This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).

STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0900

In re the Marriage of:

Roxanne Staupe, petitioner,
Respondent,

vs.

Paul Staupe,
Appellant.

Filed June 10, 2008
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. F5-04-696

Roxanne M. Staupe, 2161 Temple Court, St. Paul, MN 55104 (pro se respondent)

Christopher Zewiske, Ormond & Zewiske, 510 First Avenue North, Suite 303, Minneapolis, MN 55403 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Harten, Judge.*

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

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

KALITOWSKI, Judge

On appeal from the judgment dissolving the parties' marriage, appellant Paul Staupe argues that the district court: (1) erred in imputing income to appellant for purposes of determining his child-support obligation; (2) abused its discretion in calculating respondent's maintenance award; (3) erred in its valuation of the parties' home; (4) erred in awarding respondent a nonmarital interest in the parties' home; (5) abused its discretion in distributing the parties' marital assets and marital debt; and (6) abused its discretion in awarding respondent need-based attorney fees. We affirm.

D E C I S I O N

I.

Appellant argues that the district court failed to make the findings of fact required to impute income to him for purposes of determining his child-support obligation. We disagree.

We review child-support determinations for an abuse of discretion, reversing only when the district court reaches a clearly erroneous conclusion that is against logic and the facts on record or misapplies the law. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). Determination of an obligor's income for purposes of child support is a finding of fact that we review for clear error. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002); *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). A finding is clearly erroneous if a reviewing court is left "with a definite and firm

conviction that a mistake has been made." *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987).

The district court's first task when setting child support is to determine the parties' monthly net income. *Knott v. Knott*, 358 N.W.2d 493, 496 (Minn. App. 1984); Minn. Stat. § 518.551, subd. 5(i) (requiring "written findings concerning the amount of the obligor's income used as the basis for the guidelines calculation"). But when an obligor's current income is not an accurate reflection of his ability to pay child support, a district court may also consider an obligor's past income or earning capacity. *Beede v. Law*, 400 N.W.2d 831, 835 (Minn. App. 1987); *see also Roatch v. Puera*, 534 N.W.2d 560, 565 (Minn. App. 1995). Whether to impute income to a child-support obligor is discretionary with the district court. *See, e.g.*, *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. App. 1998).

> If the court finds that a parent is voluntarily unemployed or underemployed . . ., support shall be calculated based on a determination of imputed income. A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that the unemployment or underemployment: (1) is temporary and will ultimately lead to an increase in income; or (2) represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child. Imputed income means the estimated earning ability of a parent based on the parent's prior earnings history, education, and job skills, and on availability of jobs within the community for an individual with the parent's qualifications.

Minn. Stat. § 518.551, subd. 5b(d) (2004). [1]

[1] Because the summons and petition in this matter were filed in March 2004, both parties agree that Minn. Stat. § 518.551, subd. 5b(d) (2004), is the controlling statute for

Appellant contends that the district court erred by failing to find that he was voluntarily unemployed or underemployed before imputing $37,000 in additional income to him. But unjustifiable self-limitation of income is not the sole permissible basis for consideration of an obligor's earning history and capacity. *See, e.g.*, *Veit v. Veit*, 413 N.W.2d 601, 606 (Minn. App. 1987). We have also recognized that, because "the opportunity for a self-employed person to support himself yet report a negligible net income is too well known to require exposition," income may also be imputed to self-employed obligors. *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984); *see also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 240 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003); *Veit*, 413 N.W.2d at 606; *Beede*, 400 N.W.2d at 835; *Fulmer v. Fulmer*, 594 N.W.2d 210, 213 (Minn. App. 1999) (finding that the impracticability of determining a self-employed obligor's actual income justified using earning capacity as a substitute measure of net income). Moreover, in situations where an obligor does not have "a steady, determinable flow of income," we have approved of calculating net income by averaging an obligor's income over a longer period of time or considering "cash flow in addition to paper income." *Swick v. Swick*, 467 N.W.2d 328, 333 (Minn. App. 1991), *review denied* (Minn. May 16, 1991); *Coady v. Jurek*, 366 N.W.2d 715, 718 (Minn. App. 1985) (quotation omitted), *review denied* (Minn. June 27, 1985).

---

purposes of determining appellant's child-support obligation. Although later recodified at Minn. Stat. § 518A.32 (2006), this statute did not have effect until January 1, 2007.

