STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0482

In re the Marriage of:
JoAnne Kay Delaney, petitioner,
Appellant,

vs.

Patrick James Delaney,
Respondent.

Filed January 6, 2009
Affirmed
Halbrooks, Judge

Winona County District Court
File No. 85-F1-99-172

Lawrence Downing, Amber Lawrence, Downing, Dittrich & Lawrence, 330 Wells Fargo Center, 21 First Avenue Southwest, Rochester, MN 55902 (for appellant)

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Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

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

HALBROOKS, Judge

In this spousal-maintenance modification dispute, appellant argues that the district court: (1) improperly considered new evidence in granting respondent's motion for amended findings of fact; (2) abused its discretion by reducing respondent's maintenance

obligation; (3) abused its discretion by making the maintenance modification retroactive to the date of the original motion; and (4) abused its discretion by denying appellant's request for need-based attorney fees. We affirm.

FACTS

The 23-year marriage of appellant JoAnne Kay Delaney and respondent Patrick James Delaney was dissolved by a stipulated judgment and decree on April 20, 2000. Respondent agreed to pay appellant $1,500 per month in permanent spousal maintenance. The judgment and decree provided for periodic cost-of-living adjustments, while also allowing for adjustment based on a substantial change of circumstances.

On May 21, 2007, respondent moved the district court to terminate his maintenance obligation. On July 5, 2007, appellant moved to increase spousal maintenance and requested attorney fees. The district court heard the motions on July 17, 2007, and issued an order dated August 24, 2007, that denied both parties' motions.

On October 4, 2007, respondent moved for amended findings or, in the alternative, a new trial. Respondent's motion also included a request to reopen the record. Respondent submitted two affidavits in support of this motion, one dated October 2, 2007, and one dated October 29, 2007. Appellant moved to deny respondent's motion and to grant her $5,000 in attorney fees. The hearing on these motions was held on November 5, 2007.

On January 9, 2008, the district court issued an amended order, reducing respondent's spousal-maintenance obligation to $900 per month retroactive to the date of

respondent's original motion to terminate maintenance and denying appellant's request for attorney fees. This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court abused its discretion when it considered new evidence in granting respondent's motion for amended findings. This court reviews a district court's decision whether to amend a judgment for an abuse of discretion. *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

The purpose of a motion to amend findings is to permit the district court "a review of its own exercise of discretion." *Stroh v. Stroh*, 383 N.W.2d 402, 407 (Minn. App. 1986). "In considering the motion for amendment of its findings, the trial court must apply the evidence as submitted during the trial of the case. It may neither go outside the record, nor consider new evidence." *Rathbun v. W.T. Grant. Co.*, 300 Minn. 223, 238, 219 N.W.2d 641, 651 (1974) (involving a motion for amended findings not made in conjunction with a motion for a new trial); *see also* Minn. R. Civ. P. 52.02 (providing that a motion for amended findings "may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court"); *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006) ("A motion to amend findings must be based on the files, exhibits, and minutes of the court, not on evidence that is not a part of the record."), *review denied* (Minn. Nov. 14, 2006). But when a motion for amended findings is made

in conjunction with a proper motion for a new trial, new evidence can be considered. Minn. R. Civ. P. 59.01; *Chin v. Zoet*, 418 N.W.2d 191, 195 n.2 (Minn. App. 1988).

Here, respondent's October 4, 2007 motion was for amended findings, or, in the alternative, a new trial. But respondent's motion for a new trial was not proper because such a motion is not authorized in post-decree modification proceedings. *See Huso v. Huso*, 465 N.W.2d 719, 721 (Minn. App. 1991). Because respondent's motion for a new trial was not proper and because the consideration of new evidence is not allowed on a motion for amended findings, we conclude that the district court erred in considering the new evidence.

Although the district court's consideration of the two new affidavits was procedurally flawed, we conclude that the error did not affect the substantial rights of the parties and was therefore harmless. *See* Minn. R. Civ. P. 61 (stating that harmless error is to be ignored); *see also Meyer v. Meyer*, 441 N.W.2d 544, 547 (Minn. App. 1989) (stating that, where affirmance was justified by totality of circumstances, it was harmless error for district court to rely on affidavit submitted after hearing), *review denied* (Minn. Aug. 15, 1989).

Appellant was not prejudiced by this error. First, appellant had notice that respondent was offering new evidence to the district court. Respondent's October 4, 2007 notice of motion and motion for amended findings included a request to reopen the record. Appellant addressed this request in her October 9, 2007 responsive notice of motion and motion, requesting that the district court "refuse to consider exhibits and information not in evidence as presented at the evidentiary hearing."

Second, appellant submitted her own new evidence to the district court after the August 24, 2007 order, in the form of two affidavits.

