**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1997**

In re the Marriage of:
Melissa Lee Palmer Densmore, petitioner,
Respondent,

vs.

Robert Michael Densmore,
Appellant.

**Filed December 14, 2010**
**Affirmed in part, reversed in part, and remanded**
**Johnson, Chief Judge**

Dakota County District Court
File No. 19-F3-05-009243

Brian L. Sobol, Corwin R. Kruse, Katz, Manka, Teplinsky, Graves & Sobol, Ltd., Minneapolis, Minnesota (for respondent)

Alan C. Eidsness, Melissa J. Nilsson, Henson & Efron, P.A., Minneapolis, Minnesota; and Mark A. Olson, Olson Law Office, Burnsville, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Minge, Judge; and Ross, Judge.

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

**JOHNSON**, Chief Judge

This appeal arises from the dissolution of the marriage of Melissa Lee Palmer Densmore and Robert Michael Densmore. The parties raise multiple issues concerning four general subjects: child support, spousal maintenance, division of property, and

attorney fees. We conclude that the district court erred by miscalculating Mr. Densmore's child-support obligation and by not making findings of fact regarding Ms. Densmore's allegation that Mr. Densmore improperly dissipated marital assets. We conclude that the district court did not err in all other respects. Therefore, we affirm in part, reverse in part, and remand for further proceedings on the issues discussed below in parts I.B. and III.D.

## FACTS

The parties married in 1991. They have two daughters, who were born in 1992 and 1993. During the early years of the marriage, when the parties lived in Nebraska, Ms. Densmore worked in biology laboratories, and Mr. Densmore sold insurance. During that period, the parties had relatively modest incomes.

The parties moved to Minnesota in 1997. After moving to Minnesota, Mr. Densmore began to generate substantial income in the insurance business. Between 2001 and 2008, his annual income ranged from $351,970 to $1,297,812 and averaged approximately $740,000. Mr. Densmore's income has been largely "performance-based" and includes bonuses of varying amounts. As Mr. Densmore's income increased, the parties' standard of living increased. In 2002, they purchased a lake cabin. In 2004, they purchased a larger home for $830,000. Throughout the later years of the marriage, the family traveled frequently to desirable locations.

Between 1999 and 2005, Ms. Densmore received a master's degree and a doctoral degree in physiology. Between 2005 and 2007, Ms. Densmore completed a two-year post-doctoral fellowship at the University of Minnesota. Ms. Densmore pursued her

post-graduate studies for the purpose of a career in academia. In July 2007, after this case was commenced, she obtained employment as a teaching assistant professor in the College of Biological Sciences at the University of Minnesota.

In September 2005, the parties separated, and Ms. Densmore petitioned to dissolve the marriage. The parties disputed many issues, only some of which are at issue on appeal. The case was tried on eight days in June and July of 2008. In December 2008, the district court entered a partial judgment that dissolved the parties' marriage and addressed custody and parenting time. In May 2009, the district court addressed the remaining issues. After motions for amended findings or new trial, the district court entered an amended judgment in September 2009. Both parties appeal, Mr. Densmore by a notice of appeal, and Ms. Densmore by a notice of review.

## D E C I S I O N

As stated above, the parties' arguments concern four general subjects: child support, spousal maintenance, division of property, and attorney fees. We have organized our discussion accordingly.

### I. Child Support

The district court ordered Mr. Densmore to pay child support to Ms. Densmore in the amount of $1,861 per month. Both parties challenge the child-support order.

#### A. Governing Child-Support Statutes

Ms. Densmore argues that the district court erred by applying the recently adopted child-support statutes, which apply to dissolution actions commenced in 2007 and thereafter, rather than the child-support statutes that apply to dissolution actions

commenced in 2005. Ms. Densmore's argument presents a question of law, to which we apply a *de novo* standard of review. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008).

