

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1272**

Christine Diane Eyal, petitioner,
Appellant,

vs.

Ephraim Eyal,
Respondent.

**Filed March 13, 2017
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-FA-09-8657

Christine D. Eyal, St. Louis Park, Minnesota (pro se appellant)

Joani C. Moberg, Susan A. Daudelin, Henschel Moberg Goff, P.A., Minneapolis,
Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant-mother challenges the district court's denial of her motion to reinstate spousal maintenance following expiration of the maintenance period, asserting that the district court continued to exercise jurisdiction over spousal maintenance, and further asserting that the district court abused its discretion by declining to order respondent-father

to produce financial records regarding his bonus. Because we conclude that the district court did not err in its interpretation of the marriage-dissolution judgment and decree, and did not abuse its discretion in denying mother's discovery request, we affirm.

FACTS

Father and mother married in June 1999; the marriage was dissolved pursuant to a marriage-dissolution judgment and decree entered by the district court in February 2011 (the judgment). At the time of dissolution, the parties had two minor children, aged eight and two. The judgment granted joint legal custody of the minor children and awarded sole physical custody of the minor children to mother, with parenting time to father. Rather than calculating child support pursuant to the Minnesota Child Support Guidelines, the parties agreed that mother would receive spousal maintenance and father would pay for the children's expenses. The judgment explicitly provided: "All other child support is hereby *reserved*." (Emphasis added.) The district court later modified custody and awarded father permanent sole physical custody of both minor children.

Father was employed as the President and CEO of IFP, Inc., earning a gross annual base salary of \$208,126, plus employment benefits. Mother was not employed. The judgment awarded spousal maintenance to mother as follows:

[C]ommencing November 15, 2010, [Father] is ordered to pay to [Mother] the sum of \$5,500 per month for 24 months, payable in full on the fifteenth day of each month until October 31, 2012, [Mother's] remarriage or until either party's death, whichever first occurs. As and for additional spousal maintenance, commencing November 15, 2012 [Father] is ordered to pay to [Mother] the sum of \$3,500 per month for 36 months, payable in full on the fifteenth day of each month until October 15, 2015, [Mother's] remarriage or until either party's

death, whichever first occurs. . . . The Court shall *retain* jurisdiction to modify the award of spousal maintenance, but shall do so only upon a showing of a significant change of circumstances pursuant to Minn. Stat. § 518A.39.

(Emphasis added.)

The judgment further provided for division of father’s bonus income for fiscal years 2010 through 2015.

Father made his last required maintenance payment in October 2015. Nearly five months later, mother sought a three-year “extension of marital support,” as well as an order from the court directing father to “provide documented verification of the amount of [father’s] 2015 bonus paid in 2016.” Father challenged the district court’s jurisdiction to address the issue of spousal maintenance, arguing that he had tendered “all monthly [maintenance] payments as ordered.” Father also submitted correspondence from his employer indicating that none of its employees or officers, including father, received a bonus for the 2015 fiscal year. The district court agreed with father and denied mother’s requests. The district court determined that father made his final maintenance payment in October 2015, and did not receive a bonus for the 2015 fiscal year. The district court held that because mother’s motion came after father’s final maintenance payment, the court “has no authority to address the request to reinitiate a maintenance obligation.”

Mother appeals.

DECISION

I. The district court did not err by determining that it lacked jurisdiction to reinstate spousal maintenance, where the maintenance period had expired and the judgment did not expressly reserve jurisdiction.

The first issue presented is whether the district court erred by declining to consider mother's motion to extend spousal maintenance payments, after the final payment had been made. "The district court has broad discretion when dividing marital property in a dissolution action and will not be reversed absent an abuse of that discretion." *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003). However, we previously determined that "issues of subject-matter jurisdiction and the interpretation of statutes and stipulations in dissolution judgments are questions of law, which we review de novo." *Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008) (citing *Olmanson v. LeSueur County*, 693 N.W.2d 876, 879 (Minn. 2005) (statutory interpretation); *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (subject-matter jurisdiction); *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993) (stipulations in dissolution judgments)), *review denied* (Aug. 19, 2008).¹

Following dissolution, the district court has discretion to modify the amount of maintenance or support money, "from time to time, on motion of either of the parties."

¹ The parties treat this case as one raising a jurisdictional question. This decision therefore rests on two assumptions: first, that the matter is jurisdictional in nature; and second, that the type of jurisdiction involved is subject-matter jurisdiction. *Cf. Moore v. Moore*, 734 N.W.2d 285, 287 n.1 (Minn. App. 2007) ("Courts and parties often use concepts and language associated with 'jurisdiction' imprecisely to refer to, among other things . . . nonjurisdictional limits on a court's authority to address a question."), *review denied* (Minn. Sept. 18, 2007).

Minn. Stat. § 518A.39, subd. 1 (2016). However, it is a well-settled principle under Minnesota law that the district court lacks jurisdiction to consider a request to modify or extend a spousal maintenance award when there is no existing obligation to pay maintenance and the district court has not reserved jurisdiction. *See, e.g., Loo v. Loo*, 520 N.W.2d 740, 745 (Minn. 1994) (“Once maintenance payments end, the court is without jurisdiction to modify maintenance.”); *Eckert v. Eckert*, 299 Minn. 120, 125, 216 N.W.2d 837, 840 (1974) (“[W]here the decree does not specifically reserve jurisdiction of the issue of alimony for determination at a later date, no such jurisdiction can later be claimed.” (quotation omitted)); *Moore v. Moore*, 734 N.W.2d 285, 287 (Minn. App. 2007) (“[W]here there is no existing maintenance award and no reservation of ‘jurisdiction’ over maintenance, the district court lacks ‘jurisdiction’ to address maintenance.”) (footnote omitted), *review denied* (Minn. Sept. 18, 2007).

