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Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1506**

In re the Marriage of: Kevin T. Jacobson, petitioner,
Respondent,

vs.

Rachele D. Jacobson,
Appellant.

**Filed March 9, 2015
Affirmed in part and reversed in part
Stauber, Judge**

Dakota County District Court
File No. 19AVFA132232

Mary B. Rannells Rowan, Julie K. Seymour, Seymour Family Law, Lakeville, Minnesota
(for respondent)

Diane Kaer, Apple Valley, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal in this marital dissolution action, appellant-wife argues that the district court abused its discretion by (1) dividing between the parties the tax dependency exemptions for their children and (2) awarding damages post-decree for appellant-wife's failure to make payments on respondent-husband's credit card during the pendency of the

dissolution. Respondent-husband filed a notice of related appeal and argues that the district court abused its discretion by denying his request for conduct-based attorney fees. We reverse the post-decree damages award but otherwise affirm.

FACTS

Appellant Rachele Jacobson and respondent Kevin Jacobson married in 1996; their two children were born in 1997 and 1999. The marriage was dissolved by amended decree on February 19, 2014¹; before that time, most items to be decided in the dissolution had been resolved with the services of an early neutral evaluator.

Following entry of the amended decree, respondent brought to the district court's attention that the parties had been unable to resolve the issue of which party should receive a tax dependency exemption for the children. Respondent explained that the early neutral agreement omitted the issue of the tax-dependency exemption and the parties were unable to reach an agreement on that issue; respondent argued that the tax dependency exemption issue "still . . . needed to be heard at trial." Appellant's attorney noted that respondent's attorney had requested that the tax-dependency exemption issue be reserved, but argued that all custody issues became final upon entry of the amended decree.

On March 20, 2014, respondent moved, among other things, for an award of all tax-dependency exemptions, \$3,689.40 in damages for appellant's failure to make payments on a credit-card account she had previously paid "resulting in [respondent's]

¹ The amended decree made minor changes to the original decree, which was entered on February 3, 2014.

inability to refinance the [home] mortgages,” and \$4,589.50 in conduct-based attorney fees for appellant’s “prolonging” the dissolution process. At the April 10, 2014 motion hearing, the district court stated that the decree did not resolve, and the parties were entitled to litigate two issues: spousal maintenance and the tax-dependency exemptions. The district court also considered whether appellant’s failure to make payments on respondent’s Capitol One credit card during the pendency of the dissolution had caused such a significant drop in respondent’s credit score that he became ineligible to refinance the homestead after the dissolution. A loan officer from Bell State Bank & Trust, Mitchell Irwin, testified that the delinquent payments on the account did cause respondent to become ineligible to refinance the home.

The district court found that the issue of the tax-dependency exemption had been reserved and allocated the exemption between the parties on an equitable basis because “it allows each party adequate cash flow to accommodate the children when in each party’s care.” The district court awarded \$3,626 in damages to respondent for appellant’s improper failure to pay the monthly credit-card payments, but declined to award conduct-based attorney fees to respondent. This appeal followed.

D E C I S I O N

Tax Dependency Exemptions. The district court has discretion to allocate tax exemptions. *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). District courts review the allocation of tax-dependency deductions under the abuse-of-discretion standard. *Valento v. Valento*, 385 N.W.2d 860, 863 (Minn. App. 1986), *review denied* (Minn. June 30, 1986).

Appellant argues that “[t]he district court erred when it reallocated the right to claim the minor children as dependents.” She argues that custody was determined in the original judgment and decree, and the tax-dependency issue was not reserved by the district court, thus the district court lacked authority to modify the decree after it became final without a showing of a change in circumstances. *See* Minn. Stat. § 518.145, subd. 1 (2014) (stating that a dissolution decree is final when entered, subject to right of appeal).

Appellant’s framing of the issue as a post-decree reallocation of the tax-dependency exemption is not entirely accurate. While the district court did not either allocate the tax-dependency exemption in the original judgment and decree or specifically reserve the issue at that time, the subject was discussed by the parties before the dissolution as a contested issue that was not resolved by the early neutral agreement. Following a hearing on April 10, 2014, the district court specifically found that “[a]t the time of the [judgment and decree], the parties agreed to reserve two issues for trial: minor dependency tax exemption and the issue of vision insurance.” Because the district court’s finding that it had reserved the tax-dependency exemption issue is supported in the record, the district court did not abuse its discretion by resolving the issue post-decree.²

² Alternatively, the record and the district court’s findings demonstrate that appellant reasonably believed that the original judgment and decree did not resolve all contested issues, the tax dependency exemption issue was not included in the early neutral agreement that became the basis of the decree, and a trial was to be held to determine the limited issues not covered by the original early neutral agreement/decreed. Consistent with Minn. Stat. § 518.145, subd. 2 (2014), the district court had authority to address the issue post-decree. *See Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996) (noting that district court has discretion to reopen a final judgment); *see also Katz v. Katz*,

Credit-Card Payments. Appellant next argues that the district court abused its discretion by awarding damages for her failure to make respondent’s Capitol One credit-card payments during the pendency of the dissolution proceedings.

In the order following the initial case management conference (ICMC), respondent agreed to temporarily pay specific expenses, which did not include debt repayment. Respondent nevertheless argues that appellant had always made the monthly payments on the Capitol One account and had a duty to continue doing so during the pendency of the dissolution.

The district court applied Minn. Stat. § 518.091 (2014) in awarding damages to respondent for nonpayment of the debt. This statute includes provisions that constitute a temporary restraining order that is implemented in every dissolution summons. The order prohibits either party to a dissolution from “dispos[ing] of any assets” or “harass[ing] the other party,” and requires the parties to maintain insurance during the pendency of the dissolution proceedings. *Id.*, subd. 1(1)-(3). A party who violates the statute is subject to court sanctions. *Id.*, subd. (4).

Although it is unfortunate that appellant chose to quit making payments on respondent’s Capitol One credit-card account during the pendency of the dissolution, appellant had no legal duty to continue making those payments under the terms of either the ICMC order or section 518.091. The ICMC order did not direct either party to make debt payments and did not include a general provision that would require appellant to

408 N.W.2d 835, 839 (Minn. 1987) (“[W]e will not reverse a correct decision simply because it is based on incorrect reasons.”).

continue making the payments. Further, under section 518.091, the preservation of a credit rating does not constitute an “asset,” and respondent did not provide evidence that appellant quit making the payments for the purpose of harassing respondent. For these reasons, we conclude that district court abused its discretion by awarding damages for impairment of respondent’s credit rating caused by appellant’s nonpayment of the Capitol One credit-card debt.

Attorney Fees. By notice of related appeal, respondent argues that the district court abused its discretion by declining to award him conduct-based attorney fees. Courts may award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of dissolution proceedings. Minn. Stat. § 518.14, subd. 1 (2014). Whether to award conduct-based attorney fees is “almost entirely” within the district court’s discretion. *Crosby*, 587 N.W.2d at 298 (quotation omitted). As the dissolution proceedings were not particularly prolonged and did not demonstrate egregious conduct on the part of appellant that would support an award of attorney fees, the district court did not abuse its discretion by declining to award them.

Affirmed in part and reversed in part.