

*This opinion is nonprecedential except as provided by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
A21-1741**

In re the Marriage of: Kimberly Erin Macfarlane, petitioner,
Appellant,

vs.

Bruce Travis Adam Macfarlane,
Respondent.

**Filed October 10, 2022
Affirmed in part, reversed in part, and remanded
Reilly, Judge**

Hennepin County District Court
File No. 27-FA-19-8377

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Jeffrey K. Priest, Priest Hill Law Firm, PLLC, Eagan, Minnesota (for appellant)

Timothy D. Lees, Lees Family Law, LTD., Edina, Minnesota; and

Jolene D. Baker Vicchiollo, Alexis N. Rohach, Baker Vicchiollo Law, LLC, Edina,
Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this marriage dissolution dispute, appellant-wife argues that the district court (1) abused its discretion by awarding husband permanent spousal maintenance; (2) erred by making a finding of fact purportedly ordering the parties to submit possible future disputes regarding personal property to binding arbitration; and (3) should have specified that the property equalizer be paid from pre-tax retirement funds. While we conclude that the district court failed to make the findings of fact necessary to support its decisions related to the maintenance award and the property equalization payment, we also conclude that any error made by including a finding of fact purportedly referring possible future disputes to binding arbitration is harmless. As a result, we affirm in part, reverse in part, and remand.

FACTS

Appellant-wife Kimberly Erin Macfarlane and respondent-husband Bruce Travis Adam Macfarlane married in 1999. When wife petitioned to dissolve the parties' marriage in 2019, they had three minor children, one of whom is now an adult. In July 2021, the matter proceeded to a two-day trial to address the disputed issues of physical and legal custody of the minor children, parenting time, child support, spousal maintenance, and the division of debts and assets.

The district court made many findings of fact about the parties' incomes and expenses, including that, during the marriage, the parties enjoyed a middle-class lifestyle and did not incur significant debt. After separating, the parties sold the family home for

\$730,000 with the proceeds split equally between husband and wife. At the time of the trial, the district court found that wife worked full-time and earned a gross monthly income of \$14,730.33. The district court found wife's reasonable monthly living expenses were \$5,441.54.

The district court also found that husband started working full-time in 2019. Before taking that job, however, husband spent about 14 years as the homemaker and primary caretaker of the children. Wife was the primary wage earner during the marriage, and the district court found that her income increased steadily during the marriage. The district court found that husband lost employment and earning opportunities by being a homemaker. At the time of the trial, the district court found that husband earned a gross monthly income of \$6,657.66. The district court found husband's reasonable monthly living expenses were \$5,502.

The December 2021 dissolution judgment divided the parties' marital property and included a finding of fact stating that any disputes "shall be resolved through binding arbitration without right of appeal." The district court also granted husband \$2,000 in permanent monthly maintenance and ordered wife to pay husband a property equalizer amount of \$55,028.27 within 90 days following the entry of judgment. Wife appeals.

DECISION

I. The district court erred by failing to calculate the parties' net incomes.

Wife asserts that the district court's findings do not support awarding husband permanent spousal maintenance in the amount of \$2,000 per month because the findings show that husband's reasonable monthly expenses (\$5,502) are less than his gross monthly

income (\$6,657.66). Appellate courts review a district court’s decision about spousal maintenance for an abuse of discretion. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021). A district court abuses its discretion if it makes findings unsupported by the record, misapplies the law, or decides the question in a manner contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022); *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Spousal maintenance is “an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.” Minn. Stat. § 518.003, subd. 3a (2020); *see Honke*, 960 N.W.2d at 266 (stating that “an award of maintenance depends on a showing of need”) (citations and quotations omitted). When a party requests spousal maintenance, the district court must address whether the spouse seeking spousal maintenance established a need for maintenance under Minn. Stat. § 518.552, subd. 1 (2020). *Honke*, 960 N.W.2d at 266; *Madden v. Madden*, 923 N.W.2d 688, 695 (Minn. App. 2019). A party shows a need for maintenance if, considering the standard of living during the marriage, the party shows that he or she cannot provide for the payment of his or her reasonable expenses calculated at the marital standard of living. *See* Minn. Stat. § 518.552, subd. 1 (addressing need for maintenance); *Honke*, 960 N.W.2d at 266 (same).

If a party shows a need for maintenance, the district court may award spousal maintenance “in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors[,]” including those listed in Minn.

Stat. § 518.552, subd. 2 (2020). *Honke*, 960 N.W.2d at 267. No single factor is dispositive. *Id.*

Wife is correct that the district court’s findings show that husband’s gross monthly income exceeds his monthly expenses, thereby creating a possibility that husband does not need part or all of the maintenance that the district court awarded him. But the district court did not find husband’s after-tax net income. *See Schmidt v. Schmidt*, 964 N.W.2d 221, 227 (Minn. App. 2021) (noting that, generally, “an employed person is required by law to file an income-tax return and pay income taxes, unless the employee’s income is below the applicable income thresholds”). While the spousal maintenance statute does not specify whether the district court must consider gross income versus net income, “it usually is necessary for the district court to consider a spouse’s obligation to pay income taxes when determining his or her ability to provide adequate self-support through employment.” *Id.*; *see Erlandson v. Erlandson*, 318 N.W.2d 36, 39 (Minn. 1982) (affirming a maintenance award noting that the recipient’s “[reasonable] monthly expenses exceeded her *net* take-home salary”) (emphasis added); *Schmidt*, 964 N.W.2d at 229 (reversing denial of maintenance when the denial was based on an analysis which omitted consideration of the effect of taxes on the potential maintenance recipient’s income); *cf. Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985) (reversing an award of spousal maintenance because “to determine [the potential obligor’s] ability to pay, the court must make a determination of the payor spouse’s net or take-home pay”), *rev. denied* (Minn. July 26, 1985).

