STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1

In re the Marriage of:

Carol Estelle Wolsfeld Stalcar, petitioner,
Appellant,

vs.

Jack Paul Stalcar,
Respondent.

Filed February 2, 2010
Reversed and remanded
Kalitowski, Judge

Hennepin County District Court
File No. 27-FA-07-4712

Maria E. Maier, Goldstein Law Office, P.A., Golden Valley, Minnesota (for appellant)

Christopher M. Banas, Banas Family Law, P.A., Eagan, Minnesota (for respondent)

Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Johnson, Judge.

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

KALITOWSKI, Judge

Appellant Carol Estelle Wolsfeld Stalcar challenges the district court's judgment and decree dissolving the parties' marriage, arguing that the district court abused its discretion (1) in determining the amount of permanent spousal maintenance; (2) by

ordering the parties' house to be sold; and (3) by failing to award attorney fees pursuant to the parties' stipulation. We reverse and remand.

D E C I S I O N

I.

Appellant argues that the district court abused its discretion in determining the amount of appellant's spousal-maintenance award because (1) the district court failed to consider respondent's income from two part-time jobs in calculating his ability to pay spousal maintenance and (2) the district court improperly "imputed" income to appellant without making a finding of bad faith.

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). A district court abuses its discretion in ordering maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id*. at 202 & n.3. "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). A district court's determination of income for maintenance purposes is a finding of fact. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). This court reviews questions of law related to spousal maintenance de novo. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

In determining the amount and duration of a spousal-maintenance award, the district court considers the factors set forth in Minn. Stat. § 518.552 (2008). These factors include: (1) the financial resources of the party seeking maintenance and the

party's ability to meet needs independently; (2) the time necessary to acquire education or training to enable the party seeking maintenance to find employment and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting; (3) the age and physical and emotional condition of the spouse seeking maintenance; and (4) the ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance. Minn. Stat. § 518.552, subd. 2. No single factor is dispositive and each case must be determined on its own facts. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39 (Minn. 1982). The essential consideration is the financial needs of the spouse requesting maintenance and the spouse's ability to meet those needs balanced against the financial condition of the spouse paying the maintenance. *Id.* at 39-40.

Respondent's Income from Part-Time Jobs

Appellant argues that the district court abused its discretion by excluding income from respondent's part-time jobs in evaluating respondent's net income for purposes of crafting the maintenance award. Respondent is employed full time as an executive chef; he earned a gross annual income of $82,405.20 in 2007. In addition, respondent has worked part time for the past four years driving a school bus, earning an average of $11,158 per year. This bus-driving income has steadily decreased over the years, to $8,878.30 in 2007. Respondent testified that he anticipated a further decrease in 2008. Respondent has also earned extra cash by plowing snow in his neighborhood, earning approximately $1,200 per year, but respondent stated that he planned to stop plowing once the parties' home was sold. The district court excluded income earned from these

part-time jobs, stating, "It would be unreasonable to base respondent's permanent maintenance obligation on temporary income earned during the past several years."

In *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009), the Minnesota Supreme Court held that the legislature intended the definition of gross income set forth in Minn. Stat. § 518A.29 (2008), governing child support, to apply to chapter 518, governing spousal maintenance. Section 518A.29 provides in pertinent part:

> (b) Gross income does not include compensation received by a party for employment in excess of a 40-hour work week, provided that:
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> . . . .
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> (2) the party demonstrates, and the court finds, that:
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> (i) the excess employment began after the filing of the petition for dissolution or legal separation or a petition related to custody, parenting time, or support;
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> (ii) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
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> (iii) the excess employment is voluntary and not a condition of employment;
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> (iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or faction of an hour; and
>
> (v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

Minn. Stat. § 518A.29. Here, it is undisputed that respondent failed to satisfy (i) and (ii) because his part-time employment began well before appellant filed the petition for dissolution. The record indicates that at the time of trial, respondent had been driving a bus for approximately four years, and had been plowing snow for seven or eight years. Because a party must meet each of the conditions set forth under subsection (b)(2), the

income from respondent's part-time jobs must be included in his gross income for purposes of determining spousal maintenance.

