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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1020**

In re the Marriage of:
Teresa Marie Nordahl, petitioner,
Respondent,

vs.

Steven Edward Nordahl,
Appellant.

**Filed May 1, 2017
Affirmed
Johnson, Judge**

Anoka County District Court
File No. 02-FA-15-263

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

Kathleen M. Murphy, Kathleen M. Murphy Attorney at Law, Minneapolis, Minnesota (for
respondent)

Jacob M. Birkholz, Birkholz & Associates LLC, Mankato, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

Teresa Marie Nordahl and Steven Edward Nordahl were married for approximately 25 years before their marriage was dissolved. The district court awarded Teresa temporary spousal maintenance of \$2,500 per month for a period of approximately 12 years. The district court also awarded Teresa need-based attorney fees. We affirm.

FACTS

Teresa and Steven were married in 1987. They have three adult children. They separated in December 2013, and Teresa petitioned for dissolution of the marriage in July 2014.

During the marriage, Teresa left her employment in accounting and secretarial work to stay at home with the children. She later went back to work, first as a part-time employee for Sherburne County and then as a part-time church secretary. In 2012, she was treated for breast cancer, which limited her ability to work. Since March 2014, she has been employed full-time at a small business, where she does secretarial, accounting, and human-resources work. Her wage rate is \$17.35 per hour, with minimal overtime. Her employer offers an employee stock ownership plan (ESOP), with partial vesting after three years and full vesting after seven years. She contributes 4% of her pay to a 401(k) account.

Since 2001, Steven has been employed by an electric utility, where he works as a lead apparatus technician. His base wage rate is approximately \$46 per hour, with overtime wages of between \$70 and \$95 per hour. His fringe benefits include allowances for a

vehicle, a cellular telephone, and internet service at home. He contributed 14% of his pay to a 401(k) account during the marriage.

During their marriage, Teresa and Steven lived a comfortable but frugal lifestyle. They focused on paying down debt and saving money in a joint savings account. They did not have significant investments in securities, other than the investments in their respective 401(k) accounts. They lived in a five-bedroom, three-bathroom house, with a monthly mortgage payment of \$650 and a loan balance of \$7,000 at the time of trial in November 2015. They typically took one significant family vacation, as well as several long weekend trips, each year.

After Teresa and Steven separated, Teresa continued to pay the household bills out of their joint checking account, in part by transferring funds from their joint savings account to the joint checking account. Steven deposited \$700 into the joint checking account each month. In 2014, Steven took one-half of the balance of the joint savings account without Teresa's knowledge. As Teresa continued to pay household expenses, and as her attorney fees grew, she incurred debt of \$11,710, as of October 2015.

In July 2015, the district court ordered Steven to pay Teresa temporary spousal maintenance of \$1,400 per month. In September 2015, the district court granted Teresa's request for a need-based award of attorney fees by ordering Steven to pay her \$6,300, which was approximately half the fees she had incurred since June 2014.

At trial, the parties stipulated that Steven would buy Teresa's interest in the marital home for \$140,000. Steven planned to refinance the marital home by borrowing \$180,000.

Teresa planned to purchase a home for approximately \$200,000, with financing that would require a monthly mortgage payment of \$925.

In February 2016, the district court issued its dissolution decree. For purposes of ruling on Teresa's request for spousal maintenance, the district court found that her monthly gross income is \$3,141 and that her reasonable monthly expenses are \$3,932. The district court found that Teresa's earnings were unlikely to increase and that she lacked sufficient financial resources to provide for her reasonable needs given the standard of living during the marriage. The district court found that Steven's monthly gross income is \$9,371 and that his reasonable monthly expenses are \$3,176. The district court awarded temporary spousal maintenance of \$2,500 per month, to be paid until 2028. The district court noted that, considering spousal maintenance and certain deductions from gross income, each party would be able to meet his or her respective needs. The district court also granted Teresa's request for a need-based award of attorney fees by ordering Steven to pay her \$5,770, which is two-thirds of the fees she had incurred after September 2015.

In March 2016, Steven moved for amended findings of fact. In April 2016, the district court issued an amended decree, which revised certain dollar amounts but did not substantially alter the outcome. Steven appeals from the orders issued in February 2016 and April 2016.

