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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1273**

In re the Marriage of:

Larry A. Letsinger, petitioner,
Appellant,

vs.

Lori A. Letsinger,
Respondent.

**Filed May 22, 2017
Affirmed
Schellhas, Judge**

Wright County District Court
File No. 86-FA-13-3456

John DeWalt, DeWalt, Chawla + Saksena, LLC, Minneapolis, Minnesota (for appellant)

Cara A. Wittwer, Rebecca S. Wanous, C. Wittwer Law Office, Ltd., Delano, Minnesota
(for respondent)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and
Smith, John, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of his motion to terminate or, alternatively, decrease his spousal-maintenance obligation. We affirm.

FACTS

Appellant Larry Letsinger (husband) and respondent Lori Letsinger (wife) married in May 1989 and dissolved their marriage in October 2014.¹ At the time of the dissolution, husband was 50 years of age and wife was 52 years of age. The district court found husband's gross monthly income to be \$7,500 and his reasonable and necessary monthly expenses to be \$2,489. The court found wife's gross monthly income to be \$1,673.75 and her reasonable and necessary monthly expenses to be \$3,500. Under the dissolution judgment, husband is obligated to pay wife \$2,000 per month in permanent spousal maintenance.

On February 25, 2015, husband's employment as a vice president of sales ended when his employer eliminated his position. On July 31, husband moved to terminate or, alternatively, reduce his spousal-maintenance obligation. At that time, he was unemployed but actively seeking employment.

On August 17, 2015, husband began new employment as a sales executive. His employer's offer letter describes his compensation as an annual base salary of \$60,000, paid weekly, and a monthly automobile and mobile-phone allowance of \$660. Four

¹ In November 2014, the district court amended the dissolution judgment to correct clerical errors.

potential types of commission income are also available to husband. According to the employer's vice president and chief financial officer, sales representatives typically start to earn "regular and consistent commissions" in about 12–18 months. Based on husband's most recent paycheck submitted to the district court, husband had received total commissions since August 17, 2015, of \$674.34 as of February 25, 2016. The court found that husband "will begin earning regular and consistent commissions in the summer [of] 2016."

In a January 8, 2016 affidavit, husband informed the district court that his new employer paid him a one-time signing bonus in the amount of \$8,500, paid weekly until January 2016.² After automatic wage withholding for payment of husband's spousal-maintenance obligation began, husband informed the court, in a March 4, 2016 affidavit, that the signing bonus was \$10,000, not \$8,500. He also told the court that he would receive his last bonus payment in his April 3, 2016 paycheck.

In considering husband's spousal-maintenance modification motion, the district court found that wife had \$3,490 in reasonable monthly expenses and monthly gross income of \$1,992, which represented an increase of \$318.25 since the dissolution judgment. The court found that husband had \$2,763.70 in reasonable monthly expenses and that husband's "actual monthly gross earnings in 2015 averaged \$7,046 per month." The court denied husband's motion, concluding that husband's decrease in gross monthly

² Neither husband's employer's offer letter nor its February 22, 2016 letter, explaining husband's compensation, contains any mention of a signing bonus.

income from \$7,500 at the time of the dissolution to \$7,046 was not sufficient to create a presumption that a substantial change in circumstances existed that rendered husband's spousal-maintenance obligation unreasonable and unfair, and that husband also failed to demonstrate an actual change in circumstances showing his obligation to be unreasonable and unfair.³

This appeal follows.

D E C I S I O N

Husband argues that the district court erred in concluding that he did not meet his burden of proving the existence of a substantial change in circumstances—his decreased income—that rendered his spousal-maintenance obligation unreasonable and unfair. A decision to modify spousal maintenance is discretionary with the district court and requires the moving party to show both: (1) substantially changed circumstances and; (2) that the changed circumstances make the existing award unreasonable and unfair. *See* Minn. Stat. § 518A.39, subd. 2(a) (stating that “[t]he terms of an order respecting maintenance or support may be modified upon a showing of one or more of [eight circumstances], any of which makes the terms unreasonable and unfair”), (b)(5) (stating that a presumption of a substantial change in circumstances arises, “and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if . . . the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party”)

³ The district court temporarily reduced husband's spousal-maintenance obligation “to \$1,500 from August 2015 through February 2016,” because husband had “a lapse in employment due to no fault of his own that resulted in decreased earnings for a period of months.”

