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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1179

In re the Marriage of:
Leo Maruani, petitioner,
Appellant,

vs.

Michelle Lee Maruani,
Respondent.

Filed May 19, 2009
Affirmed as modified
Harten, Judge[*]

Hennepin County District Court
File No. 27-FA-06-261

Andrew M. Silverstein, 300 Anchor Bank Building, 1055 East Wayzata Boulevard, Wayzata, MN 55391 (for appellant)

Kathryn A. Graves, Katz, Manka, Teplinsky, Due & Sobol, Ltd., 225 South Sixth Street, Suite 4150, Minneapolis, MN 55402 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Hudson, 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

HARTEN, Judge

Appellant challenges an amended dissolution judgment, asserting that the district court (1) abused its discretion in denying appellant's request for spousal maintenance; (2) erred in identifying and awarding marital property and debts; and (3) erred in ordering appellant to account for rental proceeds from the parties' apartment from the date of separation. Because there is no abuse of discretion and no error, we affirm; because we conclude that the order to account for rental proceeds requires clarification, we modify the district court's opinion as to that order.

FACTS

In 1997, when appellant Leo Maruani and respondent Michelle Maruani were married, respondent had a six-year-old daughter, C.N., and appellant, an Israeli citizen, had lived in the United States for some years. In 1998, the parties had a son, G.

After their marriage, the parties lived in South Dakota, where respondent's family is located and where they purchased an apartment building in 2001. Respondent continued her education during the marriage, obtaining her undergraduate degree in 2002 and her teaching certificate in 2005.

Appellant worked as a ritual slaughterer for a producer of kosher meats. In 2002, the parties moved to Minnesota because appellant's employer transferred him. In May 2005, appellant was injured on the job. He lost his job in September 2005 and began receiving $600 weekly in workers' compensation in January 2006. Appellant brought a

wrongful termination suit against his employer. When the case settled, appellant received a $62,000 settlement.

In October 2005, respondent moved back to South Dakota, where she obtained a job. Appellant remained in the Minnesota homestead with G. and C.N. until December 2005, when the homestead was sold. Contrary to respondent's expectation, appellant did not then move with the children to South Dakota but remained with them in Minnesota. C.N. later moved to South Dakota to live with respondent.

In January 2006, appellant brought this marriage dissolution action. The property valuation date was set at 10 February 2006, the date of the initial case management conference (ICMC). On 30 November 2007, following a trial, the district court ordered judgment awarding the parties joint legal and joint physical custody of G. (who lives primarily with respondent during the summer and with appellant during the school year) and imposed a $144 monthly child support obligation on respondent. Both parties moved for amended findings; appellant also moved for a new trial. After a hearing, the district court amended the judgment.

Appellant challenges the amended judgment, claiming that the district court abused its discretion in denying appellant spousal maintenance and that it erred in the identifying and awarding of various marital debts and properties and in ordering appellant to account for rental income from the date of the parties' separation.[1]

[1] This appeal was taken from the original judgment and the order amending judgment. In its order of 2 September 2008, this court construed the appeal to be from the amended judgment as well. We note that the district court file includes some items added after the

D E C I S I O N

1. Spousal Maintenance or Equitable Award

An appellate court reviews a district court's award or denial of spousal maintenance under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Appellant argues that the district court abused its discretion by denying him spousal maintenance, which he sought on statutory grounds, or, alternatively, an equitable award.

a. Spousal Maintenance

An award of spousal maintenance must be based on a finding that, considering the standard of living established during the marriage, one spouse either lacks sufficient property to provide for that spouse's reasonable needs or is unable to provide adequate self-support through appropriate employment. Minn. Stat. § 518.52, subd. 1 (2008). The needs of the spouse receiving maintenance must be balanced against the financial condition or ability to pay of the spouse providing maintenance. *Dougherty v. Dougherty*, 443 N.W.2d 193, 194 (Minn. App. 1989).

Appellant's claimed monthly expenses totaled $5,718. The district court (1) disallowed $1,858 of that total and reduced appellant's reasonable monthly expenses to $3,860; (2) found that these expenses can be met by appellant's monthly income of $3,960; and (3) concluded that appellant does not require maintenance. Appellant challenges the disallowance of his claimed expenses for food, car payments, and gas and

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date of the amended judgment; these are not part of the record on appeal and we do not address them.

car expenses, a total of $678;[2] he also challenges the allowance of some of respondent's claimed expenses.

i. Appellant's Expenses

Appellant asserts that the district court "improperly reduced" the monthly food budget for himself and G. from $550 a month to $375, but offers no explanation of why this was improper. In any event, appellant receives child support to assist with food expenses for G.

