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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1965
A08-0434**

In re the Marriage of:
Kelly Leslie Fedt, petitioner,
Respondent,

vs.

Steven Nels Fedt,
Appellant.

**Filed September 2, 2008
Reversed and remanded
Muehlberg, Judge***

Ramsey County District Court
File No. 62-F8-02-001062

John H. Daniels, Jr., Willeke & Daniels, 201 Ridgewood Avenue, Minneapolis, MN
55403-3508 (for respondent)

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Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Muehlberg, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals,
serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

MUEHLBERG, Judge

Appellant challenges the district court's denial of his motion to modify spousal maintenance and the district court's award of attorney fees to respondent. Because we conclude that the district court abused its discretion by denying the motion to modify and because the district court failed to allocate the amount of attorney fees between the need-based and conduct-based awards, we reverse and remand.

FACTS

The 19-year marriage of appellant Steven Nels Fedt and respondent Kelly Leslie Fedt was dissolved in May 2004. During the parties' marriage, appellant worked as a dentist and owned a dental practice, and respondent occasionally worked part-time. At the dissolution trial, the parties agreed that appellant should pay respondent permanent spousal maintenance, but they disagreed regarding the proper amount. The district court determined that appellant's reasonable monthly living expenses were \$6,806 and his monthly net income was \$11,907. The district court also found that respondent's reasonable monthly living expenses were \$7,071 and her monthly net income was \$3,787. The district court ultimately awarded respondent \$5,100 per month in permanent spousal maintenance.

Although the parties had stipulated that respondent should receive permanent spousal maintenance, appellant asked the district court in the dissolution proceeding to "award an interim amount of permanent spousal maintenance and schedule a review

hearing to address spousal maintenance at the time of [his] retirement.” The district court denied appellant’s request, ordered permanent spousal maintenance, and noted:

Present intentions have a way of changing. This is not said to question the sincerity of [appellant’s] testimony that he intends to retire and sell his dental practice by the time he reaches the age of 55. His serious heart attack in 1998 and disaffection with his historical practice support these intentions. Nevertheless, they remain intentions in an uncertain future. As discussed elsewhere, [appellant] is under no legal compulsion to sell his dental practice. . . .

Whether or to what extent [appellant’s] retirement and/or sale of [his dental practice] impacts an award of spousal maintenance to [respondent] in this case is most properly determined in accordance with [the statutory provisions regarding modification of spousal-maintenance awards].

Consistent with his testimony at trial, appellant sold his dental practice and retired in 2005. As a result, he contends that his income dropped from \$331,000 per year to \$133,190. Appellant also contends that his monthly expenses increased because (1) after he retired, he was forced to pay insurance and transportation expenses that were previously paid by his dental practice; (2) he purchased a condominium in Florida as an “investment home” for which his monthly mortgage payment is \$6,568 and monthly association fee payment is \$1,124; and (3) he moved to South Dakota, where he purchased another home.

In 2007, appellant moved the district court to terminate his spousal-maintenance obligation based on changed circumstances. As a basis for his motion, appellant cited his retirement and his inability to pay spousal maintenance. The district court denied

appellant's motion on the ground that he had not established a substantial change in circumstances and stated the following in a short memorandum attached to the order:

[Appellant] cites previous income as \$300,000 in salary per year, along with investment earnings, of \$28,000, and a monthly net income of \$16,952. His monthly budget was \$6,806 per month. [Appellant] cites current income as [\$133,190] . . . for a total monthly net income of \$11,907. His monthly expenses are listed as \$15,891 per month. [Appellant's] increase in expenses is due to his investment purchase of a house in Florida, and an additional home in South Dakota. [Appellant] now resides in South Dakota, but has not sold his home in Roseville, MN.

