STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0359

In re the Marriage of:

Russell Vander Wiel, petitioner,
Respondent,

vs.

Sharna Ann Wahlgren,
Appellant.

Filed January 23, 2023
Affirmed as modified
Jesson, Judge

Ramsey County District Court
File No. 62-FA-17-2657

Linda S.S. de Beer, de Beer & Associates, P.A., Lake Elmo, Minnesota (for respondent)

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

Evon M. Spangler, Spangler and de Stefano, PLLP, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After more than 20 years of marriage, respondent and cross-appellant Russell Vander Wiel (husband) petitioned the district court to dissolve his marriage to appellant and cross-respondent, Sharna Ann Wahlgren (wife). The ensuing litigation lasted over five

years, due in part to the impact of wife's ongoing significant health issues and the COVID-19 pandemic, as well as the parties' extensive marital assets.

After a five-day trial, the district court entered a judgment and decree ruling, among other things, that husband did not dissipate marital assets following the parties' separation. The district court then divided the property (and debts) between the parties and awarded wife five years of temporary spousal maintenance.

On appeal, the parties collectively raise 12 issues, which fall within three broad areas: (1) property division, (2) dissipation of marital assets, and (3) spousal maintenance. Because the record largely supports the district court's findings—with one exception—we affirm as modified.

FACTS

In October 2017, after more than 20 years of marriage, the parties separated. Around this time, husband petitioned the district court to dissolve the parties' marriage.[1]

Five years of contentious litigation ensued, including numerous requests for continuances, discovery disputes, motions in district court, and one appeal.[2] The district court then held a five-day trial in October and November 2020.

The May 2021 judgment dissolving the parties' marriage denied wife's motion to value the parties' property as of September 30, 2020, in favor of the original March 20,

[1] This matter was heard by a referee, who made recommendations adopted by the district court. This court treats a referee's recommendations, as adopted by the district court, as the district court's order. Minn. R. Civ. P. 52.01.

[2] During earlier proceedings, the district court appointed a guardian ad litem for wife given her ongoing mental-health concerns. This court, however, reversed that appointment. *Vander Wiel v. Wahlgren*, 934 N.W.2d 125 (Minn. App. 2019).

2018, valuation date, which was based upon the date of the original pretrial conference. The judgment then awarded wife the marital home (valued at $323,900) and a cabin in Lindstrom (valued at $277,000), and awarded husband a condominium in Utah (valued at $1,250,000). The judgment also divided the bank accounts, retirement funds, and other assets. With regards to debts, the judgment made wife responsible for repaying a home equity line of credit (HELOC) debt on the marital home because wife "unilaterally withdrew the entire $200,000 . . . [and] deposited the funds into an account in her name only" after the parties' separation. The judgment directed husband to share equally in wife's medical debt incurred prior to the valuation date, and divided approximately $208,124 in unsecured debts between the parties, as well as retirement, bank, and investment accounts, among other items.

In sum, each party received approximately $1,702,754 after the district court divided assets, debts, and the marital estate. The court ordered wife to pay husband a $3,574 equalizer payment to compensate for the slightly higher value of the net marital estate that wife received. The district court rejected wife's claim that, after the parties' separation, husband dissipated marital assets through unnecessary spending. In doing so, the district court considered wife's spending, the parties' standard of living over the last three years of their marriage, and credited husband's testimony regarding his need for the expenditures.

Finally, the district court addressed spousal maintenance. Wife sought permanent maintenance, contending that she can no longer work as a result of her emotional and mental health. After hearing extensive testimony—including expert testimony—the court

determined that wife's mental health rendered her temporarily unable to work. But the court rejected wife's proposed monthly budget of over $16,000 after examination of wife's expenses—which the district court determined were overstated—and the marital standard of living. Instead, the district court awarded wife monthly maintenance of $5,667 for five years.

Both parties moved the district court to amend the findings, and wife moved for a new trial. The district court granted, in part, the parties' motions for amended findings to correct certain clerical errors but declined to materially alter the findings, and it denied wife's new-trial motion.

Wife appealed, and husband filed a notice of related appeal.

