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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1363

In re the Marriage of:
Jennifer Kristin Gorney, petitioner,
Respondent,

vs.

Keith Joseph Gorney,
Appellant.

Filed September 5, 2017
Affirmed
Kalitowski, Judge[*]

Carver County District Court
File No. 10-FA-14-5

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota (for respondent)

Keith Joseph Gorney, Minnetonka, Minnesota (pro se appellant)

Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and Kalitowski, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Keith Joseph Gorney argues that the district court erred by miscalculating the spousal-maintenance amount, establishing a payment schedule for a property equalizer,

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

vacating the parties' stipulation that appellant receive all of his restricted stock units, and granting respondent need-based attorney fees. We affirm.

D E C I S I O N

I.

Appellant argues that the district court erred in calculating spousal-maintenance. He claims that the district court miscalculated both his income and respondent's income, and did not state the precise tax consequences of the spousal-maintenance award. We disagree.

We review a district court's spousal-maintenance award for an abuse of discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion when its conclusion is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We review a district court's findings of fact regarding spousal maintenance for clear error. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). Appellate courts view the record in the light most favorable to the district court's findings. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Appellant argues that the district court miscalculated his income. At trial, he testified that his gross annual salary was $195,000 and that he was entitled to earn a bonus of up to $25,000 per year. The district court found that appellant's gross monthly income was $16,250 and that his net monthly income was approximately $11,000.

Appellant claims that "evidence provided" showed that his net income was approximately $1,400 less per month. But he does not explain why the district court's finding regarding his income is clearly erroneous. Instead, he invites us to reweigh the trial

evidence, which we are not permitted to do. *See Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (stating that appellate courts cannot reweigh evidence). Appellant claims that the district court did not consider his expert witness's "cash-flow analysis." In its order, the district court considered both appellant's and respondent's experts. We defer to the district court's credibility determinations. *Vangsness*, 607 N.W.2d at 472. Appellant has not shown that the district court committed clear error in calculating his income.

Appellant argues that the district court erred in calculating respondent's income. He claims that the district court did not consider respondent's imputed income when calculating the spousal-maintenance award. But the record refutes this claim. The district court found that through August 31, 2017, respondent's projected imputed monthly income would be $1,170. Her monthly budget deficit would be approximately $4,375 ($1,170 imputed monthly income - $5,545 monthly expenses). In granting respondent $4,500 per month in spousal maintenance, the district court considered "some general approximations for childcare payment by each party pursuant to [the combined parental income for child support guidelines], along with additional costs for the children (camps, activities, extra-curricular, etc.) and the general tax consequences associated with a maintenance award." After considering these factors and respondent's budget, the district court did not abuse its discretion by concluding that $4,500 was necessary to fully meet respondent's monthly financial needs.

Appellant claims that when the district court increased respondent's imputed monthly income, it did not sufficiently reduce his spousal-maintenance obligation. The district court concluded that beginning September 1, 2017, respondent's imputed monthly

income would increase from $1,170 to $3,100. The district court also concluded that on that date appellant's spousal-maintenance obligation would decrease to $2,500 per month. Therefore, in September 2017, respondent's imputed monthly income will increase by $1,930 ($1,170 to $3,100), and appellant's spousal-maintenance obligation will decrease by $2,000 ($4,500 to $2,500). Because the district court considered respondent's increased imputed income in determining the spousal-maintenance amount, the district court did not abuse its discretion in calculating the reduced spousal-maintenance award.

Appellant claims that the district court did not consider that respondent's monthly income could increase beyond $3,100 during the spousal-maintenance period. The district court ordered that appellant pay spousal maintenance until January 31, 2024. The district court considered respondent's educational background, her prior work history, and expert opinions regarding the projected income for her profession. The district court balanced these factors to determine respondent's projected income over the spousal-maintenance period. Appellant claims that the duration of spousal maintenance is not justified but does not explain how the district court erred. We conclude that the district court did not abuse its discretion in determining respondent's projected income or by ordering spousal maintenance through January 2024.

Appellant argues that the district court erred by not stating the precise tax consequences of the spousal-maintenance award. The district court generally has discretion to consider the tax consequences of a property distribution. *Grigsby v. Grigsby*, 648 N.W.2d 716, 725 (Minn. App. 2002)), *review denied* (Minn. Oct. 15, 2002). "But the district court should not consider tax consequences of its property division when to do so

would force it to speculate." *Id.* Spousal maintenance is generally tax deductible for the payor and constitutes taxable income for the payee. *See* 26 U.S.C. § 215 (2012) ("[T]here shall be allowed as a deduction an amount equal to the alimony."); 26 U.S.C. § 71(a) (2012) ("Gross income includes amounts received as alimony. . . ."); Minn. Stat. § 290.01, subds. 19, 22 (2016) (stating that "'net income' means the federal taxable income" and that "'taxable net income' means . . . for resident individuals the same as net income").

The district court considered "the general tax consequences associated with a maintenance award." In general, the spousal-maintenance award decreases appellant's tax liability and increases respondent's tax liability. Appellant cites no authority requiring the district court to state its precise tax calculations. Moreover, in determining the spousal-maintenance amount, the district court considered other factors in addition to the tax consequences, such as additional costs associated with the children. The district court did not abuse its discretion by considering the general tax consequences of the spousal-maintenance award.

II.

Appellant claims that the district court had insufficient evidence to conclude that he could pay the $56,000 property equalizer in accordance with the ordered payment schedule. We disagree.

