at which each vehicle could be sold, which add up to \$18,000.

In light of Ronald's testimony, the district court erred by finding that the value of the business is zero. The district court should have found that the value of the business is no less than \$18,000.

IV. Evidence of Charlene's Gambling

Charlene argues that the district court erred by admitting evidence concerning her frequent visits to casinos. She contends that the evidence lacks relevance and is unfairly prejudicial.

In cross-examining Charlene, Ronald's attorney inquired about expenditures she had made at a casino. Charlene's attorney objected and argued that the evidence is irrelevant because Charlene's proposed budget did not include a line item for gambling. Ronald's attorney argued in response that the evidence is relevant because it contradicts Charlene's testimony that she is disabled and incapable of earning money. The district court overruled the objection. In its dissolution order, the district court referred to Charlene's gambling in connection with her decision to not seek employment, noting that she has "the time to make many trips to gambling casinos and sit at a slot machine and gamble for hours at a time."

A district court has broad discretion in ruling on objections to the relevance of evidence. *Johnson v. Washington Cnty.*, 518 N.W.2d 594, 601 (Minn. 1994). In this situation, the district court did not abuse its discretion. Charlene's frequent casino excursions bore some relevance to her claim that she is incapable of sitting for long periods of time, which would be required in many jobs. In any event, the evidence does not appear to have been dispositive of any of the district court's findings of fact or conclusions of law.

Thus, the district court did not err by admitting evidence concerning Charlene's frequent visits to casinos.

V. Judicial Bias

Charlene argues that “the record as a whole in this case reflects bias of the court against her.” In support of the argument, she refers to many of the district court’s alleged errors that are highlighted in her various arguments. But adverse rulings alone, even erroneous rulings, do not prove judicial bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). Charlene has not identified any reason why the district court’s impartiality should be questioned. Thus, Charlene is not entitled to appellate relief on the ground of judicial bias.

In sum, the district court did not err with respect to most of the issues raised by Charlene on appeal, but the district court erred in two ways. First, the district court erred by ruling that Charlene is not entitled to \$1,000 per month in consulting fees during the pendency of the dissolution action without making a finding as to whether Charlene fulfilled or breached the obligations stated in paragraph 4 of the October 2017 agreement. On remand, the district court shall make findings on that factual issue and reconsider its conclusion concerning the consulting fee. Second, the district court erred by finding that the value of the parties’ business is zero. On remand, the district court shall find that the value of the business is \$18,000 and shall amend the decree accordingly with respect to the division of the parties’ assets.

Affirmed in part, reversed in part, and remanded.