

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1338**

In re the Marriage of:
Robert Lawrence Geiselman, petitioner,
Appellant,

vs.

Lynn W. Geiselman,
Respondent.

**Filed June 9, 2009
Reversed and remanded
Stauber, Judge**

Hennepin County District Court
File No. 27FA075650

Kay Nord Hunt, Marc A. Johannsen, Lommen, Abdo, Cole, King & Stageberg, P.A.,
2000 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402 (for appellant)

Marcia S. Rowland, Suite 240, 600 Market Street, P.O. Box 623, Chanhassen, MN 55317
(for respondent)

Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal in this spousal maintenance dispute, appellant-husband argues that (1) the district court's spousal maintenance award was an abuse of discretion and (2) the district court miscalculated the equalizer payment. Because the district court

miscalculated the equalizer payment and abused its discretion in setting appellant's spousal maintenance obligation, we reverse and remand.

FACTS

In July 2007, after 23 years of marriage, appellant Robert Geiselman petitioned to dissolve his marriage with respondent Lynn Geiselman. Prior to trial, the parties agreed to equally divide all of the marital assets. Consequently, the primary issue for trial was spousal maintenance.

At the time of trial, appellant was employed at St. Jude Medical, Atrial Fibrillation Division, as the Director of Documentation. Appellant testified that his present annual salary was approximately \$157,000, plus an annual bonus based upon his "level in the company and company performance." Concerning the bonus, appellant explained that his bonus was not guaranteed and that he would receive a bonus only if certain company performance expectations were met. Appellant further testified that he received a bonus for 2007. This bonus had a gross value of \$41,672, and a net value of \$24,602.09.

Prior to joining St. Jude Medical in June 2006, appellant was employed at Seagate Technology. Appellant testified that when he left Seagate, his approximate salary was \$146,000. Appellant also submitted evidence that between 2002 and 2005, his annual compensation from Seagate typically included a bonus varying from \$16,000 to \$35,000. According to appellant, his income from 2006 was inflated because when he left Seagate he (1) received a refund for four weeks of vacation; (2) received deferred compensation for at least five years; and (3) and he had to exercise all of his stock options.

Respondent, a registered nurse, generally worked outside the home during the parties' marriage. However, the number of hours that respondent worked per week substantially varied. Respondent testified that, at times, she worked as much as 24-32 hours per week, and that at other times, she worked as little as three-to-four days a month. In December 2007, respondent quit her job, and at the time of trial, respondent was unemployed. Although respondent has been diagnosed as suffering from depression, the experts agreed that respondent can and should support herself.

On April 22, 2008, the district court issued its order dissolving the parties' marriage. The district court found that respondent was "voluntarily unemployed" and imputed income to her in the amount of "\$2,000 net per month for purposes of calculating her need for spousal maintenance." The district court also found respondent's reasonable monthly expenses to be \$5,781, and based on the imputed income, found respondent to be in need of \$3,781 per month in order to meet her monthly expenses. The court then found that by January of 2009, respondent should be capable of earning a net monthly income of \$3,124, leaving her with a shortfall of \$2,657 to meet her monthly expenses. Thus, the court ordered appellant to pay respondent temporary spousal maintenance in the amount of \$3,500 per month commencing April 1, 2008, through December 2008. Thereafter, appellant was ordered to pay permanent spousal maintenance in the amount of \$2,500 per month. Finally, because appellant was awarded the homestead, the district court ordered appellant to pay respondent the sum of \$149,250, as an "equalization payment" to equalize the division of the parties' marital assets.

After the district court issued its amended findings of fact, conclusions of law and amended judgment and decree, which corrected various clerical errors, respondent moved for amended findings of fact, conclusions of law, or in the alternative, a new trial. On June 9, 2008, the district court issued its post decree order finding that appellant's net monthly income was approximately \$557 higher than that calculated in the first amended judgment and decree. Thus, the court ordered appellant to pay \$4,400 per month to respondent in temporary spousal maintenance commencing April 1, 2008, until January 1, 2009, and "\$3,500 permanently after that date." The district court also ordered appellant "to pay to respondent by January 30th of each year, an amount equal to 25% of the gross of any bonuses he received in the previous year as and for spousal maintenance." Finally, the district court recalculated the equalization payment to be \$155,717 by removing a U.S. Bank Visa account from the marital debt, and denied appellant's "request for a decrease in the equalizer payment." The district court issued its second amended order in July 2008, which incorporated the June 2008 post-decree order. This appeal followed.

