

*This opinion is nonprecedential except as provided by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
A20-0016**

In re the Marriage of:

Caryn Blaine Evans, petitioner,
Respondent,

vs.

Keith Eric Evans,
Appellant.

**Filed January 19, 2021
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-FA-18-4324

Jonathan D. Miller, Jean Paul Agustin, Meagher & Geer, PLLP, Minneapolis, Minnesota
(for respondent)

Adam Y. Galili, Metro Law & Mediation, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Smith, Tracy M., Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In his appeal from the judgment and decree (J&D) dissolving the parties' marriage, appellant/cross-respondent Keith Eric Evans (husband) argues that (1) the district court violated his homestead-exemption rights when it required that the proceeds of the sale of the marital homestead be used to pay off certain unsecured marital debts to family members and (2) the district court abused its discretion in a number of ways in determining his obligation to pay spousal maintenance. In her cross-appeal, respondent/cross-appellant Caryn Blaine Evans (wife) argues that the district court abused its discretion when it ordered only ten years of spousal maintenance rather than permanent spousal maintenance.

As to husband's appeal, we conclude that husband forfeited his homestead-exemption theory by failing to raise it to the district court and that the district court did not abuse its discretion as husband contends with respect to spousal maintenance. As to wife's cross-appeal, we conclude that, because of internal inconsistencies with the district court's factual findings and legal conclusions regarding wife's need for permanent or temporary spousal maintenance, the district court's order as written does not permit meaningful appellate review. Therefore, we affirm in part, reverse in part, and remand to the district court to address the duration of spousal maintenance.

FACTS

The following facts are drawn from the bench trial in this matter. Husband and wife were married in 1995. The parties have two children; one was 17 years old at the time of trial, and the other was emancipated and living outside the home. The parties separated in

April 2017, and wife petitioned for dissolution of the marriage in 2018. After the parties resolved many issues in the dissolution, the district court held a bench trial in July 2019 on issues including the sale of the parties' marital homestead and spousal maintenance.

Sale of marital homestead and payment of debts from proceeds

When the parties separated, and throughout the dissolution proceedings, wife remained at the parties' marital homestead in St. Louis Park with the parties' minor child. Husband moved out of the marital homestead and lived for a period of time in Minneapolis before relocating to Massachusetts. At the time of trial, husband had lived outside of the marital homestead since April 2017. Throughout the dissolution proceedings, husband paid the mortgage, utilities, and taxes on the marital homestead.

Although both parties wanted the marital homestead sold as part of the dissolution proceedings, they did not agree on the timing of the sale. Following trial, the district court ordered the parties to list the marital homestead for sale by March 1, 2020.

The district court also addressed the distribution of the proceeds of the sale. Wife requested that the net proceeds be applied to various debts, including loans from the parties' family members. The district court found that the parties owed \$57,400 to wife's mother, which they had used primarily to pay for health insurance; \$32,500 to wife's sister and brother-in-law, which had been used to pay husband's rent; and \$5,000 to husband's brother, which had been used for "life expenses." The district court allocated these debts evenly between the parties. The district court also ordered that the net proceeds from the sale of the marital homestead be used to pay a number of marital debts, including the debts to wife's family members and to husband's brother, with the remaining proceeds split

equally between the parties.¹ Husband does not dispute that the family debts are marital debts, nor does he dispute the amount owing or the district court's equal allocation of the family debts between the parties. He challenges only the district court's requirement that the proceeds of the sale of the marital homestead be applied to the marital debt owed to wife's family members. He does not challenge the district court's requirement that the proceeds be applied to any other marital debts.

Spousal maintenance

The district court also mandated that husband pay wife \$2,507 in monthly spousal maintenance commencing at the time of the sale of the marital homestead and continuing for ten years. Relevant to this appeal, in determining spousal maintenance, the district court considered husband's and wife's incomes, wife's expenses following her anticipated relocation to New Jersey, and the budget deficit that each party would face after payment of spousal maintenance.