Third, the district court specifically limited its consideration of respondent's new evidence, stating that although it

> does not generally consider new evidence, such as the information supplied by the respondent in his motion for amended findings, the Court will consider the "new" evidence because it supplements the previous record with respect to respondent's income which is necessary for the court's review in a spousal modification case.

The district court, after considering this evidence, found respondent's income to be $50,000—the same determination that it made in its August 24, 2007 order. The district court disregarded respondent's October 4, 2007 income estimate of $45,000 "because of the inconsistency between his July and October affidavits and the lack of inclusion of significant corporate benefits, such as the use of automobile and cell phone." While the district court made reference to an exhibit to respondent's October 2, 2007 affidavit, none of the district court's findings matched the figures offered by respondent. We therefore conclude that appellant was not prejudiced by the district court's consideration of respondent's October affidavits.

Because appellant had notice that respondent was submitting new evidence and, in response, submitted her own new evidence and because the district court's consideration of respondent's new evidence did not change its initial determination of respondent's income, we hold that the district court's error in this matter was harmless.

II.

Appellant makes several arguments that the district court abused its discretion by reducing respondent's spousal-maintenance obligation. A district court has broad discretion in deciding whether to modify a party's spousal-maintenance obligation. *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004). This court will not disturb the district court's decision absent an abuse of that discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). An abuse of discretion occurs when the district court's decision "is against logic and the facts on record." *Kielley*, 674 N.W.2d at 775 (quotation omitted).

A. Determination of respondent's income

"A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004); *see also* Minn. R. Civ. P. 52.01 (stating that findings of fact "shall not be set aside unless clearly erroneous"). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). To make a successful challenge to the district court's findings of fact, the party challenging the findings "must show that despite viewing [the] evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Id.*; *see also Zander*, 720 N.W.2d at 364.

Here, appellant contends that the district court improperly calculated respondent's income by failing to include any corporate benefits. We disagree. The district court

considered the value of respondent's corporate benefits—namely, the car and cell phone—in determining his income. Given the contradictory financial statements of respondent and appellant's failure to challenge them before the district court, we are not convinced that the district court made a mistake in performing the difficult task of determining respondent's income.

B. Appellant's increased income

Appellant argues that her increased income does not constitute a substantial change in circumstances because the increase was anticipated at the time of dissolution. A party seeking modification of maintenance has a dual burden: (1) to demonstrate that a substantial change in circumstances has occurred and (2) to show that the change renders "the original award unreasonable and unfair." *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). Substantially increased income of a party is a change in circumstances that can justify modification. Minn. Stat. § 518A.39, subd. 2(a) (2008). A finding of changed circumstances is a factual finding that will not be set aside unless it is clearly erroneous. *See* Minn. R. Civ. P. 52.01; *Prange v. Prange*, 437 N.W.2d 69, 70 (Minn. App. 1989), *review denied* (Minn. May 12, 1989).

Although the district court did not specifically find a substantial change in appellant's circumstances, we conclude that such a finding can be implied here. *See Hecker*, 568 N.W.2d at 709. The district court noted that appellant had seen a "marked increase in her income," but that respondent "continued to maintain a similar business as he did during the marriage." The district court also analyzed the statutory factors and found the existing maintenance obligation to be unreasonable and unfair. *See id.*; *see*

also Minn. Stat. § 518.552 (2008). This analysis implies a finding of a substantial change in circumstances.

We next address whether the district court "carefully exercised its discretion in modifying the terms of the original judgment and decree which incorporated the parties' stipulation." *Hecker*, 568 N.W.2d at 709. In the context of spousal-maintenance modification, if one party claims that a substantial change was not or could not have been anticipated, a stipulation may be relevant in determining whether the change in circumstances has rendered the terms of the original decree unreasonable and unfair. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). Here, appellant claims that her increase in income was anticipated because the stipulation mentioned that she was a management trainee. But appellant ignores that the judgment and decree also stated that her medical condition made her future employment uncertain. Nor does appellant contest the district court's finding that she has no physical condition bearing on spousal maintenance. We therefore conclude that appellant's claim that her increased income was foreseeable is without merit.

C. Reasonable monthly expenses

Appellant argues that the district court inappropriately reduced her expenses. The only expense reduction specifically challenged by appellant is the adjustment of her monthly mortgage expense from $1,100.62 to $0. The district court noted that the original expense was unreasonable because appellant mortgaged the homestead after the dissolution, and her expenses already included real-estate taxes, insurance, and utilities.

A district court's calculation of living expenses must be supported by the record. *Rask v. Rask*, 445 N.W.2d 849, 854 (Minn. App. 1989). To determine the need for maintenance and the obligor's ability to pay, a court determines the parties' reasonable expenses. *See Kemp*, 608 N.W.2d at 921 (stating that a spousal-maintenance recipient's needs "are often determined by considering her income and available resources versus her reasonable monthly expenses").