In 2005, the legislature essentially rewrote the child-support statutes. 2005 Minn. Laws ch. 164, §§ 4-32, at 1880-1925; 2005 Minn. Laws 1st Spec. Sess. ch. 7, § 28, at 3092-93. In 2006, the legislature amended the effective-date provision of the 2005 amendments to provide that the new statutes related to support obligations apply to "actions or motions filed after January 1, 2007." 2006 Minn. Laws ch. 280, § 44, at 1145. The new statute generally prohibited motions to modify child support, with certain exceptions, before January 1, 2008. Minn. Stat. § 518A.39, subd. 2(j) (2006); *Rose v. Rose*, 765 N.W.2d 142, 147 (Minn. App. 2009) (noting moratorium).

In this case, the district court noted that Ms. Densmore petitioned to dissolve the parties' marriage in September 2005. The district court also noted that the moratorium on motions to modify expired before the September 2009 final judgment. The district court applied the new statutes, stating that it was "appropriate" to do so "to avoid a situation where a modification motion might be brought simply by virtue of the changed statutory structure for determining support." Ms. Densmore asserts that if the district court had applied the child-support statutes in effect in 2005, the district court would have arrived at a child-support obligation of $2,208 per month, which is the maximum presumptive guideline amount for two children. *See* Minn. Stat. § 518.551, subd. 5(b) (2004).

Consistent with the legislature's clearly expressed intention, the district court should have analyzed the child-support issue by applying Minn. Stat. § 518.551 (2004), which applies to a dissolution action commenced in 2005. The new child-support statutes plainly do not apply to this case because they apply only to "actions or motions filed after January 1, 2007." 2006 Minn. Laws ch. 280, § 44, at 1145. Nonetheless, the district court's error was harmless. Under the harmless-error rule, this court "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Minn. R. Civ. P. 61. If the district court had applied the proper child-support statutes, Mr. Densmore presumably would have immediately moved for modification and thereby obtained a new calculation under the new child-support statutes. A modification of child support "is generally retroactive to the date the moving party served notice of the motion on the responding party." *Bormann v. Bormann*, 644 N.W.2d 478, 482 (Minn. App. 2002); *see also* Minn. Stat. § 518A.39, subd. 2(e) (2008). For that reason, the district court's error of law did not affect the substantial rights of Ms. Densmore or the children. Thus, the district court's error in applying the new child-support regime instead of the regime in effect in 2005 is not reversible error.

**B. Misapplication of New Child-Support Statutes**

Mr. Densmore argues that the district court erred by misapplying the new child-support statutes in three respects. Ms. Densmore did not respond to Mr. Densmore's arguments on this issue. Our review of Mr. Densmore's arguments indicates that the district court did misapply the new child-support statutes.

First, the district court understated Ms. Densmore's gross income by failing to consider her maintenance award. When calculating gross income for purposes of child support, a district court should include spousal maintenance received in "the current proceeding." Minn. Stat. § 518A.29(a) (2008). Second, the district court failed to adjust Mr. Densmore's child-support obligation to accurately account for the parties' proportional shares of their combined parental income for child support. If the district court had done so, it would have reduced Mr. Densmore's obligation. *See* Minn. Stat. § 518A.36, subd. 3(b) (2008). Third, the district court erroneously required Mr. Densmore to pay all costs of medical and dental insurance for the children as well as all of the children's uninsured health-care expenses. "Unless otherwise agreed . . . , the court must order that the cost of health care coverage and all unreimbursed and uninsured medical expenses" be prorated between the parties based on their shares of combined PICS support. Minn. Stat. § 518A.41, subd. 5(a) (2008).

Thus, the district court erred in its application of the new child-support statutes. Therefore, we remand for a recalculation of Mr. Densmore's child-support obligation under the new child-support statutes.

## II. Spousal Maintenance

The district court ordered Mr. Densmore to pay monthly temporary spousal maintenance to Ms. Densmore in the amount of $12,000 for seven years; in the amount of $8,000 for the next four years; and in the amount of $4,000 for four additional years. Both parties challenge the award of spousal maintenance.

