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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0686**

In re the Marriage of:

Kenneth Roland Olson, Sr., petitioner,
Appellant,

vs.

Sharon Ann Olson,
Respondent.

**Filed January 22, 2008
Affirmed
Lansing, Judge**

Itasca County District Court
File No. 31-FA-06-920

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Considered and decided by Dietzen, Presiding Judge; Lansing, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

This appeal from a marital-dissolution judgment raises the single issue of whether
the district court abused its discretion when it determined Kenneth Olson's ability to pay

spousal maintenance by averaging his income over a four-year period instead of calculating it based on the first six months of the dissolution year. Because the record establishes that the cyclical nature of the mortgage industry causes fluctuations in Kenneth Olson's income from his employment as a mortgage lender, the district court did not abuse its discretion by averaging his income, and we affirm.

F A C T S

Kenneth and Sharon Olson married in 1984 and dissolved their marriage in 2006. During the marriage Sharon Olson deferred her college plans and, by specific agreement between the Olsons, became a full-time homemaker for the couple's two children and Sharon Olson's two children from her first marriage. As the children grew older, she obtained employment in a series of entry-level positions. When the Olsons married in 1984, Kenneth Olson had a four-year degree in finance and worked in the mortgage and banking business.

At the time of dissolution, Kenneth Olson was a mortgage lender and branch manager of a mortgage company and was compensated solely by commission. The district court found that Kenneth Olson's W-2 gross income was \$108,045 in 2005, \$90,589 in 2004, and \$125,537 in 2003.¹ Based on his testimony at the contested hearing, the district court estimated that Kenneth Olson's gross income for 2006 would be \$69,600. To determine his yearly income, the district court averaged Kenneth Olson's gross income for the years 2003 through 2006 and deducted forty-five percent for

¹ The W-2 in the record for 2003 states income of \$128,537. Because the district court's determination of \$125,537 was not challenged in the posttrial motion or on appeal, we do not address this discrepancy.

necessary business-related expenses. According to this calculation, Kenneth Olson had an average net monthly income of \$4,511. The district court found that Kenneth Olson's reasonable monthly living expenses were \$2,429. Applying these findings, Kenneth Olson's average net monthly income exceeded his monthly living expenses by \$2,082.

The district court determined that Sharon Olson's reasonable living expenses were \$2,555. She was unemployed at the time of the dissolution and, because of an automobile accident, had not been employed for two years. The district court concluded that she lacked training but was capable of working in an entry-level full-time position earning \$8 an hour. Based on this finding the district court imputed monthly net income of \$1,175 to Sharon Olson.

The district court ordered Kenneth Olson to pay Sharon Olson \$1,500 each month as permanent spousal maintenance. The district court also ordered Kenneth Olson to maintain a \$150,000 term life-insurance policy as security for spousal maintenance with Sharon Olson as the named beneficiary.

On appeal, Kenneth Olson does not dispute that Sharon Olson should receive spousal maintenance but disputes the amount of maintenance. He contends that the district court abused its discretion by averaging his income over a four-year period to determine his ability to pay spousal maintenance.

D E C I S I O N

A district court has broad discretion to determine spousal maintenance, and appellate courts will uphold a maintenance decision absent a clear abuse of the district court's discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). This exercise

of discretion must be viewed in light of the statutory criteria for spousal maintenance contained in Minn. Stat. § 518.552, subd. 2(a)-(h) (2006). *Dobrin*, 569 N.W.2d at 201. These factors include the financial resources of each party, the time the recipient needs to acquire education leading to appropriate employment, the couple's previous standard of living, the duration of the marriage, the length of absence from employment, the age and physical condition of the spouse, the providing spouse's ability to meet both of their needs, and the contributions of the parties in acquiring marital property. Minn. Stat. § 518.552, subd. 2(a)-(h).

Kenneth Olson contends that the district court abused its discretion when it determined his ability to pay spousal maintenance by averaging his income over a four-year period instead of using his projected income for 2006. To determine whether the district court has abused its discretion, we analyze whether the district court reached an erroneous conclusion that is against logic and the facts on the record. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). As authority for his argument that the district court should consider only current annual income, Kenneth Olson relies on Minn. Stat. § 518A.28 (2006) (previously Minn. Stat. § 518.551, subd. 5b (2004)). But his characterization of the statute is too narrow because the statute provides that the district court is not limited to only the current annual income in its review of documentation but may also require relevant copies of other recent federal tax returns. *See id.* (requiring "all other documents evidencing earnings or income").

Calculating average income over a time period may be appropriate when the nature of employment causes income to fluctuate. *Veit v. Veit*, 413 N.W.2d 601, 606

(Minn. App. 1987). Averaging “takes into account fluctuations and more accurately measures income.” *Id.* In *Veit*, we approved averaging the income from an obligor’s proceeds from real-estate sales because the nature of the real-estate business results in income fluctuations. *Id.*

As in *Veit*, the district court did not abuse its discretion when it found that the nature of the mortgage industry in which Kenneth Olson works results in income fluctuations. The mortgage industry is directly impacted by the real-estate market. Thus, it was reasonable for the district court to conclude that the mortgage industry also fluctuates. Kenneth Olson admitted that the mortgage business was cyclical and claimed that, although he had experienced four or five good years, he was now facing a downturn in the market. Kenneth Olson’s income ranged from an estimate of \$69,600 in 2006 to \$125,537 in 2003. Because the facts and law support the conclusion that the nature of the mortgage industry caused Kenneth Olson’s income to fluctuate, the district court did not abuse its discretion when it averaged his income.

Kenneth Olson alternatively contends that if averaging was appropriate, the district court should have averaged his income over a fifteen-year period, rather than a four-year period, because the total cycle in the mortgage industry could be as long as fifteen years. He did not, however, present sufficient evidence that would allow the district court to average beyond a four-year period. He only submitted direct evidence of his income from 2003 through 2006. He submitted evidence of taxed social-security earnings from 1974 to 2005, but omitted evidence of gross income prior to 2003. In any case, Kenneth Olson’s social-security statements show that his income steadily increased

in all but four years during the previous fifteen-year period. Thus, we cannot conclude that averaging over a fifteen-year period would provide a more accurate prediction of Kenneth Olson's resources. The decision to average income over a four-year period rather than a fifteen-year period was not arbitrary, and Kenneth Olson has failed to demonstrate that four-year averaging is against logic or the facts on the record. Thus, the district court did not abuse its discretion when it chose to average Kenneth Olson's income over a four-year period.

Finally, Kenneth Olson also argues that his reasonable monthly expenses should reflect a greater allowance for term life insurance to secure the maintenance obligation. The district court, however, relied on Kenneth Olson's testimony on the monthly cost of the two policies that secure the obligation. He testified that the policies listing Sharon Olson as the beneficiary had premiums of \$27 and \$33. The district court found that his reasonable monthly expense for the two life-insurance policies was \$60. Kenneth Olson cites no authority and offers no reasoning on why it was an abuse of discretion to rely on his testimony stating the cost of the life-insurance policies. Because the district court based its decision on facts that Kenneth Olson submitted, the district court did not abuse its discretion.

Affirmed.