Here, the district court made specific findings in support of its imputation of $37,000 in additional income to appellant. The district court noted that appellant was currently working for Auxilia and earning a gross annual income of $60,000. In addition, the district court found that appellant had an extensive history of self-employment operating a consulting business and selling radios. Moreover, the district court recognized that even though the parties disagreed as to whether appellant was continuing to supplement his income with self-employment income after 2004, the weight of the evidence showed that the impracticality of determining appellant's actual net income justified imputing gross annual income to respondent in the amount of $97,000 because appellant (1) failed to be forthcoming about his financial circumstances throughout the dissolution proceedings and (2) appeared to have continued earning supplemental, self-employment income through his consulting business.

The district court's findings were not clearly erroneous. The evidence at trial showed that: (1) appellant used his consulting business's name, WAN Consulting, on recent correspondence; (2) appellant admitted that WAN Consulting had at least "a contract for one week in 2005"; (3) appellant admitted that he deliberately stopped using the WAN Consulting bank account after the dissolution was filed; (4) bank records showed that appellant had historically under-reported his actual income from self-employment on his federal tax returns, and that he had actually earned $33,000 in 2002 and more than $30,000 in 2003 from self-employment; and (5) respondent's average gross annual income for tax purposes between 1998 and 2005, excluding his self-employment income, was $97,745.

The record shows that appellant's primary source of income decreased in 2006 when he took a job at Auxilia after losing his job with Sunguard. But this fact does not establish whether appellant continued to earn supplementary, self-employment income. Although appellant testified that his consulting business ended in 2004, the district court did not find appellant's testimony to be credible. And we give deference to both explicit and implicit credibility determinations made by the district court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Moreover, appellant's argument that respondent stipulated to appellant's income during the pendency of the trial lacks merit. Rather, the record shows that respondent "agreed that [appellant] has Auxilia income of $5,000 per month," but had "an issue . . . with additional income that [appellant] might be earning."

Based on this record, we conclude that it was not clear error for the district court to consider appellant's earning history and earning capacity to impute an additional $37,000 in gross income to appellant for purposes of determining his child-support obligation.

II.

Appellant challenges the district court's spousal-maintenance determination, arguing that the district court (1) failed to make the requisite findings of fact in order to impute income to him for purposes of determining his spousal-maintenance obligation; (2) underestimated respondent's ability to support herself; (3) failed to make the requisite findings regarding appellant's budget; and (4) overestimated respondent's budget. We reject these arguments.

We review spousal-maintenance awards for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). An abuse of discretion will not be found unless the district court's decision is unsupported by logic and facts in the record. *LeRoy v. LeRoy*, 600 N.W.2d 729, 732 (Minn. App. 1999), *review denied* (Minn. Dec. 14, 1999). In determining the amount of maintenance, the district court must make findings showing that it considered all of the factors listed in Minn. Stat. § 518.552, subd. 2 (2006). *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). We review findings of fact concerning spousal maintenance for clear error. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

After the district court determines that spousal maintenance is appropriate under Minn. Stat. § 518.552, subd. 1 (2006), it must consider several factors in determining the amount and duration of a maintenance award. *Reinke v. Reinke*, 464 N.W.2d 513, 514 (Minn. App. 1990). The district court must consider the financial resources of each party, the time the recipient needs to acquire education leading to appropriate employment, the couple's marital standard of living, the duration of the marriage, the length of absence from employment, the age and physical condition of the spouse seeking maintenance, the providing spouse's ability to meet the needs of both spouses, and the contributions of the parties in acquiring marital property. Minn. Stat. § 518.552, subd. 2(a)-(h) (2006). Essentially, the district court must balance the financial needs of respondent and her ability to meet those needs against appellant's ability to provide financial support. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982).

Imputation of Additional Income to Appellant

Appellant first contends that, because the district court failed to make a finding that appellant was voluntarily unemployed or underemployed in bad faith, the district court clearly erred in imputing an additional $37,000 in gross income to appellant for purposes of determining his spousal-maintenance obligation. But this case does not involve imputing income based on a determination that husband was voluntarily underemployed. Rather, the record indicates that the district court's decision to impute income to appellant was based on (1) the impracticality of determining appellant's net income and (2) appellant's bad-faith failure to disclose his relevant financial information.