The legislature has identified certain factors for a district court to consider when setting the amount and duration of spousal maintenance. *See* Minn. Stat. § 518.552, subd. 2 (2008). But no single factor is dispositive. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). A district court has "wide discretion" in setting the amount and duration of a maintenance award. *Id.* at 38. A district court abuses its discretion if its 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 v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

**A. Ms. Densmore's Income**

The district court found that Ms. Densmore had an annual gross salary of $51,625 in her assistant professor position, that she can earn an additional $10,000 per year through consulting work, and, thus, that she has "approximately $5,100" in monthly income. Both parties challenge this figure. Mr. Densmore argues that it is too low; Ms. Densmore argues that it is too high.

***1. Employment as Professor***

Mr. Densmore argues that the district court erred by not finding that Ms. Densmore has the ability to earn a greater income. Specifically, Mr. Densmore argues that the district court should have found that Ms. Densmore could earn an annual salary of between $75,000 and $85,000 if she were to choose employment in private-sector industry rather than in academia. The district court found that Ms. Densmore was "appropriately employed" as a university professor and that to find otherwise would "work upon her a punishment for choosing a career in academia, which the Court will not

do." We apply a clear-error standard of review to a district court's finding concerning the appropriateness of the employment of a person seeking spousal maintenance. *See Nardini v. Nardini*, 414 N.W.2d 184, 197 (Minn. 1987).

If a person seeking spousal maintenance is employed only part-time, a district court may find that the person is able to earn a higher income such that spousal maintenance is unnecessary. *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 543-45 (Minn. App. 2006); *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). This principle is based on a statute providing that spousal maintenance may be appropriate if a person seeking maintenance "is unable to provide adequate self-support . . . through appropriate employment." Minn. Stat. § 518.552, subd. 1(b) (2008). The rule of *Rauenhorst* and *Schallinger* has not been extended to situations in which a person seeking maintenance is employed full-time but in a position that is not the most remunerative position for which he or she is qualified. This court has rejected similar arguments. *See Flynn v. Flynn*, 402 N.W.2d 111, 114 (Minn. App. 1987) (stating that "[c]ourts cannot force a spouse to work at a specific job"), *review denied* (Minn. Nov. 24, 1987); *Coffel v. Coffel*, 400 N.W.2d 371, 374-75 (Minn. App. 1987) (rejecting "Appellant's contention that Minn. Stat. § 518.552 requires respondent to change her vocation for a more lucrative position").

Ms. Densmore testified that she became interested in teaching at the university level while working on her master's degree, and it is undisputed that her doctoral studies were oriented toward teaching. She received her doctorate in April 2005, five months before the parties separated. The record as a whole strongly suggests that Ms.

Densmore's current employment as a university professor is consistent with career goals she identified and pursued during the parties' marriage. Both parties presented expert witnesses who testified that Ms. Densmore could earn more in private employment than in teaching. But Mr. Densmore's own expert testified that Ms. Densmore is appropriately employed. We believe that it would be a rather perverse result if we were to conclude that employment as a university professor -- a position that requires a high level of education and intellectual ability, that is respectable and prestigious, and that contributes much to society -- is not appropriate employment.

Thus, the district court did not clearly err by finding that Ms. Densmore is appropriately employed as a university professor.

***2. Income from Consulting***

Ms. Densmore argues that the district court erred by finding that she had the ability to earn $10,000 per year by consulting. She asserts that, at this stage of her teaching career, she must focus on preparing lectures and course materials. But the district court's finding has support in the report and testimony of Ms. Densmore's own expert, who stated that she has the ability to earn $10,000 in consulting income, without any qualification as to when she may do so. Thus, the district court did not clearly err by finding that Ms. Densmore has the ability to earn $10,000 per year through consulting work.

**B. Ms. Densmore's Expenses**

The district court found Ms. Densmore's reasonable monthly expenses, at the marital standard of living, to be $16,578. Ms. Densmore challenges this finding, arguing

that it is inconsistent with the marital standard of living. In the district court, Ms. Densmore proposed a monthly budget of $25,842 for herself and the two children.

