

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In re:

Estate of Prince Rogers Nelson,

Decedent.

Court File No. 10-PR-16-46

Honorable Kevin W. Eide

**DECLARATION OF LEORA M.
MACCABEE IN OPPOSITION TO ALFRED
JACKSON'S EMERGENCY MOTION FOR
RELIEF AND TO STAY THE COURT'S
OCTOBER 17, 2017 ORDER FOR
PAYMENT OF FEES AND IN RESPONSE
AND OPPOSITION TO ALFRED
JACKSON'S OBJECTION TO AND
MOTION FOR CLARIFICATION OF THE
COURT'S OCTOBER 17, 2018 ORDER**

I, Leora M. Maccabee, declare as follows:

1. I am a senior associate with the law firm of Maslon LLP, counsel for Bremer Trust, N.A., with respect to its service as Special Administrator for the Estate of Prince Rogers Nelson. I submit this Declaration in Opposition to Alfred Jackson's Emergency Motion for Relief and To Stay the Court's October 17, 2017 Order for Payment of Fees, and in Response and Opposition to Alfred Jackson's Objection to and Motion for Clarification of the Court's October 17, 2018 Order.

2. Attached hereto as Exhibit A is a true and accurate copy of *Hanson v. Hanson*, No. A11-842, 2012 WL 426597 (Minn. Ct. App. Feb. 13, 2012).

I declare under penalty of perjury that everything I have stated herein is true and correct.

Dated this 13th day of November, 2018.

/s/Leora M. Maccabee

Leora M. Maccabee

2012 WL 426597

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS
UNPUBLISHED AND MAY NOT BE CITED EXCEPT
AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

In re the Marriage of James Allen
HANSON, petitioner, Respondent,

v.

Mary Kathleen HANSON, Appellant.

No. A11-842.

Feb. 13, 2012.

Dakota County District Court, File No. 19HA-FA-09-
249.

Attorneys and Law Firms

Patricia A. O'Gorman, Patricia A. O'Gorman, P.A.,
Cottage Grove, MN, for respondent.

Valerie A.D. Arnold, Lisa A. Pletcher, Arnold, Rodman
& Pletcher PLLC, Bloomington, MN, for appellant.

Considered and decided by BJORKMAN, Presiding
Judge; SCHELLHAS, Judge; and CRIPPEN, Judge. *

UNPUBLISHED OPINION

SCHELLHAS, Judge.

*1 Appellant challenges various portions of her marriage-dissolution judgment and the district court's posttrial orders, arguing that the district court abused its discretion (1) by denying her request for a new trial and to supplement the record based on claimed trial irregularities, (2) in dividing the parties' property, (3) in determining child support, (4) in determining spousal maintenance, and (5) by denying her request for attorney fees and costs. We affirm.

FACTS

Appellant-wife Mary Kathleen Hanson and respondent-husband James Allen Hanson married in February 1982 and had four children during their marriage. The parties separated in September 2006, and husband petitioned for marriage dissolution in March 2009. The parties stipulated to a trial before a consensual special magistrate (CSM),¹ who conducted a trial over five days in May and August 2010. The CSM dissolved the parties' marriage and decided all issues of property division, child custody, child support, and spousal maintenance.

The district court adopted the CSM's decision and entered judgment in November 2010. The judgment awarded the parties joint legal custody and wife sole physical custody of the parties' only minor child. The judgment granted husband parenting time and ordered him to pay wife monthly child support of \$518, starting April 15, 2011. The judgment ordered husband to pay wife monthly spousal maintenance of \$600 for a period of 36 months, starting April 15, 2011, and terminating April 1, 2014.

In dividing the parties' property, the district court primarily focused on the parties' business, Natural Landscape & Design Inc. (NLD), which they established in 1986. Wife owned a 51% interest in the business, and husband owned a 49% interest. Husband managed and operated the business and received a salary and other benefits from the business. But husband consistently failed to maintain proper business records; he did not track or report cash receipts. Because neither of the parties maintained proper business records, the district court was unable to reasonably determine the value of NLD and therefore ordered its liquidation and corporate dissolution.