D E C I S I O N

I.

This court reviews a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). "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). In order to successfully challenge a district court's findings of fact, the party challenging the findings "must show

that despite viewing that evidence in the light most favorable to the trial court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000). Issues involving statutory interpretation, however, are questions of law, which this court reviews de novo. *Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008), *review denied* (Minn. Aug. 19, 2008).

An award of spousal maintenance depends on a showing of need. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). A district court may award spousal maintenance if it finds that the spouse seeking maintenance

(a) lacks sufficient property, including martial 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 (2006). In determining whether a party needs spousal maintenance, a district court is directed to consider "all relevant factors." *Id.*, subd. 2 (2006) (listing eight factors that are relevant for consideration for an award of spousal maintenance). "No single factor is dispositive and each case must be determined on its own facts." *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006).

Appellant argues that the district court's spousal maintenance award was an abuse of discretion because the court (1) erroneously used appellant's 2007 Medicare wages to determine his monthly income, which effectively overstated his monthly income; (2) awarded respondent more per month than needed to meet her monthly expenses; and (3) double counted any discretionary bonus received by appellant and based the award on the gross amount of the bonus rather than the net amount.

A. *Determination of net monthly income*

In the initial findings of fact, the district court found that appellant has a gross annual income of \$158,414, plus bonus income that is dependent on performance of his division. The court then found "as a reasonable average" that appellant "has an annual gross income of approximately \$175,000 (base salary plus bonus) with a gross monthly average of \$14,583" and a net monthly income of approximately \$9,722. The district court subsequently amended its findings to read that appellant's "gross income according to his 2007 W-2 . . . was \$184,948 resulting in a monthly gross income of \$15,417 and a net monthly income of \$10,279, approximately \$557 higher than that calculated in the first Amended Judgment and Decree." The court then increased appellant's maintenance obligation by \$1,000 based on the finding that he has \$557 more in net monthly income than that which was originally determined.

Appellant argues that the district court's amended spousal maintenance award was an abuse of discretion because it is based on income that is not available to him to pay maintenance. To support his claim, appellant asserts that the finding that his gross annual income from 2007 was \$184,948 is based on his Medicare wages. Appellant claims that

included in his medicare wages are (1) his “Code D” benefits of \$15,500, which is appellant’s non-taxable elective salary deferrals to a 401(k) retirement plan and (2) his \$11,033.54 in “Code Y” benefits, which are salary deferrals under a 409(a) non-qualified deferred compensation plan. Appellant argues that because he does not actually receive the salary deferral or deferred compensation, it cannot be used to calculate his net monthly income for purposes of spousal maintenance. Thus, appellant argues that by using the medicare wages of \$184,948 to determine his net monthly income, the district court overstated his gross and net income in setting his maintenance obligation.

Historically, the statute entitled “Maintenance, Support, Property,” defined “income” as “any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers’ compensation, unemployment benefits, annuity, military and naval retirement, pension and disability payments.” Minn. Stat. § 518.54, subd. 6 (2004). However, this definition of income was repealed in 2006. 2006 Minn. Laws ch. 280, § 47. “The current statute does not define ‘income’ for purposes of maintenance and generally bases a maintenance award on one party’s need for it and the other party’s ability to pay it while satisfying his or her own needs.” *Lee v. Lee*, 749 N.W.2d 51, 58 (Minn. App. 2008), *review granted* (Minn. June 25, 2008).

In contrast, the present child support statute is more detailed and provides a definition of “gross income.” *Id.* The child support statute defines “gross income” as “the gross income of the parent calculated under section 518A.29.” Minn. Stat. § 518A.26, subd. 8 (2008). Section 518A.29, provides in relevant part:

Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income under section 518A.30, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section 518A.31, and potential income under section 518A.32. . . . *No deductions shall be allowed for contributions to pensions, 401-K, IRA, or other retirement benefits.*

Minn. Stat. § 518A.29(a) (2008) (emphasis added).