"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." *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quoting *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004)). To facilitate the determination of spousal maintenance, the district court must find the parties' reasonable monthly expenses in light of the marital standard of living. *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 409-12 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). A district court may assign more or less weight to expenses that change over the course of a marriage. *See Robert v. Zygmunt*, 652 N.W.2d 537, 545 (Minn. App. 2002). In addition, the district court's identification of a maintenance recipient's expense will not be reversed absent an abuse of discretion. *Kampf v. Kampf*, 732 N.W.2d 630, 634 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Ultimately, we apply a clear-error standard of review to a district court's finding of the reasonable expenses of a person seeking spousal maintenance. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989).

In this case, the district court's findings indicate that the parties' standard of living increased significantly during the marriage. The district court found that the parties "began their life together modestly," that their income had a "significant upward trend," and that the parties "lived an objectively lavish lifestyle." The district court added that "the parties have clearly shown a tendency to spend money nearly as fast as it comes

through the door, saving little to nothing." The district court deemed this manner of spending to be "excessive" and stated, "this Court finds it should not be used as the benchmark for setting spousal maintenance."

Ms. Densmore's proposed budget was based on the parties' spending habits in 2004 and the first half of 2005, which is a relatively brief portion of their 14-year marriage. The district court rejected Ms. Densmore's proposed budget of $25,842, stating that it "equates to $300,000 per year, an amount which this court finds unreasonable, despite the parties' ramped-up spending during the last few years of their marriage." The district court was within its discretion in not setting Ms. Densmore's monthly budget at a level commensurate with the highest marital standard of living in light of its finding that the parties' spending during that period was excessive. *See Robert,* 652 N.W.2d at 545 (affirming denial of spousal maintenance because "parties' lifestyle for 18 of the marriage's 21 years was modest"). In light of the circumstances of this case, the district court did not err by setting Ms. Densmore's reasonable expenses at $ 16,578 per month.

**C. Duration and Amounts**

As stated above, the district court ordered Mr. Densmore to pay monthly temporary spousal maintenance to Ms. Densmore in an initial amount of $12,000 for seven years; in a reduced amount of $8,000 for the next four years; and in a further reduced amount of $4,000 for four additional years, after which time (in the year 2024) the obligation terminates. Ms. Densmore challenges these amounts and their respective

durations, arguing that the award of temporary spousal maintenance is insufficient to allow her to meet her needs.

***1. Years 2009 through 2016***

Ms. Densmore first argues that the district court erred by setting spousal maintenance at $12,000 per month for the first seven years after the dissolution of the marriage. She contends that the sum of her earned income, child support, and spousal maintenance will be insufficient to allow her to meet her budgeted expenses of $16,578. A district court has "wide discretion" in setting the amount of spousal maintenance. *Erlandson*, 318 N.W.2d at 38.

A district court is authorized to award spousal maintenance "in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . , and after considering all relevant factors." Minn. Stat. § 518.552, subd. 2. A district court shall consider, among other factors, eight factors that are described in the statute. Minn. Stat. § 518.552, subd. 2(a)-(h). The parties' "standard of living established during the marriage" is one of the eight statutory factors. Minn. Stat. § 518.552, subd. 2(c). "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." *Melius*, 765 N.W.2d at 416 (quoting *Peterka*, 675 N.W.2d at 358)).

In this case, the district court recognized that its award of spousal maintenance, combined with Ms. Densmore's other sources of funds, might not be enough to allow her to pay all the expenses in her approved budget, which includes, among other things, a

$5,000 monthly mortgage expense. Rather, the district court recognized that it would be just and equitable for Ms. Densmore to sell the large marital homestead in favor of a smaller home with a smaller mortgage payment. The district court stated that, even though Ms. Densmore was awarded the homestead, the court "will not be obligated to award [her] funds sufficient to maintain the mortgage payments on the homestead, which are approximately $64,000 per year. These payments *may* be beyond [her] means . . . . If such is the case, the onus will be on [Ms. Densmore] to either find a way to maintain the property, or to sell it."

