

*This opinion is nonprecedential except as provided by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
A20-1249
A20-1261**

In re the Marriage of:
Amy Lynn Callister, petitioner,
Respondent (A20-1249),
Appellant (A20-1261),

vs.

Kevin Callister,
Appellant (A20-1249),
Respondent (A20-1261).

**Filed September 20, 2021
Affirmed
Segal, Chief Judge**

Washington County District Court
File No. 82-FA-19-431

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for respondent/cross-appellant Amy Lynn Callister)

Kevin Callister, Glendale, Arizona (pro se appellant/cross-respondent)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In these consolidated marital-dissolution appeals, husband argues that the district court failed to divide equitably the parties' marital property and debts, and wife argues that

the district court made findings of fact regarding spousal maintenance that are not supported by the record, resulting in an award of temporary spousal maintenance that is excessive in amount and duration. We affirm.

FACTS

Amy Lynn Callister (wife) and Kevin Callister (husband) were married in 2003 and have one minor child. In January 2019, wife petitioned for dissolution of the marriage. Husband filed an answer and counterpetition in which he sought an award of spousal maintenance from wife. He alleged that, during the marriage, wife's income was the parties' primary source of income and that he stayed home to care for the parties' daughter. Wife opposed an award of spousal maintenance.

For most of the marriage, the parties lived in California, where wife worked for International Business Machines Corporation (IBM) between 1996 and 2016. After wife was let go from her position at IBM, the parties moved to Minnesota, where wife started a new job in August 2016. She left that position in November 2017, and has since held temporary positions, while also working as a part-time sales clerk at a GAP clothing store.¹ At the time of trial, wife's employment provided her with a gross monthly income of approximately \$14,771,² and wife asserted that her reasonable monthly expenses were approximately \$9,000.

¹ At the time of trial, wife was employed with a temporary placement company that placed wife with outside companies for contract work. Wife had no guarantee of another placement after a contract ended.

² This number does not include the income wife received through her employment at the GAP store.

Before the parties' marriage, husband was employed with a company that manufactured medical devices. He was laid off the month before the parties were married, and then spent six months managing a company for wife's mother. From April 2004 to April 2009, he worked at Medtronic, but was ultimately let go as part of a layoff. At that time, wife's position at IBM required her to travel four days a week, and the parties decided that husband would stay at home and serve as the primary caretaker of their daughter who was three years old at the time. In addition to taking care of their daughter, husband taught music lessons and ran a swimming program during the summer, but had no full-time employment outside the home. After the parties separated, husband returned to California for a brief time and ultimately relocated to Arizona, where he found full-time employment as a teacher earning a gross monthly income of \$4,583. He asserted that his monthly expenses following the dissolution would be approximately \$6,020.83 per month. Based on his anticipated monthly budget deficit, he sought an award of permanent spousal maintenance from wife in the amount of \$2,500 per month.

The district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree. The district court found that husband's projected monthly expenses were "somewhat inflated" and that his current reasonable monthly living expenses totaled \$5,500 per month. The district court also found that wife's claimed monthly expenses were "significantly inflated" and that her reasonable expenses totaled "no more than \$7,500" per month. The district court determined that, under the circumstances, it was appropriate to award husband temporary spousal maintenance in the amount of \$2,500 per month for five years. The district court noted that the award would

allow husband to meet his reasonable monthly expenses while providing him time to undergo training or education needed to maintain his employment or secure a higher-paying job.

The district court also made findings related to the apportionment of the debts owed by the parties. The district court identified the marital debts and ordered that they were to be paid off with the proceeds of the sale of the marital homestead in California. With regard to a debt of \$28,000 from a loan wife had obtained from her father during the marriage, the district court determined that the debt would be wife's sole responsibility. And the district court stated that it was using its equitable powers to assign debts solely to husband for loans made to him by his siblings during the marriage. These loans included \$25,000 borrowed by husband from his brother in 2007; \$26,200 borrowed from his sister in 2018; and another \$9,750 borrowed from his sister also in 2018.

