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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-514**

In re the Marriage of: David Diederich Churchill, petitioner,
Respondent,

vs.

Inger Ann Wegener Churchill,
Appellant.

**Filed February 2, 2010
Affirmed
Connolly, Judge**

Otter Tail County District Court
File No. 56-FA-07-2560

Katrina I. Wass, Pemberton, Sorlie, Rufer & Kershner, P.L.L.P., Fergus Falls, Minnesota
(for respondent)

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Pelican Rapids, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Shumaker, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the district court's judgment, alleging that the district court
abused its discretion by failing to award her one-half of respondent's gross annual

bonuses in its grant of permanent spousal maintenance. Because the district court did not abuse its discretion in awarding appellant one-third of respondent's net annual bonuses, we affirm.

FACTS

Appellant Inger Ann Wegener Churchill and respondent David Diederich Churchill were married on August 6, 1983. During their marriage they had two children, the younger of whom remains a minor. Appellant and respondent were separated in August 2007, and respondent petitioned for dissolution of their marriage in September 2007.

The couple moved several times during their marriage in order to advance respondent's career, to the detriment of appellant's career and earnings capability. Most recently, they owned a house in Fergus Falls. At the time of trial, appellant earned \$52,786 per year as a special-education teacher. Respondent was a senior vice president of Boone Newspapers, Inc., and the publisher of its subsidiary, the Fergus Falls Daily Journal. He earned a base salary of \$140,000 per year, and two annual bonuses: a Christmas bonus and a variable, nonguaranteed performance bonus. In 2007, his Christmas bonus was \$2,265.20, and his performance bonus was \$112,000. The performance bonus is based on various factors, including the company's profitability.

Following trial, the district court issued an order and entered judgment dissolving the marriage. The district court considered all of the statutory factors in great detail and thoroughly considered whether and how much maintenance was appropriate. The parties stipulated to child-support payments of \$1,920 per month. The district court ordered

respondent to pay appellant \$2,400 per month in maintenance until the end of respondent's child-support obligation, at which point his maintenance obligation increases to \$3,600 per month. In addition to the fixed monthly payments, the district court ordered respondent to pay appellant one-third of the net amount of his annual Christmas and performance bonuses.¹ This appeal follows.

DECISION

We review a district court's spousal-maintenance determination for an abuse of discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). "This court will not find an abuse of discretion unless the district court's resolution of the matter is against logic and the facts on record." *Id.* (quotation omitted). We will uphold a district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Maintenance is "an award made in a dissolution . . . proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2008). A district court "may grant a maintenance order for either spouse" if, after taking into account the standard of living established during the marriage, it finds that the spouse seeking maintenance (a) lacks sufficient property to provide for his or her "reasonable needs" or (b) is unable to provide adequate self-support. Minn. Stat. § 518.552, subd. 1 (2008). If maintenance is proper under subdivision 1, the district court shall order maintenance in the amount it deems just

¹ The district court essentially defined "net bonus" as the gross bonus minus state and federal taxes paid on it. The district court included certain restrictions pertaining to tax exemptions; it also factored in Medicare and FICA payments.

after it considers all relevant factors. *Id.*, subd. 2 (2008). These include: (a) the financial resources of the party seeking maintenance and the party's ability to meet needs independently; (b) the time needed for the party seeking maintenance to acquire sufficient training or education to find appropriate employment; (c) the standard of living established during the marriage; (d) the duration of the marriage; (e) the loss of earnings, seniority, retirement benefits, and other employment opportunities foregone by the spouse seeking maintenance; (f) the age and physical and emotional condition of the spouse seeking maintenance; (g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and (h) each party's contribution to the amount or value of marital property. *Id.* No single statutory factor is dispositive, but "the essential consideration is the financial need of the spouse receiving maintenance, and the ability to meet that need, balanced against the financial condition of the spouse providing the maintenance." *Novick v. Novick*, 366 N.W.2d 330, 334 (Minn. App. 1985).

Appellant does not contend that any of the facts found by the district court are clearly erroneous. She only argues that the district court abused its discretion by awarding her one-third of respondent's annual net bonuses, claiming that it should have awarded her one-half of respondent's annual gross bonuses. She cites no authority for the proposition that maintenance payments from an annual bonus should be divided equally between spouses, but suggests the district court's findings are insufficient to justify its award of only one-third of respondent's bonuses. In other words, appellant, without citation to supporting authority, simply assumes that the district court abused its

discretion by not setting her bonus-based maintenance payment at one-half of respondent's bonuses. Similarly, she cites no caselaw for her assertion that a district court is presumptively required to base maintenance calculations on a gross (rather than net) bonus. Based on these unsupported assumptions, appellant asserts that the district court's findings do not justify its failure to calculate maintenance payments from respondent's gross bonuses, or in the manner most favorable to her. We disagree.

We initially note that appellate courts cannot assume district court error. *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949); *see Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*). Therefore, to prevail on appeal, a party must show both error by the district court and that the error in question prejudiced the complaining party. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (holding that to prevail on appeal appellant must show both error and prejudice); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a district court will not be reversed if it reached an affirmable result for the wrong reason). Here, because appellant failed to show that the assumptions on which she bases her inadequate-findings argument accurately reflect the law, even if we assume that the district court did not make findings explaining why it set respondent's bonus-based maintenance payment at one-third of his net bonuses rather than half of his gross bonuses, appellant has not shown an error by the district court. Therefore, her argument is simply inadequate to merit reversal. Moreover, as detailed below, the assumptions on which appellant bases her inadequate-findings argument do not accurately reflect the law.