The parties' incomes

From 1998 to 2016, husband worked as a shoe sales representative for Clarks. While working for Clarks, husband consistently earned more than \$100,000 annually and occasionally earned more than \$200,000 per year. From 2017 to March 2019, husband worked for Samuel Hubbard Company, also as a sales representative in shoes. During his time at Samuel Hubbard, husband earned a gross monthly income of \$8,333. After losing

¹ Although the family debts amount to \$94,900, the J&D orders that \$94,000 in unsecured family debt be paid out of the sale proceeds.

his job at Samuel Hubbard, husband began working on business ventures in the cannabidiol (CBD) industry, an industry in which he has no experience. By the time of trial, husband had not yet earned income from his CBD ventures and had turned down an offer from Clarks to return to as a sales representative, where he could have earned \$130,000 per year. At trial, husband testified that he has “high hopes” for his CBD business and hopes to make between \$60,000 and \$70,000 per year through sales of CBD products. He testified that, based on his more than two decades of sales experience, he could be successful selling any product and that his passion for CBD products will ensure his success. The district court found husband’s testimony regarding his current employment to be credible.

In the J&D, the district court determined that, given the unpredictable nature of and difficulty in ascertaining husband’s income from his CBD business, it was impracticable to determine his actual income and therefore appropriate to rely on husband’s earning capacity. The district court found that, based on husband’s prior earnings at Samuel Hubbard and his acknowledgement that he could find immediate employment in sales at a comparable salary, husband’s earning capacity is \$8,333 per month.

Wife initially worked as a licensed preschool teacher in Massachusetts, but she quit working full-time in 1999, when the family moved to Minnesota, so that she could care for the couple’s children. After the parties separated, wife took a part-time job as a pet specialist at Lunds & Byerlys. At trial, wife testified that she was not physically able to return to preschool teaching. Wife also testified that, were she to seek the necessary education to regain her teaching license, it would lead to no discernable increase in her income. Wife testified that she works an average of 36 hours per week at Lunds & Byerlys,

where she earns \$14.75 an hour. The district court determined that wife's gross monthly income is \$2,472.

Wife's expenses after relocation to New Jersey

Wife stated at trial that she intended to relocate to New Jersey in fall 2020 to be near her mother. In preparing her budget estimate for trial, wife conducted research into necessary expenses in New Jersey and ultimately determined that her budget in New Jersey would be \$5,197.50 per month. Wife talked to a real estate agent in the area to estimate rent for a two-bedroom apartment. She similarly researched the cost of medical insurance, cable and internet service, and parking and tolls. For her usual household expenses like food and other household items, wife used her current expenses in Minnesota so that they matched her current lifestyle. Based on this information, wife's post-dissolution budget estimate in New Jersey was \$5,197.50 a month—a reduction from her current monthly living expenses of \$7,885.62 in Minnesota. The district court found that wife's proposed post-dissolution expenses of \$5,197.50 were reasonable and consistent with her marital standard of living.

Spousal-maintenance obligation and the parties' budget deficits

Wife used the tool "FinPlan" to propose five spousal-maintenance scenarios to the district court. Husband did not object to admission of any of these FinPlan calculations at trial. These scenarios were calculated based on both wife's and husband's estimated budgets. The district court, relying on scenario 3, granted wife \$2,507 in monthly spousal maintenance for ten years. The district court determined that, at this amount of spousal maintenance, husband and wife would each have a \$772 budget deficit every month.

Language in order regarding tax implications

In the paragraph of its conclusions of law addressing spousal maintenance, the district court included the following language:

It is intended that this maintenance payable to [wife] shall be included in [wife's] gross income, pursuant to Section 71 of the Internal Revenue Code, and shall be deductible by [husband], pursuant to Section 215 of the Internal Revenue Code.

This appeal and cross-appeal follow.

DECISION

Husband first challenges the district court's decision to require that the marital-homestead proceeds be used to pay off marital debt to wife's family members and to husband's brother, arguing that the requirement violates his homestead-exemption rights. He next challenges the spousal-maintenance obligation to wife on four grounds: (1) the use of his earning capacity to determine his income, (2) his monthly budget deficit as a result of the maintenance obligation, (3) the reliance on wife's budgeted living expenses, and (4) the inclusion in the J&D of obsolete language regarding income-tax obligations. In her cross-appeal, wife argues that the spousal-maintenance obligation should be permanent instead of temporary. We address each of these issues in turn, dividing them into two categories—marital debt and spousal maintenance.