DECISION

The parties dispute aspects of the district court's decisions regarding its division of the parties' marital assets and its award to wife of spousal maintenance. An appellate court will not alter a district court's decision on these matters unless that decision constitutes an abuse of the district court's discretion. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018) (property); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (maintenance). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

The parties also dispute aspects of the district court's determination that husband did not dissipate marital assets. What is often colloquially referred to dissipation of marital

assets is currently addressed by Minnesota Statutes section 518.58, subdivision 1a (2022). Under that provision, a person who is a party to, or who contemplates initiation of, the dissolution of a marriage

> owes a fiduciary duty to the other for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets. If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution . . . proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred.

Minn. Stat. § 518.58, subd. 1a. The applicability of this statute depends on whether the district court "finds" that one of the spouses, in contemplation of commencing or during the pendency of the dissolution "transferred, encumbered, concealed, or disposed of marital assets." *Id.* A district court's findings of fact are reviewed for clear error. Minn. R. Civ. P. 52.01; *see Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (applying rule 52.01 in a family-law appeal). Thus we review the district court's determination that husband did not dissipate marital assets for clear error.

The clear-error standard of review, whether employed in the findings-unsupported-by-the-evidence prong of the abuse-of-discretion standard of review or otherwise, "is a review of the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021); *see Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in a family-law

appeal). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Kenney*, 963 N.W.2d at 223 (quotation omitted). When applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Thus an appellate court need not engage in extended discussion of the evidence to demonstrate the correctness of the district court's findings; rather, it need only fairly consider all the evidence and determine that the evidence reasonably supports the decision. *Kenney*, 963 N.W.2d at 222; *see Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (discussing clear-error standard of review).

Finally, we note that appellate courts do not presume error. Instead, the party seeking relief on appeal must both show that the district court committed the alleged error and that the error was prejudicial. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *see Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (applying *Midway* in a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001); *see* Minn. R. Civ. P. 61 (requiring harmless error be ignored); *see also Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (refusing to grant appellate relief when any error was de minimis), *rev. denied* (Minn. Nov. 16, 2010); *Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (same).

With these standards of review in mind, we address the parties' arguments.

I. The district court's division of marital assets fell within its broad discretion.

A district court must divide marital assets justly and equitably. Minn. Stat. § 518.58, subd. 1 (2022). Here, the judgment and decree included a balance sheet identifying the parties' assets and debts and addressing the values of those assets and debts as of the March 2018 valuation date. Those assets and debts can be summarized as real property valued at $1,850,900; bank, retirement, and investment accounts valued at $3,353,687; vehicles valued at $53,144; personal property valued at $50,000; and debts totaling $208,124. Thus the parties' marital assets had a gross value of over $5 million, while the parties had marital-debt total of about $208,000. Of that debt, the district court assigned over $200,000 to wife.

A. Property Valuation

Husband challenges the district court's valuation of the Utah condominium.

A district court's valuation of property is a finding of fact and will not be set aside unless it is clearly erroneous. *See Vangsness*, 607 N.W.2d at 472. The district court is not required to be exact in its valuation of assets, as long as its valuation "lies within a reasonable range of figures." *Passolt v. Passolt*, 804 N.W.2d 18, 25 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Nov. 15, 2011).

Here, the district court valued the Utah condominium at $1,250,000. That valuation is supported by the record. The record contains both a 2017 tax-assessed value of the Utah condominium of $980,000 and a November 2017 sales-comparison-approach appraisal, valuing the condominium at $1,199,000. While neither value addresses the condominium's value as of the March 20, 2018 valuation date, the district court noted both

that husband's March 9, 2018 financial disclosures valued the Utah condominium at $1,250,000 and that wife requested that the property be valued at $1,250,000.

But husband argues that his financial disclosures contained a clerical error, and that the November 2017 appraisal should have been used to determine the Utah condo's value. We disagree. First, husband's financial disclosure was submitted to the court within two weeks of the valuation date—the most recent out of all of the estimates. Second, we defer to the district court's choice to rely on the parties' assertions. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (explaining that appellate courts neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder). Third, even ignoring the valuation of the condominium in husband's financial disclosures, the district court's valuation of the condominium was reasonable given the values generated by the other parts of the record addressing the condominium's value. And this $50,000 difference in a million-dollar property is less than five percent more than its proposed value—a de minimis difference we will not overturn on appeal. *Miller*, 787 N.W.2d at 690. As a result, we cannot say that the district court's valuation of the condominium is clearly erroneous.

