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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1547**

In re the Marriage of:
Renita Lanette Ray, petitioner,
Appellant,

vs.

David Gerald Ray,
Respondent.

**Filed August 18, 2009
Affirmed
Stauber, Judge**

Sibley County District Court
File No. 72F499000057

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MN 55387 (for appellant)

David G. Ray, 38282 170th Street, Green Isle, MN 55338 (pro se respondent)

Considered and decided by Stauber, Presiding Judge; Toussaint, Chief Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal in this spousal-maintenance dispute, appellant-wife argues that the
district court erred in granting respondent-husband's request for reduction of his spousal-
maintenance obligation and in awarding conduct-based attorney fees to both parties.

Because the district court's findings are adequately supported by the record, and the court did not abuse its discretion in modifying husband's spousal-maintenance obligation or awarding attorney fees to both parties, we affirm.

FACTS

On July 19, 2000, the marriage between appellant Renita LaNette Ray (wife) and respondent David Gerald Ray (husband) was dissolved. The judgment and decree ordered husband to pay wife temporary spousal maintenance in the amount of \$220 per month. Wife moved for amended findings and conclusions of law, requesting a \$500 increase in spousal maintenance, and the district court subsequently entered an amended judgment and decree ordering husband to pay wife permanent spousal maintenance in the amount of \$600 per month. In support of this award, the court found that "[wife] does have a diagnosed medical condition, which does affect her ability to work full-time or to work at many occupations, including the one for which she was educated, but does not preclude her from working more than her current part time hours," that "[husband] does have the ability to contribute to [wife's] ongoing support," and that "[wife] lacks sufficient property and resources to provide on her own for her needs and self-support." At the time of the amended judgment and decree, husband was self-employed as a computer consultant, earning a gross annual income of \$65,285.70. Wife was employed part-time as a guardian ad litem for Sibley County, earning a gross annual income of \$7,756.

Following the amended judgment and decree, the proceedings in this matter were greatly protracted by motions and filings of both parties. Husband filed the present

motion to terminate or reduce his spousal-maintenance obligation in January 2007, asserting in his supporting affidavit that his income had significantly decreased over the past five years, and that wife was cohabitating and had “secreted her living situation by continuing to use a post office box as her address.” Along with his notice and motion, husband served wife with interrogatories requesting information regarding her income and living situation. Wife then moved for an order (1) requiring that husband “obtain the written permission of the chief judge before bringing any more motions against [wife];” (2) increasing her maintenance award based on her increased need and husband’s increased income; (3) awarding her attorney fees based both on her need and husband’s conduct; and (4) denying husband’s requests for relief. Wife objected to husband’s interrogatories but agreed to provide some information regarding her current income and employment.

Following a hearing on the parties’ motions, and after receiving additional written submissions from both parties, the district court issued an order denying husband’s and wife’s motions with respect to spousal maintenance and denying wife’s motion for attorney fees. In its accompanying memorandum, the court found that although husband’s “gross income has decreased by at least 20 percent from his income at the time the maintenance obligation was set, and that the reduction is through no fault or choice of his [own],” husband had not met his burden of showing that the reduction in his income made the existing maintenance obligation unreasonable or unfair. The court also expressed frustration with the monthly budgets and incomes submitted by the parties, stating that “[i]f the incomes reported are to be believed, how in the world can either

party put forth budgets along the lines submitted, budgets that include [excessive expenditures].”

Husband then sent the district court a letter asking for permission to file a motion for reconsideration under Minn. R. Gen. Pract. 115.11, which the district court granted. Husband then sought an order “[c]ompelling [wife] to fully respond to [his] Interrogatories and Request for Production of Documents . . . which were not previously answered in their entirety,” as well as for “attorneys fees and court costs incurred in this proceeding.” Husband asserted that wife provided incomplete or evasive responses to his interrogatories regarding her health, current employment, income information, living arrangements, and monthly expenses. He also argued that wife received income and benefits beyond what she reported in her 2006 federal income tax return. In response, wife again moved for an order requiring husband “to obtain written permission from the chief judge before bringing any more motions against [her],” and for attorney fees, asserting that she made adequate discovery disclosures and that “[t]here is nothing else besides my tax returns that [husband] needs to determine my income.”