The district court also addressed the parties' real property, on which they operated NLD and maintained the marital homestead. With a deadline of January 1, 2016, the court ordered the sale of the real property upon the parties' mutual agreement or, alternatively, the transfer of the property pursuant to an anticipated eminent-domain proceeding. The court awarded temporary possession and use of the homestead to wife until January 1, 2011, at which time the homestead was to be offered for rent to a third party. The court granted husband temporary possession and use of the NLD portion of the property but required him to continue to pay rent for that possession and use.

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Shortly after entry of the dissolution judgment, husband complained that wife refused to sign the contract with the court-appointed auctioneer for the sale of the NLD assets. Accordingly, the district court ordered that the auction go forward without wife's signature. Wife then requested an emergency stay of the auction, which the district court considered and denied. The auction occurred in December 2010.

*2 Wife later moved for amended findings of fact or a new trial, claiming procedural irregularities in restriction of her presentation of evidence, challenging numerous factual findings and conclusions of law, and requesting an opportunity to supplement the record. The district court amended one finding and its related legal conclusion but otherwise denied wife's motions. This appeal follows.

DECISION

Claimed Trial Irregularities

Wife argues that the district court abused its discretion by denying her motion for a new trial based on claimed irregularities at trial. The district court may grant a new trial when there was an “[i]rregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial.” Minn. R. Civ. P. 59.01(a). But procedural and evidentiary rulings are matters left to the district court's discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn.App.2001), *review denied* (Minn. Oct. 24, 2001); *see also Manion v. Tweedy*, 257 Minn. 59, 67–68, 100 N.W.2d 124, 130 (1959) (stating that “[t]he mode, manner, and method of receiving testimony is a matter resting almost wholly in the discretion of the [district] court”). To succeed on a motion for a new trial on the basis of irregular procedure, the moving party must show (1) an irregularity occurred, and (2) the party was deprived of a fair trial. *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn.App.1995) (quotation omitted), *review denied* (Minn. June 14, 1995).

Wife argues that the district court deprived her of a fair trial because the CSM improperly rushed her and curtailed her presentation of evidence. We disagree. As the order denying wife's new-trial motion explains, the CSM afforded both parties additional time beyond the amount originally anticipated; allotted wife a significant majority of the trial time for her presentation of evidence; and

imposed restrictions on wife's testimony only to curtail her presentation of irrelevant or cumulative evidence, particularly evidence as to the parties' already well-established failure to maintain proper business records for NLD. *See* Minn. R. Evid. 403 (permitting exclusion of relevant evidence “if its probative value is substantially outweighed by ... considerations of undue delay, waste of time, or needless presentation of cumulative evidence”). The district court did not abuse its discretion by limiting wife's presentation of evidence, and the limitations did not amount to procedural trial irregularities. The CSM's limitations do not warrant a new trial.

Wife also argues that she should receive a new trial because the CSM “pressur [ed]” her to settle the case. This argument also is unavailing. Consistent with public policy that prefers the settlement of disputes, the CSM repeatedly encouraged the parties to settle, citing numerous evidentiary problems and emphasizing that inability to settle would result in a decision that would be financially disadvantageous to both parties in multiple respects. *See Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn.2008) (stating that public policy favors the settlement of claims). But the CSM also plainly informed the parties that he would permit them an opportunity to present their case and repeatedly extended the trial for that purpose. Given the unique facts of this case, particularly the dearth of reliable evidence about NLD's value, the CSM did not act improperly in strongly encouraging the parties to settle some of their financial disputes. The district court did not abuse its discretion in determining that wife is not entitled to a new trial on this ground.