The record reveals that, until May 2004, which was only 17 months before the parties' separation, they lived in a home purchased in 1997 for $180,000, which had a monthly mortgage of only approximately $1,800. The district court essentially determined that it would be fair and equitable for Ms. Densmore to either downsize her living arrangements or reduce other aspects of her living expenses. The difference between the parties' two most recent mortgages is approximately $3,200. If that amount were deducted from Ms. Densmore's monthly budget, as the district court contemplated, the initial spousal maintenance award of $12,000 per month, combined with her other sources of income and child support, would allow Ms. Densmore to meet her reasonably monthly budget. Thus, the district court did not abuse its discretion in setting spousal maintenance at $12,000 for the first seven years following dissolution.

***2. Years 2016 through 2020***

Ms. Densmore also argues that the district court erred by setting spousal maintenance at $8,000 per month for the second portion of the maintenance period,

between the eighth and eleventh years after the dissolution of the marriage. She contends that she will experience greater monthly deficits after the first step reduction in 2020. Ms. Densmore's argument assumes that she is entitled to spousal maintenance in an amount that equals, with mathematical precision, the amount of her reasonably monthly expenses, and she also assumes that her reasonably monthly expenses must continually be commensurate with the marital standard of living. The applicable law does not create such an entitlement, even if the reasonable monthly budget is based on a standard of living enjoyed at some point during the marriage.

As stated above, a district court is authorized to award spousal maintenance "*as the court deems just, . . . , after considering all relevant factors*." Minn. Stat. § 518.552, subd. 2 (emphasis added). The relevant factors include, but are not limited to, eight factors described in the statute. *See* Minn. Stat. § 518.552, subd. 2(a)-(h). The parties' "standard of living established during the marriage" is only one of the eight statutory factors. Minn. Stat. § 518.552, subd. 2(c). This court has qualified the significance of the martial standard of living by stating that 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*." *Melius*, 765 N.W.2d at 416 (emphasis added) (quoting *Peterka*, 675 N.W.2d at 358)).

In its concluding paragraph on the issue of spousal maintenance, the district court noted that the parties lived together for 14 years, that "both have many years of productive employment potential ahead of them, and both have the professional skills and abilities to provide them with meaningful and gainful employment." The district court

acknowledged that Ms. Densmore's income likely will never be as lucrative as Mr. Densmore's present income. Yet the district court stated that Ms. Densmore "will undoubtedly have an upward career trajectory, and will increase her compensation as her experience increases." The district court also stated that Ms. Densmore "will enjoy an elevated level of social prestige, as well as a respectable salary." Accordingly, the district court determined that "a less than permanent award is nonetheless equitable," and it proceeded to award Ms. Densmore temporary spousal maintenance in substantial, though decreasing, amounts for 15 years.

Mr. Densmore notes that Ms. Densmore's reasonable expenses will decrease by $2,000 per month after she pays off a debt to her attorney for fees incurred in the district court, which is likely to occur within seven years of the dissolution. Still, the district court was aware that, between 2016 and 2020, all of Ms. Densmore's sources of support likely would not add up to the total of her reasonable monthly expenses. Nonetheless, after considering multiple factors, including the marital standard of living, the district court elected to award maintenance in an amount that is below the most recent marital standard but still substantial. This court has suggested that the marital standard of living is not a "trump card" that necessarily overcomes other relevant factors. *Chamberlain*, 615 N.W.2d at 412. It is significant that Ms. Densmore is both adequately employed and employable in the future. This is not a case involving "a long-term traditional marriage in which there is an older, dependent spouse who has little likelihood of achieving self-sufficiency because of an absence from the labor market for a long period of time." *Gales v. Gales*, 553 N.W.2d 416, 421 (Minn. 1996). It also is significant that the period

of time during which a deficit is acknowledged is more than eight years after the parties' dissolution and more than 12 years after the parties' separation. The award of spousal maintenance, in combination with Ms. Densmore's salary and consulting income, will ensure her a respectable standard of living in the eighth through eleventh year after dissolution. Thus, the district court did not abuse its discretion in setting spousal maintenance at $8,000 for the eighth through eleventh years following dissolution.