We have recognized that considering an obligor's past income or earning capacity may be appropriate when an obligor's income fluctuates. *See Ferguson*, 357 N.W.2d. at 108 (recognizing "the opportunity for a self-employed person to support himself yet report a negligible net income"). Moreover, we have upheld the district court's consideration of an obligor's past income or income-earning capacity when the obligor is shown to have intentionally self-limited his income or mischaracterized his financial information in an effort to avoid paying a higher maintenance award. *See Eisenschenk*, 668 N.W.2d at 243; *Fulmer v. Fulmer*, 594 N.W.2d 210, 213-14 (Minn. App. 1999); *Doherty v. Doherty*, 388 N.W.2d 1, 3 (Minn. 1986).

As discussed above, the district court determined that the weight of the evidence at trial showed that determining appellant's net income was impractical because appellant had failed to be forthcoming about his financial circumstances and had continued to generate self-employment income. Furthermore, these same findings indicate that the

district court believed that appellant's failure to fully disclose his financial information was done in bad faith. Although the court did not explicitly find that appellant was underreporting his actual income in bad faith, this court may infer bad-faith behavior from the district court's findings. *See Warwick v. Warwick*, 438 N.W.2d 673, 678 (Minn. App. 1989) (extending earning-capacity and earning-history analysis to spousal-maintenance obligations). Here, the court's findings illustrate its belief that appellant engaged in bad-faith behavior. Thus, since an implicit finding of bad faith is supported by the record, the district court did not commit clear error in imputing income to appellant for purposes of determining his spousal-maintenance obligation.

Determination of Respondent's Ability to Support Herself

In addition, appellant argues that the district court underestimated respondent's ability to support herself in making its spousal-maintenance calculation. An obligee's ability to support herself is listed in Minn. Stat. § 518.552, subd. 2, as one of the factors that must be considered by the district court in determining the amount or duration of a maintenance award. Thus, respondent's ability to support herself is a finding of fact concerning spousal maintenance that we review for clear error. *See Gessner*, 487 N.W.2d at 923.

Here, the district court found that respondent's income was insufficient to meet her needs, and this finding is supported by the record. At the time of trial, respondent was 52 years old and had been absent from the work force for almost 25 years. During the pendency of the proceedings, respondent began working as a bank teller an average of 22.5 hours per week, earning $8.85 per hour. The district court found that this was

respondent's "first job offer, after applying for hundreds of positions, at least six to ten positions per week, over a two-year time period." And the district court found that respondent's continued efforts to homeschool the parties' youngest child currently prevented her from pursuing a "career which would enable her to support herself."

Although appellant argues that the district court erred in not requiring respondent to utilize her legal education, the evidence at trial established that, due to her poor grades during law school and failure to sit for the bar exam, respondent's law degree proved more of a hindrance than an asset in her job search. Furthermore, appellant's argument that respondent's homeschooling duties should not excuse her from working more hours is unpersuasive because the record shows that homeschooling was part of the lifestyle that the parties agreed to provide for all of their children throughout the entirety of their marriage. Based on this record, the district court's findings regarding appellant's ability to support herself were not clearly erroneous.

Consideration of Appellant's and Respondent's Budgets

Appellant further argues that the district court clearly erred in not making adequate findings regarding appellant's budget and in overestimating respondent's budget. Minn. Stat. § 518.552, subd. 2, requires the district court to consider each party's financial resources when determining spousal maintenance. Accordingly, we review the district court's findings regarding the parties' respective financial resources for clear error. *See Gessner*, 487 N.W.2d at 923.

Here, the record shows that both parties submitted budgets to the district court and gave extensive testimony regarding those budgets. Although the district court did not

make an explicit finding regarding appellant's monthly budget, as it did respondent's, the district court did consider appellant's proposed budget before making its maintenance determination. Additionally, testimony at trial established that appellant led an extravagant lifestyle and was not forthcoming about his financial resources. *See Sefkow*, 427 N.W.2d at 210 (stating that we defer to the district court's credibility determinations). Accordingly, it was not clear error for the district court to find that, given appellant's education, employment history, job skills, and assets, he had adequate financial resources to provide support for the needs of both himself and respondent.

In sum, because the district court's findings concerning spousal maintenance were not clearly erroneous, were supported by the facts in the record, and gave adequate consideration to the factors set forth in Minn. Stat. § 518.552, subd. 2, we conclude that the district court acted within its discretion in determining appellant's spousal-maintenance obligation.

III.

Appellant contends that the district court clearly erred in determining that the parties' homestead had a value of $152,000 after initially finding that it had a value of $182,721. We disagree.

