STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1916

In re the Marriage of:
Maria Toso, petitioner,
Respondent,

vs.

Victor Olaf Toso,
Appellant.

Filed June 30, 2014
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-FA-10-151

Susan M. Gallagher, Gallagher Law Office, L.L.C., Eagan, Minnesota (for respondent)

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota; and

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

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

In this appeal from a marital-dissolution judgment, appellant argues that the district court failed to comply with this court's remand instructions following the first

appeal and abused its discretion by awarding spousal maintenance and attorney fees to respondent. Because we conclude that the district court properly exercised its discretion, we affirm.

FACTS

Appellant Victor Toso and respondent Maria Toso were married in 1998 and divorced in January 2012. Respondent has dual citizenship from the United States and Denmark. She has the equivalent of a bachelor's degree in business communications from a Danish university. Respondent worked in that field for a time; but after the parties' children were born, she was a homemaker for several years. In 2007, respondent was employed in Minnesota by a Danish company, but she was laid off in 2009. At the time of trial, respondent was looking for work but stated that her absence from the workforce for eight years and the fact that her work experience was largely in Denmark, not the United States, weakens her resume. Respondent testified that she had been looking for a job in communications and had secured three interviews. She worked briefly at one job, but lost the position because it involved online marketing, not communications.

In its initial judgment and decree, the district court awarded respondent temporary spousal maintenance in the amount of $3,200 per month for a period of 60 months "to allow [respondent] to become self-supporting" and "obtain any needed education or retraining." The district court also awarded respondent $33,324.32 in conduct-based attorney fees, finding that appellant had been uncooperative, had raised irrelevant,

unmeritorious issues, and had "been the cause of substantial delay in the administering of this matter."

In his first appeal, appellant raised seven issues, five of which were affirmed by this court. *Toso v. Toso*, No. A12-1033, 2013 WL 2923639, at *4-12 (Minn. App. June 17, 2013) (*Toso I*). But we reversed and remanded the issue of spousal maintenance, concluding that the district court's award was not supported by the record. *Id.* at *5. We noted that the district court had "relied heavily" on respondent's need for retraining or education in awarding maintenance despite the fact that respondent had testified that she was not seeking further education or retraining. *Id.* On remand, we instructed the district court to make "findings on [respondent's] need for retraining or education and the effect of this need on the duration of any maintenance award." *Id.*

We also reversed and remanded the award of $33,324.32 in conduct-based attorney fees because the district court findings were "too conclusory to adequately support an attorney-fee award." *Id.* at *11. We noted that the district court had "failed to identify which issues it found irrelevant or unmeritorious, [and] which uncooperative actions delayed or increased the cost of trial." *Id.* We stated that we could not determine whether appellant's conduct unreasonably contributed to the length or expense of the proceeding without more detailed findings. *Id.*

The issues of spousal maintenance and attorney fees were subsequently reconsidered by the district court. Wanting to limit additional costs on remand, respondent stipulated that she was not seeking retraining or education, and both attorneys agreed to rely on the existing record. The district court issued its amended judgment,

finding that "[t]he record [did] not contain evidence of plans for [respondent's] re-training or re-education." It modified the amount of spousal maintenance, ordering appellant to pay respondent $3,000 per month for a period of five years. The district court's award was based on respondent's eight-year absence from the workforce and the loss of earnings and employment opportunities she forfeited by staying at home with the children. With respect to the duration of maintenance, the district court determined that respondent "will be able to gain work experience, build her resume and be self-supporting in five years . . . [and] in five years, the children will be older and less dependent on her, the economic conditions in Minnesota will have improved, and [respondent] will be able to find self-supporting employment."