***3. Years 2020 through 2024***

Ms. Densmore argues further that the district court erred by setting spousal maintenance at $4,000 per month for the third portion of the maintenance period, between the twelfth and fifteenth years after the dissolution of the marriage. Our analysis of this part of Ms. Densmore's argument essentially mirrors that of the prior four-year period. In short, the district court determined that it would be just and equitable to award Ms. Densmore substantial, though decreasing, amounts of spousal maintenance for more than a decade after the dissolution. Having awarded temporary maintenance for such a long time, it no longer can be said that the district court did not award maintenance in sufficient amounts. We note, for example, that in *Gales*, a case in which both the husband and wife had steady employment, the supreme court concluded that the district court erred by awarding permanent maintenance and held that "an award of rehabilitative maintenance of *no longer than five years* is appropriate under the facts and circumstances of this case." *Gales*, 553 N.W.2d at 422 (emphasis added). In this case, in contrast, the district court awarded four years of maintenance while the action was pending in the district court and then awarded 15 years of temporary maintenance post-judgment, of

which at least seven years are fully funded, and of which four years are partially funded in relatively generous amounts. Thus, we conclude that the district court did not abuse its discretion in setting spousal maintenance at $4,000 for the twelfth through fifteenth years following dissolution.

***4. Years After 2024***

Ms. Densmore also argues that the district court erred by terminating spousal maintenance after 15 years. She contends that spousal maintenance should be permanent. "Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3 (2008). We apply an abuse-of-discretion standard of review to a district court's decision to award temporary spousal maintenance. *Bolitho v. Bolitho*, 422 N.W.2d 29, 32 (Minn. App. 1988); *see also Nardini*, 414 N.W.2d at 194.

Again, our analysis of this part of Ms. Densmore's argument follows our analysis of her previous arguments. The district court determined that there was no "necessity of a permanent award." Minn. Stat. § 518.552, subd. 3. The district court's decision surely was based on the fact that it was awarding Ms. Densmore substantial, though decreasing, amounts of spousal maintenance for 15 years after the dissolution of her marriage and nearly two decades after the parties' separation. The district court noted that Ms. Densmore was well employed and likely to remain well employed. We are unaware of any caselaw arising from similar facts that would require us to conclude that the district court abused its discretion by not awarding permanent spousal maintenance to a person who is not a traditional homemaker, is not late in life, and is not lacking in marketable

skills. Thus, we conclude that the district court did not abuse its discretion by not awarding permanent spousal maintenance.

We also must consider Mr. Densmore's argument for reversal with respect to the duration of temporary spousal maintenance. He argues that the district court erred by awarding temporary spousal maintenance for 15 years because that period of time is too long. He notes that he paid temporary maintenance while this action was pending, for a total duration of nearly 19 years, even though the parties were married for only 14 years. He also notes that Ms. Densmore testified that she would need maintenance for only 10 years. But Ms. Densmore later sought permanent maintenance in her proposed findings. Again, we are unaware of any caselaw arising from similar facts that would require us to conclude that the district court abused its discretion by awarding temporary spousal maintenance for too many years. Thus, we conclude that the district court did not abuse its discretion by not awarding temporary spousal maintenance for a shorter period of time.

## III. Division of Property

The district court awarded Ms. Densmore approximately 60 percent of the parties' marital property. The district court awarded marital property worth approximately $919,000 to Ms. Densmore and marital property worth approximately $601,000 to Mr. Densmore. Both parties challenge this division.

A district court is to divide the parties' marital property after it

> mak[es] findings regarding the division of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the

> age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.

Minn. Stat. § 518.58, subd. 1. A district court has discretion when dividing marital property, and a district court's division will be affirmed if it "has an acceptable basis in fact and principle even though [an appellate court] might have made a different disposition of the problem." *Rohling v. Rohling*, 379 N.W.2d 519, 522 (Minn. 1986) (quotation omitted). A division of property need not be equal in order to be equitable. *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005).