Assigning a specific value to an asset is a finding of fact that we review for clear error. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001); *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975). A district court is not required to be exact in its valuation of assets; rather, "it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

Here, appraisers established a range of values for the parties' homestead ranging from $149,000 to $224,000. After hearing testimony from different appraisers, the district court broke for lunch and advised the parties to use a homestead valuation of $182,721 as the basis for a possible settlement over the break. But no settlement was reached, and trial continued after lunch. Following trial, the district court issued a dissolution decree setting forth a finding of fact stating that the parties' homestead had "an appraised value of $152,000 and [was] unencumbered."

Appellant contends that the district court's initial, mid-trial valuation of the parties' homestead was a final judgment. But a final judgment is defined as a "final determination of the rights of the parties." Minn. R. Civ. P. 54.01. Thus, the court's preliminary valuation of the homestead is best characterized as a temporary order that had effect only until the district court entered its final decree of dissolution. *See* Minn. Stat. § 518.131 (2006). In addition, because $152,000 was within the appraised range, and because appellant's appraiser admitted that he made a computational error in arriving at the high-end valuation of $224,000, the district court's determination that the parties' homestead had an appraised value of $152,000 was not clearly erroneous.

IV.

Appellant claims that the district court erred in calculating respondent's nonmarital contributions to the parties' homestead. We disagree.

Although the question of whether property is marital or nonmarital is a question of law subject to de novo review, we defer to the district court's underlying findings of fact. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). All property, real or personal, is

presumed to be marital if "acquired by the parties, or either of them . . . at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife." Minn. Stat. § 518.54, subd. 5 (2006). Nonmarital property is real or personal property "acquired by either spouse before, during, or after the existence of their marriage, which (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse; [or] (b) is acquired before the marriage." *Id.*

A party seeking to establish the nonmarital character of an asset must do so by a preponderance of the evidence. *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004). "The preponderance of the evidence standard requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists." *Id.* "In order to maintain its nonmarital character, nonmarital property must be kept separate from marital property or, if commingled, must be readily traceable." *Wopata v. Wopata*, 498 N.W.2d 478, 484 (Minn. App. 1993); *see also Carrick v. Carrick*, 560 N.W.2d 407, 413 (Minn. App. 1997) (noting that the standard required is not "strict tracing," but a preponderance of the evidence).

Appellant contends that the district court's determination of respondent's nonmarital interest in the home was erroneous because (1) respondent failed to put forth sufficient tracing evidence to prove the nonmarital nature of the property by a preponderance of the evidence and (2) the district court based its calculation on an erroneous valuation of the parties' homestead. We disagree.

The record shows that respondent produced evidence establishing her nonmarital interest in the home: $1,000 in earnest money prior to their marriage; $8,600 cash down payment as a gift from respondent's mother; $3,000 down payment on contract for deed as a loan from respondent's aunt that was later forgiven; $10,000 negotiated final payment on the contract for deed from the $10,000 she received in cash from the sale of her premarital home. Having found that respondent made a total of $22,600 in nonmarital contributions to the homestead (46.12% of the home's purchase price in 1981), the district court determined that appellant's nonmarital interest in the home's current market value of $152,000 was $70,102. Although appellant was provided with an opportunity to contradict the testimony and documentation put forth by respondent, he failed to do so. And although appellant points out minor discrepancies in respondent's tracing evidence, this court defers to the district court's underlying findings of fact. *See Olsen*, 562 N.W.2d at 800. Finally, as discussed above, the district court's valuation of the parties' homestead was not clearly erroneous.

In sum, because respondent established her nonmarital interest in the parties' homestead by a preponderance of the evidence, and because the current market value used by the district court to calculate respondent's nonmarital interest was not clearly erroneous, we conclude that the district court did not err in finding that respondent made a nonmarital contribution of $70,102 to the parties' homestead.

V.

Appellant challenges the district court's unequal division of the parties' marital debt and marital assets. We conclude that the district court's apportionment was within its discretion.

The district court has broad discretion when dividing marital property. *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). We will not modify "a district court's property division absent a clear abuse of discretion or an erroneous application of the law." *Id.* Although Minnesota law requires that a property division be equitable, it need not be equal. *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). When dividing property, a district court may consider a number of factors, including length of the parties' marriage, the parties' respective sources of income, and the manner in which each party contributed to the marital property's preservation. *Sirek*, 693 N.W.2d at 899. In a dissolution action, marital debts are treated as marital property. *Korf v. Korf*, 553 N.W.2d 706, 712 (Minn. App. 1996).

