STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0832

In re the Marriage of:
Helene Louise Collin, petitioner,
Respondent,

vs.

Jean Marcel Guay,
Appellant.

Filed April 21, 2009
Affirmed in part, reversed in part, and remanded
Randall, Judge[*]

Hennepin County District Court
File No. 27-FA-06-9095

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Considered and decided by Hudson, Presiding Judge; Minge, Judge; and Randall, 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

RANDALL, Judge

Appellant challenges the district court's awards of child support and spousal maintenance in this marriage-dissolution action. The district court properly relied on the evidence before it in calculating appellant's net income. That issue is affirmed. But because the district court abused its discretion in making the amount of the awards, we reverse and remand for the district court to make new awards consistent with the record.

FACTS

The parties were married in April 1992. Respondent Helene Collin filed a petition for dissolution on December 29, 2006. During the course of their marriage, the parties moved several times for appellant Jean Guay's job. With the exception of a short time as a part-time retail employee, respondent did not work during the parties' marriage.

The district court determined that appellant earned a net monthly income of $7,660. Pursuant to the agreement of the parties, the district court awarded sole physical custody of the parties' two minor children to respondent and awarded the parties joint legal custody. The district court determined that appellant had the ability to pay spousal maintenance, and that respondent had the need for such maintenance. The district court ordered appellant to pay child support in the amount of $2,298, or 30% of appellant's net monthly income, plus an additional 30% of any bonuses appellant might receive from his employer.

The district court determined that, due to their high standard of living during marriage, the parties had been living with a monthly shortfall on their personal expenses

in the sum of $1,302. The district court found that this shortfall should be divided equally between the parties, but that "neither party can enjoy the same standard of living that was experienced during the marriage with only [appellant's] earnings given the increased costs associated with maintaining two households and the fact that the parties were spending beyond their means during the marriage." The district court determined respondent's reasonable monthly living expenses, after reduction for child support, amounted to $3,982, which was reduced by $651, respondent's share of the parties' monthly expenses shortfall. Appellant was ordered to pay spousal maintenance in the amount of $3,331 per month.[1] The district court further ordered that appellant's spousal-maintenance obligation be reduced to $2,331 effective January 1, 2011, and $1,331 effective January 1, 2013, based on reasonable determinations of respondent's ability to return to the workplace.[2]

Following a court trial, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree on January 24, 2008. The parties separately moved for amended findings of fact. In his motion, in relevant part, appellant moved for amended findings regarding (1) his child-support obligation, (2) his net

[1] Appellant was ordered to pay $652 per month while the sale of the parties' homestead was pending, as well as paying the expenses associated with the home. The homestead has been sold.

[2] In the fall of 2004, respondent began coursework at a community college, which she continued once the parties moved to Minnesota in 2005. Respondent voluntarily ended her schooling following the commencement of the divorce proceedings in the spring of 2007. Respondent testified that she never intended to obtain a career despite her schooling. The district court found this testimony to be incredible. The district court found that with one year of additional schooling, respondent could earn a salary of approximately $36,000 per year.

monthly income, (3) the amount of the reduction of his monthly spousal-maintenance obligation, and (4) the amounts the district court determined were reasonable monthly expenses for respondent and the parties' two minor children. The district court denied appellant's motion with regard to each of these challenges. The district court issued amended findings of fact, conclusions of law, order for judgment, and judgment and decree on March 25, 2008. This appeal follows.

D E C I S I O N

I.

Child Support

Appellant argues that the district court abused its discretion when it set his child-support obligation because the income figure used to calculate appellant's obligation was higher than the cap established pursuant to Minn. Stat. § 518.551 (2004), and because appellant was ordered to pay an additional 30% of any yearly bonuses he received from his employer in addition to his monthly obligation, putting his obligation further above the established cap.

Normally, the district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record or it misapplies the law. *Id.* (addressing the setting of support in manner that is against logic and facts on record); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (addressing an improper application of law).

