**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0845**

In re the Marriage of:
Robert Joseph Hoolihan, petitioner,
Appellant,

vs.

Jacqueline Ann Hoolihan,
Respondent.

**Filed June 18, 2018**
**Affirmed in part and reversed in part**
**Kirk, Judge**

Dakota County District Court
File No. 19HA-FA-16-191

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Considered and decided by Kirk, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

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

**KIRK**, Judge

In this spousal-maintenance dispute, appellant-husband challenges the district court's grant of permanent spousal maintenance to respondent-wife, arguing (1) that the district court abused its discretion in awarding maintenance based on an equalization of the

parties' incomes and not based on wife's need or on the parties' standard of living during their marriage and (2) that the district court should not have required husband to secure the maintenance award by naming wife as a beneficiary on his life-insurance policies. We affirm in part and reverse in part.

## FACTS

Appellant-husband Robert Joseph Hoolihan and respondent-wife Jacqueline Ann Hoolihan were married in 1971. In March 2016, husband served wife with a summons and petition for dissolution of marriage. The matter proceeded to a trial on December 21 and 22, 2016, where the only contested issues were the value of a lakehome property purchased during the marriage and wife's request for spousal maintenance. The parties submitted financial-disclosure forms and agreed to a valuation date of April 30, 2016, for their property and assets. Both parties hired financial experts who submitted financial documentation and who testified at trial about the parties' incomes, budgets, and property and assets division.

At the time of trial, both parties were retired; husband was 70 and wife had just turned 65. During their marriage, both parties worked full time. Husband worked full time as a pharmacist for the Veteran's Administration (VA) until 2001, in addition to working part time for Health Partners until 2014. Husband receives monthly pensions from both positions. When husband retired from the VA in 2001, he elected to take survivorship benefits for wife on his pension with a partial survivor annuity worth 55% of $28,000 per year or $15,400. Husband also has two life-insurance policies worth a combined total of $300,000.

Wife worked full time for Blue Cross Blue Shield of Minnesota until March 2016 and subsequently received severance payments until November 2016. Wife elected to cash out her pension plan in a lump-sum payment when she retired. Both experts treated the lump sum as a regular pension so as to give a monthly benefit to wife. During their marriage, the parties divided their finances and both contributed to the parties' monthly expenses. Husband paid the mortgage on the parties' marital home in Burnsville and covered household-related expenses and other necessities. Wife paid the expenses for the parties' two children, including clothing, tuition and college-related costs, and for the parties' entertainment, including annual vacations.

In 2006, wife purchased a lakehome on Devil's Lake in Webster, Wisconsin for $560,000. Wife contributed over 15% of the purchase price using money from her non-marital inheritance. Wife holds the title to the lakehome, along with the parties' now-adult sons. Husband is not on the title but took out a $60,000 home-equity loan with wife on the property. The parties' sons initially helped pay the mortgage until wife refinanced and could pay it herself. Wife now pays the $2,515 monthly mortgage on the lakehome. While the parties were still married, marital funds were contributed to the expenses for the lakehome, and husband performed labor and upkeep at the property. Wife and the extended family use the lakehome seasonally, and wife does not wish to live there year round. Wife's claimed monthly expenditure for the lakehome is $3,164.00, including the mortgage. In November 2016, the lakehome's value was appraised at $433,500, significantly lower than what wife paid in 2006. As such, the mortgage on the lakehome is greater than the current value of the home.

As part of the dissolution action, the parties agreed that the marital home in Burnsville would be sold and that they would split the proceeds. In addition to the proceeds from the sale of the marital home, the parties' experts testified to the parties' investment, retirement, pensions, and social security income, as well as their trust and net investment assets. Both experts submitted cash flow schedules and documentation estimating monthly expenses and cash flow for the parties with and without the lakehome. Based on wife's claimed monthly income and budget, she requested maintenance of $2,328 per month.

In its April 5, 2017 dissolution judgment, the district court ordered husband to pay wife $1,400 per month in permanent spousal maintenance; ordered that husband continue the partial survivorship annuity on his VA pension for wife; and ordered that husband name wife as a beneficiary on his life-insurance policies "in light of the spousal maintenance award." An amended judgment correcting typographical errors was entered on May 5, 2017.

Husband appeals.