The district court has broad discretion in setting a property equalization payment schedule. *See Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002) (explaining that the district court has discretion in evaluating and dividing property in a martial dissolution); *cf. Lossing v. Lossing*, 403 N.W.2d 688, 692 (Minn. App. 1987) (concluding that it is

"unable to say from the record that the [district] court abused its discretion in setting dates and amounts of payments on appellant's property division obligation").

The parties stipulated that appellant would pay respondent a property equalizer in the amount of $56,000 and that "[u]nless the parties otherwise agree, the method of payment shall be decided by [the district court] at trial." Because the parties did not agree on a payment schedule, the district court ordered that appellant

> make a lump sum payment of $10,000 to [respondent] in partial satisfaction of the property settlement within thirty (30) days of the entry of the final judgment and decree. The remaining balance of $46,000 shall be subject to interest accrual at the statutory judgment rate, and shall be paid by [appellant] to [respondent] as follows: $10,000 each by January 1, 2017; January 1, 2018; January 1, 2019; and January 1, 2020. The remaining $6,000, plus any accrued interest, shall be paid by July 1, 2020.

The district court found that appellant had $92,955 in assets (after debt reduction) and that respondent had $5,614 in assets (after debt reduction). The district court based its findings on the parties' stipulated list of assets.

The record indicates that the district court did not err in finding that appellant can pay the property equalizer. Moreover, the district court established a payment schedule that permits appellant to pay in installments such that he likely does not have to liquidate his assets or procure a loan. The district court did not abuse its discretion by establishing a payment schedule for the property equalizer.

III.

Appellant argues that the district court improperly relied on post-trial submissions from respondent to calculate a $2,561 payment based on restricted stock units (RSUs) that his employer awarded to him on a quarterly basis. We disagree.

In an August 2015 order, the district court adopted the parties' stipulation that appellant would receive all of his RSUs. The parties acknowledged that they had "fully disclosed to the other all assets, liabilities and other financial information" and that "each party is relying on the information provided to him/her by the other party when making the decision to enter into this Agreement." Appellant represented that his RSUs had a value of $1,338.

The district court subsequently discovered in two of appellant's bank statements—dated March 20, 2015, and June 19, 2015—that he received additional RSU distributions in the amounts of $3,186 and $3,274. The district court concluded that because appellant did not disclose these distributions they were outside the August 2015 order. The district court awarded respondent $2,562, as a property equalizer.

The district court may vacate a stipulation that "was improvidently made and in equity and good conscience ought not to stand." *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). This court reviews a district court's decision whether to vacate a stipulation for an abuse of discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn., 1989).

The *Shirk* standard for vacating a stipulation applies because the district court had not yet entered a final judgment and decree when it vacated the stipulation that appellant would receive all of his RSUs. Because appellant had omitted the RSUs' actual value from

the August 2015 agreement between appellant and respondent, the district court did not abuse its discretion by concluding that in equity and good conscience the stipulation should not stand. After vacating the stipulation, it was within the district court's discretion to equitably distribute the previously undisclosed property.

Appellant claims that the parties previously discussed the RSUs in mediation and that they used the formula in *Salstrom v. Salstrom*, 404 N.W.2d 848, 851 (Minn. App. 1987), to conclude that respondent's gain would be negligible and therefore not necessary to include in the property division worksheet. In *Salstrom*, this court considered whether incentive stock options scheduled to vest after dissolution of the marriage were marital property. 404 N.W.2d at 850-51. Because the RSUs here were marital property that were cashed in during the marriage, *Salstrom* is inapplicable.

IV.

Appellant argues that he does not have the ability to pay the need-based attorney fees because his monthly income is "fully dissolved" by his spousal-maintenance and child-support obligations. We disagree.

The district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds" that (1) the fees are necessary for the good-faith assertion of the party's rights, that (2) the payor has the ability to pay the award, and that (3) the recipient does not have the means to pay his or her own fees. Minn. Stat. § 518.14, subd. 1 (2016); *see also Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001). Generally "conclusory findings on the statutory factors do not adequately support a fee award." *Geske*, 624 N.W.2d at 817. But "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" when review of the order "reasonably implies that the district court considered the relevant factors" and that "the district court was familiar with the history of the case and had access to the parties' financial records." *Id.* (quotation omitted). "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).

Here, the district court reasoned that

> it is appropriate to award some need-based attorney's fees to [respondent] given the fact that [appellant] has a current income of $195,000/yr. plus bonus, [respondent] has an imputed current income of $14,040/yr., [respondent] has borrowed from friends and family to pay some of her attorney's fees to date, and the parties agreed [respondent] would leave the corporate world and her six-figure salary in 2008 to care for their children and start a part-time photography business.

The district court ordered that appellant pay respondent $20,000 within 90 days of the entry of the judgment and decree.

Appellant's total monthly expenses until September 2017 are $10,628 ($4,500 spousal maintenance, $2,066 child support, and $4,062 reasonable monthly expenses). During this time, he has a minor monthly cash surplus. But starting in September 2017, appellant's monthly cash surplus increases to approximately $2,405 ($11,000 net income – ($2,500 spousal maintenance, $2,033 child support, and $4,062 reasonable monthly

expenses)). Because appellant will soon have a substantial monthly cash surplus, the district court did not abuse its discretion by granting respondent need-based attorney fees.

Appellant claims that the district court did not hear testimony regarding the need-based attorney fees. He does not explain what additional information the testimony would provide. The district court granted respondent need-based attorney fees in the same order that established spousal maintenance, child support, and numerous property distributions. The district court was familiar with the case history and the parties' financial records. Appellant has not shown that the district court abused its discretion by not hearing additional testimony regarding his financial condition.

Affirmed.