Respondent argues that appellant did not raise this issue in his motion for amended findings of fact to the district court. Accordingly, it could be considered to be not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court generally will not consider matters not argued and considered in the court below). In his motion for amended findings, appellant did not argue that the district court had improperly exceeded the statutory cap. However, "it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities." *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted); *see also Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n.1 (Minn. App. 1990) (applying *Hannuskela* standard in a civil case where there is "nothing 'novel or questionable'" about the relevant law). This case calls for appellate oversight.

In the original judgment and decree, the district court determined appellant's monthly net income to be $7,660. The district court subsequently denied appellant's motion to amend this finding, and the district court's amended findings of fact reflect the same figure.[3] Minn. Stat. § 518.551, subd. 5(k), states that "[t]he dollar amount of the income limit for application of the guidelines must be adjusted on July 1 of every even-numbered year to reflect cost-of-living changes. The Supreme Court shall select the

[3] In the section regarding child support, the district court's amended findings of fact do not specifically state appellant's net monthly income, but do state "[appellant's] monthly child support obligation is equal to thirty percent (30%) of his net income, or $2298.00 per month." When the calculation is done, $2,298 is 30% of $7,660.

index for the adjustment." Pursuant to that statute, the supreme court ordered "[t]hat the new dollar amount of the income limit for application of the child support guidelines shall be $7,360.00," effective from July 1, 2006 to December 31, 2006. Cost of Living Adjustments to Child Support Guidelines, C9-85-1134 (Minn. Apr. 13, 2006) (order). As this case was commenced on December 29, 2006, this cap properly applies to this case.

The figure used by the district court in this case to calculate appellant's child-support obligation exceeds the statutory cap. Had the district court applied the statutory cap to this case, appellant's obligation would have been $2,208,[4] a difference of $90 per month. The district court also noted that the parties have a monthly shortfall of $1,302 in their expenses.[5] Given that the family already has a monthly shortfall in meeting their reasonable living expenses, this difference is not de minimus.

The district court then ordered appellant to pay 30% of any yearly bonuses he received from his employer to respondent as child support.[6] The inclusion of this bonus income in appellant's child-support obligation, in addition to his monthly obligation, results in a total monthly obligation considerably in excess of the statutory cap.[7] The district court has the discretion to deviate from the child-support guidelines, but must

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[4] $7,360 x 30% = $2,208.

[5] The district court found that the family had a combined net family income of $7,660 and combined reasonable living expenses of $8,697.

[6] The record indicates that appellant received bonuses of approximately $4,080 and $15,800 for 2006 and 2007 respectively.

[7] Appellant's bonuses vary by year based upon company performance and appellant's individual performance. Using the smallest bonus appellant has received from his employer, the net result to appellant's monthly child-support obligation would be an additional $102 based on the following calculation: $4,080 x 30% = $1,224 / 12 months = $102 per month.

make written findings to support its decision. "If the court deviates from the guidelines, the court shall make written findings giving the amount of support calculated under the guidelines, the reasons for the deviation, and shall specifically address the criteria in paragraph (c) [of this subdivision] and how the deviation serves the best interest of the child." Minn. Stat. § 518.551, subd. 5(i); *see also State v. Hall*, 418 N.W.2d 187, 189 (Minn. App. 1988). The district court here made no written findings to support its upward deviation from the statutory guideline cap, nor is such an upward deviation justified by the record. Nothing in the record supports the district court's finding that appellant's annual bonuses should be included in the child-support award. The district court abused its discretion by ordering appellant to make child-support payments on his annual bonuses.

Because the amount of the award exceeds the statutory cap and the parties' already experience an existing monthly shortfall of $1,300, we reverse the district court's order for child support, and remand the issue for the district court to grant an award consistent with the statutory-guideline cap.

II.

Net Income

Appellant challenges the district court's calculation of his net income, claiming that the district court used an incorrect figure to determine the monthly cost of appellant's family medical and dental insurance plans. The same net income figure was used to calculate appellant's monthly child-support and spousal-maintenance obligations.