At the time of valuation, 10 February 2006, appellant owned a Yukon vehicle with a market value of $20,660 on which he owed $29,944. In the summer of 2006, appellant traded in the Yukon for a 2006 Subaru Outback, increasing his loan from about $26,000 to about $35,000. As a monthly expense, he listed a $558 car payment. The district court found that the purchase of the Outback was "financially unjustifiable" in light of appellant's then unemployed status and allowed $258 per month for a car payment.

Appellant claimed a total of $275 for gas and car repairs and $100 for insurance. The district court allowed $150 for gas and car repairs, and $75 for insurance, reducing appellant's monthly car expenses to $225. The district court did not abuse its discretion in disallowing some of appellant's claimed vehicle expenses.

ii. Respondent's expenses

Appellant complains that the district court failed to find that respondent's $810 for car payments, gas, car repairs, and insurance was unreasonable. But respondent's

[2] He does not challenge the disallowance of his $780 credit card payment or the $400 payment to his mother, a total of $1,180.

vehicle, a 2005 Toyota, had close to 100,000 miles on it. In allowing respondent car expenses, the district court considered the necessary driving respondent had undertaken to visit with G. during the two years between the parties' separation in October 2005 and the November 2007 dissolution.

The district court found that respondent has a monthly income of $2,425 and monthly expenses of $2,850, excluding her $144 child support obligation for G. The judgment provides that G. will now travel to respondent's home for parenting time, so her $400 claimed expenses for visiting him in Minnesota will stop. But her monthly expenses will still exceed her income by $168.44.

The district court did not abuse its discretion in denying appellant's request for statutory spousal maintenance.

b. Equitable Alternative

As an alternative to statutory spousal maintenance, appellant claims equitable entitlement to compensation for funding respondent's education and supporting the family while she obtained her degree and her teaching certificate. He relies on *DeLaRosa v. DeLaRosa*, 309 N.W.2d 755, 759 (Minn. 1981), which held that when one spouse pursued education while the other worked during a marriage, the working spouse was entitled to recover half the couple's living expenses and all costs of education. *DeLaRosa* was construed in *Ellesmere v. Ellesmere*, 359 N.W.2d 48, 51-52 (Minn. App. 1984), which denied recovery of a spouse's educational expenses to the working spouse because the cost of education did not require substantial financial sacrifice or career sacrifice from the working spouse. The district court found that *Ellesmere* parallels this

case: while respondent was in school, appellant was earning between $4,500 and $7,000 per month and "made NO sacrifices during respondent's school attendance." The district court did not abuse its discretion in denying appellant's equitable claim.

2. Marital Debt and Marital Property

"Determining whether property is marital or nonmarital . . . is an issue over which [appellate courts] exercise independent review, though deference is given to the district court's findings of fact." *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003). Whether a debt is a marital or nonmarital debt is a question of law subject to de novo review; we review the findings supporting this conclusion for clear error. *See Burns v. Burns*, 466 N.W.2d 421, 423 (Minn. App. 1991).

Appellant challenges the determinations that appellant dissipated a portion of the funds from the sale of the parties' homestead, that certain items were excluded from the marital debts, and that most of respondent's jewelry was excluded from the marital property.

a. Dissipation of the Homestead Proceeds

In December 2005, appellant was living in the parties' homestead. He sold it for $79,685. By the ICMC on 10 February 2006, the proceeds had all been spent. With respondent's agreement, appellant used $51,989 to pay the parties' marital debts. Without telling respondent, appellant spent the remaining $27,696 on, among other things, $10,500 in attorney fees for his workers' compensation and employment litigation and $8,000 to retain his attorney in this action. The district court credited respondent with the $27,696, concluding that appellant had violated Minn. Stat. § 518.58, subd. 1a

(2006) (imposing fiduciary duty to other spouse on spouse who causes loss through use of marital assets).

Appellant claims that the expenses of respondent's move to South Dakota were legitimately paid with the proceeds of the homestead. But these expenses were incurred in November 2005 so respondent could work after appellant had lost his job; they were not incurred in expectation of a dissolution of the parties' marriage. These expenses are not relevant to the dissolution property division.

Appellant asserts that $3,265 paid to his employment attorney was a marital debt because the settlement award in his wrongful-discharge case was treated as marital property. But the district court deducted the $3,265, and the remaining attorney fee of $19,245, from the settlement award before dividing it between the parties. The district court did not abuse its discretion by refusing to deduct the $3,265 paid in attorney fees from both the homestead proceeds and the settlement award.