Although more precise, this court has recently determined that the definition of gross income as set forth in the child support statute does not apply to the maintenance provisions set forth in chapter 518. *Lee*, 749 N.W.2d at 59. Specifically, this court stated:

To the extent that the earlier statute [pertaining to maintenance and child support] was rather imprecise in its treatment of income for purposes of awarding maintenance or child support, and to the extent that the current statute[s] [pertaining to maintenance and child support] separately refer[] to the general provisions on maintenance and the detailed provisions on child support, *we conclude that the legislature intends the definition of [gross] income to apply to child support and not to maintenance.*

Id. at 58–59 (emphasis added).

With the definition of “gross income” applicable to child support but not spousal maintenance and without a precise definition of “income” for purposes of spousal maintenance, we note that the legislature has not adopted a per se rule on the issue of whether Medicare wages should be used in determining an obligor’s income for purposes

of maintenance. Instead, a maintenance award is broadly based on a party's needs and the other party's ability to pay. *See* Minn. Stat. § 518.552. Such a determination can only be done on a case-by-case basis.

Here, it is undisputed that appellant's gross income in 2007 was \$184,948. Although appellant's 2007 W-2 shows that he had \$26,533.54 in 401(k) contributions and deferred compensation taken out of his Medicare wages, there is no indication that any of the deferred compensation constitutes a mandatory deduction. If these deductions are not mandatory, his Medicare wages could be considered income "available" to pay maintenance. But we acknowledge that appellant has consistently contributed a portion of his Medicare wages to his 401(k) account. And there is no evidence that appellant's voluntary contributions to his 401(k) accounts suddenly increased substantially upon the dissolution of the marriage. Thus, we conclude that appellant is entitled to contribute a reasonable amount of his Medicare wages to his 401(k). The district court specifically found \$500 per month to be a reasonable monthly contribution for each party to contribute to their respective retirement accounts. Because the district court specifically found \$500 a month to be a reasonable amount to contribute to appellant's 401(k), we conclude that this amount should be deducted from appellant's Medicare wages, and the amount after deduction then used to determine appellant's net income for purposes of spousal maintenance. Although appellant can still voluntarily contribute more than \$500 per month to his 401(k), any 401(k) contribution on top of the reasonable monthly amount of \$500 would be considered income available to appellant from which to calculate his net income available to pay maintenance.

We also note that appellant's \$11,033.54 salary deferral under his 409(a) non-qualified deferred compensation plan is not taxed until it is received, presumably many years into the future. Including it as income for present maintenance purposes would be unfair because it will be includable as income in the future when it is received. Thus, in addition to a recalculation of appellant's net monthly income based on the reasonable contribution of \$500 per month to his 401(k), we remand the matter to the district court to determine (1) whether the \$11,033.54 in salary deferrals under appellant's 409(a) deferred compensation plan is a voluntary deduction, and therefore potentially "available" for purposes of paying maintenance and (2) if the deduction should be deferred until it is received to preclude doubling its use for maintenance calculations.

B. Maintenance award as compared to respondent's need

Appellant also argues that the district court's amended spousal maintenance award was an abuse of discretion because the court awarded respondent more per month than is needed to meet her reasonable monthly expenses, and the amount exceeds appellant's ability to pay maintenance and meet his monthly expenses. We agree. "[M]aintenance is awarded to meet need." *Lyon*, 439 N.W.2d at 22. A spouse's ability to pay maintenance does not entitle the spouse seeking maintenance to maintenance in excess of his or her reasonable needs. *Id.* at 21–22.

Here, the district court's amended findings do not support a need-based increase in maintenance to \$4,400/\$3,500, nor an increased ability to pay. The district court's original order found respondent's reasonable monthly expenses to be \$5,781, and appellant's maintenance obligation was set accordingly. However, when the district

court increased appellant's maintenance obligation, the court made no findings that respondent's need had increased. Moreover, the increased maintenance award was premised on the finding that appellant had \$557 more per month in available income than that which was calculated in the original order. But despite the finding that appellant had \$557 more per month in available income from which to pay maintenance, the court increased appellant's maintenance obligation by \$900 per month for 2008, and \$1,000 per month in 2009. There is no allegation that the district court understated the reasonable monthly expenses necessary for respondent to approximate the marital standard of living. Nor is there any argument that requiring appellant to pay a maintenance award in an amount exceeding his ability to pay is required to achieve an equitable maintenance award here. *See, eg., Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) (affirming a maintenance award creating \$201 shortfall for the obligor); *Buhr v. Buhr*, 395 N.W.2d 433, 436 (Minn. App. 1986) (affirming a maintenance award creating a \$75 shortfall for the obligor). Therefore, there is no justification for the arbitrary increase in the maintenance award and it had no rational nexus even to the court's new but erroneous finding that appellant's income for maintenance purposes was \$184,948. Accordingly, the district court's increase in appellant's spousal maintenance was an abuse of discretion because it exceeds respondent's need and was disproportionate to the increased amount of income found to be available to appellant.