Husband also challenges the district court's finding of wife's investment income. In finding wife's investment income, the district court applied the four-percent rate of return-on-investments to which the parties agreed. But the parties disagree on how much of the property awarded to wife should be treated as investable. Husband contends that wife's investable property should have included amounts (including amounts in wife's high-yield savings and her money-market account) which originated from funds she

borrowed via the HELOC, which the district court assigned as a debt to be paid by wife. Husband also asserts that the district court should have applied the four-percent rate of assumed return to stock options and restricted stock units awarded to wife.

We discern no abuse of discretion in the district court's determination. The calculation of investment income by a district court only need fall within a reasonable range. *Passolt*, 804 N.W.2d at 25. And the difference between the annual investment income advocated by husband ($31,000) and the amount determined by the district court ($25,000) is within that range of reasonableness given the extent of marital assets here. Further, both parties' experts agreed that stock-option values are volatile. Thus we cannot say that omitting those assets from the flat rate of return assumed by the parties constituted an abuse of the district court's broad discretion in these matters.

B. Debts

Wife argues that the district court abused its discretion by ordering her to repay the entire HELOC.[3] Specifically, she contends that the HELOC is a marital debt and should be divided between the parties accordingly.[4]

In a dissolution proceeding, the parties' debts are divided in the same manner as the division of assets. *Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996). Marital assets can be "property, real or personal," acquired by the parties, collectively or individually, to a dissolution proceeding, "at any time during the existence of the marriage relation between them." Minn. Stat. § 518.003, subd. 3b (2022). Meaning, generally, debts incurred after the marriage and before the valuation date are considered marital property subject to just

[3] While not entirely clear, husband also seems to assert that the district court miscalculated the property-equalizer payment because of the treatment of the HELOC debt. But the record shows that the district court fully considered the parties' assertions on HELOC matters when it awarded wife the marital home and treated the HELOC secured by that home as a marital debt. Specifically, while the district court did not deduct the HELOC from the value of the marital home, it did use the HELOC debt as a separate item in calculating the property-equalizer payment. Absent more, we cannot say that husband has shown that the district court abused its discretion when it used the HELOC debt in its calculation of the equalization payment.

[4] Husband further argues that the district court abused its discretion when it assigned him wife's outstanding medical bills. The district court determined that to the extent the debt was incurred prior to the valuation date, the parties share equally in those debts and any medical debt incurred after the valuation date was wife's sole responsibility. Husband contends that wife failed to properly submit her medical bills through the parties' insurance provider, which caused additional costs. But husband does not identify where, in this very extensive record, the evidence is that supports his assertions. *See* Minn. R. Civ. App. P. 128.03 (requiring a cite to the record for each material fact). Nor did we locate the evidence to which he seems to refer. *See Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996) (stating citations to the record "are particularly important where . . . the record is extensive"), *aff'd*, 568 N.W.2d 705 (Minn. 1997); *see also Cole v. Star Trib.*, 581 N.W.2d 364, 371-72 (Minn. App. 1998) (noting that failure to cite the record can result in an argument not being properly before this court).

and equitable division. *Id.* But it is within the district court's broad discretion to assign a party solely responsible to pay a debt that benefits only that party. *See Tasker v. Tasker*, 395 N.W.2d 100, 105 (Minn. App. 1986) (concluding it was not an abuse of discretion for the district court to assign one party all the student-loan debt where the party's education had not yet produced a financial benefit).

Here, the district court did not abuse its discretion when it assigned wife sole responsibility for the repayment of the entire HELOC when it also awarded the marital home to wife. As the district court determined, wife unilaterally withdrew approximately $200,000 from the HELOC postseparation and maintained exclusive control over the funds throughout the proceeding. And while wife testified that she withdrew the monies to cover her living expenses, the district court determined that at the time of the withdrawals, she was working full-time and had access to other brokerage accounts which the court implicitly found could have covered these costs. Moreover, the district court noted wife's testimony that she used a portion of these funds to pay a nonmarital expense.[5]

Given this testimony, the district court's assignment of the HELOC debt to wife is not an abuse of discretion.[6]

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[5] The district court found wife's testimony credible that she used a portion of the HELOC funds to pay for her attorney's fees, which are considered a non-marital expense. *Thomas v. Thomas*, 407 N.W.2d 124, 128 (Minn. App. 1987) ("Any amount taken from marital property to pay one party's attorney's fees should be accounted for . . . and the other party compensated in the distribution.").