Property Division

*3 Wife challenges several aspects of the district court's property division. We review the district court's property division for an abuse of discretion. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn.2003). A district court abuses its discretion if it resolves the matter in a manner that is “against logic and the facts on [the] record.” *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn.1984). “We will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though [this court] might have taken a different approach.” *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn.2002). We will not reweigh evidence or make factual findings on appeal. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn.1988)

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(stating that appellate court usurps district court's role when it reweighs evidence and finds facts).

Wife argues that the district court abused its discretion in dividing the parties' property by (1) ordering the liquidation of NLD, (2) denying her dissipation claims, (3) declining to recognize certain claimed debts, (4) misallocating the post-separation mortgage, and (5) failing to fully consider the impact of anticipated eminent-domain proceedings.

NLD

The district court made extensive findings about NLD, with approximately 13 pages devoted to the history, operation, and valuation of NLD. The court determined that the parties' failure to maintain proper business records precluded a reliable valuation of NLD and ordered its liquidation. Wife argues that the court (1) abused its discretion by rejecting her expert witness's business valuation as unreliable, (2) clearly erred by finding the parties equally responsible for the inadequate business record-keeping rather than attributing responsibility solely to husband, and (3) abused its discretion by ordering the liquidation of NLD. We address each argument in turn.

Wife's valuation expert

The district court thoroughly considered wife's expert's credentials, her method of analysis, and the evidence she relied on, and found that none of these factors warranted reliance on the expert's opinion about the NLD's value. As to the expert's credentials, the court noted that the expert had never before prepared a valuation report or testified as to a business's value. As to the expert's analysis, the court noted that the expert "made several serious lapses in the standard methodology for appraising a business." Wife's expert failed to apply a key-person discount despite acknowledging at trial that she would consider husband a "key person" for NLD; she did not visit the business site until after preparing her valuation; and she failed to critically evaluate the tax implications of her valuation. As to the evidence underlying the expert's opinion, the court emphasized that the expert never spoke to husband or the NLD accountant. Instead, the expert relied exclusively on wife's statements regarding NLD's income and accepted wife's claim that NLD received hundreds of thousands of dollars of undocumented income even though wife's claims were inconsistent with other evidence.

*4 We conclude that this record amply supports the district court's determination that wife's expert's business valuation was unreliable.

Wife also contends that the district court should have permitted her to remedy her expert's analytical lapses by submitting an addendum. The court found that the proffered addendum, which wife submitted well after her expert testified, was untimely and that the other reasons for discrediting the expert still applied, making the addendum no more reliable than the original valuation. We conclude that the court did not abuse its discretion by not considering the addendum.

Responsibility for inadequate record-keeping for NLD

That husband failed to maintain proper business records for NLD is undisputed. The failure was so extensive that the district court labeled husband's conduct "business 'worst practices.'" " But the court also found that wife shared responsibility for these failures, and the record supports that finding. Wife was a 51% shareholder in NLD and was aware of husband's poor business practices in operating NLD, even if she did not know specifics as to how much income went unreported or how that income was used. We conclude that because the record demonstrates that wife shared responsibility for the business practices that obstructed a proper valuation of NLD, the district court did not clearly err by finding both parties responsible for the inadequate record-keeping and its consequences.

Liquidation

Wife argues that the district court abused its discretion by ordering NLD's liquidation because liquidation is "extreme" and there were less drastic alternatives available. We disagree. Liquidation is an acceptable, recognized method of dividing property when, as here, the parties cannot agree on the division of a family business. *Nardini v. Nardini*, 414 N.W.2d 184, 188 (Minn.1987). Here, the district court acknowledged that liquidation would financially disadvantage both parties but determined that liquidation was necessary because the record-keeping failure prevented a reasonable valuation of NLD and rendered NLD unmarketable as a going concern. Based on the evidence that demonstrated the impossibility of an alternate division of NLD, we conclude

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that the district court did not abuse its discretion by ordering NLD's liquidation.