A determination of the amount of an obligor's income for the purpose of child support is a finding of fact and will not be altered on appeal unless it is clearly erroneous. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002); *see also Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992) (applying the same standard of review to findings of fact for spousal maintenance). "To challenge the trial court's findings of fact successfully, 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." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the record might support findings other than those made by the trial court does not show that the court's findings are defective." *Id.*

In his motion for amended findings of fact, appellant claimed the district court had miscalculated the cost of the family insurance plans. Appellant argued, "copies of [appellant's] 2007 pay stubs, reveal that 'Medica Choice' and not 'Medica Elect' is the family medical insurance plan that [appellant] subscribes to. . . . [Respondent's] Exhibit 21 further reveals that the 'Employee Costs,' 'Family,' 'Medica Choice Plan' to be '$178.13,' which computes to be a monthly family premium of $385.95 per month." In denying appellant's motion for amended findings regarding the cost of insurance, the district court stated:

> [t]he record evidence is not clear on this point, contrary to [appellant's] arguments. First, his pay stubs, which indicate Medica Choice as his medical plan, are from 2007, not 2008, and he was eligible to select a different plan for 2008. There was no documentary evidence regarding his 2008 election;

> nor does there appear to be testimony from [appellant] directly on this topic. Using a $321.00 monthly figure for medical and dental premiums is reasonable and supported by the record as a whole.

Appellant concedes the district court's finding that he offered no testimony regarding his health plan election for 2008, stating that "[n]o testimony or evidence was presented at trial that [a]ppellant had chosen Medica Elect for either 2007 or 2008." Now on appeal, appellant argues, for the first time, that a January 18, 2008 paystub shows his 2008 election of the Medica Choice plan, at a bi-weekly cost of $178.13.[8] Appellant cites to an exhibit which was submitted to the district court as an addendum to a letter appellant's counsel sent to the court after the conclusion of the trial. This is problematic for several reasons.

First, appellant's argument to this court advances a theory different from the one advanced to the district court in appellant's motion for amended findings. In the district court, appellant did not argue that documentary evidence demonstrated his election of the Medica Choice plan for 2008. Rather, appellant argued that the documentary evidence showed his election of Medica Choice for 2007, so the district court should have used the costs associated with that plan for 2008.

Second, the document to which appellant refers was not in evidence before the district court either at trial or at the posttrial motion stage. By appellant's own chronology, the exhibit to which he refers was not presented to the district court until it was appended to a letter sent by appellant's counsel to the district court dated February

[8] The paystub in question does show a deduction made for the Media Choice health plan.

13, 2008, more than two weeks after the judgment and decree had been issued. Even at that time, the exhibit was presented for a different purpose than the one for which appellant attempts to use it now. The exhibit was sent to the district court as a means of rebutting a complaint by respondent that appellant had allowed the couple's bank account to become overdrawn. Appellant submitted the paystub to show that he had not been paid in time to prevent the overdraft from occurring. This letter and the accompanying documents were not filed with the district court but were merely correspondence.

The letter and the accompanying documents do, however, appear in the record as exhibits attached to appellant's notice of motion and motion for amended findings. However, appellant does not reference the documents in his motion in the manner he does here. The exhibit appellant attempts to rely on is not part of the trial record. Moreover, appellant did not bring a motion to consider newly discovered evidence before the district court to have the January paystub introduced into the record.

Given that this document does not appear in the trial record and that appellant concedes that he did not provide testimony regarding his 2008 health plan election, the district court's finding that there was no documentary or testimonial evidence regarding appellant's 2008 benefit election is not clearly erroneous. Appellant presents no authority to show that the district court's reliance on or use of the cost of the less expensive health plan was in error. "[T]he burden of showing error rests upon the one who relies upon it." *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975).

Respondent argues that, because respondent and the children have moved to Canada since the entry of this judgment, appellant is no longer required to carry medical coverage for his family, his net family income has increased, and his argument regarding the district court's calculation of his net income is now moot. But, as appellant argues, a number of months passed between the time judgment was entered and when respondent was no longer covered by appellant's insurance, during which time appellant was still obligated to maintain his family coverage. The issue of which coverage appellant carried at that time is not moot as appellant may have suffered an injury for which he is entitled to relief. However, we conclude the district court's findings and conclusions were not erroneous and appellant is not entitled to relief on this issue. Any change of circumstances which has occurred subsequent to the entry of judgment, such as respondent's relocation, are properly the subject of a district court motion for modification of the decree.

