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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-109**

In re the Marriage of:  
Stephen Odell Stamper, petitioner,  
Appellant,

vs.

Cherie Lynn Stamper,  
respondent.

**Filed August 10, 2010  
Affirmed  
Halbrooks, Judge**

Otter Tail County District Court  
File No. 56-FA-07-1966

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(for appellant)

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respondent)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and  
Johnson, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS, Judge**

Appellant challenges the district court's award of permanent spousal maintenance  
to respondent. Specifically, appellant claims that (1) the amount of maintenance awarded

to respondent will afford her a more luxurious lifestyle than what she enjoyed during their 22-year marriage; (2) the district court's conclusion that respondent is unlikely to become self-sustaining in the foreseeable future is unsupported by the record; and (3) there is no explanation for a temporary increase in appellant's total obligation following their son's high school graduation. Because we conclude that the district court did not abuse its discretion, we affirm.

## **FACTS**

Appellant Stephen Stamper and respondent Cherie Stamper married in November 1985 and separated in August 2007. Many of the issues that arose during the couple's dissolution were stipulated to, including that appellant would pay respondent \$1,500 per month in child support, and the district court entered a judgment and decree dissolving the marriage in 2008. The district court did not address the amount and duration of respondent's spousal maintenance award, reserving that for trial. Respondent requested \$2,600 in spousal maintenance each month until appellant was no longer paying child support, and \$4,000 per month in permanent maintenance thereafter. Appellant offered to pay respondent temporary spousal maintenance of \$1,800 per month for two years.

After a trial and subsequent submissions by the parties, the district court ordered appellant to pay \$1,800 per month for spousal maintenance until the parties' minor son graduated from high school and \$3,500 per month thereafter until the marital home sold. Upon the sale of the marital home, appellant's maintenance obligation would be reduced by \$754 per month (to \$2,746) to account for respondent's lower house payment.

Appellant challenged this determination on appeal, arguing that the district court made inadequate findings regarding respondent's reasonable monthly expenses, and this court remanded. *Stamper v. Stamper*, No. A08-1366, 2009 WL 1919650, at \*3 (Minn. App. July 7, 2009). We noted that "the district court made several recitations of what each party claimed [respondent]'s expenses were, but the district court did not specifically find [respondent]'s reasonable monthly expenses." *Id.* at \*2. Appellant also argued in his first appeal that the district court erred by failing to explain why his total obligation increased upon the parties' minor child's high school graduation. Because we remanded on other grounds, we declined to address this issue. *Id.*

On remand and without holding a new hearing, the district court issued an order making factual findings according to our remand instructions. First, the district court made specific findings with regard to each party's claimed monthly expenses to determine whether the circumstances supported a maintenance award. The district court found that respondent's net income was \$1,040 per month and that her reasonable current monthly expenses were \$4,624.94. The district court reached this amount after examining respondent's claimed expenses and reducing some that it found to be inflated. For example, the district court reduced respondent's claimed monthly car-insurance payment by \$30 because that amount was attributable to insuring the vehicle belonging to the parties' adult son, reduced her claimed credit-card payment by one-half to \$250 per month to reflect the required minimum payment, and reduced her claimed YMCA membership expense by \$16 to reflect the current monthly payment. The district court also disregarded a \$25 monthly bank charge based on respondent's testimony that she no

longer incurs this charge.<sup>1</sup> Based on the district court's findings with respect to respondent's net income and actual monthly expenses, and after incorporating the \$1,500 per month respondent was receiving in child support, it found that respondent had a monthly deficit of \$2,084.94.

The district court also found that appellant's current monthly net income was \$7,294.89, which excluded possible bonuses because any future bonuses appellant may earn are unknown and not guaranteed. Appellant claimed \$5,821.58 in monthly expenses (excluding spousal maintenance), and the district court found that appellant's claimed expenses were reasonable. The district court "note[d] that [appellant]'s claimed monthly expenses do not reflect a decreased standard of living from that established during the later years of the marriage." The district court's calculations of appellant's income and expenses resulted in a surplus, before any maintenance payment, of \$1,473.31 per month. The district court's award of \$1,800 in maintenance prior to the parties' son's graduation resulted in a deficit of \$284.94 per month for respondent and a deficit of \$326.69 per month for appellant.