Appellant argues that a cashier's check for $15,000, that he obtained from the homestead proceeds in order to pay off the marital debt on his Yukon, was not a dissipation of the homestead proceeds. But appellant deposited that check in his own account and used $8,000 to retain his attorney for this action and $3,265 to pay his employment attorney: thus, funds he obtained from marital property were used to pay nonmarital debts.

The district court did not err in concluding that appellant had dissipated $27,696 of the marital assets.

b. Exclusions from Marital Debt

Appellant challenges the exclusion of expenses for G.'s tuition, expenses for G.'s extracurricular activities and counseling, the negative value of the Yukon, and charges on appellant's Wells Fargo credit card from the marital debts.

i. G.'s Tuition

On the valuation date, 10 February 2006, the outstanding bill for G.'s private-school tuition from October 2005, when the parties separated, to February 2006 was $2,500. The district court denied appellant's motion to amend the finding that this debt was solely appellant's.

Generally, a spouse is not liable for debts of the other spouse. But while "husband and wife are living together," spouses are jointly and severally liable for "necessary household articles and supplies furnished to and used by the family." Minn. Stat. § 519.05(a) (2008). In a dissolution proceeding, "the court *may* apportion such debt between the spouses." *Id.* (emphasis added). It was within the district court's broad discretion not to apportion this debt.[3]

ii. G.'s Childcare and Counseling Expenses

Appellant claims that, after the valuation date, he spent $2,383 on work-related child care for G. He argues that the district court abused its discretion in not treating this expense as marital debt. *See* Minn. Stat. § 518A.40 (2008) (providing that both parents

[3] Appellant also argues that the district court should have required respondent to pay half of G.'s tuition in the future. But the district court found that respondent's net monthly income is $2,425 and her monthly expenses are $2,850 plus $144 in child support. The district court did not abuse its discretion by not requiring her to pay half of G.'s tuition.

should contribute to work-related child care expenses). But the district court found that appellant "provided no evidence [as to] whether these expenses were work related or because he needed a babysitter for personal activities." The record supports this finding. It shows that the $2,383 was incurred for various extra-curricular activities in which G. participated at a Jewish Community Center from February 2006 until July 2007. Nothing in the record indicates that G.'s participation was necessitated by appellant's work obligations and, for part of this time, appellant was unemployed.

Appellant also spent $510 on counseling for G. and argues that this is a marital debt. *See* Minn. Stat. § 518A.41, subd. 5 (2008) (providing that both parents should contribute to children's medical care). But nothing in the record indicates that the counseling bills were submitted for insurance reimbursement, and respondent was providing insurance for G.

Absent any evidence showing that the childcare expenses were work-related or that the counseling expenses were not covered by insurance, the district court did not abuse its discretion in declining to find that they were marital debts.

iii. Debt on the Yukon

At the time of valuation, 10 February 2006, the Yukon had a negative value of $9,284. In July 2006, appellant traded it in and purchased a 2006 Subaru Outback.

Although he no longer owned the Yukon at the time of trial, appellant argues that the district court should have credited him with the debt that existed on it as of the valuation date. But the proceeds of the Yukon had gone into nonmarital property: appellant's Outback. Appellant's decision not to pay off the debt on the Yukon with

homestead proceeds but rather to pay his lawyers did not entitle him to have the Yukon debt later regarded as marital.

iv. Wells Fargo Credit Card

On 10 February 2006, appellant's Wells Fargo account had a balance of $8,964. Because appellant had made a $5,000 payment to his employment lawyer from the account in January 2006, the district court deducted that amount and found that appellant's debt on the card was $3,964.

Appellant argues that the district court instead should have used the June 2006 balance on the credit card, $9,976, because appellant was supporting himself, C.N., and G. with the account from February until June. He provided no documentation of any expenses.

The district court noted that, during the proceedings, "[appellant] has had access to more income than [r]espondent, including nontaxable worker's compensation payments of $2,400 per month, and income from the rental property of approximately $1,500 per month" and "has been employed full time since February 2007" and excluded the credit card charges from marital debts.