Wife also argues that the district court abused its discretion by denying her motion to stay the auction. The record reflects that the court thoroughly considered wife's motion and determined that she would not suffer irreparable harm if the auction proceeded, and that she could pursue monetary damages against husband if she later demonstrated that the court ordered the auction in error. Because nothing in wife's argument or our independent review of the district court's multiple decisions on this issue indicates that the court abused its discretion by denying wife's motion to stay the auction, we conclude that wife is not entitled to relief on this basis.

Dissipation

*5 Wife argues that the district court erred by denying her dissipation claims. If a district court finds that a party to a dissolution proceeding has, without the consent of the other party and in contemplation of commencing or during the pendency of the dissolution proceeding, "transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life," the district court must "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 (2010). The party claiming dissipation bears the burden of proof. *Id.* We review a district court's findings as to whether a party transferred or disposed of marital assets for clear error. *See* Minn. R. Civ. P. 52.01 (stating that factual findings "shall not be set aside unless clearly erroneous").

Wife argues that the district court clearly erred by finding that husband did not dissipate marital assets by conducting business with his girlfriend. The court considered husband's sale of NLD goods to his girlfriend, his decision to hire his girlfriend as an NLD employee, and his loan of money to his girlfriend. The court found that the sale of goods and the loan did not constitute dissipation of corporate or personal assets because they resulted in a net benefit to NLD (and therefore to both of the parties). Similarly, the court found no dissipation of assets related to the girlfriend's employment because "she was not overpaid for the services she was providing." Wife appears only to challenge the court's finding as to the loan, arguing that husband "had no authority to engage

NLD income in investments for [his girlfriend] and his misappropriation of NLD assets did harm [wife] and NLD based upon the unavailability of that income for business investment or for income." But the remedy for dissipation is to put the 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.

Because the record amply supports the district court's finding that husband's business conduct with his girlfriend accrued to the benefit of NLD and therefore the parties, we conclude that the court did not clearly err by finding no dissipation of marital assets on this basis.

Wife reiterates her concerns about abuse of NLD's cash receipts, arguing that husband's use of the receipts constituted dissipation. For the same reasons previously discussed—both parties' knowledge of and responsibility for the disposition of those assets, and because husband's misuse of NLD funds represented a continuation of conduct during the marriage, not unilateral conduct in anticipation of the dissolution—we conclude that the district court did not clearly err in finding no dissipation on this basis.

Debts

Wife argues that the district court abused its discretion by declining to recognize certain claimed debts. She argues that the court erroneously failed to recognize a \$50,000 debt of the parties owed to wife's sister. The court considered evidence that the parties received multiple undocumented loans in 2004, including a loan from wife's sister, in order to address an investment loss of more than \$900,000. The court declined to include any of these loans in its distribution of the parties' property because they did not comply with the statute of frauds. *See* Minn.Stat. § 513.33, subd. 2 (2010) (requiring that credit agreements be in writing to be enforceable). Wife argues that the court should have recognized the debt to her sister notwithstanding the lack of documentation because both she and husband acknowledged the debt. The parties' apparent mutual acknowledgement does not undermine the court's decision. The court declined to include the debt in the property distribution because it found the undocumented loan unlikely to be enforceable.

*6 We conclude that the district court did not abuse its discretion by declining to include an unenforceable loan among the parties' debts in the division of their property.

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Wife also asserts that husband borrowed without authority \$30,000 of her nonmarital funds for NLD, which the district court should have reimbursed to her in the property settlement. But wife does not support this assertion with argument or citation to the record. See *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn.App.1997) (stating that an assignment of error in a brief based on mere assertion and not supported by argument or authority is waived “unless prejudicial error is obvious on mere inspection”). Our review of the record indicates that the district court considered wife's claim of nonmarital assets and properly compensated her for the substantiated use of her nonmarital funds.

