

*This opinion is nonprecedential except as provided by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
A20-1373**

In re the Marriage of:
John A. Laumann, petitioner,
Respondent,

vs.

Kelly M. Laumann,
Appellant.

**Filed May 24, 2021
Affirmed in part, reversed in part, and remanded
Kirk, Judge***

Hennepin County District Court
File No. 27-FA-19-2719

John A. Laumann, Corcoran, Minnesota (pro se respondent)

Kurt Robinson, Kurt Robinson, P.A., Blaine, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reyes, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant-wife challenges the district court's order in this marriage dissolution case, arguing that (1) the record does not support several of the district court's findings of fact; (2) the division of marital property was inequitable; (3) the district court awarded her an

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

insufficient amount of spousal maintenance; (4) the district court's property division should have included respondent-husband's flex and sick leave pay; (5) the district court should have awarded her need-based attorney fees; and (6) the district court should have granted her continuance request. We affirm in part, reverse in part, and remand.

FACTS

Appellant-wife Kelly M. Laumann and respondent-husband John A. Laumann married in 1988 and have three adult children. The parties separated in April 2019 and husband filed a petition of dissolution. At the time of the dissolution of their marriage, wife was 57 years old and husband was 58 years old. The district court scheduled a court trial for December 2019 to resolve issues related to spousal maintenance, the division of property and retirement accounts, and attorney fees. In the months before trial, both parties had counsel withdraw from representation. Husband retained new counsel around six weeks before the December trial date and requested a continuance, but the district court denied this request because it would be unfair to wife.

Wife appeared pro se at the first day of trial. The trial was unable to be completed in one day, and a second date was scheduled for March 2020. Between the two trial dates, wife obtained counsel. Wife requested a continuance of the second trial date, but the district court denied the request. Both parties were represented by counsel for the second day of trial.¹

¹ Because of the on-again-off-again nature of legal representation of the parties at the district court and during this appeal, the record before the district court was poorly developed and the arguments on appeal were not fulsomely presented by both parties.

The district court issued its order for judgment, dissolving the marriage, dividing the property, and requiring husband to pay wife \$1,500 per month in spousal maintenance, to terminate when husband turns 65 and plans to retire. Husband received the marital home, and the remaining marital property, money, and debts were divided between the parties. Wife moved the district court for amended findings of fact and requested a new trial, but the district court denied the motion. This appeal followed.

DECISION

Spousal maintenance

Wife argues that the district court clearly erred in setting \$1,500 per month for spousal maintenance because the district court relied on an incorrect consideration of her potential income, failed to consider reasonable expenses for her to achieve as much of the marital standard of living as husband was able to achieve, did not make the award permanent, and did not secure the maintenance with life insurance.

An appellate court reviews a district court's award of maintenance for an abuse of the district court's broad discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A district court abuses its discretion if its conclusions are contrary to logic and the facts in the record. *Id.* "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." *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004).

In this case the district court left the disadvantaged spouse, wife, impoverished while allowing husband to enjoy a lifestyle virtually equal to the marital standard of living.

Husband received the marital home and a larger share of the marital assets. The district court found that wife had not been employed for many years, was recovering from injuries from an accident, and would have to find a job in a hurting economy. The district court also found that husband has a gross income of \$113,620.² This breaks down to a monthly gross income of roughly \$9,450. Initially, wife is left with a smaller share of the marital assets and only \$1,500 per month in maintenance as income, while husband has the comfort of the marital home and \$7,950 per month in income after paying the maintenance obligation.

The district court also found that wife should eventually be capable of earning an hourly rate of \$12 to \$15, resulting in a gross annual income of up to \$30,000, or \$2,500 monthly. Even if she is able to earn this much at some uncertain future date, the current award would not allow wife to live as close to the marital standard of living as husband. If she is somehow able to reach this income level, she will have a total income of \$4,000 per month (\$1,500 in maintenance and \$2,500 from anticipated employment) and husband will still have at least \$7,950. Husband will then have nearly \$4,000 a month more than wife (even more if the tax advantage of paying maintenance and tax disadvantage of receiving maintenance are taken into consideration).

² Although we do not specifically address wife's appeal of many of the district court's findings of fact, we are concerned that multiple findings are not properly supported by the facts in the record and may have reached a different result had wife been represented by counsel. Valuing wife's Toyota Prius at a Kelley Blue Book value over \$4,000 despite testimony that it was purchased for \$1,000 and has a salvaged title is perhaps the clearest example. We encourage the district court to reopen the record and reconsider its findings on remand.

