

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1766**

In re the Marriage of: Tammy Kay Holleman, petitioner,
Respondent,

vs.

Carlo Raphael Holleman,
Appellant.

**Filed March 22, 2021
Reversed and remanded
Larkin, Judge**

Dakota County District Court
File No. 19AV-FA-17-2354

James S. Carlson, Burnsville, Minnesota (for respondent)

Kathleen P. O'Connor, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this marital-dissolution case, appellant-husband challenges the district court's denial of his motion to reopen the spousal-maintenance provisions of a default judgment

and decree of dissolution based on an alleged fraud upon the court. He also challenges the district court's order finding him in contempt for failure to pay spousal maintenance as required by the default judgment. We conclude that respondent-wife committed a fraud upon the court by failing to fully disclose her business interests and associated income when requesting spousal maintenance. We therefore reverse the district court's denial of appellant's motion to reopen the judgment, reverse the provisions of the default judgment regarding spousal maintenance, and remand for a new trial on the issue of spousal maintenance. Because the contempt order was based on appellant's failure to pay spousal maintenance as set forth in the default judgment and we reverse that portion of the judgment, we also reverse the contempt order.

FACTS

Appellant Carlo Raphael Holleman (husband) and respondent Tammy Kay Holleman (wife) were married in 1998. On March 30, 2017, wife petitioned for dissolution of marriage. She requested spousal maintenance of at least \$4,000 per month. In support of that request, wife stated that her "income and property are not sufficient to meet [her] reasonable needs" and that husband's "income and property are sufficient to meet [his] reasonable needs." Wife asserted that she was employed as a real-estate agent, that her monthly gross income "varie[d]," and that "her income for 2016 was approximately \$32,000." She also indicated that she "does not know [husband's] exact gross monthly income but believes it to be in excess of \$16,000."

Husband did not respond to wife's petition for dissolution. Wife eventually requested a default hearing. The district court held the default hearing on October 23,

2017. Wife appeared in person with counsel; husband did not appear. That same day, the district court found husband in default, entered a default judgment, and issued a decree and dissolution of marriage. In its findings of fact, the district court adopted wife's allegations from her petition almost verbatim. The district court found that wife's "income and property are not sufficient to meet [her] reasonable needs," that husband's "income and property are sufficient to meet [his] reasonable needs and contribute to the reasonable needs of [wife]," that wife's "gross income for 2016 was approximately \$32,000," and that wife "does not know [husband's] exact gross monthly income but has good reason to believe[] it to be in excess of \$16,000." The district court ordered husband to pay permanent spousal maintenance of \$4,000 per month to wife, consistent with wife's request.

On October 31, 2018, wife moved the district court to find husband in contempt of court for nonpayment of spousal maintenance. She alleged that husband had not made any of the spousal-maintenance payments ordered by the district court. In support of her motion, wife submitted an affidavit and various documents detailing her and husband's finances. The district court scheduled a contempt hearing for January 23, 2019.

On January 9, 2019, husband moved to reopen the October 2017 default judgment and to terminate or modify his spousal-maintenance obligation. He alleged a "fraud upon the court" as the basis for relief. He noted that, in her petition for dissolution, wife represented to the court that her gross income from 2016 was \$32,000, which came from her employment as a real-estate agent. Husband asserted that wife failed to disclose that she had a cleaning business, which provided wife with another source of income. Husband submitted documents in an attempt to demonstrate his inability to pay spousal maintenance

as required under the default judgment and asked the district court to deny wife's contempt motion.

The contempt hearing was held on January 23, 2019. At the beginning of the hearing, the district court took note of husband's motion to reopen the October 2017 default judgment, but the court stated that it was not prepared to address the motion at that time. The district court issued an order finding husband in contempt of court. It found that husband "is able to pay \$4,000.00 per month in spousal maintenance, but chooses not to do so." The district court ordered husband to serve 45 days in jail, but the court stayed the jail time for three years, on the condition that husband make the monthly spousal-maintenance payments on time and make payments to cure the arrearages.

Husband moved for amended findings or a new trial. He requested that the district court determine his monthly gross income available for spousal maintenance and find that he is unable to pay \$4,000 per month. Alternatively, husband requested a new trial, in part because the district court declined to decide his motion to reopen the October 2017 default judgment.

On August 28, 2019, the district court issued an order denying husband's motion. It determined that husband had failed to establish wife's alleged fraud upon the court, reasoning that the evidence supported wife's assertion that her 2016 gross income was \$32,000. The district court also determined that there was no legal or factual basis to amend its contempt order or to hold a new hearing.