[Appellant] erred in concluding that his expense on the Florida investment property or his purchase of a new home in South Dakota while retaining the house in Roseville should have any bearing on his ability to pay spousal maintenance to [respondent]. The last estimate of his monthly expenses not including those home purchases would be the \$6,806 per month that the court found during the divorce proceedings. [Appellant's] early retirement means he no longer has to pay into retirement and has no work-related expenses such as insurance, uniforms etc. This should offset any inflation related increases in expenses since the dissolution. After subtracting his expenses of \$6,806 from his monthly income of \$11,907, [appellant] is left with \$5,101, enough to cover the monthly spousal maintenance obligation.

The district court, on respondent's motion, also awarded her need-based and conduct-based attorney fees. The district court stated:

[Appellant] voluntarily retired early despite knowledge of the spousal maintenance requirement; and he has continued to collect a sizeable monthly disability income payment from his disability. [Appellant's] claim of increase[d] expenses related to his investment property purchase, and his decision to purchase a second home out-of-state, is without merit and [respondent] is awarded attorney fees to be paid by [appellant].

This appeal follows.

DECISION

I. *The district court abused its discretion by denying appellant's motion to modify his spousal-maintenance obligation.*

Appellant contends that the district court abused its discretion by denying his motion to modify his maintenance obligation. Whether to modify maintenance is discretionary with the district court. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law.¹ *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997). “Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous.” *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

Minn. Stat. § 518A.39, subd. 2(a) (2006), provides, in relevant part:

The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair:
(1) substantially increased or decreased gross income of an

¹ Respondent argues that our review is limited because appellant “did not move for amended findings or for a new trial in the District Court before filing this appeal.” But motions for a new trial are not authorized in postjudgment modification proceedings and are not, therefore, required to preserve full appellate review. *See Huso v. Huso*, 465 N.W.2d 719, 721 (Minn. App. 1991); *see also Erickson v. Erickson*, 430 N.W.2d 499, 500 n.1 (Minn. App. 1988) (noting that few postjudgment modification proceedings constitute a trial and that if a trial did not occur, a motion for a new trial is “an anomaly”). Motions for amended findings may, however, be made in postdecree modification proceedings. *Hughes v. Hughley*, 569 N.W.2d 534, 536 (Minn. App. 1997). But, although appellant did not move for amended findings, we are still able to review whether the district court committed a legal error and whether the record supports the district court’s findings. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310-11 (Minn. 2003).

obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee

“A movant for maintenance modification must not only demonstrate the existence of a substantial change of circumstances, but is also required to show that the change has the effect of rendering the original maintenance award both unreasonable and unfair.” *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). If modification is warranted, the basic issue becomes balancing the needs of the spouse receiving maintenance against the financial conditions of the spouse providing maintenance. *Dougherty v. Dougherty*, 443 N.W.2d 193, 194 (Minn. App. 1989). And in doing so “the court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under section 518.552 that exist at the time of the motion.” Minn. Stat. § 518A.39, subd. 2(d) (2006).

Appellant argues that the district court’s findings regarding his current expenses and current income are clearly erroneous. We agree.

Appellant’s current expenses

Appellant contends that the district court failed to address his current expenses at the time of the motion to modify and instead relied on the dissolution court’s findings that were made after a trial that had occurred four years earlier. In deciding whether the maintenance is appropriate, a district court must make findings of fact to facilitate appellate review of the district court’s decision. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding for additional findings when a district court made no findings with regard to the parties’ separate expenses or to one of the party’s ability to pay spousal maintenance).

We conclude that the finding regarding appellant's expenses, as set forth in the district court's memorandum, is clearly erroneous. After reciting appellant's description of his current expenses (\$15,891), the district court rejected the argument that appellant's expenses for the properties in Florida and South Dakota qualify as expenses for the purpose of calculating his ability to pay maintenance. The district court then adopted the figure found by the 2004 dissolution court as the amount of appellant's current expenses (\$6,806). But the motion to modify was based not only on appellant's increased expenses from his purchase of the Florida and South Dakota properties, but also on appellant's claim that he has additional out-of-pocket expenses for transportation and insurance that were formerly paid by his dental practice. And the district court's memorandum does not indicate what role (if any) appellant's alleged increase in these expenses of \$2,800 played in its decision to adopt the \$6,806 figure.