Mortgage

Wife argues that the district court erred by considering the post-separation mortgage to be marital debt rather than husband's personal debt. Whether property is marital or nonmarital is a question of law, subject to de novo review, but we defer to the district court's underlying factual findings. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn.2008). Property acquired by the parties to a dissolution proceeding, “or either of them,” during the marriage is marital property. Minn.Stat. § 518.003, subd. 3b (2010).

The district court thoroughly considered the history of the parties' indebtedness related to the house. The parties were indisputably jointly responsible for a mortgage of more than \$617,000 in 2004, when they sold their real property to husband's aunt in order to obtain funds with which to partially satisfy the investment debt noted above. They continued to reside in the homestead and paid rent (for the homestead and property used by NLD) to husband's aunt for several years thereafter. In November 2008, during the pendency of this dissolution proceeding, husband repurchased the property from his aunt. Husband's aunt re-conveyed the property to husband and wife, and they incurred mortgage indebtedness in the amount of \$417,000. At the time, wife resided in the homestead and continued to do so throughout this proceeding. The court reasoned that the practical effect of the transactions with husband's aunt was a net benefit to both parties—a temporary transfer of the property away from the parties to permit them access to equity and subsequent repurchase of the property with a mortgage \$200,000 less than that previously owed. On this record, we conclude that the

court did not err in determining that the mortgage is the parties' marital debt.

Eminent-domain proceedings

Wife argues that the district court abused its discretion by failing to appropriately consider the impact of anticipated eminent-domain proceedings. We disagree. The court recognized that “[i]t is economically in the parties' best interests to retain ownership and possession of the [real estate] until such time as development and eminent domain proceedings may occur” but found that to be impossible because of the parties' animosity toward each other. As a compromise, the court permitted the parties to retain joint ownership of the property until the eminent-domain proceedings (or if they agreed to sell it earlier) but ordered wife to vacate the homestead to permit it to be rented. Because the court thoroughly considered the economic, practical, and personal effects of its distribution of the parties' real property, including the anticipated eminent-domain proceedings, it did not abuse its discretion in ordering wife to vacate the homestead.

Unallocated personal property

*7 Wife also argues that the district court erred by failing to allocate certain personal property. Wife asserts that “there are two vehicles and a boat, which have not been accounted for, the value of which should be imputed to [husband] for the purpose of determining the property division.” The court noted in its denial of wife's motion for amended findings that no record was ever made as to the existence of these claimed assets, and wife has not indicated otherwise. The court did not err by not allocating assets of which it had no evidence.

Child Support

Wife argues that the district court abused its discretion in setting child support because it erred in determining the parties' incomes and improperly deferred husband's child-support obligation. We review the district court's decisions in a child-support matter for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn.App.2001). A ruling “that is against logic and the facts on record” exhibits an abuse of discretion, *Rutten*, 347 N.W.2d at 50, as does a misapplication of the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn.App.1998). We will not reverse the district court's findings as to a parent's income unless they are clearly erroneous. *Schallinger v. Schallinger*, 699

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N.W.2d 15, 23 (Minn.App.2005), review *denied* (Minn. Sept. 28, 2005).

Wife's income

Wife asserts that the district court erroneously imputed \$60,000 of annual income to her. We disagree. The court found that wife is capable of earning \$60,000 annually, but it used that figure solely for determining spousal maintenance, not for calculating child support. And wife does not dispute the court's finding that her current monthly income is \$1,083. The court did not clearly err in determining wife's income for child support.

Husband's income

Wife also argues that the district court's findings as to husband's income are unsupported by the record because the findings rely on tax returns that undisputedly do not accurately reflect the extent of husband's earnings. Wife asserts that the court should have imputed income to husband based on his admitted failure to report all of his income. But while the parties agreed that they failed to accurately report their income, they disagreed as to the extent of the underreporting. And the court found both parties to be unreliable sources of financial information, although it considered other evidence of the parties' marital standard of living in finding wife's claims as to unreported income excessive. *See Sefkow*, 427 N.W.2d at 210 (requiring deference to district court's credibility determinations). The court found that husband likely earned more income than was represented in his tax returns but "in the absence of credible evidence [it was] unwilling to speculate concerning [husband's] earning capacity, beyond what was reported on his tax returns." We conclude that the evidence supports both the court's finding as to husband's income and its decision not to impute income based on unreliable evidence.