I. Payment of Marital Debts from the Homestead Proceeds

Husband argues that, by ordering the sale of the marital homestead and the use of the proceeds to pay off the parties' unsecured family debt, the district court violated the homestead exemption founded in the Minnesota Constitution and codified by statute. *See*

Minn. Const. art. I, § 12; Minn. Stat. § 510.01 (2018). He asserts that, by ordering the parties to pay creditors from their homestead proceeds, the district court deprived him of the legal protection from creditors to which his homestead equity was entitled.

Wife counters that the district court had the discretion to dispose of marital property equitably and that its decision was not an abuse of discretion in the circumstances. Wife further argues that husband's homestead-exemption argument fails because he forfeited the argument by failing to raise it in the district court and because, on its merits, the exemption does not apply to a marital dissolution order regarding the division of property.

We conclude that husband forfeited the homestead-exemption argument by failing to raise it in the district court. While, at trial, husband did generally oppose the use of the marital homestead proceeds to pay off the debt to wife's family, he did not assert the homestead-exemption argument. Because husband did not provide the district court the ability to conduct the necessary fact finding and analysis to determine whether husband had homestead rights that applied to the use of sale proceeds to the payment of the parties' marital debts, this issue is not properly before us on appeal. *See, e.g., In re Dahlgren Twp.*, 906 N.W.2d 512, 519-20 (Minn. App. 2017) (“[L]itigants are bound in this court by the theory or theories, however erroneous or improvident, upon which the action was actually tried below.” (quotation omitted)). Husband's argument is therefore forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (citing *Pomush v. McGroarty*, 285 N.W.2d 91, 93 (Minn. 1979) (“Nor may a party obtain review by raising the same general issue litigated below but under a different theory.”)). Because the homestead-exemption theory

is the only basis on which husband challenges the district court's requirement to pay the family debts from sale proceeds, his challenge to that requirement fails.

II. Spousal Maintenance

Both parties challenge the district court's spousal-maintenance determination. In a dissolution proceeding, a district court may grant spousal maintenance if it finds that, in light of the standard of living established during the marriage, the spouse seeking maintenance "lacks sufficient property, including marital property apportioned to the spouse, to provide for [the] reasonable needs of the spouse" or "is unable to provide adequate self-support . . . through appropriate employment." Minn. Stat. § 518.552, subd. 1 (2018); see *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that a maintenance award depends on a showing of need). If the district court determines that spousal maintenance is appropriate, it applies the factors in Minn. Stat. § 518.552, subd. 2 (2018), to determine the amount and duration of that maintenance.²

Appellate courts review a spousal-maintenance determination for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies

² These factors include: (1) the resources of the party seeking maintenance; (2) the time necessary to find education or training to allow the party seeking maintenance to become partially or fully self-supporting; (3) the marital standard of living; (4) the duration of the marriage and, if the party seeking maintenance was a homemaker, their absence from the workforce and the diminished quality or usefulness of their prior education or skill; (5) loss of earnings, seniority, retirement benefits, and other employment opportunities by the party seeking maintenance; (6) the age and physical and emotional condition of the spouse seeking maintenance; (7) the ability of the spouse paying maintenance to meet their needs while also paying maintenance; and (8) the contribution of each party to the value of the marital property. Minn. Stat. § 518.552, subd. 2.

the law. *Dobrin*, 569 N.W.2d at 202, 202 n.3 (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

We first address husband's arguments against the district court's award of temporary spousal maintenance before turning to wife's argument on cross-appeal.

A. Husband's challenges to spousal-maintenance determination

1. Husband's earning capacity

Husband argues that the district court erred when determining his ability to pay maintenance because it improperly relied on his earning capacity, which the district court determined to be \$8,333 per month, to measure his income. "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).

