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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0148**

In re the Marriage of: Debra Jean Berndt-Tuttle, petitioner,
Appellant,

vs.

Jason James Tuttle,
Respondent.

**Filed December 11, 2023
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69DU-FA-20-143

Gerald K. Wallace, Wallace Law Firm, PLLC, Duluth, Minnesota (for appellant)

Bill Thompson, Duluth, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Hooten,
Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the amended findings of the parties' marriage dissolution judgment, arguing that the district court abused its discretion in awarding spousal maintenance, failing to award spousal maintenance arrears and to order respondent to

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

secure the award with life insurance, finding nonmarital claims for respondent and awarding him his truck, dividing the marital debt, and failing to acknowledge appellant's nonmarital claim in the homestead, to grant her a greater award based on respondent's dissipation of funds, to order valuation and division dates for pension and retirement account, to divide some other assets, and to award appellant the full amount of her attorney fees. Because we see no abuse of discretion in any of these decisions, we affirm.

FACTS

Appellant Debra Berndt-Tuttle, now 61, and respondent James Tuttle, 56, were married in 2007. In 2020, appellant began an action for legal separation, and respondent petitioned for dissolution of the marriage. In 2021, a district court order awarded appellant temporary monthly spousal maintenance of \$3,000 and reserved the issue of attorney fees. In 2022, the district court found respondent in contempt for failing to comply with a discovery request and denied appellant's motion for default judgment.

At trial, each party testified as to how the marital estate should be divided. After the district court entered its initial judgment, appellant moved for amended findings of fact or a new trial. Following a hearing on the motion, the district court amended the findings and denied the motion for a new trial. Appellant challenges the denial of her motion, arguing that the district court abused its discretion in (1) awarding spousal maintenance, (2) failing to award spousal maintenance arrears, (3) failing to order respondent to maintain life insurance to secure the spousal maintenance award, (4) failing to acknowledge appellant's nonmarital claim in the homestead, (5) finding nonmarital claims for respondent, (6) awarding respondent's truck to respondent, (7) failing to grant appellant an

adequate award based on respondent's dissipation, (8) dividing the marital debt, (9) failing to order valuation and division dates for pension and retirement accounts and to divide some other accounts, and (10) failing to award appellant the full amount of her requested attorney fees.

DECISION

The parties agree that the standard of review for all the issues raised is abuse of discretion. *See Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016) (spousal maintenance); *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009) (division of marital property); *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999) (attorney fees). A district court abuses its discretion if its findings of fact are unsupported by the record, or if it improperly applies the law, or if it resolves the question in a manner that is contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). “That the record might support findings other than those made by the [district] court does not show that the [district] court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). This court will reverse a district court’s decision “only for an abuse of discretion and not simply because as a court of review we would have arrived at a contrary result had we heard the matter de novo.” *Moss v. Moss*, 143 N.W.2d 844, 846 (Minn. 1966) (quotation omitted).

1. Spousal Maintenance¹

Appellant sought permanent spousal maintenance of \$4,200 monthly; she was awarded \$2,500 monthly for ten years, by which time she will be about 70 and respondent about 65. The district court based the award on detailed findings as to each party that address the criteria set out in Minn. Stat. § 518.552, subd. 2 (2022): (1) the financial resources of the party seeking maintenance, (2) the probability of that party becoming fully or partly self-supporting, (3) the marital standard of living, (4) the duration of the marriage, (5) the age and physical condition of the spouse seeking maintenance, and (6) the ability of the obligor spouse to meet needs while meeting the needs of the obligee spouse.

As to appellant, the district court found that: (1) during the marriage, appellant maintained the home while respondent worked outside the home as an electrician; (2) appellant's part-time employment as a house cleaner now provides about \$1,300 monthly and she is unlikely to earn more; (3) she will be eligible for social security in two years; (4) she has failing physical conditions; (5) she is unable to do much of the work on her home herself; and (6) based on her exhibit, her monthly living expenses are \$5,505. Thus, her expenses are more than four times her income.² The district court concluded that

¹As a threshold matter, appellant phrases this issue as whether the district court abused its discretion in "requiring appellant to spend her property settlement to support herself." The district court made no finding or order as to how appellant was to spend her property settlement, found that appellant had received approximately \$500,000 in the settlement, and observed that her "continual complaints regarding her substantial award from this Court [were] frustrating."

² $4.2 \times \$1,300 = \$5,460$.

appellant “is entitled to ongoing maintenance [of \$2,500 monthly] until the time of [respondent’s] retirement.”