Husband appealed to this court. In an order accepting jurisdiction over husband's appeal, this court determined:

Although the August 28, 2019 order does not expressly deny [husband's] January 9, 2019 motion to reopen the default judgment and decree based on fraud upon the court, the order in effect ruled on the motion, because the court concluded that [husband] had not established fraud or misrepresentation by [wife]. To the extent that the August 28, 2019 order denied [husband's] motion to reopen the default judgment on the ground of fraud upon the court, it is a final and appealable order.

This court also determined that it is appropriate to review the district court's contempt orders in the interests of judicial economy. Because wife did not file a brief, this court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

DECISION

I.

Husband challenges the district court's denial of his motion to reopen the October 2017 default judgment and decree of dissolution. "A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal." Minn. Stat. § 518.145, subd. 1 (2020). But a court may relieve a party of a marital dissolution judgment and decree under certain circumstances, including a "fraud upon the court." *Id.*, subd. 2 (2020).

Although a motion to reopen a judgment for ordinary fraud must be brought within one year of the judgment, no such limit applies to motions to reopen for a fraud upon the court. *See id.* (providing that the subdivision does not limit the court's power to set aside a judgment for a fraud upon the court); *see also Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001) (holding that ordinary fraud is the proper standard for motions brought

within one year of the judgment), *review denied* (Minn. Sept. 11, 2001); *cf. Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989) (providing that a fraud on the court “eliminates the time restriction for bringing a motion to vacate a judgment”).

In a marital-dissolution case, a fraud on the court is generally described as “an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the property settlement grossly unfair.” *Maranda*, 449 N.W.2d at 165. “[T]he difference between fraud and fraud on the court is primarily a difference of degree rather than kind.” *Id.* The standard for demonstrating a fraud on the court is more strenuous than the standard for demonstrating ordinary fraud. *Doering*, 629 N.W.2d at 129.

We review the district court’s decision whether to reopen a judgment based on a fraud on the court for an abuse of discretion. *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). A district court does not abuse its discretion when there is evidence to support its decision. *Id.* “The moving party bears the burden of establishing a basis to reopen the judgment and decree.” *Id.*

Husband alleges that wife committed a fraud on the court because she failed to disclose a primary source of her income—her cleaning business—when requesting spousal maintenance. According to husband, this nondisclosure was material because it impacted the district court’s decision to award permanent spousal maintenance of \$4,000 per month to wife.

The record supports husband’s contention. In her petition for dissolution, wife represented that she was employed as a real-estate agent and that her gross income for 2016

was approximately \$32,000. The district court adopted those findings in its October 2017 default judgment. Wife's subsequent filings with the district court during the contempt proceedings indicated that at the time of the dissolution proceedings, wife was self-employed as a real-estate agent but that she also received income from her own cleaning business. Moreover, those documents reveal that wife's gross income from 2016 was not \$32,000. Instead, wife's form 1040 for 2016 lists her gross income as \$18,469, which was entirely from business income. According to wife's Schedule C forms, the net profit from wife's real-estate business was \$3,726, and the net profit from her cleaning business was \$14,743, resulting in a gross income of \$18,469.¹

In rejecting husband's assertion that wife committed a fraud on the court by failing to disclose the existence of her cleaning business, the district court reasoned that wife "did have a cleaning business, but her profit and loss statements from 2016 and 2017, as well as her tax returns support the finding she earned \$32,000 total," referring to the district court's finding in the default judgment that wife's "gross income for 2016 was approximately \$32,000." Because wife's form 1040 for 2016 shows that her gross income for that year was \$18,469, the district court's reasoning is flawed.

In sum, wife did not fully disclose all relevant facts regarding her income when she petitioned for dissolution and requested spousal maintenance. Her actual gross income from 2016 differed significantly from the amount she listed in her petition for dissolution,

¹ The net profits listed on the Schedule C forms are added together and entered on the form 1040 as "business income" in the gross-income section.

and she failed to disclose her cleaning business, which was the principal source of that income.

Even though wife's gross income from 2016 was actually less than \$32,000 as found in the dissolution judgment, her failure to disclose the existence of her cleaning business was not harmless. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error). The district court must consider all relevant factors when determining an award of spousal maintenance. Minn. Stat. § 518.552, subd. 2 (2020). Those factors include “the financial resources of the party seeking maintenance” and that party’s “ability to meet needs independently”; “the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment”; “the standard of living established during the marriage”; “the duration of the marriage”; “the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance”; “the age, and the physical and emotional condition of the spouse seeking maintenance”; “the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance”; and “the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property.” *Id.*, subd. 2(a)-(h).

