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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1331**

John Frederick Stolte, petitioner,
Respondent,

vs.

Kathleen Marie Stolte,
Appellant.

**Filed July 17, 2017
Affirmed
Johnson, Judge**

Dakota County District Court
File No. 19-F3-88-008751

Deborah N. Dewalt, Burnsville, Minnesota (for respondent)

Merlyn L. Meinerts, Burnsville, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Klaphake,
Judge.*

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

John Frederick Stolte and Kathleen Marie Stolte were married from 1970 to 1989.
When their marriage was dissolved, the district court awarded Kathleen permanent spousal

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

maintenance. In 2016, the district court granted John's motion to terminate spousal maintenance because his income substantially decreased after he retired and because Kathleen is able to support herself. We affirm.

FACTS

John and Kathleen were married in 1970. They have two adult children. Their marriage was dissolved in 1989.

In the dissolution decree, the district court found that John's monthly net income was \$2,759 and that his reasonable monthly expenses were \$1,700. The district court found that Kathleen's monthly net income was \$1,352 and that her reasonable monthly expenses were \$1,650. The district court awarded Kathleen permanent spousal maintenance of \$350 per month, with an adjustment every two years for increases in the cost of living.

John retired in March 2014 at the age of 66. In February 2016, when spousal maintenance was \$625 per month, John moved to terminate his spousal-maintenance obligation. He argued that his income had substantially decreased because of his retirement. He stated in an affidavit that he "retired for good faith reasons" and that his reasonable monthly expenses are \$4,710. In response, Kathleen argued that John did not retire in good faith but that his retirement was "motivated by a desire to terminate his spousal maintenance obligation." She submitted an affidavit stating that her income consists only of spousal maintenance and worker's compensation benefits. She stated that her monthly expenses are \$4,096 and that she supports one of the couple's adult children.

The district court found that John's monthly net income is \$2,879 and that his reasonable monthly expenses are \$2,650. The district court found that Kathleen's monthly

net income is \$3,075, which is the amount of her worker's compensation benefits, which she will receive for the rest of her life, with adjustments for increases in the cost of living. The district court found that Kathleen's reasonable monthly expenses are "approximately \$3,000.00." The district court found that "there has been a substantial change in circumstances" because John retired in good faith, which resulted in decreased income. The district court found that Kathleen is no longer in need of spousal maintenance because her monthly net income is greater than her reasonable monthly expenses. Thus, the district court granted John's motion and terminated his spousal-maintenance obligation. Kathleen appeals.

D E C I S I O N

Kathleen argues that the district court erred by granting John's motion to terminate spousal maintenance.

A district court may grant an award of spousal maintenance if it finds that one spouse either

- (a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

- (b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2016). An award of spousal maintenance “shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors.” Minn. Stat. § 518.552, subd. 2 (2016). The relevant factors are the financial resources of the spouse seeking maintenance to provide for his or her needs independently, the time necessary to acquire education to find appropriate employment, the age and health of the recipient spouse, the standard of living established during the marriage, the length of the marriage, the contribution and economic sacrifices of a homemaker, and the resources of the spouse from whom maintenance is sought. *Id.*; *see also Kampf v. Kampf*, 732 N.W.2d 630, 633-34 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). No single factor is dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984). In essence, the district court balances “the recipient’s needs against the obligor’s ability to pay.” *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

A district court may modify an award of spousal maintenance if there has been a substantial change in circumstances that makes the existing award unfair and unreasonable. Minn. Stat. § 518A.39, subd. 2(a), (b) (2016). The circumstances that may warrant modification include a “substantially increased or decreased gross income of an obligor or obligee” and a “substantially increased or decreased need of an obligor or obligee.” *Id.*, subd. 2(a)(1), (2). If the district court finds a substantial change in circumstances, the district court must consider the factors applicable to an initial award of spousal maintenance and determine whether the obligee, at the time of the motion to modify, “is

unable to provide adequate self-support.” Minn. Stat. § 518.552, subd. 1(b); *see also* Minn. Stat. § 518A.39, subd. 2(e) (2016).

The party moving to modify a spousal-maintenance award bears the burden of demonstrating a substantial change in circumstances that renders the existing award unfair and unreasonable. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997); *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). This court applies a clear-error standard of review to a district court’s findings of fact concerning spousal maintenance, *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992), and an abuse-of-discretion standard of review to a district court’s decision regarding whether to modify an existing maintenance award, *Hecker*, 568 N.W.2d at 709-10.

Kathleen contends that the district court erred for several reasons. We construe her brief to argue that the district court erred for five particular reasons, as follows.

A. Substantial Change in John’s Circumstances

Kathleen asserts three reasons why the district court erred in finding that there has been a substantial change in circumstances due to John’s reduced income.

First, Kathleen contends that the district court erred by not including all of John’s investment income when making a finding concerning his income. John presented evidence to the district court that his annual gross income consists of \$30,552 in social security benefits and \$12,685 in investment income and that his annual income taxes are \$8,691. There was no other evidence of John’s investment income. Based on simple arithmetic, John’s evidence suggests that his annual net income is \$34,546, which implies a monthly net income of \$2,879. That is what the district court found. Kathleen contends

that John's investment income is understated because the district court did not consider \$44,000 in transfers from a "Pershing Brokerage" account to his checking account during an 11-month period. But there is no evidence in the record as to whether that brokerage account belongs to John or his current wife. Furthermore, there is no evidence in the record as to whether those transfers are periodic payments of income as opposed to conversions of assets from one form to another form. See Minn. Stat. § 518A.29(a) (2016) (defining "gross income" for purposes of spousal maintenance to mean "periodic payment to an individual"); *Duffney v. Duffney*, 625 N.W.2d 839, 842-43 (Minn. App. 2001) (concluding that proceeds from sale of asset was not income for purposes of child support). Kathleen also suggests that the district court should have imputed a greater amount of investment income to John based on the value of his investments and an assumed rate of return. But Kathleen did not present such an argument to the district court. The district court did not clearly err in its consideration of John's investment income when finding his monthly net income.