Appellant argues that his worker's compensation payments "did not commence until late January of 2007." But, in the data sheet he presented on 10 February 2006, appellant stated that he "receives Workers' Compensation benefits of approximately $750.00 per week, resulting in net weekly income of approximately $600.00 after deduction of workers' compensation attorneys' fees" and said his gross income was $2,600 from workers' compensation. Although the homestead proceeds and the rental

property income were eventually classified as marital assets, appellant had legitimate access to at least half those amounts to support himself during this period. The district court did not abuse its discretion in declining to give appellant credit for unspecified credit card expenses.

c. Exclusion from Marital Property

The district court awarded respondent her jewelry, the replacement value of which as of 10 February 2006 was $25,984, excluding her wedding ring. Appellant claims the jewelry is marital property because it was acquired during the marriage; respondent testified that she acquired much of it while working in a pawn shop before and during the first year of the marriage. Respondent submitted an exhibit listing all her pieces of jewelry, identifying whether each was bought during the marriage or acquired before the marriage. The district court found her statements on the origins of her jewelry to be credible.

The district court did not abuse its discretion in finding that most of respondent's jewelry was nonmarital property.

3. Pre-judgment Income From Rental Property

On 29 February 2008, respondent, in her motion to amend, sought $19,203.03, "her one-half share of the income of the parties' South Dakota property which has been mismanaged or misappropriated by [appellant] since October 2007." In its order to amend the judgment, the district court made findings related to this request:

> 90. [Respondent] also sought a judgment of $19,203.13 against [appellant], which is the amount of rental funds that [r]espondent argued [appellant] has used for his own personal expenses pending this litigation.

. . . .

> 95. Regarding [r]espondent's request that she be granted a judgment in the amount of $19,203.13 against [appellant], it appears that this issue was not addressed in the Judgment and Decree. This is an error and shall be corrected in the Amended Judgment and Decree which shall require [appellant] to account to [r]espondent for *every* single deposit and expense related to the property from the date of the parties' separation ([r]espondent's relocation to South Dakota) [October 2005] to the date of this order [9 May 2008]. *Any* expense not legitimately attributed to the rental property shall be considered a dissipation of marital assets and one-half of it shall be paid to [r]espondent . . . .

But we note that the amended judgment does not reflect the order to amend. It does not "require [appellant] to account to [r]espondent for *every* single deposit and expense" from October 2005 to May 2008, nor does it address the issue of the $19,203.13 respondent claimed was owed her as a half of the rental proceeds received since October 2007. The amended judgment provides that, until the property is sold, "[appellant] shall continue to manage the property . . . and shall provide [r]espondent with a monthly written accounting, by the 15th day of the following month, of the income and expenses of the property" and that "any of [respondent's] share of the rental income not previously paid to [her] shall be paid out of [appellant's] share of the sale proceeds." The amended judgment also appoints an arbitrator "to determine any and all disputes concerning the South Dakota apartment, including but not limited to, disputes concerning . . . distribution of rental income . . . ."[4]

[4] Respondent challenged this court's jurisdiction over this issue. By its Order of 2 September 2008, this court implicitly assumed jurisdiction, noting that appointment of arbitrator is a district court enforcement proceeding that may exist concurrently with an appeal.

Appellant challenges the portion of the order amending judgment that says he will be required to account for deposits and expenses from the October 2005 separation. Both parties agree that appellant had no obligation to make such an accounting prior to the date of the ICMC, 10 February 2006.

Appellant relies on the district court's order released after the ICMC prohibiting both parties from disposing of property "except in the usual course of business or for the necessities of life." He claims this language permitted him to do what he did with the rental income: use it in the usual course of business, i.e., to maintain the property, or for the necessities of life, i.e., to provide for himself and G., and, for a time, C.N.

Appellant argues that both respondent and the district court knew and implicitly approved this use of the rental income. The record supports this argument: in the November 2007 judgment, the district court found that "[t]hroughout the litigation, [appellant] has had access to . . . income from the rental property of approximately $1,500 per month."

Moreover, in a January 2007 order issued to resolve a dispute on the sale price of the rental apartment, the district court found that "[appellant] already supplied [respondent with] checking account information associated with the rental property" and that "Counsel for [appellant] agreed to supply the requested information [i.e., the 2003, 2004, and 2005 tax returns]." Respondent, when provided with this information, did not allege misappropriation of rental income prior to November 2007 and did not request an accounting for the period from October 2005 to November 2007. We conclude that the district court acted sua sponte when it ordered appellant to provide such an accounting.

Because there is no reason to require appellant to account for rental property income prior to the judgment and because we note that the amended judgment includes no such requirement, we modify the order to amend the judgment to delete the requirement that appellant account for the rental income from the date of the parties' separation.

We affirm the denial of spousal maintenance, the decisions as to marital debts and marital property, and the appointment of an arbitrator to resolve any disputes as to the rental income.

Affirmed as modified.