STATE OF MINNESOTA
IN COURT OF APPEALS
A10-561

In re the Marriage of Catherine Lynn Smith, petitioner,
Appellant

vs.

Steven Lance Smith,
Respondent.

Filed January 18, 2011
Affirmed
Ross, Judge

Scott County District Court
File No. 70-FA-06-725

Mark E. Mullen, Rodney H. Jensen, Jensen, Mullen & McSweeney, P.L.L.P., Bloomington, Minnesota (for appellant)

Sean A. Shiff, Skolnick & Shiff, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

ROSS, Judge

This appeal requires us to determine whether the district court erred by interpreting a partial dissolution decree to require that the parties jointly pay their income taxes incurred before their marriage ended and whether it erred by not deducting

appellant Catherine Smith's debts when determining her spousal maintenance award. We conclude that the district court's interpretation of the tax provisions comports with their plain language and that any error with respect to the calculation of spousal maintenance is harmless. We affirm.

FACTS

Catherine and Steven Smith married in 1982. Catherine Smith worked as a cosmetologist and Steven Smith opened a business called S & S Enterprises, which owns and operates metropolitan area car washes. Catherine Smith quit her job in 1987 just before the birth of the couple's first child. Their second child was born in 1990. From 1987 on, Catherine Smith was a full-time homemaker and caretaker and Steven Smith managed S & S.

The Smiths' marriage dissolved in 2007 by a partial judgment and decree. The partial judgment allocated ongoing expenses until the sale of their house. It reserved to the district court the issue of spousal maintenance until after the sale. Steven Smith ultimately bought the house and a trial on spousal maintenance ensued. The final judgment and decree adopted the partial judgment and also allocated spousal maintenance. It requires Catherine Smith to pay $93,667.24, or one-half of the deficit in the household account. Catherine Smith appeals, arguing that this deficit correlated to Steven Smith's payment of their income taxes, which she maintains he was required to pay on his own.

D E C I S I O N

Catherine Smith urges us on appeal to reverse the district court's judgment. Our review is somewhat limited because, although the party seeking review must provide the relevant transcripts, *Bender v. Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003), Catherine Smith did not provide transcripts from the July 2009 trial. Without transcripts, our scope of review is limited "to whether the district court's conclusions of law are supported by its findings of fact." *Id.* We will address Catherine Smith's contentions with that caveat.

I

Catherine Smith contests the district court's interpretation of the partial judgment and decree. The district court held that paragraph 17 required Steven Smith to deposit funds from his income into a household account to cover the parties' joint expenses. It also held that Steven Smith contributed all of his income to the account, but because there were insufficient funds to pay the parties' income taxes, he borrowed from the home-equity line, as authorized by paragraph 20. The district court then concluded that it was equitable to require Catherine Smith to reimburse Steven Smith for a share of the parties' personal tax liabilities from her half of the homestead equity. This amounts to $93,667.24.

Catherine Smith does not question the district court's requirement that she pay half the household account's deficiency; but she contests its conclusion that the parties' income taxes were to be jointly paid in the first place. She reads the decree to make

Steven Smith solely responsible for the parties' income taxes. She points to paragraphs 15 and 19, which she claims make paragraph 17, the relevant tax provision, ambiguous.

We review whether a provision in a divorce judgment and decree is ambiguous de novo. *In re Estate of Rock*, 612 N.W.2d 891, 894 (Minn. App. 2000). And it is ambiguous if it is "reasonably susceptible to more than one interpretation based on its language alone." *Id.* If we deem the provision ambiguous, we afford great deference to the district court's construction of the ambiguous language and review only for clear error. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005). We particularly give significant weight to the district court's construction of its own ruling. *Id.* And given the failure to provide a transcript, our scope of review is even further limited to whether the district court's conclusions were supported by its finding of facts. *Bender*, 671 N.W.2d at 605.

We hold that the district court did not err by concluding that the parties are jointly liable for their income taxes. Even if paragraphs 15 and 19 cast some shadow of ambiguity on the decree, Catherine Smith fails to show that the district court's resolution of the arguably ambiguous language is unsupported by the court's findings. The district court concluded that paragraph 17, which states that "the parties' personal income tax liabilities before and until the sale of the Homestead closes[,] . . . shall be drawn from the [household account] . . . . [And] funding of the [2006 income taxes] as they are determined and come due shall be paid from the Household Account," meant that the parties were jointly liable for their income taxes. This is not illogical.