The district court subsequently issued an order granting husband’s motion for reconsideration and rehearing, “PROVIDED THAT this relief is conditioned upon the payment to Sibley County District Court Administration of \$2,500 as and for attorney fees and costs from [husband] to [wife],” to be “held in trust by Court Administration pending the further Order of this Court.” In its accompanying memorandum, the court indicated that although husband had prior opportunities to compel discovery but failed to do so, it was granting husband’s motion for reconsideration because: “In an attempt to

fairly and reasonably put the maintenance matter to rest, the only way to proceed is to compel the discovery and Order a rehearing by allowing [husband] to, in effect, buy that opportunity by awarding [wife] fees associated with the entire process.”

Following in camera review of the discovery documents submitted by wife and a hearing on April 24, 2008, the district court issued an order granting husband’s motion to reduce his maintenance obligation, denying wife’s motion for an upward modification of husband’s maintenance obligation, awarding attorney fees to both parties, and granting wife’s motion to require husband to get the chief judge’s written permission before filing any additional motions. During the April 24 hearing, the district court received documents related to wife’s 2006 bankruptcy filing that husband obtained through a public records search. This appeal follows.

D E C I S I O N

I. Maintenance modification

Whether to modify maintenance is discretionary with the district court. *Youlter v. Youlter*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). A district court abuses its discretion when its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Maintenance-related findings of fact are upheld unless clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

A modification of spousal maintenance is appropriate when a change in circumstances renders the original award “unreasonable and unfair.” Minn. Stat. § 518A.39, subd. 2(a) (2008). A substantial increase or decrease in the gross income of

an obligor or obligee, or a substantial increase or decrease in the needs of an obligor or obligee, are sufficient to show changed circumstances. *Id.*

Here, the district court found that:

after considering the most recent submissions, wading through the conflicting numbers provided by [wife], and even after, in effect, imputing income to [wife] which would be more consistent with her disclosures in the bankruptcy proceeding, the result is that while [husband] continues to outearn [wife], the overall financial circumstances from the 2001 award to now have changed significantly and sufficiently to warrant a reduction in the amount to be paid by [husband] to [wife].

In reaching its decision, the district court considered the following financial data: wife's 2001 gross annual income of \$7,800 and 2006 gross annual income of \$17,400 to \$30,600; wife's 2001 gross annual expenses of \$38,000 and 2006 gross annual expenses of \$34,800; husband's 2001 gross annual income of \$65,300 and 2006 gross annual income of \$41,500; and husband's 2001 gross annual expenses of \$32,300. The district court was unable to determine husband's 2006 gross annual expenses.

Wife argues that the district court's finding of her 2006 income was clearly erroneous because the court improperly relied on documents she filed for purposes of bankruptcy. Wife contends that "[i]n concluding that these documents presented conflicting information, the [district] court failed to consider the different purposes served by each of these documents."

But the district court's finding of wife's 2006 annual gross income as the range of \$17,400 to \$30,600 plainly reflects the court's understandable confusion regarding the multiple documents in the record related to wife's income and its inability to reconcile

the differences in income that wife reported on the various documents. Wife reported monthly income of \$2,144 to \$3,180¹ during her 2006 bankruptcy proceeding, but she reported gross annual income of only \$15,534 on her 2006 tax return. Other than explain the different purposes of the bankruptcy forms, wife does not clarify the substantial discrepancy between the income she reported in bankruptcy, under penalty of perjury, and the income she reported on her 2006 tax return. Thus, because the record supports the district court's finding of a substantial increase in wife's income, we conclude that the district court did not abuse its discretion in modifying husband's spousal-maintenance obligation to wife.

We also reject wife's claim that the district court shifted the burden of proof to her to justify continuation of the maintenance award at the level of \$600 per month. *See Poehls v. Poehls*, 502 N.W.2d 217, 218 (Minn. App. 1993) (stating that "permanent maintenance" is a term of art that places a burden on the obligor to demonstrate that a maintenance award should be modified due to changed circumstances); *see also Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000) ("While permanent maintenance does not compel future self-sufficiency by the recipient, it also does not preclude an obligor from subsequently demonstrating that a recipient has, in fact, become self-sufficient."). The amended judgment and decree left open the possibility that although permanent, the award could be modified in the future. And husband would not be able to prove changes in wife's income unless wife submitted accurate documentation pursuant to husband's discovery requests. The district court worked fairly and diligently to obtain whatever

¹ Both of these numbers include husband's spousal-maintenance payment to wife.

information it could with respect to the parties' incomes and expenses, and its frustration with both parties in their failure to timely and accurately provide such information is evident in the court's orders. Wife's failure to provide accurate income information or to reconcile the discrepancies in her income information is not indicative of the district court shifting the burden of proof to wife to justify her maintenance award.

