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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1701**

In re the Marriage of:

Patrick Chaon Horner, petitioner,
Respondent,

vs.

Isabelle Christine Chaon,
Appellant.

**Filed January 5, 2010
Affirmed in part and reversed in part
Shumaker, Judge**

Hennepin County District Court
File No. 27-FA-06-8313

John Robinson Hill, Larkin, Hoffman, Daly & Lindgren, 1500 Wells Fargo Plaza, 7900
Xerxes Avenue South, Minneapolis, MN 55431 (for respondent)

Isabelle C. Chaon (pro se appellant)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant challenges the district court's denial of spousal maintenance and denial
of reservation of maintenance, arguing that (1) she did not receive a substantial property

settlement; (2) she is unable to support herself; and (3) her physical disability creates uncertainty regarding her future earnings. Because we conclude that there was no clear error in the district court's extensive findings on the maintenance determination, but that the district court erred in declining to reserve maintenance and retain jurisdiction because of appellant's health problems, we affirm the denial of maintenance but reverse the ruling that the issue of maintenance will not be reserved.

FACTS

Patrick Chaon Horner, born February 12, 1965, and Isabelle Christine Chaon, born July 17, 1966, were married on September 21, 1996. On November 30, 2003, the parties' only child was born. Horner commenced dissolution proceedings in November 2006. The district court awarded Horner sole legal and physical custody and did not award spousal maintenance to either party. Further, the district court did not reserve spousal maintenance for future consideration.

Horner has a consistent work history and has worked for two electronics companies in sales positions since 2000. At the time of trial, he was working for Phillips Electronics as an account director. His gross annual income after retirement contribution was approximately \$126,079 in 2006. Horner claims reasonable living expenses for himself and their child are \$9,735 a month.

Chaon attended undergraduate school at Harvard, received a law degree from Georgetown Law Center, and a Magister Uiris from Universitat Trier in Germany. She worked as a Wall Street attorney in New York and as an attorney in Minneapolis. Chaon quit practicing law, and did not keep her continuing legal education credits current,

approximately a decade before the parties' trial because she claimed it was not a good professional fit for her. She later decided to become a physician and, at the time of trial, was on leave from the University of North Carolina – Chapel Hill School of Medicine.

It is undisputed that Chaon suffers from a physical disability called Tarlov Cyst Disease.¹ Although she had issues with the disease after her pregnancy with a child in a former relationship, the worst of the effects came after the birth of the parties' child in 2003. She had to have five surgeries since 2005, in an attempt to improve her health. As a result of the surgeries, her pain is not as severe as it once was. At the time of trial, she was receiving \$1,000 a month from disability-insurance benefits. This monthly sum was expected to run out at the earlier of the time Chaon returned to medical school or February 2008, because the benefits were only guaranteed for 24 months. Chaon was not eligible for social security disability benefits because she did not have enough work-credit quarters to qualify.

When the district court divided the parties' property, Chaon was awarded personal property (\$16,000), a vehicle (\$13,525), half of a retirement account (\$35,295), and \$64,039.50 as an equalizer.

DECISION

I.

Chaon argues that the district court abused its discretion when it failed to award her spousal maintenance because she did not receive a substantial property settlement and

¹ Tarlov cysts are fluid filled sacs that affect the nerve roots of the spine, especially near the base of the spine.

is unable to support herself. An appellate court reviews a district court's maintenance award under an abuse-of-discretion standard. *Dorbin v. Dorbin*, 569 N.W.2d 199, 200 (Minn. 1997). 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. *Id.* at 202.