Deferring the obligation

*8 The district court ordered husband to pay child support starting in April 2011. Wife argues that the court abused its discretion by deferring the obligation based on the seasonal nature of husband's landscaping business because husband has the obligation to budget his resources accordingly and has traditionally done so. But the seasonal nature of the landscaping business was only a small part of why the court deferred the obligation. The court's principal consideration was the

liquidation of NLD, which left husband unemployed. Because husband's work experience was primarily in the landscaping business, the court reasonably anticipated that it would take some time for husband either to establish a new landscaping business (presumably through the purchase of NLD's assets at auction) or to find a job in a different landscaping company. But the court also admonished husband to diligently seek employment and mandated regular reports on his progress toward obtaining employment, stating expressly that the obligation would be advanced if he was able to find employment before April 2011. The court's decision to defer husband's obligation until April 2011 (or earlier if he secured employment before that date) was not an abuse of discretion.

Spousal Maintenance

Wife challenges the district court's spousal-maintenance determination, arguing that the court erred in determining her anticipated income and her reasonable expenses and erred in determining husband's income. We review a district court's spousal-maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn.1997). Findings of fact, including the determination of income for maintenance purposes, must be upheld unless they are clearly erroneous. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn.App.2004).

Wife's income

Wife argues that the district court clearly erred in finding that she is able to earn \$60,000 annual income because this amounted to an improper imputation of income to her without a finding of bad faith. We disagree.

The maintenance statute plainly requires a district court faced with a request for spousal maintenance to determine whether the party seeking maintenance is able to provide adequate self-support based on a variety of factors, including the possibility that a party not currently self-supporting will be self-supporting after a transitional period. *See* Minn.Stat. § 518.552, subs. 1(b), 2(b) (2010). A determination that the party seeking maintenance is or will be able to earn sufficient income to be self-supporting is not an imputation of income. *See Passolt v. Passolt*, 804 N.W.2d 18, 22 (Minn.App.2011) (stating that district court need not find bad faith to consider maintenance recipient's potential for self-support), *review denied* (Minn. Nov. 15, 2011).

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The record amply supports the district court's finding that, based on her extensive and successful work history, wife is able to earn \$60,000 annually as a real estate closer. And the undisputed decline of the real estate market supports the court's finding that wife is not able to earn that much income now or in the near future. The court's finding that wife has the ability to earn significantly more income than she currently earns, and therefore requires only temporary maintenance while she reaches that potential, is not clearly erroneous.

Wife's expenses

*9 Wife also challenges the district court's findings as to her reasonable monthly expenses, arguing that they are erroneous because they do not reflect the marital standard of living. "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*, 675 N.W.2d at 358 (emphasis added); *see also* Minn.Stat. § 518.552, subd. 2(c) (2010) (requiring consideration of "the standard of living established during the marriage" in determining spousal maintenance). But the marital standard of living is only one of numerous factors that inform the district court's decision as to spousal maintenance. *See* Minn.Stat. § 518.552, subd. 2 (2010) (requiring consideration of "all relevant factors" and providing list of necessary considerations); *Napier v. Napier*, 374 N.W.2d 512, 515 (Minn.App.1985) (recognizing that the list of factors is nonexclusive). Indeed, the most important factors in considering a request for spousal maintenance are "the financial need of the party receiving maintenance and his or her ability to meet that need balanced against the financial condition of the spouse who will be providing the maintenance." *Gatfield v. Gatfield*, 682 N.W.2d 632, 638 (Minn.App.2004), *review denied* (Minn. Sept. 29, 2004). Thus, if the parties' resources no longer support the marital standard of living, then a maintenance recipient will have to share that burden. That is the case here.

