

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1366**

In re the Marriage of:
Stephen Odell Stamper, petitioner,
Appellant,

vs.

Cherie Lynn Stamper,
Respondent.

**Filed July 7, 2009
Remanded
Hudson, Judge**

Otter Tail County District Court
File No. 56-FA-07-1966

Katrina I. Wass, Pemberton, Sorlie, Rufer & Kershner, PLLP, 110 North Mill Street, P.O.
Box 866, Fergus Falls, Minnesota 56538-0866 (for appellant)

Jeffrey D. Skonseng, Krekelberg, Skonseng & Soberg, PLLP, 213 South Mill Street,
Fergus Falls, Minnesota 56537 (for respondent)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and
Muehlberg, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Appellant-father Stephen Stamper argues that the district court failed to make adequate findings to support its award of permanent spousal maintenance to respondent-mother, Cherie Stamper. Father also makes several other challenges to mother's maintenance award. Because the district court did not make adequate findings to support the maintenance award to mother, we remand.

FACTS

The parties married in November 1985 and separated in August 2007. In the dissolution proceeding, they stipulated to the resolution of several issues, including an award to mother of sole physical custody of the parties' remaining minor child, that father would pay child support, and that the parties' marital home would be sold after the youngest child finished high school. A judgment dissolving the marriage and addressing the stipulated issues was entered on February 6, 2008. Issues requiring litigation included the amount and duration of mother's maintenance award.

After a trial and subsequent submissions by the parties, the district court directed entry of a supplemental judgment that incorporated the initial judgment, including its provisions, stating that father would pay monthly child support of \$1,500 until the remaining minor child finished high school in 2010. It also found mother's net monthly income but did not find her reasonable monthly expenses; found father's net monthly income without consideration of his bonuses; found father's reasonable monthly expenses until the child's graduation; required father to pay mother permanent monthly spousal

maintenance of \$1,800 until the minor child finished high school; and required father to pay mother permanent monthly maintenance of \$3,500 after the child finished high school. The judgment noted that the parties intended to sell the marital home after the remaining minor child finished high school and that mother's expenses would then decrease, and stated that father's maintenance obligation would be reduced by \$754 upon sale of the house. Without having made a posttrial motion, father appeals.

D E C I S I O N

Absent a motion for a new trial, the scope of appellate review includes substantive legal issues properly raised to and considered by the district court, whether the evidence supports the findings of fact, and whether those findings support the conclusions of law and the judgment. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2003) (stating that a new-trial motion is not a prerequisite to appellate review of substantive legal issues properly raised and considered in district court); *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976) (stating that absent a motion for a new trial, appellate courts may review whether evidence supports findings of fact and whether findings support conclusions of law and judgment).

Father argues that the district court's award to mother of permanent spousal maintenance is defective because the district court failed to find mother's reasonable monthly expenses. A decision regarding spousal maintenance is discretionary with the district court. *E.g.*, *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). Conducting effective appellate review of a district court's exercise of its maintenance-related discretion is possible "only" when the district

court issues “sufficiently detailed findings of fact to demonstrate its consideration of all factors relevant to an award of permanent spousal maintenance.” *Stich*, 435 N.W.2d at 53. While Minn. Stat. § 518.552 (2008), lists factors to be considered in setting the amount and duration of a maintenance award, no single factor is dispositive and the issue is basically the recipient’s need balanced against the obligor’s financial condition. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982); *see Maeder v. Maeder*, 480 N.W.2d 677, 679 (Minn. App. 1992) (noting both that a maintenance decision generally balances the incomes and needs of the parties and that the central determination in the balancing process is the available resources of each party), *review denied* (Minn. Mar. 19, 1992). The balance between a maintenance recipient’s need for maintenance and an obligor’s ability to pay maintenance “can only be struck when the [recipient’s] needs are, in fact, determined.” *Bliss v. Bliss*, 493 N.W.2d 583, 587 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993); *see Kemp v. Kemp*, 608 N.W.2d 916, 922 (Minn. App. 2000) (applying *Bliss*). Thus, because a finding of a maintenance recipient’s reasonable monthly expenses is critical to a maintenance award, the lack of such a finding has prompted, in whole or in part, remands of maintenance awards. *See, e.g., Stich*, 435 N.W.2d at 53; *Kemp*, 608 N.W.2d at 922; *Bliss*, 493 N.W.2d at 587.

Here, the district court made several recitations of what each party claimed mother’s expenses were, but the district court did not specifically find mother’s reasonable monthly expenses. A district court’s recitation of a party’s claims “is not making true findings” because findings “must be affirmatively stated as findings of the [district] court.” *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989); *see*

Dougherty v. Dougherty, 443 N.W.2d 193, 194 n.1 (Minn. App. 1989) (applying *Dean* in a maintenance-modification context). If findings of mother’s reasonable monthly expenses are absent, identifying the extent of her need for maintenance, and hence review of her maintenance award, is impossible. See *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that “maintenance depends on a showing of need”); *Kemp*, 608 N.W.2d at 921 (stating that “[a maintenance] recipient’s needs are often determined by considering her income and available resources versus her reasonable monthly expenses”).

Because we conclude that the district court’s findings of fact are inadequate to allow review of mother’s maintenance award, we remand the maintenance question to the district court and decline to address father’s other arguments. A remand for findings of mother’s reasonable monthly expenses is consistent with the caselaw addressing the necessity of findings of fact, with the caselaw noting that a district court’s recitation of a party’s claims does not constitute factual findings, and with the caselaw requiring a determination of a maintenance recipient’s need for maintenance.

A remand for findings will also help avoid a possible future problem: Without findings identifying the “baseline circumstances” against which claims of changed circumstances will be measured in future modification proceedings, those modification proceedings will become “unnecessarily complicated.” See *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (noting, in the context of a stipulated maintenance award, the necessity of identifying the “baseline circumstances” against which future allegations of changed circumstances will be measured); *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (stating, in the child-support context, that unless “a support order

provides a baseline for future modification motions by reciting the parties' then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified") (citing *Hecker*, 568 N.W.2d at 709). And the fact that mother's maintenance award is permanent does not render illusory our concern about future modifications; "permanent maintenance" does not mean that the award cannot be modified or terminated. See *Poehls v. Poehls*, 502 N.W.2d 217, 218 (Minn. App. 1993) (noting that "permanent maintenance" is a term of art placing the burden on the obligor to show that a maintenance award should be reduced or terminated due to changed circumstances).

We note that the parties disagree about whether a 2009 increase in mother's health-insurance expense is the basis for the 2010 step increase in her maintenance award. The district court did not explain the step increase, and any relationship between mother's increased insurance expense and the step increase is unclear because the step increase is greater than the increased insurance expense and the step increase takes effect a year after the increase in the insurance expense. On remand, the district court shall make the findings necessary to address the various aspects of the maintenance issue and shall reevaluate the maintenance question in light of those findings. Whether to reopen the record on remand shall be discretionary with the district court.

Remanded.