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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0879**

Cynthia Marie Severson, petitioner,  
Respondent,

vs.

Jason Albert Severson,  
Appellant.

**Filed May 6, 2008  
Affirmed; motion denied  
Lansing, Judge**

Washington County District Court  
File No. F5-06-2002

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Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and  
Peterson, Judge.

**UNPUBLISHED OPINION**

**LANSING, Judge**

In this appeal from judgment in a marital-dissolution action, Jason Severson challenges the district court's determination of the amount of maintenance, the division

of credit-card debt, and the order for attorneys' fees. Because the district court properly applied the law, reasonably exercised its discretion, and relied on findings that were either supported by the record or incorporated by stipulation, we affirm.

## **F A C T S**

Cynthia and Jason Severson began dissolution proceedings in March 2006, and the district court entered judgment dissolving their fifteen-year marriage in March 2007. The Seversons stipulated to the division of most assets but were unable to reach agreement on the amount of spousal maintenance, the division of credit-card debt, the division of Jason Severson's Fireman's pension, and Cynthia Severson's request for attorneys' fees. They submitted these remaining issues to the district court on affidavit evidence.

The district court's March 1, 2007 judgment provides that Cynthia Severson, who has a health condition that limits her ability to work, will receive monthly spousal maintenance of \$1,250; that Cynthia Severson is obligated to pay \$10,000 in credit-card debt and that Jason Severson is obligated to pay \$10,813.27 in credit-card debt; that the Fireman's pension will be divided equally between them; and that Jason Severson is required to pay Cynthia Severson \$3,500 as need-based attorneys' fees. On April 11, 2007, Jason Severson filed a motion for amended findings of fact or a new trial. Cynthia Severson objected to the motion as untimely, and Jason Severson withdrew the motion and brought this appeal of the March judgment.

## DECISION

### I. *Spousal Maintenance Provision*

Jason Severson first challenges the amount of maintenance ordered by the district court. We review a district court's spousal-maintenance determination for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). In determining maintenance, the district court must make findings showing that it considered each of the eight factors relating to maintenance amount and duration that are listed in Minn. Stat. § 518.552, subd. 2(a)-(h) (2006). *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). The district court's findings of fact are reviewed for clear error. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). If we conclude that the district court relied on findings of fact that are clearly erroneous, then we must also conclude that the district court abused its discretion when it calculated spousal maintenance. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007).

Unless a litigant has made a timely motion for a new trial, challenges to trial procedure, evidentiary rulings, and jury instructions are not subject to appellate review. *Sauter v. Wasemiller*, 389 N.W.2d 200, 201-02 (Minn. 1986). Instead, our review is limited to whether the evidence supports the findings of fact and whether the findings support the conclusions of law. *Erickson v. Erickson*, 434 N.W.2d 284, 286 (Minn. App. 1989).

In his challenge to the spousal-maintenance provisions, Jason Severson asserts that the district court's findings are inadequate, its calculation of his firefighter's income is incorrect, its calculation of his monthly income from Andersen Corporation is

unsupported, and it improperly relied on an expense-sharing arrangement that has no evidentiary basis.

Jason Severson's argument on inadequate findings under Minn. Stat. § 518.552, subd. 2, centers on the adequacy of the district court's findings on the Seversons' individual living expenses. We conclude that the district court's findings were adequate. The dissolution judgment includes seven pages of findings on the relevant factors. Each factor is listed and separately discussed. Thus, because the district court considered each of the factors listed in Minn. Stat. § 518.552, subd. 2, we see no basis for concluding that the findings were inadequate.