[6] Wife contends that the district court's finding that there was "nothing nefarious" about the parties' spending postseparation is at odds with the assignment of the HELOC to her. She further asserts that the court treated her differently than husband by assigning this debt to her while not requiring husband to repay "similar" postseparation expenses. For two reasons, we disagree. First, the treatment of husband's expenses was addressed by the

C. Posttrial Motions

Wife broadly challenged the asset valuation underlying the property division in a new-trial motion requesting relief under rule 59.01 of the Minnesota Rules of Civil Procedure. According to wife, because husband failed to disclose assets and comply with discovery requests, she was unable to provide evidence of a change in value to justify an alternate valuation date. As a result, wife contends, she is entitled to a new trial with regard to the property division.[7] Wife, however, does not identify any assets husband failed to identify during the discovery process.

Despite wife's motion being one for a new trial under rule 59.01, the district court analyzed this posttrial-valuation issue utilizing Minnesota Statutes section 518.145, subdivision 2 (2020).[8] The district court "spent considerable time explaining why [it]

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district court in the context of wife's motion—where she bore the burden of proof—that husband dissipated marital assets. A district court's decision regarding whether a party dissipated marital assets is separate and distinct from its division of marital debts. *Compare* Minn. Stat. § 518.58, subd. 1a (requiring the division of marital property to compensate a party if the district court "finds" that the other party improperly "transferred, encumbered, concealed, or disposed of marital assets"), *and* Minn. R. Civ. P. 52.01 (stating that findings of fact are not set aside unless clearly erroneous), *with Korf*, 553 N.W.2d. at 712 (applying the abuse-of-discretion standard to the division of marital debts). Second, the court's decision in addressing husband's spending was based, in part, on its determination that husband spent money on living expenses, a factual finding it did not make regarding wife's HELOC withdrawal.

[7] Husband argues that the district court abused its discretion by determining that wife's motion for amended findings was not a request for reconsideration. But given our determination that the district court properly handled the posttrial motions, we need not reach this issue.

[8] The supreme court has stated that "[t]he sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997); *see Pooley v. Pooley*, 979 N.W.2d 867, 876 (Minn. 2022) (quoting this aspect of *Shirk*). Because Minn. Stat. § 518.145, subd. 2, provides the "sole" vehicle for relief from a "judgment and decree," it is at least arguable

assigned March 20, 2018 as the valuation date and why it did not credit wife's argument about husband's alleged disclosure failures." And the court noted that wife's motion for a new trial amounted to an attempt to relitigate this issue, and it denied wife's motion for a new trial on this ground.

The denial of wife's posttrial motion based upon the valuation date falls squarely within the district court's discretion. Wife's argument is premised on the theory that husband had a duty to provide information about his assets "until trial and beyond." And that, under rule 26.05 of the Minnesota Rules of Civil Procedure, husband was required to supplement his discovery responses up to the trial.

But here husband did answer and supplement discovery responses multiple times, up to three months before trial. The district court set a discovery cut-off date of September 30, 2020, which husband complied with. Setting and enforcing discovery limits is within the broad discretion of the district court. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007) (applying an abuse-of-discretion standard of review to the district court's broad power to issue discovery orders). We see no abuse of that discretion given the multitude of documents produced here and the delays in this matter which were attributable to both parties, as well as the global pandemic.

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that the "judgment and decree" for which Minn. Stat. § 518.145, subd. 2, provides the "sole" vehicle for relief is a judgment and decree that is otherwise final. If a motion for amended findings or a new trial is available, it is at least arguable that any then-existing judgment is not yet final. For purposes of this appeal, however, we will assume that a motion for relief under Minnesota Statutes section 518.145, subdivision 2, is viable despite the simultaneous availability of a motion for a new trial or amended findings, or both.

Still, wife argues that the district court erred in denying her new-trial motion when it analyzed this issue using Minnesota Statutes section 518.145, subdivision 2, instead of rule 59.01 of the Minnesota Rules of Civil Procedure. Minnesota Statutes section 518.145, subdivision 2, provides that the district court may order a new trial as relief from a judgment and decree for one of the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3) fraud . . . ; (4) the judgment and decree . . . is void; or (5) the judgment has been satisfied, released, or discharged, . . . or it is no longer equitable."

Rule 59.01, on the other hand, states in applicable part that a new trial may be granted based upon an irregularity in the proceeding that deprived the moving party of a fair trial. Minn. R. Civ. P. 59.01. That irregularity, according to wife, was the district court's failure to enforce the discovery rules. And she asserts, as she must, that the error was prejudicial error.