## D E C I S I O N

### I. The district court did not abuse its discretion in awarding wife permanent spousal maintenance.

This court reviews a district court's spousal-maintenance award for an abuse of discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016); *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion when it resolves 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). "Findings of fact concerning spousal maintenance must be

upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). 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).

"[M]aintenance is awarded to meet need, [and it] depends on a showing of need." *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). Under Minn. Stat. § 518.552, subd. 1 (2016), the district court may order maintenance for either spouse if it finds that the party seeking maintenance:

> (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.

If the district court awards maintenance, it considers eight factors in determining the duration and amount of the award, including the financial resources of the party seeking maintenance, the standard of living during the parties' marriage, the duration of the marriage, the contribution of both parties to the preservation of the marital property, and the ability of the spouse from whom maintenance is sought to meet his or her needs while also meeting those of the requesting spouse. Minn. Stat. § 518.552, subd. 2 (2016). There is not a preference for temporary maintenance if the statutory factors justify permanent maintenance. *Id.*, subd. 3 (2016). "[N]o single statutory factor for determining the type or

amount of maintenance is dispositive." *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). The district court, in essence, balances "the recipient's need against the obligor's ability to pay." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

Here, the district court considered the documentation submitted by both parties, as well as the testimony of their experts in determining each party's reasonable monthly cash flow. Neither party challenges the court's findings regarding their monthly incomes or husband's reasonable monthly expenses. The parties disagree about wife's reasonable monthly expenses. The district court found, and the record evidence supports, that husband has a monthly surplus of over $2,800 given his monthly income and expenses, and that wife has a monthly income of $5,734. Wife submitted documentation to the court estimating her monthly expenses to be $7,232, including amounts for the lakehome and for a new residence in the Twin Cities, and requested $2,328 per month in maintenance. The district court awarded wife $1,400 per month in permanent spousal maintenance.

On appeal, husband argues that wife failed to show, and the district court failed to find, that wife has a need for permanent monthly maintenance, and that the district court improperly used the maintenance award to equalize the parties' incomes. A district court errs by awarding maintenance in order to equalize parties' incomes. *See Lee v. Lee*, 749 N.W. 2d 51, 60 n.2 (Minn. App. 2008) (stating that "equalization of the parties' incomes by an adjustment of maintenance is without authority or precedent"), *aff'd in part and rev'd in part on other grounds*, 775 N.W.2d 631 (Minn. 2009); *see also Snyder v. Snyder*, 298 Minn. 43, 53, 212 N.W.2d 869, 875 (1973) (stating that maintenance exists to provide for the recipient spouse's needs, not to act as a "lifetime profit-sharing plan").

Here, the district court found that husband made more than wife during their marriage, and that husband's contributions to the parties' monthly household and living expenses allowed wife to live beyond her individual monthly income throughout the marriage. The court also found that, although the parties "lived a comfortable and secure standard of living," they "lived within their means" and that both parties contributed significantly to the parties' monthly expenses and lifestyle during the marriage. The district court found that given the marital standard of living, wife had a deficiency in her ability to meet her monthly expenses going forward, and that both parties were entitled to enjoy retirement in a lifestyle consistent with their 45-year marriage.

The court determined that the long-term duration of the marriage, the marital standard of living, and wife's inability to meet her monthly needs without assistance, coupled with husband's ability to meet his monthly needs while also paying spousal maintenance, all weighed in favor of permanent spousal maintenance for wife. The record shows that the district court thoughtfully considered the relevant statutory factors and that the court's findings justifying permanent spousal maintenance for wife are well-reasoned and supported by the record.

In calculating the amount of spousal maintenance, the district court utilized the cumulative net monthly average income for the last three years of the parties' marriage, as prepared by husband's expert, which equaled $14,153 total (or $7,077 each). The district court noted that "an equalization of monthly cash flow between the parties [was] appropriate." Despite the use of the word "equalization," a review of the record and the court's order shows that the court used this number as a way to approximate the marital

standard of living so as to quantify wife's need for maintenance going forward, and not merely to equalize the parties' incomes. The court explained that $7,077 each per month would sufficiently allow both parties to spend on the expenses that are important to them—for wife, the lakehome, and for husband, monthly charitable contributions.

Husband also maintains that the district court erred by including the costs of the lakehome in its maintenance calculation for wife because the lakehome was not part of the parties' marital standard of living. Husband argues that, without the lakehome, wife would be able to meet her monthly expenses without maintenance and would, in fact, have a surplus. Husband points to the following language in the district court's order as support for his argument: "Maintaining two homesteads is not consistent with the lifestyle the parties enjoyed during the entirety of their marriage." But the key word in the court's language is "entirety."