D E C I S I O N

I. Spousal Maintenance

Steven argues that the district court erred by awarding Teresa temporary spousal maintenance of \$2,500 per month until 2028.

A district court may award spousal maintenance if it finds that one of the parties either

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2016). If the district court finds that one of these conditions exists, it may award spousal maintenance “in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors.” *Id.*, subd. 2. The “relevant factors” are “the financial resources of the spouse seeking maintenance” and the spouse’s ability to provide for his or her needs independently, the “time necessary to acquire education” to find appropriate employment, “the standard of living established during the marriage,” the length of the marriage, any loss of employment opportunities during the marriage, the age and health of the recipient spouse, the resources of the spouse from whom maintenance is sought, and the contribution and economic sacrifices of a homemaker. *Id.*, subd. 2(a)-(h); *see also Kampf v. Kampf*, 732 N.W.2d 630, 633-34 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). “No single factor is dispositive.” *Id.* at 634. In essence, the district court balances “the recipient’s needs against the obligor’s ability to pay.” *Prahl v. Prahl*, 627

N.W.2d 698, 702 (Minn. App. 2001) (citing *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982)).

Steven challenges numerous parts of the district court's spousal-maintenance analysis as well as its ultimate decision to award temporary spousal maintenance and the monthly amount. We will address each specific issue raised in Steven's appellate brief, to the extent that he identifies an alleged error by the district court.¹

First, Steven contends that the district court erred by finding the parties' respective *gross* incomes rather than their respective *net* incomes. The district court actually made findings of each party's gross income and also made detailed findings of each party's net income after considering spousal maintenance, 401(k) contributions, deductions, exemptions, and taxes. In doing so, the district court noted that each party is able to pay for all reasonable monthly expenses, with a surplus. Teresa contends in response that Steven actually benefitted from the district court's findings of gross income because the district court failed to include "[e]xpense reimbursements or in-kind payments [that] reduce personal living expenses." *See* Minn. Stat. § 518A.29(c) (2016). We conclude that the district court did not abuse its discretion or clearly err in its consideration of this issue in a way that prejudiced Steven.

¹In response, Teresa initially contends that Steven did not preserve all of his challenges to the district court's orders by including them in his post-trial motion for amended findings. In a dissolution case, a party is not required to preserve all arguments concerning spousal maintenance by presenting them to the district court in a motion for amended findings. *Naffke v. Naffke*, 240 Minn. 468, 472, 62 N.W.2d 63, 66 (1953). Thus, we will consider all of Steven's arguments on appeal.

Second, Steven contends that the district court erred by not including Teresa's employer's contributions to the ESOP, which he asserts will increase her income in the future. The district court stated that it was not considering Teresa's interest in the ESOP because she was not vested in the plan. Teresa's interest in the ESOP was unvested at the time of trial and will not fully vest until 2021. Because any benefit from the ESOP is contingent on future events, the district court did not abuse its discretion by not considering the value of Teresa's interest in the ESOP.

Third, Steven contends that the district court erred by not including the investment income that Teresa could earn on the \$140,000 payment from Steven for her interest in the marital home. *See Curtis v. Curtis*, 887 N.W.2d 249, 252-57 (Minn. 2016). Steven presented the testimony of an expert who opined that Teresa could invest \$100,000 of the proceeds of Steven's purchase and earn a 4% rate of return on those funds. The district court did not impute income on the funds that Teresa received from Steven, both because the district court did not find Steven's expert to be persuasive and because the parties did not have a consistent practice during the marriage of investing in securities. We conclude that the district court did not abuse its discretion by rejecting Steven's argument on those two grounds.

Fourth, Steven contends that the district court erred by including a monthly mortgage payment of \$925 in Teresa's reasonable monthly expenses. Specifically, he contends that Teresa had not yet purchased a home at the time of the dissolution and that \$925 is more than the parties' mortgage payment during the marriage. The district court found that Teresa's plan to buy a \$200,000 home with a ten-year mortgage was reasonable

and in line with the couple's past spending practices, and it also noted that \$200,000 was the price of an appropriately modest residence. Steven has not cited any caselaw for the proposition that recognizing such an expense is inappropriate before the purchase has occurred, especially in light of the obvious fact that Teresa will need to spend some amount on housing. In addition, given a general tendency for home values and prices to appreciate over time, it should not be surprising that Teresa's mortgage payment will be more than the couple's mortgage payment on the home they purchased during the marriage. Thus, the district court did not abuse its discretion in its consideration of this issue.