Given the district court's careful consideration of the parties' ongoing discovery disputes and its consideration of the valuation date in both its original decision[9] and in the judgment and decree, we discern no difference, in this case, between the posttrial application of Minnesota Statutes section 518.145, subdivision 2, and rule 59.01. Under

[9] In its November 2019 order, the district court determined that neither wife's (September 30, 2020) nor husband's (December 4, 2017) requested dates of valuation would be fair and equitable, given the circumstances. The district court set the date of valuation for March 20, 2018, the date of the initially scheduled prehearing settlement conference. *See* Minn. Stat. § 518.58, subd. 1. And further, the district court noted that Minnesota Statutes section 518.58, subdivision 1, allows the parties the opportunity to request the court adjust the valuation date if there is a substantial change in value of an asset between the date of valuation and the final distribution of assets.

either analytical framework, the district court operated within its broad discretion in denying the posttrial motion on this ground.

II. The record supports the district court's finding that husband did not dissipate marital assets.

Husband spent various amounts on furnishings for the apartment he occupied after the parties separated, on certain gifts of college tuition to his nieces and nephews, and on attorney fees. The district court found husband's testimony on these matters credible and that there was no improper use of marital assets by husband. Wife argues that these determinations by the district court are clearly erroneous.

A. Household Goods and Gifts

In challenging husband's expenditures on household goods, wife asserts that husband could have used furniture the parties already owned, or lived at one of the parties' furnished residences that wife was not occupying, instead of renting an apartment. Therefore, wife concludes, husband's expenditures on these goods were neither for the necessities of life nor in the usual course of business. But the district court credited husband's testimony regarding the expenses for the months immediately following his departure from the marital home in October 2017. And appellate courts defer to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Further, in crediting husband's testimony on these matters, the district court reviewed the documents addressing both parties' postseparation spending, and stated that each party "spent money over the course of [the dissolution proceeding] as they would have if they had remained together." On this record, wife has not shown that the district court clearly

erred in determining that husband did not attempt to conceal or otherwise dissipate marital assets by making expenditures on household goods.

Regarding husband's gifts of college tuition to his nieces and nephews, the record reflects postseparation payments from one of husband's bank accounts for student loans (or college tuition) for his nieces and nephews totaling about $26,000. The record also reflects that the parties had a practice of giving gifts to relatives. Absent more, wife has not shown that the district court's finding that husband did not dissipate marital assets through gifts was clearly erroneous. And even if the finding regarding the gifts was clearly erroneous, the amount of the gifts in question ($26,000) was de minims when compared to the full marital estate. Therefore, even if the finding was clearly erroneous, relief would not be required here. *See Hesse*, 778 N.W.2d at 105 (noting that appellate courts ignore prejudicial error when the prejudice is de minimis); *see also* Minn. R. Civ. P. 61 (requiring harmless error be ignored).

B. Attorney Fees

Generally, the payment by a party to a marital dissolute proceeding of attorney fees is not a payment "in the usual course of business or for the necessities of life." *Baker v. Baker*, 753 N.W.2d 644, 654 (Minn. 2008). But *Baker* does not require the finding that husband's expenditures on attorney fees violated Minnesota Statutes section 518.58, subdivision 1a. Specifically, wife has not established that the funds at issue here were not funds husband earned *after* the valuation date—March 20, 2018.[10] And for property to be

[10] The record shows that husband made the following payments from his bank account: (1) August 2018 payment for $5,000; (2) September 2018 payment for $10,000;

considered "[m]arital property," it must have been acquired by the parties after marriage but *before* the date of valuation. Minn. Stat. § 518.003, subd. 3b. Because wife has not shown that the payments for attorney fees were made with funds acquired before the valuation date, those funds were not marital property. *See id.* As a result, the district court's findings that husband did not dissipate marital assets on this basis is not clearly erroneous.

III. The district court did not abuse its discretion when it determined that wife was entitled to temporary spousal maintenance.