The district court also made separate findings regarding the parties' future expenses upon their son's graduation. It found that respondent's reasonable monthly expenses from the time when the parties' minor son graduated from high school until the marital home sold would decrease by \$1,025 per month, to \$3,599.04. It reached this

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<sup>1</sup> The district court also discussed respondent's requests for retirement and food/travel expenses of \$100 and \$200, respectively. But the district court found that "[a]s to the monthly expenses relating to retirement and food/travel, no evidence was presented for this Court to find that such expenses are reasonable or that she incurs such expenses."

amount by eliminating a \$280 monthly payment for a Texas property that the parties were trying to sell at the time of trial, eliminating a \$370 car payment, eliminating a \$250 minimum credit-card payment (based on the assumption that the balance would be paid off), and eliminating \$125 for expenses related to their son's school and extracurricular activities. But because respondent would not receive child support during this period, her deficit nevertheless increased to \$2,559.94 per month.

The district court also reduced appellant's future monthly expenses by eliminating the \$1,500 in child support that appellant would no longer owe upon his son's graduation, eliminating the \$275 appellant claimed as his half of the Texas house payment, and eliminating \$440 in expenses related to parenting time. The district court did not reduce any of appellant's minimum monthly credit-card payments. Overall, appellant's monthly expenses during this time period were calculated to be \$3,606.58, resulting in a monthly surplus of \$3,688.31. The district court increased the maintenance award during this time period to \$3,500, which resulted in a surplus for both parties—\$940.06 per month for respondent and \$188.31 for appellant. The district court explained that “[t]he step increase in spousal maintenance that takes effect in June 2010 is reflective of the cessation of child support payments beginning in June 2010. Accordingly, [r]espondent's monthly income is reduced, while her needs remain similar.”

Finally, the district court made findings regarding the parties' monthly expenses once the marital home was sold. The district court reduced respondent's claimed monthly housing payment from \$1,553.69 per month to \$800 per month based on her testimony that the amount approximates what she would be paying for a smaller home.

The district court also found that appellant's expenses would not change once the marital home was sold, but that his maintenance payment would decrease, given respondent's anticipated house payment. After the calculations were complete, both parties were expected to have a monthly surplus of approximately \$940. The district court concluded that all of these findings supported an award of spousal maintenance.

Second, the district court discussed the amount of spousal maintenance. The district court noted that respondent "will not be enjoying the standard of living she did during the marriage. [She] will be living in a smaller home and driving an older vehicle. The spousal maintenance payments she receives will be taxable as income and not totally available to meet her expenses." The district also "recognize[d] that a number of [appellant]'s monthly expenses are credit card bills. As [appellant] makes payments towards these balances, the obligations will, in turn, decrease."

In addition, the district court made extensive findings with respect to respondent's employment history and potential to become self-sustaining in the future. The district court ultimately concluded that respondent was not going to become self-sustaining in the foreseeable future and that application of the statutory factors favored a permanent maintenance award. Based on these findings, appellant was ordered to pay \$1,800 per month until the parties' son graduated from high school, \$3,500 from that point until the marital home was sold, and \$2,746 thereafter. This appeal follows.

## **DECISION**

Appellant challenges both the amount and duration of his maintenance obligation. Appellate courts review maintenance awards for an abuse of discretion. *Dobrin v.*

*Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Absent an abuse of the district court’s “wide discretion” in addressing maintenance, its decision “is final.” *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion if its underlying findings of fact are clearly erroneous, if it misapplies the law, or if it resolves the matter in a manner that is against logic and the facts on record. *Dobrin*, 569 N.W.2d at 202 (noting that clearly erroneous findings and a misapplication of the law constitute an abuse of discretion); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (stating that resolving the matter in a manner contrary to logic and the facts on record will constitute an abuse of discretion).