Father made his final maintenance payment in October 2015, and he did not receive a bonus in 2016 for the 2015 fiscal year. Under the reasoning articulated in *Loo*, *Moore*, and *Eckert*, mother should have served and filed her motion to extend the maintenance award before father’s final October 2015 payment or, assuming father received a bonus for fiscal year 2015. However, because mother delayed filing her motion until nearly five months after the maintenance period expired, we agree with the district court that it lacked jurisdiction to consider her untimely request to further extend spousal maintenance for an additional three years.

Mother argues that the district court continues to exercise jurisdiction over the matter because the judgment “expressly reserved jurisdiction over spousal maintenance.”

This argument appears to be based on the portions of the judgment stating that “[t]he Court shall *retain* jurisdiction to modify the award of spousal maintenance, but shall do so only upon a showing of a significant change of circumstances pursuant to Minn. Stat. § 518A.39.” Noting that the judgment says that the district court will “retain jurisdiction” to “modify” maintenance, and that, in the context of spousal maintenance, the word “reserve” is a term of art, father points out that the judgment expressly reserved jurisdiction over other child support, but did not expressly provide that the court’s jurisdiction to modify spousal support was similarly reserved. Therefore, father contends, the lack of this term of art regarding maintenance requires the conclusion that the relevant part of the stipulated judgment should not be given the meaning associated with the term of art that it did not use. This is a powerful argument. Assuming, without deciding, that a judgment’s use of “retain” could be read in a manner similar to the “reserve” term of art, mother’s argument fails for two reasons.

First, because mother’s argument is based on the provision in the judgment stating that “[t]he Court shall retain jurisdiction to modify the award of spousal maintenance, but shall do so only upon a showing of a significant change of circumstances pursuant to Minn. Stat. § 518A.39,” the only authority retained or reserved by the district court was the authority to modify the then-existing maintenance award. The plain language of the provision does not authorize the district court to modify, extend, or reinstate the maintenance award after the award expired. *See Eckert*, 299 Minn. at 125, 216 N.W.2d at 840 (noting, with respect to previously terminated spousal maintenance, that the courts may not modify something that has ceased to exist). Thus, the district court’s authority to

modify the award *during* the maintenance period “upon a showing of a significant change of circumstances” within the parameters of section 518A.39 does not, and cannot, amount to a reservation of the court’s authority to “modify” maintenance *after* expiration of the maintenance period.

Second, apart from the fact that the judgment did not attempt to preserve for the district court the ability to address maintenance after the award expired, Minnesota caselaw informs us that when a maintenance award expires following the last payment, the district court loses the ability to modify, extend, or otherwise alter maintenance payments. *Eckert* provides that a district court may not, after a maintenance award expires, consider a request to modify an award unless it has “*reserve[d]* jurisdiction,” 299 Minn. at 125, 216 N.W.2d at 840 (emphasis added and quotation omitted). Minnesota cases accord with this decision. *See, e.g., McCarthy v. McCarthy*, 293 Minn. 61, 66, 196 N.W.2d 305, 308 (1972) (noting that, in a case where maintenance was not awarded, if the decree does not expressly *reserve* jurisdiction of the issue of alimony, jurisdiction may not be claimed at a later date) (emphasis added); *see also Moore*, 734 N.W.2d at 287 (noting that, in a case where a maintenance award had expired, a district court lacks authority to modify maintenance unless expressly “reserved”); *Diedrich v. Diedrich*, 424 N.W.2d 580, 583 (Minn. App. 1988) (“Generally, if the maintenance obligation terminates under the terms of the original decree, and the [district] court has not expressly reserved jurisdiction, the [district] court is thereafter without jurisdiction to modify.”). Because the maintenance period expired before Mother filed her motion, there was nothing left for the district court to modify.

In sum, we hold that the plain language of the judgment, which did not seek to preserve in the district court the ability to address maintenance after the award expired, and our caselaw, both support the district court’s decision that it lacked jurisdiction to modify a maintenance award where jurisdiction was not expressly reserved, and where the maintenance period expired prior to the motion’s filing.

II. The district court did not abuse its discretion by denying discovery.

Mother challenges the district court’s order denying discovery. “The district court has broad discretion in granting or denying discovery requests. Absent a clear abuse of discretion, the district court’s decision regarding discovery will not be disturbed.” *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006) (citation and quotation omitted), *review denied* (Minn. Mar. 28, 2006).

Mother sought an order from the court directing father “to provide documented verification of the amount of [his] 2015 bonus paid in 2016.” In response, father submitted evidence through an affidavit and supporting documentation. Specifically, father provided a letter from his employer’s vice president of finance, indicating that none of its employees or officers, including father, received a bonus for the 2015 fiscal year. The district court found father’s documentation “credible,” and denied mother’s discovery request.²

² It is apparent from the number of hearings and extensive motion practice that the parties have been involved in “nearly constant litigation” since 2009. The record reflects that the district court has given this case its full and thoughtful attention and, during that time, has had the opportunity to judge the credibility of the witnesses. We defer to those credibility determinations. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 298 (Minn. App. 2007).

On appeal, mother argues that she is “entitled to receive [father’s] W2 and any other documentation concerning the payment of a bonus, the payment of expenses or other compensation.” Mother did not request father’s W2 or other specific documentation in her motion to the district court, and we decline to consider this request for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (articulating rule that appellate courts generally will not consider matters not argued to or considered by the district court). Moreover, there is nothing in the record to suggest that the district court abused its discretion by determining that discovery was not warranted under the circumstances. We therefore determine that the district court did not abuse its discretion by declining to compel discovery.

Affirmed.