While dissolutions following long-term marriages inevitably create economic problems for both parties, and equal distribution is not required, “the bulk of the economic burden should not be visited on one party without regard to the parties’ standard of living during the marriage and without regard to that party’s now limited ability to [compete] in the labor market.” *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987). The district court did not properly balance the length of the marriage and the income disparity of the parties.³

Further, the district court’s calculation of wife’s income was speculative since she has been out of the workforce for more than twelve years, has suffered an injury, and will have to find a job in a hurting economy. The district court concluded that wife “may use the cash equalizer paid to her to secure housing and reduce her monthly expenses and obligations.” But wife should not be forced to deplete portions of her property distribution to survive while trying to find a job. *See Lee v. Lee*, 775 N.W.2d 631, 640 n.10 (Minn. 2009) (stating that disadvantaged spouse should not be required to “invade the principal of the [distributed] property to pay living expenses”).

Because of all the factors working against wife finding employment, equitable spousal maintenance would suggest that the parties’ incomes in this case should be close to the same despite caselaw stating that the goal is not equalization of the parties’ incomes.

³ In the dissolution of long-term marriages where one party was a homemaker for several years and the parties are approaching retirement age, it is not uncommon to find equitable a maintenance award that comes close to dividing a maintenance obligor’s income in half. *See generally Rye v. Cook*, No. A13-1414, 2014 WL 1758277, at *1, *7 (Minn. App. May 5, 2014).

Lee v. Lee, 749 N.W.2d 51, 60 n.2 (Minn. App. 2008), *aff'd in part, rev'd in part on other grounds*, 775 N.W.2d 631. Finally, given wife's dire situation, her age, the length of the marriage and the clear need for maintenance, as well as the current discrepancy between the parties' incomes, it was an abuse of discretion not to make maintenance permanent, and the district court on remand should consider securing it with a life insurance policy. See Minn. Stat. § 518.552, subd. 3 (2020) ("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."); *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987) (reversing and remanding for permanent maintenance when wife's future income was uncertain), *review denied* (Minn. Nov. 24, 1987); *Israni v. Sidhwani*, No. A20-0707, 2021 WL 1081779, at *4 (Minn. App. Mar. 22, 2021) (reversing for permanent maintenance when uncertainty existed regarding health and future ability of obligee to work).⁴ Husband can move to modify maintenance when he retires, and the district court may consider whether the parties' financial circumstances justify a change at that time.

In conclusion, the district court abused its discretion in awarding spousal maintenance because the current division of property and spousal maintenance award inequitably prejudices wife. This appears to be a product of wife being unrepresented at the first day of trial and having difficulty calculating her reasonable monthly expenses as the party displaced from the home. On remand, the district court should reopen the record

⁴ Nonprecedential opinions are not binding authority, but we cite this case as persuasive authority for its distinction between permanent and temporary spousal maintenance. See Minn. R. Civ. App. P. 136.01, subd. 1(c).

and reconsider the division of property. The district court should also increase the spousal maintenance obligation to bring the parties on equal financial footing, and the district court should make this award permanent and consider securing it with a life insurance policy if husband is insurable and the cost is reasonable. The amount of the award can be readjusted once wife obtains a stable income.⁵

Flex and sick leave pay

Wife argues that the district court erred when it failed to classify husband's accrued flex and sick leave pay as marital property. "Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court's underlying findings of fact." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). However, "error is not presumed on appeal, and the burden of showing error rests on the party asserting it." *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011).

⁵ In establishing an equitable order in a long-term marriage with one spouse being disadvantaged in ability to earn income compared to the advantaged spouse, a district court could total the income available at the beginning and equitably divide that between the parties through maintenance after taking into account the parties' expenses. In this case, the record does not provide much detail from which these expenses can be determined. The best we have is husband's calculation of his expenses and his agreement that wife would have the same in reasonable expenses. A district court could then reduce the disadvantaged spouse's maintenance award after two years to reflect the earnings that should be available to the disadvantaged spouse by then, based on the district court's determination of what income he or she can eventually earn by rehabilitation and reasonable efforts to obtain employment. This would allow the disadvantaged spouse to seek a modification before the step down if he or she was not able through good-faith effort to achieve the income level expected by the district court. See Minn. Stat. § 518.145, subd. 2 (2020). Implicit in this is that the parties will never be able to achieve the marital standard of living and the pain of their shortfalls should be shared. In this case, maintenance would likely be between \$4,000 and \$5,000 per month at the beginning. Wife's maintenance could be reduced after two years if her anticipated income is achieved.