Although Minn. Stat. § 518.552 (2008) lists factors to be considered in setting the amount and duration of spousal maintenance, no single factor is dispositive; the issue is basically the recipient’s need balanced against the obligor’s financial condition. *Erlandson*, 318 N.W.2d at 39–40. A review of the record shows that none of the district court’s findings regarding the parties’ expenses and income is clearly erroneous, and neither party is specifically disputing any findings of fact on appeal. The question then becomes whether the district court’s award of maintenance is a misapplication of the law or whether it is against the logic and facts on record. Appellant’s primary contention is that the maintenance awarded to respondent “is nonsensical and provides [her] with a standard of living beyond that enjoyed during the marriage.”

Generally, “maintenance depends on a showing of need.” *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989). A recipient’s needs are “often determined by considering her income and available resources versus her reasonable monthly expenses.” *Kemp v.*

*Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). A party's "reasonable monthly expenses" for maintenance purposes are not measured by the party's actual expenditures, but by the expenses reasonably associated with the marital standard of living. Minn. Stat. § 518.552, subds. 1, 2(c); see *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 409–12 (Minn. App. 2000) (discussing the importance of the marital standard of living when addressing a maintenance recipient's reasonable monthly expenses), *review denied* (Minn. Oct. 25, 2000). "The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances." *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004).

The district court awarded maintenance in three amounts: \$1,800 per month until the parties' minor son graduated from high school in June 2010, \$3,500 per month until the marital home sells (it was to be placed on the market in June 2010), and \$2,746 per month from the sale of the marital home going forward. Appellant primarily disputes the amount of maintenance he is required to pay following his son's graduation. Here, the district court's maintenance award for the period following the parties' son's graduation results in a monthly surplus for respondent of approximately \$940. The maintenance award therefore exceeds what the district court has determined to be her reasonable monthly expenditures. Appellant relies on *Chamberlain* to argue that this was an abuse of discretion. In *Chamberlain*, this court reversed an award of permanent spousal maintenance of \$2,400 per month because the district court failed to take into account money available to the recipient to use as a down payment for a new house. 615 N.W.2d



at 412. Appellant's reliance is misplaced. There is nothing in this record to indicate that the district court failed to take into account respondent's available income or assets when it set the amount of maintenance.

Appellant also argues that the parties' standard of living during their marriage was significantly different from the Chamberlains' and therefore the maintenance amount should be adjusted accordingly. But there is no indication based on respondent's claimed monthly expenses that she is attempting to increase her standard of living beyond that enjoyed during the marriage. The primary components of her monthly budget are the costs of housing, insurance, utilities, groceries, home maintenance, and other incidentals. She requested \$100 per month for entertainment, \$50 per month for clothing, \$400 per month for groceries, and \$38 per month for her gym membership. The district court carefully reviewed and reduced several of respondent's claimed expenses, and none of these expenses suggest that respondent is living extravagantly.

To the contrary, the district court found that respondent had considerably trimmed her monthly expenditures after separation, and that

even with an award of spousal maintenance, [r]espondent's expenses will only minimally be met and at a standard below that which was enjoyed during the marriage. Respondent's claimed and allowed monthly expenses reflect a significantly reduced standard of living compared to the standard enjoyed during the marriage. Respondent has substantially minimized her expenditures to correspond with her monthly funds. Conversely, [appellant]'s credit card debt represents his spending beyond his means following the parties' separation and demonstrates that, unlike [r]espondent, [appellant] continues to live at or above the standard of living established during the marriage. The disparity between the standards of

living that [appellant] and [r]espondent now separately experience is not equitable.