When determining spousal maintenance, the district court engages in a two-part inquiry. Minn. Stat. § 518.552, subds. 1, 2 (2022). First, the district court determines whether the party requesting spousal maintenance lacks the ability to provide adequate self-support at the marital standard of living. *Id.*, subd. 1; *see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that an award of spousal maintenance requires a showing of need). Second, if the district court determines that the spouse is entitled to spousal maintenance, it determines the amount and duration of the maintenance. *Id.*, subd. 2; *see also Schmidt v. Schmidt*, 964 N.W.2d 221, 226 (Minn. App. 2021) (stating a spousal-maintenance award is intended to recreate the standard of living consistent with the parties to the dissolution's marital standard of living, as close as is equitably possible under the circumstances). Here, husband challenges the district court's determination that wife was temporarily unable to support herself, as well as the amount of maintenance

(3) November 2018 payment for $10,000; and (4) December 2018 payment for $10,000. Husband's postseparation paychecks were deposited into this account.

awarded to her. We review these spousal-maintenance decisions for an abuse of discretion. *Schmidt*, 964 N.W.2d at 226.

A. Wife's Ability to Work

After hearing extensive expert testimony regarding wife's mental health, the district court found that wife is unable to work because of her mental-health difficulties. This inability was temporary, the court determined, given that wife's mental-health providers testified that once the dissolution litigation is over, her mental health should improve. Accordingly, the district court awarded temporary maintenance for a five-year period.

The district court's findings are well supported by the record. While there was much dispute over wife's current mental health, it was undisputed that wife has been out of the workforce and collecting long-term disability for the two years preceding trial. Wife, who previously was licensed to practice law, testified that she would need time to take the necessary courses to restore her license to practice. And her treatment records demonstrate a lengthy pretrial period of anxiety, depression, and ongoing mental-health challenges. Her therapist—found to be credible by the district court—explained that wife consistently has difficulty with focus and concentration, skills necessary for employment. And one of wife's expert witnesses, after reviewing wife's medical and employment records, stated in his report that wife "is not capable of working at the level she worked in 2014, and it is not foreseeable when she might be at that level."

Still, husband argues that wife's mental-health challenges are "situational," caused by the stress of the dissolution. And, citing to *Gales v. Gales*, he contends this is not a basis for a permanent maintenance award. 553 N.W.2d 416, 421-22 (Minn. 1996). But

Gales does not dictate the outcome here. First, the district court awarded *temporary* maintenance. Second, the *Gales* court only stated that emotional distress caused by the dissolution should not "by itself" justify an award. *Id.* at 421. Here, where wife's mental-health issues are longstanding and impact her employment, and where the maintenance award is limited to five years, we discern no abuse of discretion in the district court's award based upon wife's inability to work.

B. Amount of Spousal Maintenance

Spousal maintenance is "an award made in a dissolution . . . 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 (2022); *Honke v. Honke*, 960 N.W.2d 261, 266 (Minn. 2021) (stating that "an award of maintenance depends on a showing of need" (quotation omitted)). This court reviews a district court's spousal-maintenance decision for an abuse of discretion. *Honke*, 960 N.W.2d at 265. 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*, 975 N.W.2d at 506; *Dobrin*, 569 N.W.2d at 202.

Here, the district court ordered husband to pay wife 60 months of temporary spousal maintenance in the amount of $5,667, plus 20% of the gross of husband's work bonus. This monthly amount was arrived at based upon a monthly budget of $10,981 for wife—which the court found reasonable—and after deducting wife's monthly income for long-term disability and investment income from her budget amount. Husband challenges six of the district court's estimated values for wife's monthly expenses: car payment, rent,

clothing, gifts and charitable contributions, travel, and entertainment. We begin with an overview of the evidence presented regarding monthly expenses before turning to examine the specific items challenged by husband.

Wife's expert estimated wife's monthly expenses to be $16,679. And wife testified that she believed her monthly expenses were closer to $24,000, although she offered no documents supporting her estimate. The district court determined that wife's expert's estimates were overstated, but took them into consideration. And the court considered husband's monthly-expense estimates based on the parties' average expenses between 2013 and 2017. According to husband's analysis, wife's monthly expenses should be $6,002. But the district court, noting that the period of time husband relied upon coincided with a decrease in the parties' income due to wife's 2013 retirement and that husband omitted the parties' monthly retirement contribution, determined that husband's estimates were too conservative. Yet, in making its ultimate decision, the district court took into account husband's calculations as well.

1. Car Payment

Husband contends that wife's car payment of $542.69 should not be included as a monthly expense because wife purchased the car after the valuation date and, given the parties' past spending on cars, wife should have purchased the new vehicle outright. He also points out that wife was awarded the parties' Porsche Boxter in the property division and that, when he bought a new car after the valuation date, he did not use a loan to do so.