Furthermore, contrary to Jason Severson's argument, the district court's findings directly address the Seversons' individual living expenses. The district court found that Jason Severson's claimed monthly expenses of \$4,412 are excessive. The district court also found that Jason Severson has a net income before profit sharing of \$4,433 and that "he will have sufficient income to pay his necessary monthly expenses after payment of spousal maintenance as ordered." Thus, the district court implicitly found that Jason Severson's monthly expenses are less than \$3,183, the net amount remaining after paying maintenance. Cynthia Severson's monthly expenses can be similarly inferred from the findings. Although the district court described her claimed expenses of \$3,394 as "speculative," it did not specifically reject her claims. In assessing her expenses, the district court noted that it will "be necessary for [Cynthia Severson] to obtain adequate housing." Because Cynthia Severson has a monthly net income of \$1,268.12, and the district court ordered maintenance of \$1,250, it can be inferred that the district court

found that she has reasonable expenses of at least \$2,518.12. Thus, the district court's findings adequately address the Seversons' individual expenses.

Jason Severson next argues that the district court improperly calculated his monthly income as a firefighter. The evidence submitted to the district court, however, showed that during the first three months of 2006, he had earned net pay of \$1,669.69. The district court divided this figure by three and calculated the average monthly income as \$557. Because no contrary evidence was submitted to the district court, this finding is not clearly erroneous.

Jason Severson also challenges the district court's finding that he earns a net monthly income of \$3,876 before profit sharing from his employment at the Andersen Corporation. He criticizes the district court for not explaining its calculation.

Although the district court did not explain how it reached its calculation, the district court's finding has a clear basis in the record and permits effective appellate review. The record contains four of Jason Severson's pay stubs. The pay stubs indicate that Jason Severson received biweekly paychecks of \$1,782; \$1,750; \$1,792; and \$1,832. The average of these paychecks multiplied by twenty-six—the number of paychecks in a year—and divided by twelve—the number of months in a year—results in a monthly income of \$3,876. Thus, the district court's finding was not clearly erroneous.

In assessing Jason Severson's ability to pay maintenance, the district court stated:

The Court finds that [Jason Severson] can contribute \$1,250.00 per month to the [Cynthia Severson] by way of spousal Maintenance and still maintain a comfortable lifestyle. The Court is informed that [Jason Severson] will have someone living in the home to share in his expenses. If the expense sharing does not occur, [Jason Severson] has the ability to seek

housing and a vehicle that is more in line with his finances. However, this Court does not believe that [Cynthia Severson] should struggle to pay for the medications she needs, lose her vehicle, or live in poverty.

Jason Severson argues that the finding about expense sharing is based on “nothing more than a bare allegation” and that the maintenance order is therefore improper.

The district court’s statement, however, had evidentiary support in Cynthia Severson’s affidavit. The affidavit stated: “[Jason Severson] will have a much easier time when he is sharing expenses with his girlfriend. [Jason Severson] has made it very clear to me that once I am out of the house, his girlfriend will live there.” The district court’s finding was based on adequate evidence. We further note that the district court considered this only in describing Jason Severson’s life-style potential. The court alternatively stated that Jason Severson could afford adequate housing and transportation without the cost-sharing circumstances.

Because the district court’s findings were not clearly erroneous and the district court made extensive findings on the relevant factors, the district court did not abuse its discretion by providing a spousal-maintenance amount of \$1,250 a month.

Jason Severson makes two related arguments about the district court’s decision to require maintenance payments to begin immediately. First, he argues that, because Cynthia Severson remained in the marital home, her living expenses were reduced and the amount of maintenance should be reduced. This argument is based on Jason Severson’s claim that Cynthia Severson remained in the marital home, a fact not in the record. Furthermore, this argument does not take into account the district court’s considerable discretion in determining maintenance. The district court is authorized to

order maintenance “in amounts and for periods of time, either temporary or permanent, as the court deems just.” Minn. Stat. § 518.552, subd. 2. The district court could reasonably require that maintenance begin immediately to enable Cynthia Severson to move out of the house. This provision does not amount to an abuse of discretion.

Second, Jason Severson argues that the district court failed to incorporate into the judgment the provision in the Seversons’ stipulation that gave Cynthia Severson “90 days from the issuance of the final Judgment and Decree by the Court to vacate the marital home.” Although the district court included many of the provisions in the stipulation in the final order, it failed to incorporate this provision. Failure to specifically incorporate this provision, however, does not mean that Cynthia Severson could remain in the house after the ninety-day period. Jason Severson received the house in the property division and was not obligated to permit Cynthia Severson to live there after the dissolution was final. Thus, the district court did not err by failing to restate this provision in its final order. Jason Severson’s arguments on the timing for the commencement of the maintenance payments does not provide a basis for reversal.