III.

Maintenance

Appellant also challenges the district court's spousal-maintenance award to respondent.

An appellate 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); *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin*, 569

N.W.2d at 202 & n.3 (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner*, 487 N.W.2d at 923; *see* Minn. R. Civ. P. 52.01 (stating that findings of fact "shall not be set aside unless clearly erroneous").

Appellant claims that the district court's treatment of the parties' respective monthly expenses resulted in an unfair determination of his expenses as compared to respondent's. We agree. Appellant argues that the district court gave no explanation for its determination of the cost of respondent's household insurance or why respondent was allowed nearly double the amount for utilities. Appellant also argues that the district court "merely assumed that [r]espondent would have triple or more than triple the expenses found for [a]ppellant" and that "[s]uch an approach is unreasonable when one considers economies of scale in grocery and entertainment purchases." We agree. Appellant points out that the district court's approach left him with a combined child-support and spousal-maintenance burden representing some 73% of his net income! This amount is excessive, beyond appellant's ability to pay, against any principles of fairness and equity, and must be considerably reduced. *See* Minn. Stat. § 518.552, subd. 2(g) (2004) (stating that the district court must consider the ability of the obligor spouse to pay a maintenance award while still meeting their own needs).

Appellant similarly challenged the district court's findings regarding respondent's expenses in his motion for amended findings. In denying his motion, the district court stated, "[a]t trial, [respondent] testified that [the records she kept of her expenses] reflected spending at a rate less than was normal given the reduced circumstances of the

parties during the separation. These records are not reliable evidence of the [respondent's] and children's reasonable living expenses." Respondent's submissions to the district court indicated monthly expenses of $6,820, which the district court reduced to $6,280 after finding that expenses respondent claimed, such as $90 per month for medical insurance, $300 per month for a car payment, and $150 for child care, did not exist. The district court reduced this $6,280 figure by $2,298 for child support and $651 for respondent's share of the family's monthly budget shortfall, and arrived at a figure of $3,331 for maintenance.

Incredibly, the district court found appellant's reasonable monthly expenses to be only $2,036, after the $651 shortfall-share reduction. Appellant had claimed reasonable monthly living expenses of $8,065.[9] The district court properly concluded that appellant's claimed monthly expense of $1,420 for attorney's fees was not a recurring expense, but the district court's revised figure of only $100 per month for professional fees has no basis. The district court greatly reduced appellant's claimed expenses for food, clothing, recreation, social obligations, and various other expenses without explanation or sufficient finding. Nothing in the record supports these reductions. It is startling that respondent put in for $6,820 in living expenses and the district court reduced that by just $540 while appellant put in for $8,065 in living expenses and the district court reduced that amount by approximately $6,000.

[9] Appellant argues that the starting point for his monthly living expenses should have been $8,565, rather than $8,065 as stated by the district court. Because we reverse and remand the spousal maintenance award because the district court's findings were erroneous, we do not address this issue.

Finally, the district court also ordered appellant to pay 30% of any bonuses he receives after the parties' marital consumer debt is retired to respondent as spousal maintenance in addition to his monthly obligation, through January 2013. Appellant's bonuses are based on his performance at his job and on the performance of his company. The district court's order found that respondent lacked sufficient property to provide for her reasonable needs. Maintenance was awarded. The district court's findings do not support the conclusion that an additional amount from appellant's bonuses is required for respondent to meet her monthly needs.

The district court abused its discretion in making its findings related to the spousal-maintenance award, particularly as related to the parties' reasonable monthly expenses and as to the final amount awarded. We are left with a firm conviction that a mistake was made in the calculation of the spousal-maintenance award. The record does not support the inclusion of any amount of money from appellant's annual bonuses in the spousal-maintenance award. Accordingly, we also reverse the spousal-maintenance award and remand it for the district court to order a lower award and to recalculate upwards appellant's reasonable monthly living expenses.

Affirmed in part, reversed in part, and remanded.