The standard for setting maintenance is what the district court deems “just,” Minn. Stat. § 518.552, subd. 2, and the district court is given wide discretion in making that determination, *Schallinger*, 699 N.W.2d at 22. Here, the district court considered all of the statutory factors in great detail and thoroughly considered whether and how much maintenance was appropriate. The parties stipulated to child-support payments of \$1,920 per month. The district court granted permanent maintenance, ordering respondent to pay appellant \$2,400 per month in maintenance until the end of respondent’s child-support obligation, at which point his maintenance obligation increases to \$3,600 per month. On top of that, the district court also ordered respondent to pay appellant one-third of the net amount of his annual bonuses.

The district court made detailed findings with respect to appellant’s reasonable needs and respondent’s ability to pay. It found that some of appellant’s claimed current expenses were inflated, reducing certain expenses in recognition of the fact that her two-person household that includes one minor child should be less expensive than her former four-person household that included two minor children. It also found that her claimed future expenses² were inflated, reducing certain expenses to coincide with her reasonable needs in running a one-person household. The district court found that appellant’s reasonable current monthly expenses were \$6,242.16, resulting in a deficit (after receipt of child support and before accounting for maintenance payments) of \$1,843.92, and that

² The time period for “future expenses” begins when respondent’s obligation to pay child support ends.

her reasonable future monthly expenses were \$4,754.85, resulting in a deficit of \$2,276.61 (before accounting for maintenance).

The district court found that respondent's reasonable current monthly expenses were \$6,106.51, resulting in a surplus of \$1,267.43, and that his reasonable future monthly expenses were \$4,644.61, resulting in a surplus of \$2,729.33. As with appellant, in determining respondent's reasonable monthly expenses, the district court reduced or eliminated certain claimed expenses.

The district court specifically found that the standard of living established during the marriage is not sustainable by either party following their separation and divorce. Factoring in net monthly earnings and the tax consequences of the maintenance payments, the district court calculated the following total monthly current and future surpluses and deficits for each party:

Current – Appellant

Net Monthly Pay	2,478.24
Monthly Expenses	(6,242.16)
Child Support	1,920.00
Maintenance Received	2,400.00
<u>Tax on Maintenance</u>	<u>(480.00)</u>
Total Monthly Surplus	\$76.08

Current – Respondent

Net Monthly Pay	7,373.94
Monthly Expenses ³	(6,106.51)
Maintenance Paid	(2,400.00)
<u>Tax Benefit</u>	<u>720.00</u>
Total Monthly Deficit	(\$412.57)

³ This includes \$1,920 in child support.

Future – Appellant

Net Monthly Pay	2,478.24
Monthly Expenses	(4,754.58)
Maintenance Received	3,600.00
<u>Tax on Maintenance</u>	<u>(720.00)</u>
Total Monthly Surplus	\$603.66

Future – Respondent

Net Monthly Pay	7,373.94
Monthly Expenses	(4,644.61)
Maintenance Paid	(3,600.00)
<u>Tax Benefit</u>	<u>1,080.00</u>
Total Monthly Surplus	\$209.33

Thus, not including the portion of respondent's bonuses separately awarded as maintenance, the district court set the amount of current and future maintenance payments at a level that allows appellant to meet her reasonable monthly expenses and even provides a surplus. *But see Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that maintenance is awarded to meet need). Before consideration of respondent's bonuses, his current maintenance payments will result in his falling short of his current reasonable monthly expenses. Future maintenance payments will result in him being able to meet his reasonable monthly expenses, although his surplus will still be less than his ex-wife's.

The district court also awarded one-third of respondent's net bonuses to appellant. It reasoned that, although appellant came out ahead based on the above calculations from respondent's base salary, this discrepancy was fair in light of how it apportioned respondent's bonuses. The district court did not calculate respondent's annual bonuses into his base income because the bonuses are variable and nonguaranteed, but it did

award appellant a portion of respondent's bonuses because they had historically been received during the marriage and used toward the parties' standard of living.

In sum, the district court carefully considered all relevant factors. It made detailed findings about the parties' reasonable needs, and awarded maintenance that would allow appellant to meet those needs. On top of that, it awarded appellant one-third of respondent's net annual bonuses. Appellant does not contest any of the district court's factual findings, including that her reasonable needs will be more than provided for. *See Novick*, 366 N.W.2d at 334 (stating that balancing maintenance recipient's needs and maintenance provider's ability to pay is the "essential consideration"). Furthermore, she has pointed to no evidence in the record indicating that this award is unfair to her. Rather, her sole argument is that she should have been awarded more money, but she presents no authority or reasoning in support of that position. Given the district court's thoughtful and thorough analysis and the significant discretion it has by law to set a fair maintenance award, we are not convinced that its decision is "against logic and the facts on record." *Schallinger*, 699 N.W.2d at 22 (quotation omitted). Thus, we conclude that the district court did not abuse its discretion in awarding appellant one-third of respondent's net annual bonuses.

Affirmed.