The district court thoroughly considered the parties' standard of living in evaluating wife's request for spousal maintenance and set wife's reasonable monthly expenses at a "drastically cut," "bare bones" \$2,765. Consistent with its other findings, the court discredited wife's claim that the marital lifestyle was supported by approximately \$160,000 of additional unreported annual income. Rather,

the court considered the parties' homestead, their documented income, and other evidence of their lifestyle, and found their lifestyle to be "comfortable." The court also considered the effects of this proceeding, noting that the parties have expended "significant sums" on litigation and that "both parties are now going to suffer from the choices made and the consequences of the choices made," including most fundamentally the liquidation of NLD. The court did not clearly err in finding that "the standard of living the parties enjoyed throughout the marriage is no longer attainable" and that only a "bare bones" budget was reasonable for both parties.

Husband's income

Wife argues, as she did with respect to the district court's child-support decision, that the district court clearly erred in determining husband's income because it declined to impute income to husband. As discussed above, the court did not abuse its discretion by declining to impute income to husband based on unreliable evidence.

Attorney Fees

*10 Wife challenges the district court's denial of her request for conduct-and need-based attorney fees. In a dissolution proceeding, a district court may award conduct- and need-based attorney fees. Minn.Stat. § 518.14, subd. 1 (2010). We review the district court's decision as to both types of fee awards for an abuse of discretion. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn.App.2007) (conduct-based fees); *Clark v. Clark*, 642 N.W.2d 459, 466 (Minn.App.2002) (need-based fees).

Conduct-based fees

The district court may award attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Minn.Stat. § 518.14, subd. 1. Such an award of conduct-based fees "may be made regardless of the recipient's need for fees and regardless of the payor's ability to contribute to a fee award." *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn.App.2001). But it must be based on specific behavior occurring during the litigation. *Id.* at 819.

The district court made numerous unfavorable findings as to both parties' requests for conduct-based fees. The court found that both parties' conduct in the improper, even fraudulent, operation of NLD, was "offensive to the

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Court,” and that the parties' unwillingness to cooperate and reach decisions, even to their detriment, “defie[d] rational behavior.” Because both parties' conduct was improper, the court found that neither was more at fault than the other and declined to award fees. The court expanded on and reiterated its decision that wife is not entitled to conduct-based fees in its order denying posttrial relief. Because the court thoroughly considered this issue and found, consistent with the record, that both parties' conduct was improper, it did not abuse its discretion by denying wife's request for conduct-based fees.

Need-based fees

The district court shall award need-based attorney fees if it finds

- (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
- (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn.Stat. § 518.14, subd. 1.

Wife asserts that she is entitled to an award of need-based attorney fees based on “the disparity in the parties' incomes,” husband's ability to pay her fees, and her inability to pay the fees. Although the district court did not make findings expressly addressing wife's claim for need-based attorney fees, it made numerous findings as to the parties' significantly diminished means. Because the court found that both parties will be operating on “bare bones” budgets, the court did not abuse its discretion by ordering each party to pay his or her own attorney fees.

Affirmed.

All Citations

Not Reported in N.W.2d, 2012 WL 426597

Footnotes

- * Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.
- 1 A CSM proceeding is a form of alternative dispute resolution that is a binding adjudicative process. See Minn. R. Gen. Prac. 114.02(a)(2). The parties “present their positions to [the CSM] in the same manner as a civil lawsuit is presented to a judge.” *Id.* Although the parties' stipulation afforded the CSM broad authority to decide all trial and posttrial issues, the district court countersigned and thereby adopted all of the CSM's decisions, making the CSM's decisions the decisions of the district court. Under these circumstances, we review the CSM's decision as a decision of the district court. See *Buller v. Minn. Lawyers Mut.*, 648 N.W.2d 704, 707–11 (Minn.App.2002) (reviewing CSM's decision adopted by the district court as a decision of the district court), *review denied* (Minn. Aug. 20, 2002).