**A. Findings on Unequal Division**

Mr. Densmore argues that the district court erred by failing to make adequate findings explaining the district court's rationale for the unequal award of property. Findings concerning the division of property must "indicate the rationale of the trial court in making its award." *Dick v. Dick*, 438 N.W.2d 435, 437 (Minn. App. 1989). But a lack of explicit findings does not require a remand if the district court's rationale for its decision can be discerned from its order. *See Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999). In this case, the district court's order expressly addresses most of the statutory factors relating to the division of property. The district court's order does not expressly address three statutory factors: the parties' prior marriages, their estates, and their opportunities for future acquisition of capital assets. But the absence of findings on

those factors is inconsequential. It is undisputed that neither party was previously married. The other two factors concern factual issues that were prominent among the disputed issues. Thus, we decline to remand for additional findings regarding the district court's division of property. *See King v. King*, 368 N.W.2d 317, 319 (Minn. App. 1985) (affirming division of property because remand for additional findings would be "pointless act").

**B. Unequal Division**

Mr. Densmore argues that the district court erred by awarding Ms. Densmore approximately 60 percent of the marital assets instead of half. When a district court divides property in a particular case, it should do so "in light of its particular facts." *Lenzmeier v. Lenzmeier*, 304 Minn. 568, 571, 231 N.W.2d 71, 74 (1975); *see also Chamberlain*, 615 N.W.2d at 414 (citing *Lenzmeier*). A disparity in the parties' incomes can justify a disproportionate property award. *See, e.g.*, *Reynolds v. Reynolds*, 498 N.W.2d 266, 270-71 (Minn. App. 1993) (affirming 58%-42% property division where one party earned "significantly more" than the other). In this case, there is a large disparity in the parties' respective earning abilities. Thus, the district court did not err by not ordering an equal division of the marital property.

**C. Home Valuation**

Ms. Densmore argues that the district court erred by not reserving the issue of the value of the parties' homestead. The district court found the value of the home, which was awarded to Ms. Densmore, to be $1,115,000, and that the parties had $402,000 of equity in the home.

A district court should value property as of the date of the initially scheduled prehearing conference, unless the parties agree to another date or the court finds another date to be "fair and equitable." Minn. Stat. § 518.58, subd. 1. "If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution." *Id.* "The district court has broad discretion in setting the marital property valuation date." *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002).

In this case, the parties' initially scheduled prehearing conference was set for March 16, 2006. But the parties stipulated to an April 2007 valuation date for the home. After the stipulation, Ms. Densmore argued to the district court that the home should be valued at its then-current value. Ms. Densmore essentially argues that the district court should have ignored the parties' stipulated valuation date. We conclude that the district court did not abuse its discretion by not varying from the parties' stipulated valuation date.

**D. Dissipation**

Ms. Densmore argues that the district court erred by not finding that Mr. Densmore's spending after the separation constituted a "dissipation" of the parties' assets for which she is entitled to compensation.

> If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution . . . transferred, encumbered, concealed, or disposed of marital assets except in the usual course of

> business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred.

Minn. Stat. § 518.58, subd. 1a (2008). The burden of proof with respect to dissipation is on the party alleging improper conduct. *Id.*

On appeal, Ms. Densmore asserts that Mr. Densmore "dissipated over $600,000." *See id.* (prohibiting the improper disposing of marital assets). Ms. Densmore raised this issue at trial and in her post-trial motion, but the district court did not address it. At trial, Ms. Densmore argued that Mr. Densmore dissipated approximately $360,000. The difference between $600,000 and $360,000 is at least partially explained by the district court's findings regarding Mr. Densmore's reasonable monthly budget.

A district court's findings of fact must provide "a clear understanding of the basis and grounds for the decision." *Putbrese v. Putbrese*, 386 N.W.2d 849, 850 (Minn. App. 1986) (quotation and citation omitted); *see also Stich*, 435 N.W.2d at 53. The reasons for the district court's implicit denial of Ms. Densmore's dissipation argument are unknown. Thus, we reverse on this issue and remand for findings of fact and conclusions of law that are sufficient to allow appellate review. If the district court were to find that Mr. Densmore improperly dissipated assets, the district court may select any remedy that would achieve an equitable distribution of the marital estate, including an adjustment to the prior division of property.