Appellant argues that the district court erred by eliminating her mortgage expense when she presented evidence to support that expense. But the district court was not required to accept appellant's evidence regarding her monthly expenses. *See Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) (stating that fact-finder "is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afforded reasonable grounds for doubting its credibility"). Here, appellant received the marital homestead free and clear, mortgaging it after the dissolution of the parties' marriage. Although in her June 28, 2007 affidavit, appellant claims that this mortgage was necessary for repairs and maintenance, she presented no evidence of this beyond her own assertion. The district court closely examined both parties' expenses, and the district court's determination that appellant's mortgage expense was unreasonable has ample support in the record.

D. Issues not adequately briefed

Appellant argues that the district court abused its discretion in reducing respondent's maintenance obligation when her monthly net income already falls short of her monthly expenses. Because appellant cites to no authority for the proposition that it

is an abuse of discretion for a district court to reduce maintenance when the receiving party falls short of its monthly expenses, we decline to reach this issue. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue in absence of adequate briefing).

Appellant also asserts that equalization of income is not a basis on which the district court may set maintenance. Because appellant cites to no authority and makes this assertion solely in a header of her brief, we also decline to consider this issue. *See id.*

III.

Appellant argues that the district court abused its discretion by making the spousal-maintenance modification retroactive to May 10, 2007, the date of respondent's original motion to terminate maintenance. We review a district court's decision regarding the effective date of a spousal-maintenance modification for an abuse of discretion. *Kemp*, 608 N.W.2d at 920–21.

> A modification of support or maintenance . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification *but only from the date of service of notice of the motion* on the responding party and on the public authority if public assistance is being furnished or the county attorney is the attorney of record.

Minn. Stat. § 518A.39, subd. 2(e) (2008) (emphasis added). Respondent served appellant with notice of the motion to terminate spousal maintenance on May 18, 2007. Therefore, the earliest possible date to which the district court could have applied the modification is May 18, 2007. *See Lee v. Lee*, 749 N.W.2d 51, 60 (Minn. App. 2008), *review granted* (Minn. June 25, 2008). Because the statute clearly limits retroactivity to the date the

motion is served, the district court erred in making the modification retroactive to May 10, 2007. But we conclude that the error was de minimis, as the maximum amount of support at stake is approximately $200.[1] We therefore decline to remand for this technical error. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (refusing to remand for de minimis technical error in child-support case); *see also* Minn. R. Civ. P. 61.

IV.

Appellant argues that the district court abused its discretion by denying her request for need-based attorney fees, costs, and disbursements. "We will uphold the district court's denial of attorney fees absent an abuse of discretion by that court." *Walker v. Walker*, 553 N.W.2d 90, 97 (Minn. App. 1996). "The district court will be found to have abused its discretion only if its decision is based on a clearly erroneous conclusion that is against logic and the facts on record." *LeRoy v. LeRoy*, 600 N.W.2d 729, 732 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. Dec. 14, 1999).

In a spousal-maintenance modification proceeding,

> the court shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided 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;

[1] Before the modification, appellant received $1,715.67 per month in spousal maintenance, or about $430 per week. After the modification, appellant is to receive $900 per month, or $225 per week. The amount in dispute for the period of May 10–18, 2007 is therefore approximately $200.

> (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 (2008); *Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999); *Schallinger*, 699 N.W.2d at 24. "Although fees are often awarded in actions to enforce the terms of a judgment of dissolution, the specific facts of a case may warrant the denial of fees." *Yeager v. Yeager*, 405 N.W.2d 519, 523 (Minn. App. 1987) (citations omitted).

Here, appellant submitted monthly expenses to the district court that included $350 for attorney fees. When a party requesting attorney fees has presented monthly expenses to the district court that include an allocation for attorney fees, the district court does not abuse its discretion in refusing to grant attorney fees. *Haasken v. Haasken*, 396 N.W.2d 253, 261 (Minn. App. 1986). Furthermore, a district court does not abuse its discretion in denying attorney fees when, following an award of permanent maintenance, the property and income of the parties should be evenly balanced. *See Nardini v. Nardini*, 414 N.W.2d 184, 199 (Minn. 1987) (stating that district court's "failure to award attorney fees cannot be characterized . . . as an abuse of discretion where the property and income of the parties, following the reapportionment of the marital property and the award of permanent maintenance, should be relatively evenly balanced"); *Reinke v. Reinke*, 464 N.W.2d 513, 516 (Minn. App. 1990) ("Where the property and income of the parties is evenly balanced following reapportionment of the marital property and the award of permanent maintenance, the denial of attorney fees cannot be characterized as

an abuse of discretion."). The district court took great pains to balance the economic positions of the parties in a reasonable and fair manner, altering respondent's maintenance obligation so that the respective after-tax net incomes of appellant and respondent were $21,478.70 and $22,320.63. Based on this record, the district court did not abuse its discretion by denying appellant's request for attorney fees.

Affirmed.