Second, Kathleen contends that the district court erred by finding that John's income had decreased. She notes that his monthly net income of \$2,875 is greater than it was at the time of the 1989 dissolution decree, when it was \$2,759. Her contention does not account for inflation. John argued to the district court that, after adjusting for inflation, his 1990 monthly net income is equivalent to \$4,938 in today's dollars, which means that his monthly net income now is 42% less than it was at the time of dissolution. The district court did not make a specific finding concerning inflation, but such a finding may be implied. See *Umphlett v. Commissioner of Pub. Safety*, 533 N.W.2d 636, 639 (Minn. App.

1995). The district court did not clearly err by finding a substantial decrease in John's real income despite a slight increase in the nominal amount of his income after 26 years.

Third, Kathleen contends that the district court erred by not making an express finding that the substantial change in circumstances made the existing spousal-maintenance award "unreasonable and unfair." *See* Minn. Stat. § 518A.39, subd. 2(a). Kathleen is simply incorrect. The district court's order states, on page 5, "It would be unreasonable and unfair to require [John] to maintain the support obligation from the Decree."

Thus, the district court did not err by finding that there has been a substantial change in circumstances.

B. Kathleen's Ability to Provide Self-Support

Kathleen asserts two reasons why the district court erred in finding that she is capable of supporting herself and, thus, no longer in need of spousal maintenance.

First, Kathleen contends that the district court erred by not considering the factors in section 518.552, as required when considering a motion to modify spousal maintenance. *See* Minn. Stat. § 518A.39, subd. 2(e). The district court's order includes two pages of discussion of Kathleen's income, assets, and expenses. The district court did not fail to consider the relevant factors in section 518.552.

Second, Kathleen contends that the district court erred by finding that she is capable of supporting herself without spousal maintenance. The district court found that her monthly net income is \$3,075. Kathleen submitted a document showing monthly expenses of \$4,096, but the district court found that her reasonable expenses are \$3,000. Given its

findings on her income and her reasonable expenses, the district court further found that Kathleen is able to support herself with a \$75 monthly surplus.

The district court found that Kathleen's claimed amount of monthly expenses is unreasonable for two reasons: because she spends \$1,146 on payments on a mortgage loan on a lake cabin, which is her second home, and because she spends an unknown amount on an adult child who resides with her. Kathleen focuses her appellate arguments on the district court's reasoning with respect to the mortgage loan on the lake cabin. Kathleen explains that she executed a mortgage on the lake cabin when she refinanced her primary residence. She introduced evidence that she obtained the most favorable terms by paying off the mortgage loan on her primary residence and instead securing a loan with a mortgage on the lake cabin.

If the lake cabin were the sole reason for the district court's reduction of her reasonable monthly expenses, Kathleen might have a valid argument for reversal. But the district court's finding of her reasonable expenses also is based on evidence that Kathleen pays some of the living expenses of an adult child. It is well settled that expenses attributable to adult children "cannot be considered by a court in determining an appropriate level of maintenance." *Reif v. Reif*, 410 N.W.2d 414, 416 (Minn. App. 1987). Kathleen does not challenge the district court's reasoning with respect to the expenses attributable to the adult child. The district court did not make detailed findings concerning the amount of such expenses, but the evidentiary record contains ample evidence to support such a general finding. *See Driscoll v. Driscoll*, 414 N.W.2d 441, 446 (Minn. App. 1987)

(stating that this court will affirm spousal-maintenance award that “has an acceptable and reasonable basis in fact”).

Kathleen admitted to the district court that she provides the adult child with food and clothing. Kathleen’s monthly budget states that she spends \$600 on groceries and household supplies and \$100 on clothing. A fact-finder could infer that half of those expenses are attributable to the adult child. Her monthly budget also includes \$100 for “tuition” and expressly notes that it is for the adult child. Kathleen’s credit-card statements show that the adult child charges, on average, approximately \$600 per month, mostly on goods and services other than groceries, clothing, and tuition, and Kathleen’s bank statements show that she pays those credit-card bills. In addition, it may be inferred that the adult child’s presence in Kathleen’s household increases other expenses, such as utilities and transportation. Considering all of these expenses, the district court was justified in reducing Kathleen’s budget by \$1,096 on the ground that she incurs expenses of that amount or more because of the adult child.

Thus, the district court did not clearly err in its findings concerning Kathleen’s income and reasonable expenses and did not abuse its discretion in concluding that Kathleen is able to support herself.

C. Reservation of Jurisdiction

Kathleen last argues that the district court erred by not reserving jurisdiction over the matter of spousal maintenance. In response, John argues that Kathleen did not preserve this argument because she did not ask the district court to reserve jurisdiction. John is correct. At no time during district court proceedings did Kathleen request that the district

court reserve jurisdiction in lieu of terminating spousal maintenance. Thus, we will not consider the issue for the first time on appeal. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe 175 v. Columbia Heights School Dist.*, 842 N.W.2d 38, 42-43 (Minn. App. 2014).

Affirmed.