On the issue of attorney fees, the district court again awarded a total of $33,324.32 to respondent. The district court noted its "extensive review of the record" and made 22 findings of fact. In support of the award, the district court cited the following: (1) four attorneys had withdrawn from their representation of appellant during the course of litigation, resulting in delay and the repetitive production of documents and arguments made to the court; (2) appellant had numerous discovery violations, including his failure to timely disclose his expert witness and the improper submission of his children's statements as an exhibit; (3) appellant failed to file his income taxes in compliance with the district court's order; (4) the unmeritorious objections appellant made, including one instance when he argued that the documents he had received were insufficient because his copies had notes on them while respondent's version did not; (5) appellant's frivolous objections related to respondent's subpoena duces tecum that increased the time spent at

the motion-in-limine hearing; and (6) the disrespect that appellant showed towards the court by filing a nude photograph of respondent that served no purpose but to "cause great embarrassment." The district court awarded $30,000 in fees based on these findings.

The district court issued a second award of attorney fees based on appellant's posttrial conduct relating to the sale of the parties' marital home. The district court found that appellant had intentionally refused to cooperate with the sale of the parties' home by failing to attend the closing, removing property from the home that was to be included in the sale, and by refusing to sign the necessary documents to complete the sale of the home. Appellant's actions resulted in the need for a two-day hearing. Due to this posttrial delay, the district court awarded an additional $3,324.32 to respondent. This appeal follows.

D E C I S I O N

I. Spousal Maintenance

Appellant argues that the district court's failure to address the duration of the spousal-maintenance award is a violation of this court's remand instructions. He also argues that, on this record, the district court's amended maintenance award of $3,000 per month for five years is an abuse of discretion. We review both a district court's implementation of remand instructions and award of spousal maintenance for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005) (remand instructions); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (maintenance award).

A district court may grant an award of spousal maintenance if it finds that one of the parties:

> (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. . . .

Minn. Stat. § 518.552, subd. 1 (2012). The district court must consider all relevant factors in making its maintenance-award determination, including:

> (a) the financial resources of the party seeking maintenance . . . ;
>
> (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment . . . ;
>
> (c) the standard of living established during the marriage;
>
> (d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;
>
> (e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;
>
> (f) the age, and the physical and emotional condition of the spouse seeking maintenance;
>
> (g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and
>
> (h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

Minn. Stat. § 518.552, subd. 2 (2012).

On remand, the district court found that respondent is not seeking retraining or education. In light of this finding, it reduced the monthly maintenance award from $3,200 to $3,000, but did not alter the duration of the award. Appellant argues that because respondent is not seeking retraining or education, spousal maintenance is inappropriate and this court should terminate the award.

In support of his argument, appellant relies on *Broms v. Broms*, 353 N.W.2d 135 (Minn. 1984). In *Broms*, the supreme court reduced the duration of a maintenance award from ten years to five because "the award [had] no relationship to either the underlying basis for the award of maintenance or the factors relevant to its duration." 353 N.W.2d at 138. The supreme court redetermined the duration of the maintenance award based on Minn. Stat. § 518.552, subd. 2(b), because the record reflected that Broms needed to complete two additional years of graduate study before she could pursue a career utilizing her undergraduate degree. *Broms*, 353 N.W.2d at 138.

But appellant fails to consider the other statutory factors provided in Minn. Stat. § 518.552, subd. 2. The fact that respondent is not seeking retraining or education is not dispositive of a maintenance award. *See Dobrin*, 569 N.W.2d at 201. Nor does it indicate that five years of maintenance is an abuse of discretion. In determining the duration of the maintenance award, the district court relied on other statutory factors, including the length of respondent's absence from employment and the loss of earnings

and other employment opportunities she gave up by staying home with the parties' children. Minn. Stat. § 518.552, subd. 2(d), (e).

The record supports the district court's reliance on these statutory factors. The record is clear that the parties agreed that respondent would stay at home after the birth of their first child, and respondent was a homemaker for nearly eight years. The record establishes that respondent received her degree in Denmark and worked primarily for Danish companies. Respondent testified that she had little work experience in the United States. The record shows that respondent has not held a full-time job for any length of time in the United States, and she has been unable to find suitable employment, despite actively searching for jobs. Unlike *Broms*, where it was known that it would take the maintenance-recipient two years to complete the necessary education to enter the workforce, here there is no obvious timeline indicating how long it will take respondent to find suitable employment.