### E. Walker Ridge

Ms. Densmore argues that the district court erred by awarding Mr. Densmore all of the parties' marital interest in Walker Ridge Partnership, LLC. The district court found that Mr. Densmore invested $40,000 in the partnership and that the investment now is worthless. Ms. Densmore argues that she should receive half of the marital interest. We must defer to the district court's determination that Mr. Densmore credibly testified that the investment is worthless. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). In light of that finding, Ms. Densmore has not suffered any prejudice from the district court's decision to award all of the marital interest to Mr. Densmore. *See* Minn. R. Civ. P. 61. Thus, the district court did not commit reversible error by awarding Mr. Densmore all of the parties' interest in the partnership.

## IV. Attorney Fees

The district court ordered Mr. Densmore to pay Ms. Densmore a lump sum of $50,000 in need-based attorney fees. The district court denied Ms. Densmore's request for conduct-based attorney fees. Ms. Densmore challenges both of these rulings.

### A. Need-Based Fees

Ms. Densmore argues that the district court erred by not granting her a larger award of need-based attorney fees. A district court "shall" award need-based attorney fees if it finds that the fees are necessary for a good-faith assertion of the recipient's rights and will not contribute unnecessarily to the length or expense of the proceeding, that the payor has the ability to pay the fees, and that the recipient cannot pay the fees. Minn. Stat. § 518.14, subd. 1. We apply an abuse-of-discretion standard of review to a

district court's ruling on a request for need-based attorney fees. *Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009).

Ms. Densmore asserts that, at the time of trial, she owed "over $173,000 in attorney fees," not $150,000, as the district court stated. In the district court, Ms. Densmore's attorney submitted an affidavit, which states that, as of August 29, 2008, Ms. Densmore had unpaid attorney fees, costs, and expert fees totaling $172,928.81. But of that total, $22,164.77 was for costs and expert fees, which means that her unpaid attorney fees were $150,764.04. Thus, the district court did not err by finding that Ms. Densmore owed "over $150,000" in attorney fees.

The district court not only awarded Ms. Densmore $50,000 but also included $2,000 in her budgeted expenses for payments on her debt to her attorney. If Ms. Densmore pays $2,000 per month, she likely will pay off her debt for fees, costs, and expert fees before spousal maintenance payments are reduced from $12,000 to $8,000. Thus, we conclude that the district court did not abuse its discretion by awarding Ms. Densmore $50,000 in need-based fees.

**B. Conduct-Based Attorney Fees**

Ms. Densmore argues that the district court erred by not granting her conduct-based fees. An award of need-based fees does not preclude a district court "from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. A district court may award conduct-based fees regardless of the recipient's need for fees and the payor's ability to contribute to a fee award. *Geske v.*

*Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). We apply an abuse-of-discretion standard of review to a district court's ruling on a request for conduct-based attorney fees. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

Ms. Densmore asserts that Mr. Densmore engaged in improper conduct by refusing to produce discovery, refusing to comply with court orders, making allegedly false statements under oath, concealing and disposing of income and assets, pursuing groundless ancillary orders for protection, improperly involving the parties' children in the case, undermining Ms. Densmore's relationship with the children, and prompting the first assigned trial judge to recuse on the scheduled day of trial. The district court was well aware of the procedural history of the case and Ms. Densmore's allegations because she requested conduct-based fees on three occasions: in her memorandum submitted in lieu of closing argument, in her proposed findings, conclusions, and judgment, and in her post-trial motion for amended findings or a new trial. The district court noted that the proceedings involved "much acrimony" but stated that "neither party's conduct was any more culpable than the other party's, and does not rise to a level uncommonly seen by this Court." We conclude that the district court did not abuse its discretion by denying Ms. Densmore's request for conduct-based fees. *See Kitchar v. Kitchar*, 553 N.W.2d 97, 104 (Minn. App. 1996) (affirming denial of conduct-based attorney fees in part because both parties contributed to expense of case), *review denied* (Minn. Oct. 29, 1996).

**Affirmed in part, reversed in part, and remanded.**