The inclusion of the car payment is supported by the record. There is no dispute that wife incurred this monthly car-payment expense. And wife testified that her previous

car was 13 years old, needed to be replaced, and she did not have sufficient funds to purchase it outright, testimony upon which the district court was free to rely. As to the 2000 Porsche Boxster, wife testified that it had not been used since 2017 and that she was unsure of its condition. Accordingly, we discern no abuse of discretion in the inclusion of a car payment in wife's budget.

2. Rent

Husband challenges the district court's inclusion in wife's monthly budget of a $2,000 rent payment for a condominium wife purportedly rents from her mother. The month-to-month lease agreement in the record states that rent payments were scheduled to begin on August 1, 2018. Husband's argument for excluding the $2,000 figure is persuasive for three reasons.

First, review of the financial records shows no evidence that wife currently pays—or that she ever paid—a monthly amount of $2,000. Nor was there trial testimony by wife that she resides at her mother's condominium. Thus the record lacks evidence supporting an inclusion in wife's budget of any amount for rental of the condominium.

Second, the district court awarded wife two other pieces of real property where she could reside: the marital home and the Lindstrom cabin. We understand that, for a period of time, there was water damage to the marital home.[11] But the record does not reflect that

[11] Husband testified that in February 2020, the marital home suffered extensive water damage. Upon husband's arrival to assess the damage, he saw water flowing from the ceiling, running down the walls, and pooling on the floors. Given the extent of the water damage to the marital home, substantial repairs were necessary. In July 2020, the necessary steps were taken by wife to initiate these repairs. By September 2020, wife had paid for

this damage necessitated rental of the condominium for a five-year period, particularly when wife could have resided at the cabin while the marital home was being repaired.

Third, "[t]he 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). If free use of the condominium was part of the marital standard of living, that use of the condominium was free because wife's mother declined to enforce the lease; in other words, the free use of the condominium was functionally a gift to the parties from wife's mother. To include the (apparently never paid) rent amount in wife's budget for purposes of spousal maintenance would essentially make husband—via his maintenance obligation—responsible for continuing the gifts that had been made by wife's mother. How this is equitable is neither clear nor explained by wife. Alternatively, if wife did not start using the condominium until after the parties separated, the use of the condominium was neither part of the marital standard of living nor a substitute for what would otherwise have been a marital expense. In these circumstances, including the (unpaid) rent amount in wife's budget would run afoul of the idea that it is "the standard of living established during the marriage" that the district court is to consider. Minn. Stat. § 518.552, subd. 2(c).

Given the dearth of evidence that wife actually made rental payments, that the use of the condominium was required, and that including the rent amount in wife's monthly

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about half of the repair costs and requested that the contractor begin additional projects at the marital home.

budget would be an equitable representation of the marital standard of living, we must conclude that the district court abused its discretion by including a $2,000 per month rent payment in wife's temporary maintenance budget.

3. Clothing, Gifts and Charitable Contributions, Travel, and Entertainment

The district court's monthly maintenance budget for wife included $400 for clothing, $200 for gifts, $400 for charitable contributions, $915 for travel, and $400 for entertainment. When addressing the evidence regarding wife's monthly expenses in these areas, the court generally found that wife's estimates were overstated and, at times, unsupported by the record. On the other hand, the court found husband's estimates, at times, too conservative. Accordingly, the district court determined that wife's monthly expenses in these areas fall someplace between the parties' estimates.

A district court's determination of a party's expenses is a finding of fact. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). And findings of fact are not set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *see Kenney*, 963 N.W.2d at 221-22 (discussing clear-error standard of review). Here, the district court's findings on the relevant expenses are not clearly erroneous. For example, wife's expert's budget allocated $750 monthly for clothing, while husband listed the five-year average as $228 per month. The court found wife's amount too high, husband's amount low, and decided that a reasonable amount for a clothing budget, given the standard of living during the marriage, is $400 per month. This amount is supported by the record. Wife submitted bank and credit-card statements that showed spending that averaged more than $228 per month, and

husband's five-year average did not include all of wife's spending on clothes. Thus the district court's finding for wife's clothing expense is not clearly erroneous.

The district court allocated $200 for gifts and $400 for political contributions per month. These numbers fall between wife's expert's budget of $550 for charity and husband's five-year average of $309 for charity. The court's number for gifts is lower than both wife's ($400) and husband's ($312) because the district court found that husband was no longer responsible for supporting wife's family members, whom they had given gifts to in the past. Because these numbers fall within a reasonable range supported by the record, we discern no clear error in this decision.