In addition, the analysis under *Lee* is consistent with caselaw providing that a party's maintenance obligation should be calculated based on the party's income at the time of trial rather than on anticipated future income. *See Carrick v. Carrick*, 560 N.W.2d 407, 412 (Minn. App. 1997) (holding that the district court erred in relying on the payor-spouse's anticipated decrease in income before it had actually occurred and reasoning that the payor-spouse could move for modification if and when his income did in fact decrease).

We conclude that because the district court based its maintenance award on erroneous findings regarding respondent's income, the district court abused its discretion. *See Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007) (stating that a district court abuses its discretion if it relies on findings of fact that are clearly erroneous), *review denied* (Minn. Aug. 21, 2007).

Appellant's Potential Income

Appellant argues that the district court abused its discretion by imputing income to her in determining her need for spousal maintenance without first making a finding of bad faith. The district court found that although appellant was unemployed, she had the capacity to work full time and earn $1,598.64 gross per month, calculated by multiplying the minimum wage of $6.15 by 150% times a 40-hour workweek times 4.33 weeks per month. Because the district court applied a formula used to calculate the potential

income of a voluntarily unemployed parent with regard to child support without explanation or appropriate findings, we reverse and remand.

A finding that a party seeking maintenance has the ability to meet needs independently by full-time employment is not an 'imputation of income.' *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005) (denying the wife's request for maintenance and finding that she had the capacity to be self-supporting), *review denied* (Minn. Sept. 28, 2005). *See* Minn. Stat. § 518.552, subd. 2(a) (providing that a court may consider a "party's ability to meet needs independently" in determining amount and duration of spousal maintenance). Thus, it was proper for the district court here to consider appellant's earning capacity in determining the extent to which appellant could "meet her needs independently" pursuant to Minn. Stat. § 518.552, subd. 2(a).

But in calculating appellant's earning capacity, the district court, without explanation, applied the formula set forth in Minn. Stat. § 518A.32 (2008), which is used to determine a parent's potential income when the parent is voluntarily unemployed, underemployed, or employed on a part-time basis for purposes of child support. *See* Minn. Stat. § 518A.32, subd. 2 (providing that a parent's potential income may be calculated as "the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher."). The district court did not make a finding that appellant was voluntarily unemployed, and did not explain the basis for using this method to determine appellant's ability to meet needs independently in the context of a spousal maintenance award.

Furthermore, the record indicates that with the exception of a three-month temporary position, appellant has been unemployed since May 2006. And when appellant was employed prior to 2006, she worked only part time. Thus, the district court's conclusion that appellant had the capacity to make $1,598.64 gross per month is not supported by any findings. *See Schallinger*, 699 N.W.2d at 22 (upholding the district court's determination that the wife could meet her needs independently when the district court found that she did not work full time, but that she was in good physical and emotional health, had no health conditions that prevented her from seeking full-time employment, and had the "ability, skills, experience, and earning capacity" to meet her monthly expenses); *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 545 (Minn. App. 2006) (upholding the district court's determination that the wife was able to make $35,000 when the district court found that she earned that amount before voluntarily leaving full-time employment).

Therefore, we reverse and remand this issue and direct the district court in determining the amount of appellant's spousal maintenance award to make appropriate findings and determine appellant's ability to meet her needs independently, in such proceedings as the district court deems appropriate.

II.

Appellant argues that the district court abused its discretion when it ordered the parties to sell the marital home because (1) appellant was prejudiced by respondent's change of position at trial, and (2) the court, based on inconsistent findings, erroneously concluded that appellant could not afford to maintain the home.

> A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. We will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach.

Antone v. Antone, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted); *see Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005) ("District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law.").

Respondent's Change in Position

Appellant argues that the district court abused its discretion in ordering the marital home to be sold because appellant was prejudiced by respondent's change in position at trial regarding disposition of the home. Specifically, appellant asserts that she was prejudiced because she did not have the opportunity to gather any information regarding the possibility of obtaining financing for the home or qualifying to buy respondent out of his equity in reliance on respondent's position that appellant would be given first option on the home. Thus, she contends, respondent should have been estopped from changing his position.