Here, the district court used neither party's net income when addressing whether to award husband maintenance, even though the record contained information addressing their respective tax burdens. The parties' tax obligations could affect husband's ability to meet expenses and wife's ability to pay maintenance, respectively. By omitting consideration of the tax information in this record, the district court ran afoul of both (a) the statutory requirement in Minn. Stat. § 518.552, subd. 2, requiring that, when setting the amount and duration of a maintenance award, the district court consider "all relevant factors[;]" and (b) the caselaw specifically identifying taxes as a factor relevant to a maintenance award. Thus, in making its maintenance award, the district court both misapplied the law and set maintenance in a manner that is contrary to logic and the facts on this record.

Wife's arguments to the contrary do not persuade us otherwise. She first contends that husband never: (1) proposed that the district court use his net monthly income to determine maintenance, and (2) challenged the district court's findings about his income through a post-trial motion or cross-appeal. But husband's burden to establish his need for maintenance does not absolve the district court from making findings on the parties' net incomes when the relevant tax information is in the record. Wife also argues that husband has no need for spousal maintenance, even considering net income. And although both parties make record-based arguments about what the net income figures should be, "[a] district court's determination of income for maintenance purposes is a finding of fact[.]" *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). "It is not within the province of [appellate courts] to determine issues of fact on appeal." *Kucera v. Kucera*, 146 N.W.2d

181, 183 (Minn. 1966). Thus, a remand to determine both parties' net incomes based on the tax information in the record is required for the district court to analyze husband's need for maintenance.¹

II. Any error by referring to binding arbitration in the district court's findings of fact is harmless.

Wife next argues that the district court erred by including a finding of fact purportedly requiring the parties to submit to binding arbitration over the division of property because the parties did not agree to participate in arbitration.

The district court's findings of fact about the division of property included a finding that "[t]he parties shall endeavor to reach agreement on the division of household goods and furnishing. If they have not done so within thirty (30) days of entry of this Judgment and Decree, any remaining disputes shall be resolved through binding arbitration without right of appeal." But in the conclusions of law, the district court again detailed the division of personal property: "[a]ll unspecified home goods and furnishings will be divided by the parties by agreement within thirty (30) days of entry of the Judgment and Decree." And the district court ordered that "[i]f future disputes arise relating to matters in this case, the parties shall participate in mediation." Nowhere in the conclusions of law does the district court order the parties to participate in binding arbitration. And nowhere in the findings of fact does the district court mention mediation.

¹ Wife also argues that the district court erred by awarding husband permanent spousal maintenance instead of temporary spousal maintenance. Without findings of the parties' net incomes, and thus of husband's need and wife's ability to pay, it is premature to address the duration of any maintenance award that the district court might make on remand. As a result, we decline to address wife's argument on this point.

The parties are correct that the district court lacks authority to order binding arbitration absent their agreement. But when there is a conflict between a finding of fact and a conclusion of law that has become part of the judgment, “the judgment is binding and prevails over an inconsistent statement in an underlying finding of fact.” *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006), *rev. denied* (Minn. May 16, 2006). Because the conclusion of law is incorporated into the judgment, its requirement that disagreements be mediated trumps any statement in the findings of fact purportedly referring matters to binding arbitration. Thus, any error in the findings of fact is harmless. Minn. R. Civ. P. 61 requires courts to ignore harmless error.

III. The district court abused its discretion by failing to specify from which source of funding the property equalizer must be paid.

Finally, the parties disagree about whether the source of the equalizer payment is from pre- or post-tax funds. They claim the document is ambiguous leaving a dispute between the parties. “Generally, a document is ambiguous if it is reasonably susceptible to more than one meaning.” *Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014) (quotation omitted). Whether a document or “provision in a dissolution judgement and decree is clear or ambiguous is a legal question.” *Id.* “A district court’s determination of the meaning of an ambiguous judgment and decree provision is a fact question, which appellate courts review for clear error.” *Id.*

Here, the district court’s division of property requires wife to “pay [husband] a property equalizer amount of \$55,028.27 . . . within ninety (90) days of entry of the Judgment and Decree.” Wife does not dispute the amount owed but argues that the

property equalizer should be paid from pre-tax retirement funds that can be transferred directly to husband. She argues that a post-tax property equalizer would “significantly affect the property division and render it unequal and inequitable.” Husband contends that it does not matter which account or source of funding wife pays the property equalizer amount from, only that wife pays husband \$55,028.27 free and clear of any interest. He argues that if wife is allowed to transfer the amount of the property equalizer from a pre-tax retirement fund, he will not receive the full property equalizer payment because of the tax consequences of that payment.

The district court order is not clear about whether the equalizer payment may be transferred directly to husband from a pre-tax retirement account or must be paid to husband post-tax. The district court only ordered that wife pay husband the property equalizer amount within 90 days. Thus, the district court’s order is ambiguous, and a remand is required to clarify the ambiguity.

Affirmed in part, reversed in part and remanded.