Wife moved for amended findings on the spousal-maintenance award, and husband moved for amended findings concerning the debts owed to his siblings. The district court denied the motions.³ Husband appealed (No. A20-1249) and wife filed a notice of related appeal as well as a separate appeal (No. A20-1261). This court consolidated the two appeals.

³ The district court did issue an amended judgment and decree, but made only minor changes that did not substantively alter the initial judgment and decree.

DECISION

I. The district court did not abuse its discretion in apportioning debt between the parties.

Husband argues that the district court erred by assigning the three debts owed to his siblings solely to him because the debts were part of the marital estate and a portion of the debts therefore should have been assigned to wife. “An appellate court will not overturn a [district] court’s distribution of property in a marital dissolution absent a clear abuse of discretion.” *Nelson v. Nelson*, 400 N.W.2d 763, 765 (Minn. App. 1987), *rev. denied* (Minn. Apr. 23, 1987). This applies equally to the apportionment of marital debts. *See Filkins v. Filkins*, 347 N.W.2d 526, 529 (Minn. App. 1984).

The debts at issue relate to three promissory notes signed by husband for the loans he obtained from his brother and sister in 2007 and 2018. Husband was the sole signatory on all three promissory notes. Husband points out that, while wife did not sign the promissory notes, the debt was incurred during the marriage. He also notes that, at least with respect to the \$26,200 loan from his sister, wife agreed in an email that he should proceed with obtaining the loan from husband’s sister to help forestall foreclosure on their home in California.

Husband’s argument is premised in part on his assertion that the district court improperly determined that the debts were husband’s nonmarital property. But the district court did not explicitly determine that the debts were husband’s nonmarital property. The district court merely stated that it was using “its equitable powers to assign the

responsibility” for those debts to husband. And, regardless, we will assume for our analysis that the debts to husband’s siblings were part of the marital estate.

Treating the debts owed to husband’s siblings as part of the marital estate, however, does not necessarily mean that the district court erred in assigning the debt solely to husband. In apportioning marital property in a dissolution action, the court must make a “just and equitable” division of the marital estate. Minn. Stat. § 518.58, subd. 1 (2020). Whether a property division is just and equitable is to be evaluated in light of the apportionment of the *entire* marital estate, not on an asset-by-asset basis. *See Paul v. Paul*, 410 N.W.2d 329, 333 (Minn. App. 1987) (stating that “[w]hile each party can point to disproportionate awards with respect to certain types of property, our analysis concerns the overall marital property division”). And a district court has broad equitable powers in dissolution matters. *Huckbody v. Freeburg*, 388 N.W.2d 385, 389 (Minn. App. 1986).

Viewing the property division as a whole, we discern no abuse of discretion by the district court in assigning the three debts owed to husband’s siblings solely to husband. As noted above, the district court assigned other debts solely to wife. For example, the district court found that wife served as the sole trustee of a trust fund established by her late aunt and that, during the parties’ marriage, wife made multiple withdrawals from the trust. The debt owed to the trust was assigned solely to wife by the district court. The district court also assigned solely to wife the debt owed to wife’s father. On this record, we conclude that the district court did not abuse its discretion in assigning to husband the debts owed to his siblings.

II. The district court did not abuse its discretion in awarding husband spousal maintenance.

We review a district court's spousal-maintenance decision for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion if it reaches a conclusion "that is against logic and the facts on record." *Id.* We review legal questions de novo, but we review findings of fact for clear error. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). Findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted).

A district court may order spousal maintenance if it finds that the spouse requesting maintenance either:

- (a) lacks sufficient property . . . to provide for reasonable needs of the spouse considering the standard of living established during the marriage . . . 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

Minn. Stat. § 518.552, subd. 1 (2020). The district court may award spousal maintenance "in amounts and for periods of time, either temporary or permanent, as [it] deems just . . . after considering all relevant factors." *Id.*, subd. 2 (2020). The statute includes a non-exhaustive list of relevant factors, but the central inquiry is "basically the financial needs of [the party seeking maintenance] and [the party's] ability to meet those needs balanced against the financial condition of [the spouse]." *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