A party seeking to assert the doctrine of equitable estoppel must prove three elements: (1) that promises or inducements were made; (2) that it reasonably relied on the promises; and (3) that it will be harmed if estoppel is not applied. *Eide v. State Farm Mutual Auto. Ins.*, 492 N.W.2d 549, 556 (Minn. App. 1992). A party can claim estoppel

only if she was led to change her position to her detriment by the other party's conduct. *Cont'l Cas. Co. v. Knowlton*, 305 Minn. 201, 214-15, 232 N.W.2d 789, 797 (1975).

Here, appellant did not establish that respondent made a promise that induced her to fail to plan accordingly. And appellant failed to establish that she relied on respondent's representations to her detriment. Moreover, appellant wanted the residence from the beginning, and thus was aware that the district court would consider her financial ability to maintain the home. *See* Minn. Stat. § 518.58, subd. 1 (2008) (stating that in making property distributions, the district court may consider "all relevant factors" including the amount and sources of income of the parties); *Id.* at subd. 3 (stating that if the district court finds it necessary to preserve the marital assets of the parties, it may order the sale of the homestead). Thus, this is not a situation where the district court was required to invoke its equitable powers to prevent respondent from taking "unconscionable advantage of its own wrong by asserting a strict legal right." *See Watson v. Stonewings on the Lake*, 393 N.W.2d 518, 520 (Minn. App. 1986). We conclude that the district court did not abuse its discretion in failing to rule that respondent was estopped from arguing at trial that the home should be sold.

Appellant's Financial Ability to Maintain the Homestead

Appellant argues that the district court abused its discretion when it ordered the parties to sell the marital home because appellant could not afford to maintain the home. In particular, appellant points out that based on the district court's finding that her reasonable budget was $2,880, appellant could afford the home. The homestead had an assessed value of $421,000 at the time of trial, and was encumbered by a mortgage of

$148,000. Mortgage payments were $1,620 per month. The district court found that there were "a number of concerns with [appellant]'s plan that she be allowed to retain the marital homestead." The court reasoned that even if appellant received the requested $2,500 in monthly spousal maintenance and went back to work full time, she would still have a monthly deficit of $1,400 based on her proposed monthly budget of $5,515. Regarding appellant's proposed plan to board horses to supplement her income, the court found that appellant faced zoning barriers about which she had not yet inquired, and that appellant had not identified potential clients.

Because appellant failed at trial to establish that she could make the monthly mortgage payments and pay respondent for his equity in the home, we cannot say the district court abused its broad discretion in ordering that the house be sold to preserve the parties' assets. *See* Minn. Stat. § 518.58, subd. 3 (stating that if the district court finds it necessary to preserve the marital assets of the parties, it may order the sale of the homestead).

But although the district court did not abuse its discretion, at oral argument, appellant's counsel stated that appellant's financial situation had changed: appellant, who was still residing in the home, had acquired a renter and was boarding a horse. Furthermore, at oral argument, counsel for respondent reaffirmed that it was respondent's preference that appellant remain in the house if it was financially feasible. In addition, our remand of the issue of the appropriate amount of permanent spousal maintenance may affect appellant's ability to maintain the homestead. Therefore, we conclude that it is appropriate that this issue be remanded to the district court to determine, in such

proceedings as the district court deems appropriate, appellant's current financial ability to remain in the home.

III.

Appellant argues and respondent concedes that the district court abused its discretion when it ordered $15,000 of appellant's attorney fees to be paid out of the parties' joint assets with appellant paying the rest, in contravention of the parties' stipulation that respondent was to pay one-half of appellant's attorney fees. We agree.

In general, courts favor the use of stipulations in dissolution proceedings as a means of simplifying and expediting litigation. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Therefore, this court treats stipulations as binding contracts between the parties. *Id*. A district court may vacate a stipulation if it was improvidently made and "in equity and good conscience ought not to stand." *Id*. at 522. "[A] stipulation fixing the respective rights and obligations of the parties represents their voluntary acquiescence in an equitable settlement, and the district court should 'carefully and only reluctantly' alter its terms." *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004).

Here, the district court did not make any findings that the stipulation was "improvidently made" or unfair, but only that respondent could not afford to pay the attorney fees. *See Shirk*, 561 N.W.2d at 522. We conclude that in light of the parties' express agreement, the district court's award of attorney fees was an abuse of discretion. Thus, we reverse the award of attorney fees and remand this issue to the district court for an award of attorney fees consistent with the parties' agreement.

Reversed and remanded.