The ambiguity, if any, is insubstantial. Paragraph 15 awards Catherine Smith temporary, after-tax spousal maintenance. It then requires that Steven Smith "pay the amount of state and federal taxes due for 2007 and for any other year" before the house is sold. Because paragraph 17 requires that Steven Smith pay this amount from the household account, the district court concluded that the statement in paragraph 15, which is couched in a paragraph called "temporary spousal maintenance," was included only to reinforce the requirement that the spousal maintenance amount be calculated after taxes and that it did not affect paragraph 17. We believe that the district court's interpretation is supported by the district court's findings. It is based on a reasonable construction of the language of the partial decree as a whole, including the context of the provisions. And "arriving at the meaning of a judgment or decree the judgment as a whole should be considered in interpreting any particular clause or sentence therein." *Palmi v. Palmi*, 273 Minn. 97, 102, 140 N.W.2d 77, 81 (1966). Because the decree supports the district court's interpretation, we defer.

Paragraph 19 requires each party to pay those "excess expenses" that "are not Parties' Expenses as set forth in paragraph 17 . . . , the Parties' attorneys' and financial accounting advisor fees, or Petitioner's spousal maintenance." Catherine Smith alleges that the parties' income taxes were "excess expenses" because they were not explicitly excluded. But the district court construed paragraph 19 to define "excess expenses" as expenses not listed in paragraph 17, such as the parties' income taxes. It supported its position by concluding that income taxes should be treated like the living costs of the parties' children; both are listed in paragraph 17 (expenses to be paid out of the

household account) and not re-listed in paragraph 19 (excluding specific expenses from the definition of "excess expenses"). After concluding that these expenses should be treated alike, it found that Catherine Smith's interpretation that her children's living expenses were not excess expenses undermined her position that the parties' taxes *were* excess expenses. The reasoning is sound.

II

Given that the district court did not err by requiring Catherine Smith to pay half of the parties' income taxes totaling $93,667.24, we must decide whether the district court should have deducted that amount and an additional $20,000 of outstanding attorney fees when it estimated the monthly return on her investments. The parties agree that if the district court had subtracted these amounts from her assets, she would earn $284 less per month on interest from her investments.

The district court calculated the spousal maintenance obligation in part based on its treatment of these funds. We review the district court's calculation of spousal maintenance for abuse of discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). To find abuse of discretion, we must determine that the calculation was a "clearly erroneous conclusion that is against logic and the facts on record." *Id.* The district court's spousal maintenance determinations are governed by Minnesota Statutes section 518.552, subd. 2 (2010). This statute requires the court to consider, among other factors, the financial resources of the party seeking maintenance.

The district court concluded that Catherine Smith could earn $2,000 monthly "at a salon, in cosmetic sales, or some other sales capacity," and that she could expect a 3%

rate of return on her investments, which would amount to an additional $1,250 each month. It also found that she could expect 6% interest on the equalizer note from Steven Smith, which would yield $5,010 monthly. It then applied a 25% tax averaged rate to her expected income and concluded that, because of "the exceedingly comfortable standard of living established by the parties during their marriage," additional maintenance from Steven Smith was necessary. It concluded that Catherine Smith would need $10,000 a month in after-tax income to achieve her marital standard of living. To achieve that, the district court calculated a maintenance contribution scheme in which Steven Smith would pay increased spousal maintenance as the parties' equalizer note was paid off. The end result is that Catherine Smith would have $10,000 of after-tax monthly income. The district court refused to deduct Catherine Smith's tax and attorney fee liabilities, stating that "[i]t would not be fair at this point to deduct those payments from [Catherine Smith's] assets without making a similar deduction for [Steven Smith's] payments of these expenses."

We conclude that the district court's decision was not an abuse of discretion. It was not against logic and the facts on record because it was based on the district court's conclusion that both parties must pay the expenses, that both parties could afford the expenses, and that it would be unfair to deduct expenses only from Catherine Smith's side of the equation. It may be that the district court's forecast of her monthly earnings was inaccurate, but "[e]xactitude is not required of the trial court in the valuation of assets in a dissolution proceeding; it is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

The disputed $284 is less than 3% of Catherine Smith's monthly budget. A 3% margin of error is within a reasonable range. *Id.*

We add that even if the district court erred by failing to deduct Catherine Smith's liabilities, we would still leave the judgment intact. We will not alter a judgment if an error is harmless. Minn. R. Civ. P. 61; *see also Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002) (applying a harmless error test in an appeal of a divorce decree). The error was harmless here because, even if the money Catherine Smith could earn on her investment was off by $248, she still receives more after-tax income than necessary to meet her $10,000 per month budget. This is because the district court calculated her tax rate to be 25% when it was actually 23%. So Catherine Smith is left with a net surplus rather than a shortfall. The alleged error is harmless.

Affirmed.