The district court allotted $915 for travel. The court found husband's five-year average of $915 per month for travel supported by the evidence because wife provided no documentation to support her expert's budget of $1,000 per month for travel. Wife argues that she has taken many costly trips in the past, and even taking one of these trips per year would average out to more than $915 per month. But the district court had evidence of these trips before it when it found husband's five-year average credible.

With regard to the $400 allocation for entertainment and dining out, this amount was less than wife's expert's budget of $550 per month and more than husband's five-year average of $124 per month. The court found that wife's budget was high and not supported by the evidence, but also found that husband's account was low given the amount of traveling the parties have done. Wife submitted bank and credit-card statements to the court that demonstrate that she ate out frequently, went to movie theaters, theater

performances, and spent money on other hobbies. The court did not clearly err by making this finding.

4. Retirement Contributions

After hearing testimony that the parties invested $3,500 every month for retirement, the district court included half that amount ($1,750) as part of wife's spousal-maintenance award. Husband contends this is error because it is unsupported by the record and in contravention of precedent, citing *Sefkow*. 427 N.W.2d at 216.

We disagree. The record (including wife's testimony and even a portion of husband's testimony) supports the district court's finding. And while husband argues that wife was confused about the purpose of investment funds—which he stated were to build assets and equity for the future, not necessarily retirement—this argument only amounts to a credibility determination, which we leave to the district court. *See Goldman*, 748 N.W.2d at 284 (explaining that appellate courts give deference to the district court's opportunity to evaluate witness credibility).

Nor does *Sefkow*, which did not include savings as a need for the purposes of spousal maintenance, dictate otherwise. 427 N.W.2d at 216. Where the parties' standard of living during the marriage includes savings and retirement planning, it is within the district court's wide discretion to include it as a maintenance expense. *Schmidt*, 964 N.W.2d at 230-31. Given the testimony that the parties invested $3,500 every month to go towards retirement planning, the district court's decision in this regard is not clearly erroneous.

5. Life-Insurance Policy

Husband argues that the district court abused its discretion by ordering him to maintain life insurance for wife's benefit, particularly where the court did not specify that the amount of insurance be limited to the amount of spousal maintenance. Here, the district court determined that husband shall name wife as the beneficiary of the life-insurance policy maintained through his work as security for an award of spousal maintenance so long as he is obligated to pay spousal maintenance.

We discern no abuse of discretion in this order. In determining whether an award of spousal maintenance is justified, the district court has discretion to secure the award with life insurance. Minn. Stat. § 518A.71 (2022); *Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007). And when considering how much security is required, there is no requirement that "security be strictly equivalent" to the spousal-maintenance obligation. *Head v. Metro. Life Ins. Co.*, 449 N.W.2d 449, 453 (Minn. App. 1989) (stating district court's spousal-maintenance award must simply be reasonable), *rev. denied* (Minn. Feb. 21, 1990); *see also Peterka*, 675 N.W.2d at 358.

Given the parties' marital standard of living and the temporary award of maintenance here—such that wife is not required to remain the beneficiary of husband's work policy indefinitely—the district court did not abuse its discretion by including husband's life-insurance policy with its spousal-maintenance award.[12]

[12] Husband also argues that wife is not entitled to spousal maintenance in the form of 20% of his yearly bonus because she can support herself without it. *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009) (remanding for reconsideration of maintenance award that exceeded recipient's needs). But we evaluate the district court's decision for an abuse of discretion,

In sum, the district court did not abuse its discretion in its division of marital assets, did not clearly err in finding that husband did not dissipate marital assets, and did not abuse its discretion in the majority of its spousal-maintenance decisions. However, on this record, the district court should not have included the $2,000 per month rent payment in wife's temporary maintenance budget and, consequently, should have reduced the amount of temporary spousal maintenance by $2,000. Accordingly, we affirm the district court's decision, but modify it by removing this rent payment from wife's monthly budget and by reducing the amount of temporary spousal maintenance to $3,667 per month.

Affirmed as modified.

Honke, 960 N.W.2d at 265, and discern no such abuse here. This award of spousal maintenance lasts only for 60 months, and the portion attributable to the potential bonus is projected to amount to $375 per month—a small fraction of wife's monthly budget. Because it is unlikely that such a small payment (if, indeed, husband is awarded a bonus) will cause the spousal-maintenance award to exceed wife's needs, we hold that the district court did not abuse its discretion.