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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2278**

Mark S. Steinmetz, petitioner,  
Respondent,

vs.

Darlene D. Steinmetz,  
Appellant.

**Filed July 28, 2009  
Affirmed in part, reversed in part, and remanded  
Stauber, Judge**

Hennepin County District Court  
File No. 27FA000261958

J. Peter Wolf, Shelly D. Rohr, Wolf, Rohr & McKenzie, P.A., Suite 1860, 400 Robert Street North, St. Paul, MN 55101 (for respondent)

Richard S. Eskola, 4200 Central Avenue Northeast, Columbia Heights, MN 55421 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and Willis, Judge.\*

**UNPUBLISHED OPINION**

**STAUBER**, Judge

On appeal in this marital dissolution dispute, appellant-wife argues that the district court (1) understated the amount of retroactive spousal maintenance that respondent-

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

husband owes; (2) abused its discretion in refusing to modify respondent's spousal maintenance obligation; and (3) overstated the amount of interest awarded to respondent as a result of the marital lien on the homestead. Respondent filed a notice of review arguing that the district court abused its discretion in determining that appellant should be reimbursed for one-half of the expenditures made to improve the marital home. We affirm in part, reverse in part, and remand.

### **FACTS**

The marriage between appellant Darlene Steinmetz and respondent Mark Steinmetz was dissolved in 2002. The parties had two children during their 25-year marriage, one of whom was a minor at the time of the dissolution. The parties stipulated that physical custody of the minor child should be granted to appellant. At the time of the dissolution, respondent was gainfully employed, with a gross annual income of \$200,000. Appellant was a traditional homemaker throughout the parties' marriage, with little or no employment outside of the home. Although the parties stipulated that appellant was entitled to spousal maintenance, the amount and duration of maintenance was disputed at trial.

Following the trial, the district court found appellant's and respondent's reasonable monthly expenses to be \$8,507 and \$11,112, respectively. The court further found that respondent's budget was higher than appellant's "for the simple reason that the homestead in which [appellant] resides is unencumbered and [respondent's] expense itemization includes a mortgage payment." The court then noted that appellant received approximately \$1.2 million in stocks, bonds, and cash, and approximately \$595,000 in

liquid retirement accounts. Based on the testimony of respondent's expert witness, the district court concluded that the property awarded to appellant could be expected to generate at least \$7,000 per month in income. The court found that in addition to the projected income from the property settlement, appellant needed \$3,000 per month to meet her monthly expenses. Therefore, the court awarded appellant \$3,000 per month in permanent spousal maintenance.

The amended judgment and decree also awarded a homestead equity lien interest to respondent, accruing interest at the judgment rate. The decree further provided that the lien was subject to a deduction for: "The costs of any capital improvements which qualify for a 'stepped-up' basis for federal tax purposes, not including routine maintenance, made on the property subsequent to the entry of the Judgment and Decree." Appellant appealed the district court's spousal-maintenance award, and this court affirmed. *Steinmetz v. Steinmetz*, No. C2-02-1286 (Minn. App. Apr. 1, 2003).

In November 2005, the district court increased appellant's maintenance to \$3,400 per month until "such time as the former homestead has been sold and [appellant] has procured new housing." A few months later, however, respondent moved to suspend his maintenance obligation on the basis that he lost his employment. After the district court granted respondent's motion, suspending his maintenance obligation, the parties reached an agreement in which appellant agreed to pay respondent \$370,000 for his interest in the marital home. The stipulation reserved the issues of claimed capital improvements and the amount of interest due respondent for a future motion hearing.

On June 17, 2008, appellant moved to reinstate respondent's spousal-maintenance obligation at the increased rate of \$8,000 per month, sought a retroactive award of maintenance, and asked to be reimbursed for one-half of certain capital improvements she allegedly made to the homestead, totaling \$23,790. Appellant further requested a decision involving the amount of interest payable by her to respondent with respect to respondent's lien on the homestead.

The district court found that respondent was again employed, earning a salary of approximately \$150,000 per year, which would increase to \$200,000 per year in January 2009. Thus, the district court reestablished maintenance at the rate of \$2,550, increasing to \$3,400 per month on January 1, 2009. The court also found that because respondent had income in 2007 and 2008, appellant was entitled to retroactive maintenance in the amount of \$15,504 for 2007 and \$24,225 for 2008. The district court further found that certain expenditures made by appellant were capital improvements rather than repairs and, therefore, ordered respondent to reimburse appellant for one-half of the amount she paid for the improvements. Finally, the court found that respondent was entitled to interest on his property settlement as set forth in the judgment and decree, and ordered appellant to pay \$29,091.76 to respondent. Appellant appealed, and respondent filed a notice of review challenging the reimbursement of the alleged capital improvements to the marital home.

## DECISION

### I.

This court reviews a district court's decision to award retroactive spousal maintenance for an abuse of discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000). An abuse of discretion occurs if the district court resolves the matter in a manner that is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

The district court found that respondent's salaries for 2007 and 2008 were \$75,879.36 and \$150,000, respectively, and that respondent's salary when his maintenance obligation was originally established was \$200,000. In calculating the retroactive maintenance obligation, the district court found that \$75,789.36 is roughly 38% of \$200,000, and \$150,000 is 75% of \$200,000. Based on these percentages, the district court calculated respondent's monthly maintenance obligation for 2007 and 2008, and then determined the retroactive maintenance amount pursuant to the modified monthly maintenance obligation.