As to respondent, the district court found that his income fluctuated throughout the marriage, going from a low of roughly \$29,000 (\$2,400 monthly) in 2009 to a high of roughly \$222,000 (\$22,200 monthly) in 2018. The changes were erratic: \$41,000 in 2008 and 2016; \$56,000 in 2007 and 2011; \$67,000 in 2010; \$87,000 in 2017; \$95,000 in 2015; \$125,000 in 2014; \$141,000 in 2013; \$180,000 in 2021; \$187,000 in 2012 and 2020; and \$213,000 in 2019. The district court also found that: (1) respondent’s earning capacity, even if it declines, is more than appellant’s; (2) respondent’s monthly expenses are \$6,428, (3) respondent’s present lucrative job in New Mexico may end soon; (4) there is no documentation as to how long respondent will be able to work or his future income, but (5) “there is no reason to expect [respondent’s] earnings would not be able to continue to supply maintenance [of \$2,500 per month] to [appellant]” until he retires. Appellant claims that respondent’s monthly income is \$14,000, but respondent’s monthly income has been at that level only five times in the last 15 years, when his annual income was or exceeded \$168,000.

The \$2,500 appellant receives in spousal maintenance almost triples her monthly income to \$3,800 monthly but leaves her with a monthly deficiency of \$1,705. She claims monthly expenses of \$450 for recreation and entertainment; \$200 for vacations; \$227 for cabin expenses including maintenance, utilities and tax; \$210 for repairs and maintenance of vehicles; and \$55 for maintenance on equipment and RVs and argues that monthly spousal maintenance of \$4,200 is necessary to maintain her lifestyle. While we

acknowledge that the monthly maintenance payment does not cover appellant's monthly expenses, we are nevertheless bound by our standard of review. Giving due deference to the district court's decision, we conclude that it was not an abuse of discretion.

2. Spousal maintenance arrears

The district court found that there was "allegedly unpaid maintenance of \$12,000." Respondent argued that he was paying [appellant's] bills in lieu of maintenance. While paying bills in lieu of maintenance was not what the Court order[ed], [appellant] nonetheless benefitted from the payments and past maintenance will not be awarded."

Appellant argues that this was an abuse of discretion because "the arrearages were caused by respondent not following [the] court's order to pay maintenance, and then pay[ing] the bills instead, despite this being not what the Court ordered." Appellant does not deny that respondent paid her bills, nor does she offer to repay him if he pays her the past maintenance. The district court's decision on spousal maintenance arrears was not an abuse of discretion.

3. Life Insurance

The parties agree that the district court has "discretion to consider whether the circumstances that justify an award of maintenance also justify securing it with life insurance." *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987), (quotation omitted), *rev. denied* (Minn. Nov. 24, 1987). The district court found that, although neither the duration of respondent's future employment nor the amount of his future earnings can be predicted, his earnings are likely to be enough that he can pay maintenance until he retires. Appellant in her reply brief does not refute respondent's statement that, if he "died

tomorrow, appellant would still be a millionaire.” Appellant relies on *Kampf v. Kampf*, 731 N.W.2d 630, 635 (Minn. App. 2007), a case in which the obligee spouse had circumstances similar to appellant’s. But *Kampf* is distinguishable; in that case, the district court’s decision not to require life insurance was based on the application of the outdated exceptional-case test. *Kampf*, 731 N.W.2d at 635. Here, the district court’s decision not to require respondent to obtain life insurance to guarantee the spousal maintenance award was not an abuse of discretion.

4. Appellant’s nonmarital claim to the homestead

The district court observed that “respondent contends that [the homestead] was his pre-marital property, which is undisputed,” and that “[g]iven the refinance in 2008, the equity in the home is marital and must be accounted for in the division of the marital estate and the parties are entitled to an equal share in the equity.” The property was awarded to respondent, who was required to pay for its assessment and to pay appellant half the equity within six months. Appellant testified that she put between \$100,000 and \$125,000 in cash into the homestead, but she provided no documentary evidence of this except for her own handwritten check register entries. She argues that the district court “abused its discretion and committed clear error when it failed to acknowledge [her] testimony . . . of a nonmarital claim to the homestead, although [she] did not recall exact details.” This court defers to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court’s decision not to rely on appellant’s unsupported testimony was not an abuse of discretion.

5. Respondent's nonmarital claim to retirement accounts

The district court's amended finding reads:

Respondent has accumulated a number of retirement accounts throughout his years of employment. [There is a list of six accounts, with a total of about \$618,000.] . . . Respondent also has a pension through the electrical union in which contribution[s] were made during the marriage. Petitioner claims that there are additional retirement accounts through the union. While the court agrees that it appears there are several components to the union pension/retirement account, it is unclear if those components are separate or included in the total amount listed above. An updated accounting of these accounts will be required to properly file the QDRO [qualified domestic relations order] and any issues regarding the total amount will be determined at that time. . . . Respondent will be entitled to his nonmarital share of all retirement accounts to be determined by the QDRO. The QDRO will use the date of marriage to determine the value of each retirement account.

Respondent points out that his prior divorce decree was submitted to show that his pension was already divided with his first wife and that he worked only briefly for the union during his marriage to appellant. Appellant argues that the district court abused its discretion “when it failed to require tracing of respondent’s nonmarital values in the retirement accounts attributed to respondent . . . because [he] failed to provide any evidence supporting a nonmarital claim to his retirement accounts” and requests this court to “find that respondent has provided no tracing evidence as it relates to the retirement cash accounts . . . and that those accounts [should] be divided equally between the parties.”