In determining an obligor's ability to pay maintenance, district courts may use earning capacity to measure income if (1) it is impracticable to determine an obligor's actual income or (2) the obligor's income is unjustifiably self-limited. *Fulmer v. Fulmer*, 594 N.W.2d 210, 213 (Minn. App. 1999). When an obligor is self-employed, the use of earning capacity is commonly used. *Id.*

Here, the district court determined that it is impracticable to determine husband's actual income and therefore relied on husband's earning capacity to determine his ability to pay maintenance. The district court's finding that it is impracticable to determine husband's income is supported by the record. Although, at the time of trial in July 2019, husband had not yet earned income from his CBD business ventures (and his actual income was limited to odd jobs), he testified that he was working full-time in his CBD business,

that he had “high hopes” for the business, and that he hoped to earn between \$60,000 and \$70,000 per year. He testified that he anticipated “big” numbers in sales and income for 2020 due to an expanding CBD market and ongoing changes to marijuana laws. This record evidence supports the district court’s finding that determining husband’s income from his self-employment was impracticable when evaluating husband’s ability to pay a spousal-maintenance obligation beginning sometime in 2020.

Based on his previous earning history, the district found that husband’s gross monthly earning capacity was \$8,333. This finding, too, is supported by the record. Husband testified that he earned gross monthly salary of \$8,333 in his most recent sales position and he acknowledged that he could find immediate employment in sales and earn income comparable to his previous sales earnings. *See Fulmer*, 594 N.W.2d at 214 (affirming an estimated earning capacity based on the obligor’s earning history).

But husband argues that the district court erred by relying on his earning capacity because the district court made no finding of bad faith or unjustifiable self-limitation of income. We disagree that such a finding was required. While a bad-faith finding is necessary when imputing a maintenance obligor’s income if the obligor is unemployed or has otherwise unjustifiably self-limited their income, *see Melius v. Melius*, 765 N.W.2d 411, 415-16 (Minn. App. 2009), husband has cited no authority holding that bad faith is required to find that it is impracticable to determine the actual income of a self-employed maintenance obligor. Husband asserts that he is not unemployed. He testified that he was working full-time in his business ventures and anticipated earning substantial income in the near future based on a growing market and his sales skills and experience. The district

court found husband credible. No bad-faith finding was necessary because the district court relied on husband's earning capacity due to the impracticability of determining his actual income from his self-employment.

2. Budget deficit after payment of spousal maintenance

Husband argues that the district court abused its discretion by ordering a spousal-maintenance obligation that leaves him with a monthly budget deficit. We review a district court's determination of spousal maintenance for abuse of discretion in light of the guidelines contained in section 518.552. *Justis v. Justis*, 384 N.W.2d 885, 891 (Minn. App. 1986).

Husband contends that the district court abused its discretion by relying on wife's FinPlan scenario 3, which left both parties with a \$772 budget deficit. One of the factors the district court considers under section 518.552 is whether a maintenance amount will allow "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). But the simple fact that the spousal-maintenance obligation leads to a budget deficit does not per se mean the district court abused its discretion. *See Justis*, 384 N.W.2d at 891-92 (explaining that "[e]ach case must be determined on its own facts and no single statutory factor is dispositive" (quotation omitted)); *see also Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) (affirming a maintenance obligation creating a monthly deficit for the obligor).

Although husband is left with a deficit based on his budget, the district court's monthly spousal-maintenance determination is supported by the record. The amount itself is drawn directly from wife's FinPlan scenario 3, which leads to an equal budget deficit for

both parties. In addition, as the district court determined and as the record supports, wife's FinPlan scenario 3 overstates husband's expected budget because it includes expenses related to the marital homestead (mortgage payment, property taxes, and homeowner's insurance) that will no longer apply once the homestead is sold and the spousal-maintenance obligation begins. If those reductions in expenses are accounted for, husband's expected budget deficit will significantly decrease. In light of all of the factors, and based on the record evidence, even though husband might incur a budget deficit because of his spousal-maintenance obligation, the district court's determination of the amount of husband's obligation was not an abuse of discretion.

3. Wife's proposed budget

Husband argues that the district court abused its discretion by relying on wife's budget in setting spousal maintenance because her budget is too speculative. The district court's calculation of living expenses must be supported by evidence presented by the parties. *Rask v. Rask*, 445 N.W.2d 849, 854 (Minn. App. 1989). Here, the district court relied on wife's testimony in determining the reasonableness of her budget. We defer to the trial court's determination of the credibility of witnesses. *Sefkow*, 427 N.W.2d at 210.