The district court may grant spousal maintenance for either spouse if it finds that the spouse seeking maintenance (a) lacks sufficient property, or (b) is unable to provide adequate self support. Minn. Stat § 518.552, subd. 1 (2008). Where one party alleges a physical impairment, a district court's findings with respect to the party's impairment are largely based on the testimony of the parties and on credibility. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

In its denial of spousal maintenance, the district court relied on several factors, including: Chaon chose to remain unemployed while pursuing a lucrative career change; she is extremely intelligent, motivated and ambitious; she has one professional degree and was in the process of pursuing another; at one time she worked as a Wall Street attorney; she is licensed to practice law in three different jurisdictions; and she has evinced strength in overcoming her physical disability to pursue a career change. Based on the record and these findings, it was reasonable for the district court to determine that Chaon's property award combined with her ability to work in jobs that pay well show that she currently is able to provide adequate self support. Because the findings are supported by the record and the court properly applied the law, the district court did not abuse its discretion, on this record and considering current circumstances, in denying Chaon spousal maintenance.

II.

Chaon contends that the district court abused its discretion by failing to reserve spousal maintenance for future consideration, despite acknowledging the effects of her physical disability. An appellate court reviews a district court's failure to reserve spousal maintenance under an abuse-of-discretion standard. *Prahl v. Prahl*, 627 N.W.2d 698, 703-04 (Minn. App. 2001). A district court "may reserve jurisdiction of the issue of maintenance for determination at a later date." Minn. Stat. § 518A.27, subd. 1 (2008). The decision to reserve spousal maintenance is discretionary with the district court. *Prahl*, 627 N.W.2d at 703. "Where a court neither awards [maintenance] nor retains jurisdiction to award [maintenance] at some future time, it loses jurisdiction to do so following the dissolution." *Wibbens v. Wibbens*, 379 N.W.2d 225, 226 (Minn. App. 1985).

The district court's failure to make specific findings that explain why it did not reserve jurisdiction over the issue of maintenance is not alone sufficient to constitute an abuse of discretion. *Prahl*, 627 N.W.2d at 704. However, the lack of findings in a case in which there is evidence of a potentially progressive disease makes appellate review problematic and raises concern as to whether a reservation of maintenance was unwarranted. *Id.* This court has ruled that, in cases where a party's health is uncertain, reservation of the maintenance issue is appropriate. *See Van De Look v. Van De Look*, 346 N.W. 173, 178 (Minn. App. 1984) (reservation of maintenance issue was not an abuse of discretion where wife's cancer, although in remission, could recur); *Wopata v. Wopata*, 498 N.W.2d 478, 485 (Minn. App. 1993) (reservation was appropriate where

husband had suffered two heart attacks in the last ten years). This court previously reversed a denial of reservation of spousal maintenance because the party seeking maintenance had uncertain health issues that could render maintenance necessary in the future. *Tomscak v. Tomscak*, 352 N.W.2d 464, 466 (Minn. App. 1984), *superseded on other grounds by statute*, Minn. Stat. § 518.145, subd. 2 (1988).²

At trial, Chaon provided extensive testimony and evidence related to Tarlov Cyst Disease. Her medical records indicate that she began experiencing severe pain after the parties' son was born in 2003. In 2004, Chaon was diagnosed with Tarlov cysts in her sacrum. The cysts were impinging upon the sacral bone and eventually began to erode the sacral bone. Because of increased pain, she underwent surgery in January 2005. This surgery was not wholly successful, and in May 2005 she underwent a second surgery to improve her condition and repair a spinal leak. Following those surgeries, she periodically had her cysts drained. In November 2006, Chaon underwent another surgery, which was more successful than the previous ones. Chaon claims to have ongoing pain that gets progressively worse whenever she stays seated or standing in one place for too long. Although Chaon's pain had decreased after her surgeries, she still experienced consistent pain and discomfort from the cysts. Chaon has had several surgeries due to Tarlov cysts, and the evidence shows that she will have to undergo additional surgeries for future medical problems related to this disease. Because Chaon's future health issues related to Tarlov Cyst Disease are uncertain, as is her ability to

² *Tomscak* was superseded by Minn. Stat. § 578.145, subd. 2, regarding reopening a stipulation dissolution judgment.

support herself if her disease renders her unable to work, spousal maintenance must be reserved for future consideration.

Affirmed in part and reversed in part.