(2016); *see also Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003) (explaining that the moving party carries the burden of proof in demonstrating that there has been a substantial change in circumstances), *review denied* (Minn. Aug. 5, 2003).

Appellate courts review a district court's decision regarding whether to modify an existing maintenance award for an abuse of discretion. *Gossman v. Gossman*, 847 N.W.2d 718, 721 (Minn. App. 2014). A district court abuses its discretion regarding maintenance if 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). This court views the evidence in the light most favorable to the district court's findings and defers to its credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Gross monthly income

Husband first argues that the district court's finding that he had gross monthly income of \$7,046 is clearly erroneous. "A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009) (quotation omitted).

The district court used husband's December 24, 2015 paycheck to calculate his gross monthly income because: (1) his income for 2014 and 2015 did not accurately reflect his financial situation at the time of the hearing because he had been unemployed for a period of time during both years; and (2) his commission income at similar jobs had historically been a significant source of income but was speculative at that point. The court calculated husband's monthly gross earnings by dividing his total gross income reflected on his December 24, 2015 pay stub (\$29,292.56) by the number of weeks worked through

that pay stub (18 weeks) and multiplying the result by 4.33 weeks. See Minn. Stat. § 518A.29(d) (2016) (stating that, “Gross income may be calculated on either an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33.”). Husband argues that the district court miscalculated his income because by December 24, 2015, he had worked almost 19 full weeks, “rather than exactly 18 weeks as assumed by the court.” We are not persuaded.

A review of the record confirms that husband’s December 24, 2015 paycheck reflected pay for 18 weeks of work. The pay-period end date on husband’s paycheck is December 20, 2015, which marks the end of husband’s 18th week of work. While it may be true that on December 24, 2015, husband had worked more than 18 weeks, the relevant question is how many weeks of work are reflected in the amount of year-to-date regular gross earnings listed on husband’s December 24, 2015 paycheck, not how many weeks he had actually worked when he received his December 24, 2015 paycheck.

Husband next argues that the district court erred in calculating his gross income because the district court included his one-time signing bonus of \$10,000 in the calculation of his income. We conclude that the district court properly included husband’s signing bonus in the calculation of his gross monthly income because, contrary to husband’s argument, he received the bonus as a periodic payment weekly over a number of weeks.

Gross income includes:

any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income under section 518A.30, workers’ compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal

maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section 518A.31, and potential income under section 518A.32.

Minn. Stat. § 518A.29(a) (2016) (emphasis added). The statute does not define periodic payment, but, according to *Black's Law Dictionary*, a periodic payment is, “[o]ne of a series of payments made over time instead of a one-time payment for the full amount.” *Black's Law Dictionary* 1310 (10th ed. 2014); cf. *Black's Law Dictionary* 1310 (10th ed. 2014) (defining a lump-sum payment as, “[a] payment of a large amount all at once, as opposed to a series of smaller payments over time”). And this court has previously explained that “[b]onuses which provide a dependable source of income may properly be included in calculation of future income.” *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987), review denied (Minn. Oct. 30, 1987). A bonus paid out weekly over a period of time is a dependable source of income.

Moreover, we note that the district court concluded that even if husband correctly claimed that his income would decrease on April 1, 2016, he was eligible to begin receiving commission income in February 2016. And we agree with the court that, “[e]ven if the commissions [were] not as substantial as they will be in the future, [husband’s] earnings history with Intraworks since August 2015 demonstrates his continued ability to meet his \$2,000 spousal maintenance obligation.” We therefore conclude that the court did not clearly err in finding that husband’s gross monthly income was \$7,046.

Tax effects

Second, husband argues that the district court erred by failing to consider the tax effects on his income when considering the income available to him from which to pay spousal maintenance. Husband's argument is unavailing. Husband provided the district court with no evidence regarding the tax effects on his income. *See Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988) (“An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.”).

The district court did not abuse its discretion by concluding that husband failed to prove the existence of a substantial change in circumstances that rendered his spousal-maintenance award unreasonable and unfair.

Affirmed.