Fifth, Steven contends that the district court erred by setting Teresa's estimated monthly expenses for home maintenance and repair at \$200. Steven argued to the district court that this item should be set at only \$100. The district court relied on Teresa's testimony that she will need to pay a third party to do home repairs. The district court did not clearly err by relying on Teresa's evidence with respect to this issue.

Sixth, Steven contends that the district court erred on the ground that it allowed \$4,000 per year for family vacations in Teresa's reasonable expenses. The district court order did not designate \$4,000 per year for vacations. The district court included an estimate of \$500 per month (or \$6,000 per year) for health, recreation, gifts, and entertainment. There is no separate allocation for Teresa's vacation expenses. The district court allowed Steven an equal amount of expenses for health, recreation, gifts, and entertainment. Thus, the district court did not abuse its discretion in its consideration of this issue.

Seventh, Steven contends that the district court erred by including a 10% contribution to Teresa's 401(k) account in her reasonable monthly expenses. The district court included \$3,600 per year for retirement contributions in each party's budget. A district court has discretion to include retirement savings in a party's reasonable monthly expenses. *See Kampf*, 732 N.W.2d at 634. Because the parties' reasonable monthly expenses are similar in amount, the district court did not abuse its discretion by finding that each party would contribute the same amount to a 401(k) account.

Eighth, Steven contends that the district court erred by ordering spousal maintenance in an amount that is approximately half of Steven's net income. "The concept of 'reasonable needs' is a malleable one," but awards of spousal maintenance should align "with the circumstances and living standard of the parties at the time of the divorce." *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009) (quotation omitted). The district court considered each of the statutory factors. The district court noted that Teresa had left the workforce to care for the parties' children during the marriage, which caused her to lose seniority, retirement benefits, and other employment opportunities. The district court also found that Teresa's age and health limit her future employment opportunities and prospects for advancement. The district court found that Teresa and Steven contributed equally to the family unit and the acquisition of marital property. The district court determined that Teresa would be unable to meet her reasonable needs without spousal maintenance and that Steven's income will exceed his reasonable needs, even after paying spousal maintenance to Teresa. Steven contends that Teresa will have a monthly surplus while he will have a monthly deficit. We disagree. The district court's amended order shows that

Teresa will have a monthly surplus of \$118 while Steven will have a monthly surplus of \$1,236. Steven has not convinced this court that the district court clearly erred in its findings of fact or abused its discretion in determining the issues pertinent to Teresa's request for spousal maintenance.

Thus, the district court did not err in its award of temporary spousal maintenance.

II. Attorney Fees

Steven argues that the district court erred by granting Teresa's request for an award of need-based attorney fees. Specifically, he contends that, in light of the division of marital assets and the award of spousal maintenance, Teresa and Steven have an equal ability to pay attorney fees.

A district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on . . . the proceeding" if it finds:

(1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2016). "An award of attorney fees rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation

omitted), *review denied* (Minn. Feb. 18, 1999); *see also Geske v. Marcolina*, 624 N.W.2d 813, 816 n.1 (Minn. App. 2001).

In September 2015, the district court ordered Steven to pay half of the attorney fees that Teresa had incurred since June 2014. In its decree, the district court ordered Steven to pay two-thirds of the attorney fees Teresa incurred after September 2015. The district court did not make specific findings on each of the three factors in section 518.14, subdivision

1. Nonetheless,

A lack of specific findings on the statutory factors for a need-based fee award under Minn. Stat. § 518.14, subd. 1, is not fatal to an award where review of the order “reasonably implies” that the district court considered the relevant factors and where the district court “was familiar with the history of the case” and “had access to the parties’ financial records.”

Geske, 624 N.W.2d at 817 (quoting *Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999)).

In this case, the district court was familiar with the case and thoroughly discussed the parties’ financial situations in its analysis of the issue of spousal maintenance. For that reason, the absence of specific findings is not reversible error, and we otherwise do not detect a clear abuse of discretion.

Thus, the district court did not err by awarding need-based attorney fees to Teresa.

Affirmed.