But this court does not make findings. See *Whitaker v. 3M Co.*, 764 N.W.2d 631, 640 n.1 (Minn. App. 2009) (“[O]ur role as an error-correcting court does not extend to making factual findings.”) Respondent was 40 at the time of his marriage to appellant; the

largest of his retirement accounts was his union account; and most of his work in the union was done prior to the marriage. The district court did not abuse its discretion in concluding that some of respondent's retirement accounts were nonmarital.

6. Valuation of Respondent's 2019 Truck³

The district court found that appellant was in possession of a 2011 Ford F150 and a pre-marital 1997 Dodge Ram and that respondent was in possession a 2019 Ford F350 and a 2011 Ford F150. The parties were "awarded their respective vehicles, subject to any encumbrance."

Appellant testified that the 2019 Ford F350 was worth about \$61,000; there was a loan of over \$27,500, and the equity was \$33,495. She argues that she should be awarded half the equity. The district court found that "[t]here has been no documentation to show that . . . there is equity in the [2019 Ford F350]" and that "it is equitable for the parties to keep the vehicles that are/were in their possession at the time the first decree was filed without awarding equity to either party." The district court's decision not to rely on appellant's unsupported testimony was not an abuse of discretion.

7. Respondent's dissipation

At trial, appellant argued that respondent had dissipated \$272,043.14, of which she sought half. Respondent points out that, during the last years of the marriage while he was

³ Appellant argues that the district court erred in finding that the parties stipulated to the value of respondent's 2019 Ford F350, but this finding appears only in the original findings; it does not appear in the amended findings. Thus, the issue is not before us.

living in New Mexico, he was paying both his own living expenses and appellant's living expenses in Minnesota. The district court found that:

It is clear to the court that respondent did engage in dissipation of marital assets although not to the extent that [appellant] claims. It is for this reason the Court is going to award [appellant] one half of the Zia Credit Union Account of April 1, 2021, (total balance was \$4,998.65) and half of the money [respondent] spent on camping, fishing, and hunting. The total spent on these activities between 2018 and 2021 w[as] \$32,599.57.

Thus, appellant was awarded \$18,849.11 to compensate for respondent's dissipation. While this award is not all she wanted, we see no abuse of discretion in it.

8. Marital Debt

The parties' homestead was a double-wide trailer and adjoining ten-acre property with a barn at an address in Duluth. Respondent owned it at the time of the marriage; it was refinanced soon afterwards with a \$200,000 mortgage. At the time of the dissolution, the mortgage was \$87,068.92. The marital estate included two other properties, another one in Duluth and one in Wisconsin that had been paid for with appellant's nonmarital assets. Respondent was awarded the homestead and appellant was awarded the other two properties.

Appellant argues that the district court abused its discretion in making each party responsible for half the marital debt, a credit card debt of \$7,027.42 incurred during the marriage, and in dividing the equity in the homestead equally between the parties because respondent's financial circumstances are better than hers. But she does not show why this equal division was an abuse of discretion and that she should have a larger share. The

district court addressed the points appellant raised to support that argument when it awarded her spousal maintenance and damages for dissipation, and its decision to divide marital debt and equity in the homestead equally was not an abuse of discretion.

9. Valuation Date

Absent any agreement as to a valuation date by the parties or a finding of a valuation date by the court, “[t]he court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference” Minn. Stat. § 518.58, subd. 7 (2022). Here, there was no agreement of the parties and no finding by the court; thus, the valuation date is the date given in the statute.

Appellant argues that the absence of a valuation date in the district court’s orders is “an abuse of discretion that results in clear error,” and urges this court to either find sua sponte that “valuation was the date of trial” or remand for the district court to make findings. But the statute provides the date to be used absent the parties’ agreement or a district court finding as to valuation; it does not provide that the court of appeals is to set a valuation date. Appellant provides no legal support for her view that this court should ignore the statutory mandate, and we decline to do so.

10. Attorney Fees

Appellant requested \$17,000 in attorney fees. The district court determined in its amended findings that “[r]espondent has failed to comply with multiple court orders regarding discovery causing unnecessary delays in these proceedings” and that [r]espondent engaged in tactics that substantially delayed the resolution of this matter. Due to the delay in resolution [appellant] incurred costs and attorney fees that she would not

have otherwise incurred.” The district court then awarded appellant \$10,000 in attorney fees and noted that “[a]ll other costs and fees incurred by [appellant] in relation to the litigation of this matter will be her responsibility.”

Appellant argues that this was an abuse of discretion because “[r]espondent’s actions throughout this proceeding supported the award of far greater attorney’s fees in this case.” But she cites no legal support for this argument or for her implied view that a district court abuses discretion by not giving the highest award of attorney fees possible. Minn. Stat. § 518.14, subd. 1 (2022), provides that a district court “may” award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of proceedings; not that it “must” do so. The district court did not abuse its discretion in making the attorney-fee award.

Affirmed.