STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1503

In re the Marriage of:
Laura Jeanne Mortenson Bratsch,
petitioner,
Respondent,

vs.

Michael W. Bratsch,
Appellant.

Filed June 9, 2009
Affirmed in part, reversed in part, and remanded
Crippen, Judge[*]

Dakota County District Court
File Nos. 19-F0-06-013051, 19-F8-06-12875

Kathleen M. Picotte Newman, Kathleen M. Newman & Associates, P.A., 225 South Sixth Street, Suite 1775, Minneapolis, MN 55402; and

Franz F. Davis, Franz F. Davis & Associates, PLLC, 225 South Sixth Street, Suite 1775, Minneapolis, MN 55402 (for respondent)

Mark Gray, 3960 Minnehaha Avenue, Minneapolis, MN 55406 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.

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[*] 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

CRIPPEN, Judge

Challenging the district court's spousal-maintenance determination, appellant Michael Bratsch argues that the district court's findings are insufficient to demonstrate that it considered all the relevant factors. He also contends that the court improperly issued an order for protection. The law governing maintenance requires that we reverse and remand the spousal-maintenance determination for findings on appellant's ability to pay. But we affirm the order for protection because it is authorized by Minn. Stat. § 518B.01, subd. 6a (2008).

FACTS

Appellant and respondent Laura Mortenson Bratsch separated in May 2005 after twelve years of marriage. During the marriage, respondent was primarily a homemaker, caring for the parties' four minor children and working limited hours outside the home to help meet expenses. Appellant worked full time to support the family.

In its 2006 dissolution judgment, the court granted respondent sole legal and physical custody of the parties' children, ordered appellant to pay child support, and divided the parties' marital assets. Because appellant then was unemployed, the court reserved "the issue of the amount and duration of spousal maintenance."

The judgment also specifically addressed appellant's disability benefits from the Public Employee Retirement Association Plan (PERA). Appellant began receiving benefits in the amount of approximately $3,000 per month when he left the police force in 2001 due to a knee injury. Appellant is also entitled to PERA retirement benefits, and

the district court elected to treat the PERA benefits, including the monthly disability benefits, as an asset to be divided equally, rather than as appellant's income. The judgment awards respondent half of the PERA payments.

In early June 2007, about the same time that respondent obtained an order for protection (OFP) against appellant, appellant called a PERA representative and voluntarily terminated his monthly disability benefit. Respondent characterized as "crisis mode" the resulting consequences in the lives of her and the children, and explained that her share of the disability benefit, as the court's earlier findings had anticipated, were her only means to meet family expenses.

Respondent submitted affidavit testimony indicating that appellant did not terminate his disability benefits in good faith. She reported that, when her attorney called the PERA representative, the representative said that he warned appellant that the benefit could never be reinstated once terminated and that "his perception of the reason for [appellant's] decision was that [he] had reached his limit, financially, and that the benefit of spiting [respondent] by cutting off [her] support was worth more to him than the few dollars he took home after [] garnishment." She also stated that, when appellant hurt his knee, doctors at the Mayo Clinic told him that "he needed a full knee replacement and that his knee had degenerative joint disease and osteoarthritis"; and she emphasized that appellant had not had a knee replacement or demonstrated that his disability had been resolved.

Based on appellant's termination of PERA benefits, respondent moved the district court to order appellant to pay $1,500 per month in spousal maintenance. Following a

January 2008 hearing, the court granted respondent's motion for $1,500 per month in spousal-maintenance payments, finding that appellant's benefits-termination decision was aimed at punishing respondent; that appellant's action was not in good faith; that the choice, in light of appellant's history of unemployment, deprived both parties of their "only consistent source of income"; and that there was "no other remedy" than a spousal-maintenance award sufficiently sizeable to replicate respondent's loss of her share of the PERA payments.

Appellant subsequently moved the district court to amend the maintenance order and eliminate his spousal-maintenance obligation. The court denied this motion in June 2008.

D E C I S I O N

1. Maintenance Findings

Appellant first argues that the district court's findings are insufficient to support the order for spousal maintenance. Minn. Stat. § 518.552, subd. 2 (2008), states that a district court must consider "all relevant factors" before ordering a party to pay spousal maintenance. The statute names eight relevant factors, including respondent's "financial resources," appellant's ability to fulfill an obligation, and the contributions of each party to the value of marital property. *Id.*, subd. 2 (a)-(h). None of these factors is dispositive. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39 (Minn. 1982). The essential considerations are the financial need of the party receiving maintenance, the ability of that party to meet the need, and the financial condition of the spouse who will be providing the

maintenance. *Gatfield v. Gatfield*, 682 N.W.2d 632, 638 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

When a party challenges the sufficiency of the findings supporting the need for the maintenance award, we will uphold the award if "the record reveals with sufficient clarity the factual basis supporting the [district] court's decision." *Podany v. Podany*, 267 N.W.2d 500, 502-03 (Minn. 1978) (upholding alimony award); *see also Robinson v. Robinson*, 355 N.W.2d 737, 741 (Minn. App. 1984) (holding that findings were sufficient because they supported conclusion that statutory requirements were met), *review denied* (Minn. Jan. 4, 1985). A district court need not make explicit findings with respect to each of the eight statutory factors. *See Podany*, 267 N.W.2d at 502-03 (upholding award of alimony even though district court did not make express finding as to income). But a district court must make sufficiently detailed findings to demonstrate that it considered the factors relevant to an award of spousal maintenance. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989).