Given this inequitable situation, the district court set maintenance at an amount that allows respondent to meet her reasonable monthly needs, but also accounts for the fact that her claimed expenses represent a standard of living “below that which was enjoyed during the marriage” and that her needs will only be “minimally met.” The approximately \$940 in surplus every month will allow respondent to live closer to the standard enjoyed during the marriage. Because the district court’s findings of fact are not clearly erroneous and because it was not an abuse of discretion to award respondent maintenance in an amount that allows her to approximate the standard of living enjoyed during the marriage, we affirm.

Appellant also argues that an award of permanent as opposed to temporary maintenance is inappropriate. Generally, uncertainty about a maintenance recipient’s ability to become self-sufficient requires a permanent maintenance award. Minn. Stat. § 518.552, subd. 3 (stating that doubts about the duration of a maintenance award are to be resolved in favor of a permanent award); *see also Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987).

The district court concluded that respondent’s “foreseeable future employment” will not allow her to “meet her needs that were established during the [recent] years of the parties’ marriage.” The district court’s findings of fact support this conclusion. The district court found that, “prior to the year 2007, [respondent’s] gross income did not exceed \$10,000 per year.” Respondent testified that she “is 45 years old and has a high

school education” and during the marriage “she worked entry-level positions, including working as a cashier, waitress, laundry inspector, daycare provider, cook, and factory worker.” Therefore, an award of permanent spousal maintenance was not improper.

Appellant also argues that the district court abused its discretion by failing to consider the marital assets awarded to respondent when determining respondent’s ability to become self-supporting. It is true that Minn. Stat. § 518.552, subd. 2(a), requires consideration of the “marital property apportioned to the party” seeking maintenance. *See Rask v. Rask*, 445 N.W.2d 849, 853 (Minn. App. 1989). But respondent’s situation is distinguishable from that of the party seeking maintenance in *Rask*. In *Rask*, the wife, who was requesting maintenance, had between \$75,000 and \$119,000 to invest. *Id.* at 853–54. This court concluded that she would likely receive interest on her investment, and that this should have been considered by the district court in reaching its conclusion about the amount of spousal maintenance to award. *Id.* But in this case, respondent’s property award consisted primarily of non-liquid assets. A party seeking maintenance is not required to place herself at risk by liquidating her assets to meet her needs, and none of the marital property apportioned to respondent in the settlement agreement is income-producing. *See Bury v. Bury*, 416 N.W.2d 133, 138 (Minn. App. 1987) (explaining that a party seeking maintenance should not be required to “place herself at risk by liquidating her assets to meet her expenses”). On this record, we cannot say that the district court’s conclusion that it is not certain that respondent will become self-supporting in the foreseeable future is an abuse of discretion.

Finally, appellant disputes the temporary step increase in his maintenance obligation that will occur in June 2010 and continue until the marital home sells. Appellant's combined monthly child-support (\$1,500) and maintenance (\$1,800) obligations total \$3,300 until the parties' minor child finishes high school. At that point, appellant's child-support obligation will terminate, but his monthly maintenance obligation increases to \$3,500. Appellant challenges the \$200 increase in his total obligation, claiming it is an abuse of discretion because it is "unexplained" and "not supported by the record."

The explanation offered by the district court for this increase is that respondent's needs do not significantly decrease until the marital home sells, despite the fact that her income decreases by \$1,500 due to the loss of child support. Given this explanation, it is somewhat unclear why the district court increased appellant's maintenance obligation by \$1,700 rather than by \$1,500 to compensate respondent for the lost child support, but its decision is not entirely against logic and the facts in the record. Before their son's graduation, both parties face a monthly deficit. The district court set the pre-graduation maintenance amount with appellant's ability to pay spousal maintenance in mind. Upon the son's graduation, appellant's monthly expenses decrease not just by the \$1,500 he was paying in child support, but also by \$715 for the Texas house payment and expenses related to parenting time. Accordingly, appellant's ability to pay increases in June 2010 by \$2,215. The step increase in June 2010 reflects the parties' changed circumstances, and those changes are not limited to appellant's loss of the child-support obligation.

Accordingly, we conclude that it was not an abuse of discretion for the district court to structure the maintenance award in this manner.

**Affirmed.**