Appellant's current income.

Appellant argues next that the district court's finding regarding his current net income is clearly erroneous because the district court took his net income figure from a scenario presented in his affidavit that "by its very terms does not reflect the current circumstances at the time of the motion." Appellant's argument is persuasive for at least two reasons.

First, there is an unexplained disconnect in the district court's order. The district court recited appellant's gross income as \$133,190 (\$88,799 + \$37,714 + \$6,677). As a

result, appellant's gross monthly income should be \$11,099 ($\$133,190 / 12$).² But the district court found that appellant's net monthly income is \$11,907. In other words, appellant's gross monthly income (using the district court's figures) is less than appellant's net monthly income (using the district court's figures). The district court's findings do not explain this inconsistency, and our review of the record does not allay our concern that the district court apparently made a computation error.

Additionally, in support of his motion, appellant submitted a report prepared by his accountant. In that report, appellant's accountant listed one scenario involving appellant's current income and three scenarios involving other possible outcomes. The district court did not adopt the income figure from scenario one of the report, which included appellant's current income, but instead adopted the income figure from scenario four, which was premised on a different set of assumptions relating to his anticipated income. Accordingly, although the number \$11,906 appears in the record, the district court's finding is clearly erroneous because that figure is not appellant's current net income.³

Although we recognize that appellant's effort to inform the district court of his income is not a model of clarity, the district court adopted incorrect figures for appellant's current income. And because the district court's memorandum does not explain the apparent disconnect between its findings of appellant's monthly gross and

² After his deductions, the record indicates that appellant has no tax liability.

³ And even if the district court correctly used the figures from scenario four, it used the wrong number. Scenario four lists net income as \$11,906, whereas the district court determined that appellant's net income was \$11,907.

monthly net income, we reverse and remand for new findings and any alteration of its maintenance-modification decision made appropriate by those findings.

II. The district court abused its discretion by awarding respondent need-based and conduct-based attorney fees.

Appellant contends that the district court abused its discretion by awarding respondent need-based and conduct-based attorney fees of \$26,280.38. A district court “shall” impose need-based attorney fees and “may” award conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2006). An award of fees “rests almost entirely within the discretion of the [district] court and will not be disturbed absent a clear abuse of discretion.” *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999). A district court shall award need-based attorney fees when necessary for the good-faith assertion of a party’s rights if the party seeking fees lacks the ability to pay them and the party from whom fees are sought has the ability to pay. Minn. Stat. § 518.14, subd. 1. To award conduct-based fees, the district court must identify the offending conduct, the conduct must have occurred during the litigation process, and the conduct must have unreasonably contributed to the length or expense of the proceeding. *See id.*

Because the standards for awarding need-based and conduct-based attorney fees are different, fee awards made under § 518.14, subd. 1 “must indicate to what extent the award was based on need or conduct or both.” *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001). Here, the district court indicated that it was awarding respondent attorney fees based on both need and conduct. But the district court did not explain how

much of the fee award was need-based or how much was conduct-based. Although the district court explained that “the award is based primarily on need,” this is insufficiently specific to facilitate our review of the facts supporting the award, and a remand for specific findings is required. *See id.* at 820 (remanding for specific findings and instructions to “apportion any fee award among multiple bases for the award, if necessary”); *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001) (remanding fee issue and stating that the lack of findings “preclude[d] effective review” when a district court awarded need-based and conduct-based attorney fees, but did not indicate how much of the award was for each reason), *review denied* (Minn. Feb. 21, 2001).

Accordingly, we reverse and remand the district court’s denial of appellant’s motion to modify spousal maintenance and the district court’s award of attorney fees. On remand, appellant shall have the opportunity to demonstrate a change in circumstances, and respondent may move for attorney fees. The district court, in its discretion, may reopen the record to consider both issues and shall make findings to support its decision.

Reversed and remanded.