By arguing that spousal maintenance is inappropriate because respondent is not seeking retraining or education, appellant essentially asks this court to disregard the supreme court's instruction that each marital dissolution is unique and that we should not view one specific case as enunciating an immutable rule of law. *See Dobrin*, 569 N.W.2d at 201. The record supports the district court's findings that respondent has a unique educational and professional background and that she will need time to build her resume in the United States after her absence from the workforce. We therefore conclude that the district court acted within its discretion in awarding maintenance to respondent.

II. Attorney Fees

In the initial judgment, the district court ordered appellant to pay attorney fees after finding that appellant had raised irrelevant and unmeritorious issues, was uncooperative, not credible, and disrespectful. In *Toso I*, we determined that the district court's findings were "too conclusory to adequately support an attorney-fee award." 2013 WL 2923639, at *11. On remand, we instructed the district court to make more detailed findings. *Id.*

The district court judge who heard this matter on remand was the third judge to have presided over the parties' dissolution. The district court conducted a careful and extensive review of the record and made substantial findings of fact that support an award of conduct-based attorney fees. On appeal, appellant does not contend that the district court failed to follow this court's remand instructions to make more detailed findings. Appellant argues that the district court's findings are not supported by the record and do not justify an award of attorney fees.

A district court may "in its discretion," award conduct-based attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2012). A district court abuses its discretion by resolving the matter in a manner that is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). That the record might support findings other than those made by the district court does not render the findings clearly erroneous, and we view the "evidence in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

The district court awarded respondent a total of $33,324.32 in attorney fees. The district court awarded $30,000 after finding that appellant's pretrial conduct

> contributed to the length and expense of the trial; he changed attorneys several times which resulted in several pretrial hearings and discovery that was late and incomplete; he failed to comply with discovery requests; he put his attorney in the position of having to make arguments that were deemed unmeritorious and frivolous; he failed to cooperate with orders; and he showed disrespect towards the [c]ourt.

A district court may award attorney fees based on a party's failure to produce meaningful discovery. *See Jensen v. Jensen*, 409 N.W.2d 60, 63 (Minn. App. 1987) (concluding that the district court did not abuse its discretion in awarding attorney fees when appellant failed to produce discovery). Here, on remand, the district court found that just days before the parties were to argue their motions in limine, appellant produced two boxes of unstapled, disorganized documents purporting to be responsive to respondent's discovery requests. "What [appellant] failed to comprehend was the delay in complying with discovery and the total disarray of the documents prejudiced [respondent]. [Respondent's] attorney had to spend considerable time going through the documents to make a cogent argument to the [c]ourt." The district court further found that appellant's unmeritorious arguments added length and expense to the proceedings. The district court cited instances in the transcript where the then-presiding judge expressed frustration with appellant, alleging that he was raising frivolous arguments as a "smoke screen" to avoid addressing the merits of the case.

In addition, the district court's award of $3,324.32 in attorney fees for appellant's posttrial conduct is supported by the record. The district court found that appellant

refused to cooperate with the sale of the marital home, which resulted in an unnecessary, two-day hearing. The district court further found that appellant intentionally failed to sign the necessary closing documents for the sale of the marital home and removed items from the home that were to be included in the sale. On appeal, appellant argues that it was respondent who caused him to miss the closing date. By making this argument, appellant is asking this court to make a factual determination. "It is not within the province of [appellate courts] to determine issues of fact on appeal." *Kucera v. Kucera*, 275 Minn. 252, 254-55, 146 N.W.2d 181, 183 (1996). The district court already considered appellant's conduct with regard to the sale of the marital home and determined that it was appellant who acted improperly. Because the district court is in the unique position to observe the parties' conduct, we defer to its opinions about these matters unless they are unsupported. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to the district courts on matters of credibility).

Because the record supports the district court's findings that appellant unreasonably contributed to the length and expense of the proceedings, the award of conduct-based attorney fees in the amount of $33,324.32 was not an abuse of the district court's discretion.

Affirmed.