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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-546**

In re the Marriage of:  
Floyd E. Balstad, petitioner,  
Respondent,

vs.

Joyce C. Balstad,  
Appellant.

**Filed February 9, 2010  
Affirmed  
Toussaint, Chief Judge**

Polk County District Court  
File No. 60-F0-90-000771

Anne M. Rasmusson, Johannson, Rust, Stock & Rasmusson, P.A., Crookston, Minnesota  
(for respondent)

Alan M. McDonagh, Kari R. Winning, Carter McDonagh P.L.L.P., Grand Forks, North  
Dakota (for appellant)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and  
Bjorkman, Judge.

**UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Appellant Joyce C. Balstad challenges the district court's grant of respondent  
Floyd E. Balstad's motion to terminate his spousal-maintenance obligation. Because the

district court's conclusion that circumstances had changed, making the maintenance award unreasonable and unfair, was not an abuse of discretion, we affirm.

## DECISION

### I.

Whether to modify maintenance is discretionary with the district court. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). Though the district court has broad discretion, “we have suggested that trial courts exercise that discretion carefully and only reluctantly alter the terms of a stipulation governing maintenance.” *Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981). 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.*; *Dougherty v. Dougherty*, 443 N.W.2d 193, 194 (Minn. App. 1989).

Appellant and respondent were granted a dissolution judgment in 1991. Pursuant to the terms of the final judgment and decree, appellant was granted permanent spousal maintenance, with a provision allowing review of the maintenance award after five years.

The district court denied motions brought by respondent to modify his maintenance obligations in 1996 and 2002. Respondent brought the current motion to modify or terminate his maintenance obligation, arguing that his income had substantially decreased due to his retirement and that appellant's income had substantially increased since the original stipulated maintenance order. In granting respondent's motion and terminating maintenance, the district court found that appellant's income had substantially increased since 1991 and that respondent's income had substantially decreased due to his good-faith retirement. The district court noted that, because appellant's 1991 income of \$6,670 had increased in 2007 to over \$72,000, she had sufficient income to meet her own needs without spousal support. The district court then concluded that the award was unreasonable and unfair based on appellant's increased income and decreased needs and respondent's decreased income due to retirement.

Appellant does not challenge the numbers cited by the district court but argues that the district court erred in looking back to appellant's income at the commencement of spousal maintenance and instead should have looked to the last year that a motion to modify spousal maintenance was denied. Whether there has been a substantial change in circumstances for the purpose of modifying spousal maintenance is determined by whether there has been a change in circumstances since the award was determined or since "the award was last modified." *Wiese v. Wiese*, 295 N.W.2d 371, 372 (Minn. 1980); *see Phillips v. Phillips*, 472 N.W.2d 677, 680 (Minn. App. 1991) (discussing modification of support after prior motion to modify was denied). The district court properly looked to the circumstances at the time of the original award because the award

has not been modified. In looking back to circumstances at the time of the original award and the present circumstances of the parties, the district court's determination that appellant's financial circumstances have substantially changed is supported by the record and is not an abuse of the district court's discretion.

Appellant further argues that the district court abused its discretion in determining that respondent's financial circumstances have substantially changed to respondent's detriment because respondent's gross income has increased and, at the time of the 2008 motion for modification, was higher than it had been in any previous years. The district court noted that respondent's income was significant in 2008 but that this income "will no longer be generated as he is, in fact, retired."<sup>1</sup> Appellant argues that it was an abuse of the district court's discretion to consider a speculative reduction in income when respondent's income has not yet decreased. But respondent is not speculating about retiring; respondent has retired. He submitted documents to support his claim of reduced income, outstanding debts, and present retirement. The district court's conclusion that respondent's income will significantly decrease due to his retirement is supported by the record and was not an abuse of discretion.

Finally, appellant argues that the district court failed to consider her impending retirement when it concluded that she was fully able to support herself at a standard of

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<sup>1</sup> We observe that both the district court and the parties describe respondent's profits from the sale of farm equipment as "income." But "gross income" for the purposes of spousal maintenance is defined as "any form of periodic payment to an individual." Minn. Stat. § 518A.29(a) (2008); *see also Lee v. Lee*, \_\_ N.W.2d \_\_, (Minn. Dec. 3, 2009) (concluding that legislature intended section 518A.29's definition of gross income to apply to chapter 518, which governs maintenance).

living above what she experienced in the marriage. The district court noted appellant's impending retirement but stated that appellant had sufficient income to meet her own needs and that appellant's current needs reflect a standard of living that had substantially increased in quality since the marriage dissolution. The record reflects that appellant's standard of living has increased significantly since the dissolution, and appellant submitted documents indicating that her expected expenses were approximately \$56,712 per year. Appellant's income tax return for 2007 states her gross income was \$70,621, of which only \$10,546 came from her present employment as a waitress. Even if appellant were to retire and lose her waitressing income, the record reflects that appellant would still have annual gross income in excess of her needs. On this record, the district court's conclusion that appellant's then-current income was in excess of her needs was not an abuse of discretion.

**Affirmed.**