Wife argues that the district court abused its discretion in awarding husband temporary spousal maintenance because the findings related to the award are unsupported by the record. She argues that the district court erred in determining husband's income because the district court discounted her claim that husband could earn additional income by teaching swimming lessons as he had at times during the marriage. But husband testified that, while he did operate a swimming program when the parties lived in California, he received a cease and desist letter from the county in the summer of 2019 ordering him to stop operating the business because it was impermissible under county ordinances and municipal codes. Husband also noted that the nature of his new employment as a teacher, which spanned ten months a year, would not allow him to operate the swimming program which had traditionally run for 10 to 12 weeks.

Based on these factors, and the determination that husband earned only nominal income from the swimming program when he did run it, the district court chose not to factor in the swimming program when calculating husband's monthly income. We discern no clear error in these findings.

We also discern no clear error in the district court's finding that husband had tried to find suitable employment. Husband testified, and the district court credited, that he had applied for employment that would utilize his Masters of Business Administration degree (MBA), but did not succeed in part because of the gap in employment due to his years as a stay-at-home parent. Indeed, the record shows that husband did not work a full-time job for nearly ten years before the date of separation. Husband ultimately accepted a position as a teacher, which did not utilize his MBA, but did provide him with full-time

employment. And as the district court noted, the award of temporary spousal maintenance was designed, at least in part, to allow husband to obtain additional education and training necessary for him to secure ongoing and higher-paying employment. See Minn. Stat. § 518.552, subd. 2(b) (providing that “the time necessary to acquire sufficient education or training . . . to find appropriate employment” is a relevant factor to be considered when reviewing a request for spousal maintenance). On this record, the district court did not clearly err in finding that husband had made adequate efforts to secure appropriate employment.

Wife next argues that the district court erred in determining husband’s monthly expenses. She argues that the district court committed clear error because husband testified that his monthly expenses were \$3,363, but the district court determined that his monthly expenses were \$5,500 per month. We disagree. Husband did state that his monthly expenses were \$3,363 following the parties’ separation, but he also testified that he expected certain expenses to rise after the dissolution.

When considering a request for a spousal-maintenance award, the district court must consider “the standard of living established during the marriage.” Minn. Stat. § 518.552, subd. 2(c); see *Peterka v. Peterka*, 675 N.W.2d 353, 358-59 (Minn. App. 2004). The district court observed that the parties lived an expensive lifestyle during their marriage, and that wife continued to do so after the separation. But certain of husband’s expenses at the time of trial did not reflect the standard of living during the marriage. For example, at the time of trial, husband was renting a room from his sister in Arizona, which he claimed to share with his 22-year-old nephew. Husband paid \$800 per month in rent to his sister,

but anticipated his monthly housing expenses would increase to about \$1,400 after the dissolution to allow him to afford a mortgage. By contrast, wife rented a five-bedroom house for her and their daughter at a cost of \$3,080 per month.

The district court's finding that husband's reasonable monthly expenses would be approximately \$5,500 per month properly considered the standard of living during the marriage, not merely husband's expenses at the time of trial.

Finally, wife argues that the district court erred in determining her ability to pay spousal maintenance. Wife maintains that the district court failed to consider the debts she incurred to support husband during the marriage, the temporary contract-by-contract nature of her employment, and the debts she incurred after the separation. But the district court found, and the record supports, that it was a joint decision that husband would remain at home and be the primary caretaker of their minor child instead of seeking outside employment. The record also shows that the district court analyzed wife's earning history and determined her ability to pay based on her earnings history over the past several years. *See Fulmer v. Fulmer*, 594 N.W.2d 210, 214 (Minn. App. 1999).

The district court further noted that wife continued to support her "expensive lifestyle" and that, even while incurring those expenses, she had the ability to pay spousal maintenance to husband. As for the alleged failure of the district court to consider the debts wife incurred after the separation, wife's argument ignores the fact that the district court did order husband to pay retroactive child support and assigned several debt obligations solely to husband.

On this record, the district court did not abuse its discretion by awarding temporary spousal maintenance to husband.

Affirmed.