The fact that wife was self-employed and had an additional cleaning business that generated the majority of her income was relevant to several of those statutory factors, most notably, wife's financial resources and her ability to meet her needs independently. Thus, wife's misrepresentation affected proper consideration of the statutory spousal-maintenance factors and prevented an informed decision regarding spousal maintenance.

In addition to wife's misrepresentation of her 2016 gross income, husband identifies several other concerns regarding the district court's October 2017 default judgment and argues that those concerns support reopening the default judgment based on wife's fraud on the court. Specifically, husband argues that the district court adopted the allegations in wife's petition in their entirety, entered the default judgment on the same day as the default hearing, did not review the dissolution decree before entering the default judgment, and did not adequately consider the spousal-maintenance factors set forth in Minn. Stat. § 518.552, subd. 2.

Husband cites to *Manore v. Manore*, 408 N.W.2d 883 (Minn. App. 1987), in support of his arguments. In *Manore*, the wife petitioned for dissolution of marriage and obtained a default judgment. 408 N.W.2d at 884-85. The district court adopted the wife's proposed findings and conclusions in their entirety and issued the decree of dissolution on the same day as the default hearing. *Id.* at 885. The judgment included an award of spousal maintenance to the wife. *Id.* The husband later moved to vacate the default judgment based on fraud on the court, but the district court denied the motion. *Id.* at 885-86.

This court reversed, concluding that vacation of the judgment was necessary. *Id.* at 886. We noted that the district court's findings of fact and conclusions of law did not demonstrate the in-depth inquiry of the spousal-maintenance factors required under Minn. Stat. § 518.552, subd. 2. *Id.* at 887. Also, the wife had failed to provide evidence of her specific financial needs and resources, and that failure "was compounded by the [district] court's blanket acceptance of that lack of record and [by] the [district] court's unmodified

adoption of [wife's] proposed findings of fact and conclusions of law.” *Id.* at 887-88. We summarized:

When the [district] court was presented with vague and inadequate proposed findings of fact and conclusions of law, it had a duty to make appropriate inquiries to insure compliance with statutory requirements and to modify the proposed findings and conclusions to reflect consideration of the statutory factors. The fact that a dissolution is secured through a default judgment does not permit the [district] court to abdicate its responsibilities under the law. The result here is a judgment that serves neither the interests of the parties nor the interests of justice.

Id. at 888.

Our reasoning from *Manore* applies here. First, the district court adopted wife's allegations in her petition in their entirety, and the district court's findings recite wife's allegations nearly verbatim. Second, the district court entered the default judgment and issued the decree of dissolution on the same day as the default hearing. Third, and most importantly, the record does not indicate that the district court correctly considered the relevant statutory factors as required under Minn. Stat. § 518.552, subd. 2.

For example, in its findings of fact in the default judgment, the district court noted that wife's "income and property are not sufficient to meet [her] reasonable needs" and that husband's "income and property are sufficient to meet [his] reasonable needs and contribute to the reasonable needs of [wife]." Those findings were taken nearly verbatim from wife's petition and were stated in a conclusory manner, without supportive, specific findings regarding each party's reasonable needs. In its conclusions of law, the district court determined that its spousal-maintenance award was supported by "[t]he parties'

relative earning capacities,” “[t]he parties’ lifestyles,” husband’s “ability to support himself,” and “[t]he property settlement as set forth herein.”

We have concluded that the parties’ relative earning capacity was not correctly determined by the court, as a result of wife’s failure to disclose her cleaning business and associated income. Although the district court said its spousal-maintenance award was supported by the parties’ lifestyles, it did not make any findings regarding the parties’ lifestyles or the standard of living established during the marriage. And the proper consideration is not simply whether husband has the ability to support himself, but whether he has the ability to meet his needs “while meeting those of the spouse seeking maintenance.” Minn. Stat. § 518.552, subd. 2(g).

Moreover, the district court’s reliance on the property “settlement” set forth in the default judgment is compromised by wife’s failure to disclose her cleaning business and the associated income stream.² The property distribution awards husband “[a]ll right, title and interest in and to the business, Holleman Hauling.” But the property distribution does not include wife’s cleaning business, which was effectively awarded to wife as a result of her nondisclosure. Thus, wife’s nondisclosure impacted the district court’s property distribution, which in turn was a basis for its spousal-maintenance award.

Furthermore, the district court did not mention other relevant factors, such as wife’s ability to meet her needs independently, the duration of the marriage, and wife’s age and physical and emotional condition. *See id.*, subd. 2(a), (d), (f). Lastly, in explaining the

² We note that there is no indication in the record that the district court’s property distribution in the default judgment was based on a “settlement” between the parties.

district court's award of permanent spousal maintenance of \$4,000 per month to wife, the default judgment states, "this agreement and stipulation is fair and equitable" and that "full disclosure of each party's financial circumstances has occurred." The record belies that explanation. The record does not indicate that the spousal-maintenance award was based on an agreement or stipulation of the parties, and husband has established that the award was not based on full disclosure of wife's financial circumstances.