The district court's finding of wife's expenses is not clearly erroneous. The record evidence supports wife's budget calculation. At trial, wife testified that, to determine her budget, she contacted real estate agents in New Jersey for the average cost of an apartment, she called insurance brokers to price her medical insurance, and she also contacted her friends living in New Jersey to determine expenses for tolls, parking, and other expected costs. She further stated that her estimation of personal expenses such as groceries and

toiletries was based on the amount she currently spent on these items. The record reflects that wife's budget calculation is not too speculative, and the district court did not abuse its discretion by relying on her proposed budget.

4. Erroneous income-tax implications

Finally, husband argues that the district court erred by classifying his spousal-maintenance payments as deductions for his federal income-tax obligation and as taxable income for wife.

Because this issue relates to the application of federal income-tax law to husband's spousal-maintenance obligation, it is reviewed de novo. *See Melius*, 765 N.W.2d at 414. But even if, on appeal, a complaining party shows that the district court committed an error, this court will not reverse unless the error is prejudicial. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of Minn. R. Civ. P. 61); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) ("Although error may exist, unless the error is prejudicial, no grounds for reversal exist.").

A 2017 change to the Internal Revenue Code eliminated husband's ability to deduct spousal maintenance from his gross income while allowing wife to exclude spousal maintenance from her gross income. *See* Pub. L. No. 115-97, § 11051, 131 Stat. 2054, 2089-90 (2017). Thus, the provision in the J&D stating that "[i]t is intended that this maintenance payable to [wife] shall be included in [wife's] gross income . . . and shall be deductible by [husband]" erroneously reflects outdated law.

However, the FinPlan calculations considered by the district court in determining husband's spousal-maintenance obligation properly calculated both party's tax liabilities. Further, FinPlan scenario 3, on which the district court relied to set husband's spousal-maintenance obligation, lists both parties' "Tax Impact-Alimony" as \$0. Therefore, husband's tax liability as reflected in the district court's maintenance determination is in compliance with the new version of the Internal Revenue Code. For that reason, any error is harmless.

B. Wife's cross-appeal of the duration of spousal maintenance

In her cross-appeal, wife contends that the district court erred by granting her temporary rather than permanent spousal maintenance. This issue is reviewed for abuse of discretion. *See Dobrin*, 569 N.W.2d at 202.

The decision to award permanent rather than temporary spousal maintenance turns on whether the spouse receiving maintenance will ever become self-supporting. 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); *see* Minn. Stat. § 518.552, subd. 3 (2018) ("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."). But if the only uncertainty is *when* (rather than *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, 669 (Minn. App. 2009). An award of temporary spousal maintenance implies that the recipient is presently not self-supporting but is expected to become self-supporting and, thus, has an obligation

to make reasonable efforts to increase earning capacity to become self-supporting. *See Hecker v. Hecker*, 568 N.W.2d 705, 709-10 n.4 (Minn. 1997); *Maiers*, 775 N.W.2d at 669.

Here, the district court found, at the beginning of its spousal-maintenance analysis, that “[wife] is not presently capable of self-support” but “is capable of becoming self-supporting.” The district court then went on to analyze each of the requisite factors under Minn. Stat. § 518.552, subd. 2. In doing so, the district court found that (1) wife’s significant time away from the workforce in her role as a homemaker, (2) her loss of employment opportunities due to her time away from the work force to take care of the parties’ children, and (3) her age and physical condition all demonstrate her need for permanent spousal maintenance. *See* Minn. Stat. § 518.552, subd. 2(d)-(f). The district court then concluded:

While the Court may award permanent or temporary spousal maintenance, Minnesota law states “that 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. Additionally, the facts in this case warrant an award of permanent spousal maintenance because of the age of [wife], until such time as she has sufficient retirement income to meet her reasonable monthly living expenses.

The district court’s rationale for granting temporary rather than permanent maintenance is unclear. It appears to be based on the supposition that wife’s retirement funds will provide sufficient income to self-support. But the district court did not make explicit findings that wife would, in fact, become self-supporting at that time. Because the district court did not explicitly state its reasons for granting wife temporary spousal maintenance, and given the apparent internal inconsistency within the district court’s

factual findings, we are unable to determine the district court's rationale in granting temporary spousal maintenance. We therefore reverse and remand for clarification the question whether temporary or permanent spousal maintenance is appropriate in this case. The district court may reopen the record at its discretion.

Affirmed in part, reversed in part, and remanded.