Here, the district court awarded respondent $95,524 in marital assets and assigned her the parties' Target VISA debt. Meanwhile, appellant was awarded a total of $67,333 in marital assets and $90,679.23 in debt from the parties' First National Bank VISA, Paypal VISA, and student-loan debts. The district court explicitly recognized that, although this division of the parties' marital assets and debt was not equal, it was equitable. And our review of the record shows that the district court's apportionment of the parties' marital assets and debt was reasonable and supported by facts in the record.

The district court found that appellant's salary and earning capacity were significantly greater than respondent's. Additionally, the court noted that respondent contributed significantly to the preservation of the parties' homestead and was responsible for the care and homeschooling of the parties' five children throughout the 25-year marriage. Also, the district court found that appellant misrepresented to respondent that he had paid her student loans in full, but then forged her signature to a loan consolidation so that he could obtain a lower interest rate and deferment for his own loans. Based on this record, we conclude that the district court's distribution of the parties' marital assets and marital debt was within its broad discretion.

VI.

Appellant argues that the district court erred in awarding respondent attorney fees. We disagree.

Under Minn. Stat. § 518.14 (2006), the district court has the authority to order one party in a dissolution action to pay the other's attorney fees. We review a district court's award of attorney fees for an abuse of discretion. *Ludwigson*, 642 N.W.2d at 448. Need-based attorney fees shall be awarded if the district court finds that (1) the fees are necessary for "the good-faith assertion of the party's rights" and will not add to the length or expense of the proceedings; (2) the party ordered to pay has the means to pay; and (3) the party awarded the fees does not have the means to pay. Minn. Stat. § 518.14, subd. 1 (2006). Additionally, a court may award conduct-based attorney fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1. An award of conduct-based fees may be

made regardless of the recipient's need for fees and regardless of the payor's ability to contribute to a fee award. *See Gales v. Gales*, 553 N.W.2d 416, 423 (Minn. 1996).

In awarding attorney fees, the district court "must indicate to what extent the award was based on need or conduct or both" and, if based on conduct, what conduct justified the award. *Geske v. Marcolina,* 624 N.W.2d 813, 816, 819 (Minn. App. 2001) (quotation omitted). Although a lack of specific findings is not necessarily fatal, the district court's findings regarding attorney fees must reasonably imply that the district court considered the relevant factors so as to permit meaningful appellate review. *See Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999).

Here, the district court found that respondent was entitled to need-based attorney fees, but also found that respondent's contribution to the delay in the dissolution proceedings justified a reduction of that award. Thus, although respondent incurred attorney fees and costs in the amount of $31,636.93, she was awarded $20,000. Appellant argues that the district court failed to make the necessary findings in order to support its attorney-fee award. But the district court did make specific findings regarding respondent's inability to pay, noting that "[respondent] has minimal employment income with which to meet her monthly expenses and [appellant] has been extremely delinquent with support payments." Moreover, even though appellant claims that respondent has ample income to pay her own attorney fees as a result of the court's marital-property division and maintenance award, this court has recognized that "a sizeable award of assets does not preclude an award of fees in a dissolution proceeding." *Nemitz v. Nemitz*, 376 N.W.2d 243, 249 (Minn. App. 1985), *review denied* (Minn. Dec. 30, 1985).

Although the district court did not make specific findings regarding appellant's ability to pay the award or whether the award was necessary for respondent's good-faith assertion of her rights, its failure to do so is not fatal because other findings in the district court's order provide sufficient detail on these factors to facilitate this court's review. *See Gully*, 599 N.W.2d at 825-26. Furthermore, we reject appellant's argument that the district court's finding that respondent "contributed to delay in resolving the parties' dissolution" prohibits this court from inferring that the attorney-fee award was necessary for respondent's good-faith assertion of her rights. The fact that respondent, along with appellant, contributed to the delay of the proceedings does not negate the evidence that respondent had a good-faith need for financial assistance in order to contest the dissolution. *See Hall v. Hall*, 417 N.W.2d 300, 303 (Minn. App. 1988) (interpreting "good faith assertion of one's rights" to mean needing financial assistance to contest a matter). In sum, although more detailed findings regarding the factors set forth in Minn. Stat. § 518.14, subd. 1, would have been preferable, based on this record we cannot say that the district court's attorney-fee award constituted a clear abuse of its discretion.

Affirmed.