II. Attorney Fees

An award of conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2008), "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).

Minn. Stat. § 518.14, subd. 1, permits the award of conduct-based fees "against a party who unreasonably contributes to the length or expense of the proceeding." The district court must make findings regarding conduct-based fees "to permit meaningful appellate review" of the propriety of an award. *Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992). Conduct-based attorney fees must be based on behavior occurring during the litigation, and the court must identify the specific conduct on which it bases the fee award. *Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001).

In making its award of attorney fees to both parties, the district court "[took] into account [wife's] conduct and apparent lack of good faith in the manner with which she has responded to discovery requests, and the conflicting and even contradictory nature of those responses." The court found that wife's "unjustifiable conduct in that regard has required [husband] to go more than the extra mile in ferreting out the information that he

was entitled to receive under normal discovery rules.” And with respect to husband’s conduct, the court found that “it is also evident [husband] could have proceeded in a more expeditious fashion to obtain the information, such as by retaining counsel to cut to the chase, a course of action he finally took.”

a. Award of attorney fees to husband

The district court ordered wife to pay husband \$2,000 in attorney fees “as a direct result” of her failure to comply with husband’s discovery requests, “and in recognition of the conflicting and even contradictory nature of the responses finally submitted.”² Wife argues this award should be reversed because husband first moved for attorney fees and raised the inadequacy of wife’s discovery responses in his motion for reconsideration. Wife does not challenge the amount of the award to husband, but argues that the district court “failed to articulate any specific deficiencies” in her conduct to support the award. Wife only minimally briefs these arguments and fails to cite any supporting authority. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that 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).

Even considering wife’s claims on the merits, however, we conclude that they are unavailing. The district court specifically attributed its award of attorney fees to husband to wife’s evasive and conflicting discovery responses, which unreasonably contributed to

² The district court further ordered that this amount would be paid at a rate of \$125 per month, to be deducted from husband’s payment of spousal maintenance to wife.

the length of the proceedings. Therefore, the court did not abuse its discretion in awarding conduct-based attorney fees to husband.

b. Award of attorney fees to wife

The district court ordered that “Court Administration shall pay over to [wife] and her counsel the sum of \$1,250.00 from the deposit made by [husband] pursuant to [the court’s prior order]. The remainder of the deposit required by that Order shall be refunded to [husband] and his counsel.” Wife argues her attorney-fee award should be increased to include the additional \$1,250 that husband placed in trust with court administration, and which the district court refunded to husband. Wife contends that she “submitted to the court a detailed itemization of the attorney’s fees [she] incurred as a result of responding to [husband’s] eleventh hour claim that [she] had failed to respond adequately to discovery,” but does not cite where this information is included in her appendix or the record. *See* Minn. R. Civ. App. P. 128.03 (stating that counsel submitting briefs to this court are required to provide specific citations to factual materials in the appendix and the district court record).

A review of the materials in wife’s appendix and the district court record reveals a statement that wife has “incurred about \$10,000.00 in legal fees as the result of [husband’s] continued motions and appeals,” but there does not appear to be an itemized listing of wife’s attorney fees. The district court’s awards of attorney fees to both parties were meant to allow “counsel for each party to be partially compensated for the diligent work that each has put into this file, work that was made much more difficult by the conduct of their individual clients in trying to withhold information from one another or

make life difficult for one another.” The court’s award of conduct-based fees is discretionary, and we conclude that the district court did not abuse its discretion in awarding wife \$1,250 in attorney fees in this case.³

Affirmed.

³Husband briefs this matter as if he were also an appellant, raising several additional issues related to portions of the district court’s decision that are unfavorable to him. But husband did not file a notice of review, and therefore the issues he raises are not properly before this court. *See City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996) (stating that issues decided adversely to respondent are not properly before court if no notice of review filed).