

*This opinion is nonprecedential except as provided by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
A20-1383**

In re the Marriage of:
Dodamwalage Dinesh Jayawardena, petitioner,
Appellant,

vs.

Mallikaarachchige Sathsarani Jayawardena,
Respondent.

**Filed May 17, 2021
Reversed and remanded
Rodenberg, Judge***

Hennepin County District Court
File No. 27-FA-17-4061

John T. Burns, Jr., Burnsville, Minnesota (for appellant)

Tifanne E. Ehrman Wolter, Henningson and Snoxwell, Ltd., Maple Grove, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Rodenberg, Judge.

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

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Following a dissolution trial, a district court judge (the trial judge) excluded from appellant-husband Dodamwalage Dinesh Jayawardena's budget the amount he claimed as a reasonable monthly expense for paying off the credit-card debt allocated to him as his sole responsibility by the judgment and decree. Appellant appealed, and we reversed the exclusion and remanded for recalculation of appellant's budget and therefore of his spousal-maintenance and child-support obligations. *Jayawardena v. Jayawardena*, A19-0390, 2019 WL 4013973, at *3 (Minn. App. Aug. 26, 2019).¹

On remand, a different district court judge (the remand judge) again declined to include appellant's claimed monthly expense for servicing the credit-card debt in his reasonable monthly expenses and imposed the same spousal-maintenance and child-support obligations originally imposed. The remand judge reasoned that, because the trial judge had found as a fact that some of appellant's claimed monthly expenses, including the claimed amount of \$1,716.19 for credit-card debt, were "unsubstantiated," appellant's reasonable monthly expenses include no amount for servicing the credit-card debt.

Appellant appeals, arguing that the remand judge failed to follow our remand instructions. Because we conclude that the remand judge misapprehended our remand instructions, we again reverse and remand. On remand, the district court shall find as a fact the amount of the reasonable monthly expense of servicing appellant's credit-card

¹ Appellant raised several other issues in the earlier appeal, and we affirmed the district court on all other issues. This appeal does not implicate those other issues.

debt, recalculate appellant's monthly budget including that expense, and recalculate his spousal-maintenance and child-support obligations based on the reasonable monthly budget so determined.

DECISION²

District courts generally have broad discretion to determine how to proceed on remand but must act consistent with the remand instructions provided. *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 633 (Minn. 2017). The district court here misapprehended *Jayawardena*, 2019 WL 4013973, at *3 (reversing the exclusion of the claimed, but unsubstantiated, monthly credit-card debt payment from appellant's budget and remanding for recalculation of his spousal-maintenance and child-support obligations), and the resulting order on remand is inconsistent with our remand instructions.

It is undisputed that “[a]t the time of the dissolution trial [i.e., July 2018], appellant had more than \$30,000 in credit card debt . . . allocated to him as nonmarital debt,” and that appellant “claimed \$1,716.19 in monthly expenses to pay off this debt.” *Jayawardena*, 2019 WL 4013973, at *3.³ The trial judge expressly assigned to appellant the obligation to pay this credit-card debt, but concluded that the claimed monthly expense of appellant doing so was “unsubstantiated” because it duplicated expenses included elsewhere in appellant's budget and that, as appellant testified, he was not actually making either the

²We present only the facts relevant to the issue on appeal here. For a complete factual background of this matter, see our opinion in *Jayawardena*, 2019 WL 4013973 at *1.

³ Neither party sought review of our earlier opinion.

monthly payments of \$1,716.19 claimed in his budget or any other payments to service the credit-card debt at the time of trial.⁴

In the earlier appeal, we rejected the district court's reasoning that the credit-card expense was duplicative, reversed the exclusion on that basis, and remanded for recalculation of appellant's spousal-maintenance and child-support obligations. *Id.*

Appellant argued on remand, and reiterates in the current appeal, that our earlier reversal amounted to a directive that the district court include that \$1,716.19 monthly expense in his budget. Our earlier opinion said no such thing. Our opinion noted the undisputed credit-card debt that appellant is obligated to pay, disagreed with the trial judge's reasoning that the credit-card debt was duplicated elsewhere in appellant's monthly budget, and remanded for the district court to include in appellant's reasonable monthly expenses *some amount* for servicing appellant's credit-card debt. *See id.*

It seems from the record made by the parties on remand that appellant has not been making payments on the credit-card debt. Nothing in the record suggests that the debt has been discharged or forgiven. Accordingly, and based on the record as constituted, appellant has a legal obligation to pay the credit-card debt assigned to him in an amount in excess of \$30,000. Therefore, some reasonable monthly debt-servicing expense must be included in appellant's budget. The district court may, in its discretion, reopen the record on remand. Based on appellant's budget as so revised, the district court shall, as we

⁴The record reveals only appellant's claim that, after "the debt had been turned over to a collection attorney [in May 2018], . . . [he] estimated that a reasonable payment to satisfy his obligation would be \$1,716 a month."

previously ordered, recalculate appellant's spousal-maintenance and child-support obligations.⁵

On remand, the district court may consider whether appellant has actually been making payments on the credit-card debt since the July 2018 trial. If he has not, his relief on remand will be prospective only. If, however, the district court determines that appellant has in fact been servicing the credit card debt, it may in its discretion award him retroactive relief for any period during which he was making payments.⁶

Reversed and remanded.

⁵ This is not to say that the district court on remand must reduce appellant's obligations by the monthly debt-service cost on a dollar-for-dollar basis. It is possible that the parties' combined reasonable monthly expenses will exceed their combined net monthly income. In that case, it is for the district court to decide how the resulting monthly shortfall should be equitably shared by the parties.

⁶ At oral argument to this court, respondent's attorney repeated an argument she had made at the remand hearing: the trial judge intended to deduct, but did not deduct, two one-time 2018 tax expenses and a credit-card interest expense, a total of \$976.16, from appellant's monthly expenses. But respondent's attorney did not file a notice of related appeal raising this issue in either appeal, and therefore it is not properly before us now and is beyond the scope of our review. See Minn. R. Civ. App. P. 103.02, subd. 2, (providing that a party other than an appellant may seek review of a ruling in the same action by serving and filing a notice of related appeal); see also *301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551, 561 n.2 (Minn. App. 2010) (declining to address a respondent's claim of district court error because that respondent had not filed a notice of related appeal). Moreover, because the issue could be resolved only by fact-finding, it would more properly be addressed by a district court than by this court. See *Miller v. Miller*, 458 N.W.2d 105, 106-07 (Minn. 1990) (reversing and remanding an award of permanent spousal maintenance established by this court after it determined that an award of temporary spousal maintenance should be made permanent so that the district court could consider the parties' relative financial positions and make the appropriate award); see also *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) (stating that "[i]t is not within the province of [appellate courts] to determine issues of fact on appeal"); *Suleski v. Rupe*, 855 N.W.2d 330, 338 (Minn. App. 2014) (reversing and remanding because "findings are missing").