Appellant argues that the district court abused its discretion in calculating respondent's retroactive spousal-maintenance obligation. We agree. The original maintenance award was determined to be the amount appellant needed to meet the expenses that the district court found to be reasonable; it was not determined to be the maximum amount of maintenance that respondent could afford to pay. But the district court calculated arrearages as if the original award was the maximum that respondent could afford, such that any reduction in his income should result in a comparable

percentage reduction in maintenance. We conclude that because the original award was limited by appellant's need, rather than respondent's ability to pay, the calculation of retroactive maintenance must be based on her continuing need in addition to respondent's current ability to pay, regardless of the percentage reduction in respondent's income since the dissolution. Therefore, we remand for calculation of retroactive maintenance based on appellant's need and respondent's ability to pay.

## II.

A party moving to modify an award of maintenance bears the burden of showing a substantial change of circumstances since the maintenance obligation was originally set. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003) (citing Minn. Stat. § 518.64, subd. 2 (2002), now codified as Minn. Stat. § 518A.39, subd. 2 (2006)), *review denied* (Minn. Aug. 5, 2003). “The moving party must then demonstrate that these changed circumstances render the original award unreasonable and unfair.” *Id.* Changed circumstances that will justify modification include substantially increased or decreased income or expenses of either party. Minn. Stat. § 518A.39, subd. 2. The 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).

Appellant contends that she now has a mortgage payment of \$3,189 per month that did not exist when the original maintenance obligation was ordered. Appellant claims

that the mortgage payment is necessary to maintain her standard of living established during the marriage. Thus, appellant argues that the district court abused its discretion in refusing to increase respondent's maintenance obligation because there has been a substantial change in circumstances rendering the existing maintenance obligation unreasonable and unfair.

We note that appellant's mortgage payment arises from her decision to finance the purchase of respondent's interest in the marital home. By mortgaging the marital homestead and then asking for an increase in the maintenance award in order to pay the mortgage, appellant is essentially asking the court to order that respondent finance appellant's buyout of his interest in the homestead.

Nevertheless, we agree that a mortgage payment is a change in circumstances that could potentially render the existing maintenance award unreasonable and unfair. The district court acknowledged this potential future change in circumstances in prior orders and seemed to indicate that once the parties' children were emancipated, appellant would procure a more practical, implying smaller, house as she might no longer need a 4,500-square foot home. This indication is reflected by a footnote in the court's November 9, 2005 order in which the court noted that appellant "was expected to sell the house after [the parties' minor child] emancipated and the Court envisioned that [appellant] would secure new housing and might still have money to invest." However, in denying appellant's motion to modify the maintenance award, the district court failed to address the impact of appellant's changed circumstances on the existing maintenance award. Therefore, we remand the issue for a determination of whether appellant's decision to

incur a mortgage payment has rendered the existing maintenance award unreasonable and unfair. On remand, the district court should consider the nature of the home appellant decided to purchase, in light of the facts that the parties' children are emancipated and appellant is currently living in the marital home alone.

### **III.**

The judgment and decree required appellant to pay interest at the judgment rate on respondent's lien on the homestead, beginning 90 days after the parties' minor child was emancipated. After appellant purchased respondent's interest in the homestead, the district court found that respondent was entitled to interest on his lien for the period between September 1, 2005, and October 15, 2007. But the district court found that appellant owed no interest to respondent for the period from September 1, 2006 to January 7, 2007, due to the parties' mutual agreement to take the home off the market for that time to mourn the tragic death of their son. The court then determined that respondent was entitled to interest in the amount of \$29,091.76.

Appellant argues that the district court abused its discretion in determining the amount of interest awarded to respondent because (1) respondent's conduct prevented the home from being placed on the market in September 2005 and (2) respondent insisted on overpricing the home, causing a significant delay in the sale process. Appellant also argues that four months was not sufficient time to grieve the passing of their son.

We disagree. Each party faulted the other for the home's failure to sell, and the district court implicitly found respondent to be more credible on the issue than appellant. *See* Minn. R. Civ. P. 52.01 (stating that if the evidence is in conflict, this court defers to



the district court's credibility determinations). Moreover, appellant has not shown that the district court abused its discretion by ruling that the decision to allow the parties four months to grieve the passing of their son before putting the home back on the market is not an abuse of the district court's discretion. Accordingly, we affirm the district court's determination of the amount of interest to be awarded to respondent as a result of the marital lien on the homestead.

#### IV.

Respondent argues that the district court abused its discretion in ordering him to reimburse appellant for one-half of certain expenditures appellant made for work on the marital home because the expenditures were not made for capital improvements. We disagree. In a somewhat different context, the Minnesota Supreme Court has defined an improvement as: “[A] permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” *Kloster-Madsen, Inc. v. Tafi's, Inc.*, 303 Minn. 59, 63, 226 N.W.2d 603, 607 (1975) (quotation omitted) (holding that electric work was an improvement). Subsequent decisions have amplified this definition. *See, e.g., Sandberg v. Johnston*, 415 N.W.2d 346, 348-349 (Minn. App. 1987) (air conditioner and new driveway are capital improvements); *Henry v. Raynor Mfg. Co.*, 753 F. Supp. 278, 281-82 (D. Minn. 1990) (garage door and opener are capital improvements).

Here, appellant's claimed capital improvements consisted of (1) \$1,300 for sidewalk replacement; (2) \$1,995 for installation of a garage heater; (3) \$495 for

installation of air filter in the home; and (4) \$20,000 for installation of a maintenance-free filter system for the pond. As the district court found, the improvements made by appellant are consistent with *Kloster-Madsen's* definition of capital improvements. The district court thoroughly analyzed each improvement, and the court's findings are supported by the record. Moreover, the amended judgment and decree did not require that appellant consult with respondent before making the improvements, and there is no Minnesota law mandating that appellant consult with respondent before making such improvements. Accordingly, the district court did not abuse its discretion in ordering respondent to reimburse appellant for one-half of the capital improvements.

**Affirmed in part, reversed in part, and remanded.**