Marital property is defined as “property, real or personal, including vested public or private pension plan benefits or rights.” Minn. Stat. § 518.003, subd. 3b (2020). Wife does not cite, and we cannot find,⁶ any Minnesota caselaw classifying flex or sick leave pay as marital property, nor does the plain language of the statute indicate as such.

Instead, wife asks that we adopt a new rule classifying flex and sick leave pay as marital property. But we are an error correcting court, not a policy making court. See *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Because wife cites no authority, she has not met her burden in showing that the district court erred.

Attorney fees

Wife argues that the district court erred when it denied her request for need-based attorney fees. District courts “shall award attorney fees” if a party shows that (1) the fees are necessary for the good-faith assertion of the party’s rights and will not contribute unnecessarily to the length and expense of the proceeding; (2) the party from whom fees are sought has the means to pay them; and (3) the party to whom fees are awarded does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2020); *Phillips v. LaPlante*, 823 N.W.2d 903, 907 (Minn. App. 2012). We review a district court’s decision on whether to award attorney fees for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). “A district court abuses its discretion if its findings are unsupported by the

⁶ We previously determined in a nonprecedential opinion that vacation pay should not be considered income when determining earning capacity. See *Voigt v. Voigt*, No. A04-2433, 2006 WL 91396, at *4 (Minn. App. Jan. 17, 2006).

record or if it misapplies the law.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quotation omitted).

Wife requested that the district court award her \$10,000 in attorney fees due to her lack of assets and the financial disparity between the parties. The district court denied this request, acknowledging that wife had a right to representation to protect her interests, but reasoning that she should bear the costs of her decision to litigate rather than enter settlement negotiations. Wife requested the district court to reconsider its determination, arguing that it never addressed her claim for need-based fees. The district court denied this request, stating that it did acknowledge wife’s claim for need-based fees and citing language used in its dissolution order.

Although the district court did acknowledge wife’s request for need-based fees, it did not evaluate whether wife met the requirements of Minn. Stat. § 518.14, subd. 1. If wife met all the requirements set out by statute to qualify for need-based attorney fees, the district court would not have discretion to deny her such fees. *See Muschik v. Conner-Muschik*, 920 N.W.2d 215, 225 (Minn. App. 2018) (emphasizing that district courts must award fees and costs if a party meets statutory requirements). Therefore, the district court abused its discretion by not applying the need-based attorney fees analysis in Minn. Stat. § 518.14, subd. 1.

Continuance

Finally, wife argues that the district court abused its discretion when it denied her motion for a trial continuance after she retained counsel in February 2020. “The granting of a continuance is a matter within the discretion of the [district] court and its ruling will

not be reversed absent a showing of clear abuse of discretion.” *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). “The test is whether a denial prejudices the outcome of the trial.” *Jones v. Jones*, 402 N.W.2d 146, 150 (Minn. App. 1987).

Wife argues that the district court did not consider the required factors in denying her continuance request. In deciding whether to grant a continuance, district courts must consider and balance “(1) the degree of prejudice to the [moving party]; (2) the degree of prejudice to the [nonmoving party]; (3) the impact of a [continuance] at that stage of the litigation; [and] (4) the degree of willfulness, bad faith, or inexcusable neglect on the part of the [moving party].” *Cotroneo v. Pilney*, 343 N.W.2d 645, 649 (Minn. 1984).

While wife is correct that the district court did not explicitly address these factors in denying her motion, its basis for denial was grounded in them. The district court determined that wife would still have twenty-eight days to prepare for trial with her new attorney, suggesting a low level of prejudice to wife. The district court also had previously denied an identical motion filed by husband and felt it would be unfair to husband to deny his motion but grant wife’s motion. Lastly, the district court weighed the impact of the continuance by noting that the trial had already begun and that a continuance would push the trial date out almost four months because of the district court’s limited calendar. While the district court did not analyze the last factor, there is no evidence that wife acted with willfulness, bad faith, or inexcusable neglect. *See Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that unless error is prejudicial, no grounds for reversal exist). The district court did not clearly abuse its discretion by denying wife’s continuance request.

Affirmed in part, reversed in part, and remanded.