C. Maintenance awarded from appellant's discretionary bonus

An obligor's ability to pay spousal maintenance should include bonuses if they are dependable. *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987) (holding that

bonuses providing a dependable source of income may properly be included in calculation of income in determining maintenance), *review denied* (Minn. Oct. 30, 1987); *see also McCulloch v. McCulloch*, 435 N.W.2d 564, 566–67 (Minn. App. 1989) (excluding bonuses deemed “speculative”). Here, the district court found that

given the difficulty in determining what if any bonuses [appellant] may receive during the course of a year, an award of 25% of the gross annual bonuses to Respondent as and for additional spousal maintenance to be paid to her by January 30 of the subsequent year is reasonable and fair, would avoid the issue of maintenance being brought before the court every year, and acts to offset her claim that she will not have the benefits and future earning capacity of [appellant].

Appellant does not quibble with the district court’s decision to use his discretionary annual bonus when calculating his net monthly income available for purposes of paying maintenance. But, appellant argues that the district court abused its discretion by double counting his bonus. We agree. A review of the record reveals that, appellant’s annual bonus from 2006 was included in appellant’s 2007 Medicare wages of \$184,948, from which the district court calculated appellant’s net monthly income. But in addition to factoring his bonus into his net monthly income, the district court also awarded respondent 25% of appellant’s annual bonus. Consequently, the district court abused its discretion by effectively double counting appellant’s bonus in setting the maintenance obligation.

II.

Appellant argues that the district court made a mathematical error in the equalizer payment that deprived him of a substantial sum of money. We agree. In calculating the

equalization payment, the district court found that the cash value of marital assets awarded to appellant and respondent totaled \$119,422 and \$81,285, respectively. To “equalize” the cash value of the awards to the parties, the district court subtracted \$81,285 from \$119,422, resulting in a difference of \$38,137. The district court then ordered appellant to pay to respondent this amount (plus \$117,580, respondent’s equity in the marital homestead), in order to provide an equal distribution of the parties’ marital assets. However, the district court should have taken the \$38,137 difference and divided that number in two, and then ordered that number to be added to the \$117,580 figure to determine the equalization payment. By ordering appellant to pay the full difference between the parties’ respective values of the marital assets they received, the district court simply awarded respondent \$38,137 more in marital assets than were awarded to appellant.

Respondent argues that the district court’s equalization payment was not an abuse of discretion because the court simply made an “equitable” division of the marital assets. *See Johns v. Johns*, 354 N.W.2d 564, 566 (Minn. App. 1984) (stating that a district court’s division of marital property need not be mathematically equal to be equitable and just). But the district court specifically found that “the parties are equally dividing their assets.” Thus, the court was not asked to equitably divide the assets. Rather, the court was required to divide the parties’ assets equally as per their agreement. Because the district court’s equalization payment contains a mathematical error that results in respondent being awarded substantially more of the parties’ marital assets than appellant, we reverse and remand for a recalculation of the equalization payment.

Appellant further argues that the district court's decision in the post-decree order to remove the U.S. Bank Visa account from the marital debt was an abuse of discretion. We disagree. The record reflects that much of the debt on this account was appellant's non-marital debt. Appellant testified that the charges on the bill were made by him, and that many of the charges consisted of situations where he would go to restaurants with other people and pay the entire bill for the meal, and then be reimbursed from the other people in cash. Appellant then admitted that he did not deposit these reimbursements into any joint assets. The district court apparently found this testimony to be credible and disregarded any evidence and testimony to the contrary. *See Vangness*, 607 N.W.2d at 474 (stating that an appellate court defers to the district court's credibility determinations). Therefore, the district court did not abuse its discretion in removing the U.S. Bank Visa account from the marital debt.

Reversed and remanded.