On this record, we are concerned that the district court did not make appropriate inquiries to develop a record adequate to address wife's requested spousal maintenance or to enable complete consideration of the required statutory factors. Instead, as was the case in *Manore*, the district court seems to have engaged in a "blanket acceptance" of an inadequately developed record and an "unmodified adoption" of wife's proposed findings and conclusions of law.

In *Thompson*, this court rejected a husband's attempt to reopen a default judgment based on an alleged fraud upon the court because the husband had failed to respond to the wife's discovery requests with information to "supplement wife's admittedly limited knowledge of the parties' marital property," the wife had provided the district court with financial information "based on the best information that she had," and the husband "did not provide any evidence to rebut wife's need for spousal maintenance." 739 N.W.2d at 429.

But in this case, wife did not supply the district court with the best financial information that she had. In fact, the record indicates that wife did not submit any documents or testimony in support of her request for spousal maintenance at the default

hearing. Although wife eventually provided the district court her tax returns for 2016 and 2017, that submission occurred in November 2018, after she moved to find husband in contempt. This record does not suggest that wife was incapable of providing the district court with the necessary information about her cleaning business when she requested spousal maintenance at the default hearing.

We note that “[i]n dissolution cases, the court sits as a third party, representing all of the citizens of the State of Minnesota to see that a fair property distribution is made.” *Maranda*, 449 N.W.2d at 165. Parties to a dissolution matter have an obligation to ensure that a district court’s decisions in the matter are fully informed.

Because the confidential relationship between the parties creates an affirmative duty to disclose, nondisclosure is sufficient to establish a breach of that duty, without evidence of intent. Further, because the duty to make a full and fair disclosure is an *affirmative* duty, there is no requirement that the moving party show that he requested the information that was not disclosed; the duty to disclose exists in the absence of such a request.

Doering, 629 N.W.2d at 131. In this case, it is apparent that wife did not honor her affirmative obligation to provide the district court with relevant full information at the time of the dissolution proceeding.

In sum, we conclude that husband has established a fraud upon the court. Wife’s failure to disclose the existence of her cleaning business and the resulting income stream misled the district court, impacted nearly all aspects of the spousal-maintenance determination, and made the resulting permanent-spousal-maintenance award of \$4,000 per month grossly unfair. And wife’s fraudulent nondisclosure was exacerbated by the

district court's blanket acceptance of wife's allegations in her petition, the court's failure to make inquiries to develop an adequate factual record, and the court's failure to fully consider the statutory factors for spousal maintenance. Thus, the district court abused its discretion by denying husband's motion to reopen the October 2017 default judgment.

We therefore reverse the spousal-maintenance provisions of the October 2017 default judgment and remand the case to the district court for a new trial on the issue of spousal maintenance. See Minn. Stat. § 518.145, subd. 2 (providing that “the court may relieve a party from a judgment and decree . . . and may order a new trial”). On remand, the district court shall permit the parties to develop a record that allows consideration of all relevant statutory spousal-maintenance factors. See *Manore*, 408 N.W.2d at 888 (vacating the portion of the default judgment regarding maintenance and remanding for reconsideration on an expanded record).

We recognize that husband contributed to this situation by failing to participate in the dissolution action, which resulted in the default judgment, and that husband exacerbated the situation by failing to move to reopen the default judgment until more than one year later, after wife moved for a contempt finding. On remand, the district court is not prevented from considering the imposition of costs or fees based on husband's actions or inactions. See Minn. Stat. § 518.14, subd. 1 (2020) (indicating that a district court may award fees, costs, and disbursements against a party who “unreasonably contributes to the length or expense of the proceeding”).

II.

Husband also challenges the district court's order finding him in contempt of court for failure to pay spousal maintenance according to the terms of the default decree. "The district court's decision to invoke its contempt powers is subject to reversal for abuse of discretion." *In re Welfare of Children of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010).

The purpose of a civil contempt proceeding is to "secure compliance with an order presumed to be reasonable," and not to punish past misconduct. *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968). Because we vacate the portion of the October 2017 default judgment requiring husband to pay spousal maintenance, we cannot say that the spousal-maintenance order was reasonable. Enforcement of that order therefore does not serve the purpose of a civil contempt proceeding. Accordingly, we reverse the district court's contempt order.

Reversed and remanded.