It is undisputed that the parties did not have two homes for the "entirety" of their 45-year marriage and that wife purchased the lakehome later in the parties' marriage. The district court highlighted this point by finding that, "[p]rior to [the lakehome's] purchase, the parties did not historically maintain a second home." Although husband was not on the title and did not pay the mortgage, the parties did take out a $60,000 home-equity loan for the lakehome that was paid with marital funds, and husband contributed to monthly maintenance costs and provided labor at the lakehome. The record shows that the lakehome was part of the marital standard of living for the last ten years of the marriage.

Further, in awarding spousal maintenance, the district court did not award wife the entire amount she requested. Instead, the court utilized the $7,077 monthly figure as a way

to quantify the marital standard of living. After considering wife's monthly income of $5,734, the court determined that $1,400 per month would allow wife to maintain the lifestyle that both parties enjoyed during their 45-year marriage. *See Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (noting that the purpose of spousal maintenance "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"). In so holding, the district court found that wife's proposed monthly budget was not "overly inflated" but questioned its sustainability long term, as well as wife's ability to maintain the lakehome as a second home forever, given her static income.

A review of the district court's findings and the record shows that the maintenance award was not meant to allow wife to maintain the lakehome as a second home in perpetuity, nor to merely equalize the parties' incomes, as husband contends, but to equitably approximate the marital standard of living. The court's calculations are well-reasoned and supported by the financial documentation, as well as the testimony of the parties' experts. When a district court's spousal-maintenance award "has a reasonable and acceptable basis in fact and principle, this court will and must affirm." *DuBois v. DuBois*, 335 N.W.2d 503, 507 (Minn. 1983). *But see Bliss v. Bliss*, 493 N.W.2d 583, 587 (Minn. App. 1992) (remanding spousal-maintenance calculation to the district court where the court failed to "perform[] the analyses and modifications necessary to reach a figure that it deemed reasonable"), *review denied* (Minn. Feb. 12, 1993).

On this record, we cannot conclude that the district court abused its broad discretion in awarding wife $1,400 per month in permanent spousal maintenance after considering

the relevant statutory factors and making reasonable findings to support its decision. We affirm the spousal-maintenance award.

## II. The district court abused its discretion in ordering husband to secure the maintenance award for wife with his life-insurance policies.

It is in the district court's discretion to require life insurance as security for a spousal-maintenance award. *See Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007); *Laumann v. Laumann*, 400 N.W.2d 355, 360 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

Here, the district court ordered that husband name wife as a beneficiary on his life-insurance policies "in light of the spousal maintenance award." The district court did not elaborate on its rationale for requiring this security for the maintenance award. In addition, the record shows that husband previously elected a survivorship benefit for wife on his VA pension when he retired from the VA in 2001 that would give wife 55% of $28,000 per year or $15,400. Husband did not object at trial to continuing this survivorship annuity for wife, and the district court ordered that husband continue it. Husband argues that the VA survivorship annuity for wife is sufficient to secure the spousal-maintenance award and that the district court erred in ordering husband to further secure maintenance by naming wife as a beneficiary on his $300,000 life-insurance policies.

The statutory basis for awarding spousal maintenance is need. *Lyon*, 439 N.W.2d at 22. In this case, as discussed, the district court found that wife was unable to support herself in accordance with the marital standard of living that the parties enjoyed during their 45-year marriage, thus making a showing of need. The district court calculated wife's

need to be $1,400 per month or $16,800 per year. If husband predeceases wife, husband's VA pension survivorship annuity for wife would give her $15,400 per year (or $1,283.33 per month) slightly less than the maintenance awarded. Although wife's spousal-maintenance payments would cease, wife would begin receiving $1,283.33 per month from the survivorship annuity. Thus, wife's monthly need for maintenance of $1,400 would be met by the annuity payments less $116.67 per month.

The district court failed to explain why requiring husband to name wife as a beneficiary of an additional $300,000 in life-insurance policies was reasonable or necessary to secure payment of about $117 per month or about $1,400 per year. Because requiring husband to name wife as a beneficiary on his life-insurance policies was not supported by wife's actual need for maintenance, the district court abused its discretion in so ordering, and we reverse this requirement.

**Affirmed in part and reversed in part.**