## **II. *Marital Property Division***

In a dissolution action, marital debts are treated as marital property. *Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996). The district court must “make a just and equitable division of the marital property.” Minn. Stat. § 518.58, subd. 1 (2006). The district court’s division of marital property is reviewed for an abuse of discretion. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003). Jason Severson raises two challenges to the district court’s division of marital property.

First, he argues that the district court unfairly divided the Seversons' credit-card debts. Although the stipulation resolved most of the property issues, the Seversons submitted the division of credit-card debts to the district court. The Seversons submitted evidence of two credit-card debts: a \$10,813.27 debt on a Citibank card and a \$9,549.83 debt on a Chase card. The district court ordered Cynthia Severson to pay the Chase debt and ordered Jason Severson to pay the Citibank debt.

On appeal, Jason Severson argues that the district court failed to divide two other credit-card debts that were in his name. In addition, although the issue submitted to the district court was the division of joint credit-card debts, Jason Severson contends that the district court failed to address a number of other, non-credit-card debts. But Jason Severson only addressed the issue of dividing joint credit-card debt and cannot now claim an abuse of discretion for the district court's failure to resolve other issues that were not raised. Because the district court fairly divided the only credit-card debt brought to its attention, the district court did not abuse its discretion.

Second, Jason Severson challenges the district court's findings on the value of the marital homestead. The district court found that the "present fair market value of the homestead is between \$350,000.00 and \$380,000.00. The total present mortgage balance through Countrywide is approximately \$350,380.00 and is paid at the rate of approximately \$1,741.24." Jason Severson argues that the district court might have assigned him additional debt because it concluded—based on inadmissible hearsay appraisals of the house—that he was being given equity in the house. But because Jason Severson did not bring a timely motion for a new trial, he cannot appeal evidentiary



issues. *Sauter*, 389 N.W.2d at 201-02. In any case, he agreed to have the issues resolved through affidavit evidence, and Cynthia Severson's affidavit provides her independent but consistent assessment of the value of the house. Thus, the district court did not need to rely on the hearsay appraisals.

### **III. Attorneys' Fees**

Under Minn. Stat. § 518.14, subd. 1 (2006), the district court has the authority to order payment of attorneys' fees in a dissolution action. We review the district court's determination on attorneys' fees for an abuse of discretion. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 448 (Minn. App. 2002). Need-based attorneys' fees are appropriate if the district court finds that (1) the fees are necessary for the "good-faith assertion" of rights and will not cause unnecessary delay, (2) the individual ordered to pay has the means to pay, and (3) the individual who receives the fees does not have the means to pay. Minn. Stat. § 518.14, subd. 1.

The district court found that Cynthia Severson had incurred \$8,450.55 in attorneys' fees and would likely incur an additional \$780. After making findings on each of the relevant factors, the district court ordered that Jason Severson pay \$3,500 of Cynthia Severson's attorneys' fees.

In ordering the attorneys' fees, the district court found that Jason Severson "has the ability to contribute towards [Cynthia Severson's] attorney's fees, as [Jason Severson] has a significant income, and funds available to him by way of his Andersen Corporation profit sharing." Jason Severson argues that this finding was improper because the district court misunderstood his financial circumstances. The record, however, shows that the

district court properly assessed Jason Severson's financial situation. Therefore, the district court did not abuse its discretion when it ordered Jason Severson to pay the attorneys' fees.

Finally, we address Cynthia Severson's motion to strike documents contained in the appendix to Jason Severson's brief. Although the documents were contained in the district court file, the documents were submitted after the district court's decision. Because we did not rely on those documents, Cynthia Severson's motion to strike is denied as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot when court did not rely on material).

**Affirmed; motion denied.**