The district court made detailed findings regarding appellant's termination of the PERA disability benefit and the hardship respondent suffered as a result. Contrary to appellant's suggestion, the record supports the district court's findings on these issues, including the finding that appellant did not terminate the disability benefit in good faith. Respondent submitted evidence that appellant terminated the benefit to spite her, and appellant did not submit any evidence—other than his own statement that he had recovered from his knee injury—indicating that he had a knee replacement or had otherwise recovered. The district court credited respondent's testimony over appellant's,

and we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court also made numerous findings relevant to respondent's need for spousal maintenance in its order dissolving the marriage.

Although the district court thoroughly considered many factors supporting the maintenance award, the findings fail to show that the district court considered appellant's ability to pay $1,500 per month in spousal maintenance. The court found that appellant's net monthly income from his job at Best Buy is $2,157.19 after deducting $222 for his children's health-insurance premium. After paying $841.30 in child support and $432.25 in additional child-care costs, appellant is left with $883.64 to cover all his expenses and the spousal-maintenance payment of $1,500. The district court did not make any findings as to appellant's ability to make up the difference. The amount of the award itself—exactly $1,500—suggests that the district court based the award entirely on the amount of the disability benefit and did not consider appellant's ability to pay. The benefit of the award will be illusory if appellant is unable to make required payments.

Appellant's share of the PERA disability payments was awarded to him as a property settlement. Thus, this share of those benefits cannot be imputed to appellant as income in awarding spousal maintenance. *Kruschel v. Kruschel*, 419 N.W.2d 119, 123 (Minn. App. 1988). But the district court may properly examine imputation of income based on findings that appellant is voluntarily underemployed. *Carrick v. Carrick*, 560 N.W.2d 407, 410 (Minn. App. 1997). The court may otherwise fully consider the equities involved, including the employment efforts and lifestyle changes that may reasonably be expected of appellant in light of his choice to willfully deprive respondent

and his children of income. *See* Minn. Stat. § 518.552, subd. 2 (stating that district court must consider "all relevant factors" in awarding spousal maintenance); *Stevens v. Stevens*, 501 N.W.2d 634, 637 (Minn. App. 1993) (noting that court may consider how nonpayment of property settlement impacts party's need for maintenance as long as the court makes sufficient findings and does not affect the substantive rights of the parties).

We reverse the spousal-maintenance award and remand for findings on, among other things, appellant's ability to pay maintenance and for conclusions premised on these and other findings.

2. Order for Protection

Appellant also contends that the district court improperly issued an OFP in the marital-dissolution proceedings. But the record shows that the district court properly issued the OFP under Minn. Stat. § 518B.01, subd. 6a(a) (2008), which authorizes applicants to request the dissolution court to issue an extension of an existing OFP or issue a "subsequent order" for an OFP if the previously issued OFP is no longer in effect.

The record in the instant case shows that respondent first obtained an OFP against appellant in March 2006, about nine months before the district court dissolved the marriage. The OFP states that it is effective for one year and that appellant does not object to the OFP. Respondent applied to the district court for a subsequent OFP in May 2007, after her initial request for a subsequent OFP was denied in March 2007.[1]

[1] Appellant suggests that the subsequent OFP must be reversed because a district court denied respondent's initial request for a subsequent OFP. But Minn. Stat. § 518B.01, subd. 6a, does not prohibit a person from submitting a second application for a subsequent OFP after a first application has been denied. We find no basis for applying

Appellant merely asserts that the district court erred because the proceedings did not meet the requirements for a newly initiated OFP proceeding. This was not a new proceeding. Because appellant ignores the subdivision 6a provision, he has questioned neither the notice, the evidence, nor the findings demanded by this provision. Moreover, we have examined the record and find that it satisfies the requirements of subdivision 6a. Counsel for both parties attended the hearing on respondent's request for the subsequent OFP, and the district court issued a subsequent order under the same file number as the March 2006 OFP. Moreover, the record shows that respondent made a showing required by the statute, and supportive findings include the district court's finding in its dissolution order that appellant had

> violated the [OFP that was issued in March 2006] on numerous occasions, entering respondent's homestead property, following [her], taking the youngest child from her at a school event, leaning into her car ostensibly to speak to the children, "appearing" at places where she and the children were, calling her repeatedly on her cell phone, etc.

Although it would have been preferable for the district court to restate its earlier findings, its failure to do so is not a basis for reversal on this record.

Affirmed in part, reversed in part, and remanded.

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such a rule, particularly when, as here, the applicant alleges that the situation has worsened since the district court denied the initial request for a subsequent order.