

*This opinion will be unpublished and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
A16-2026**

In re the Marriage of:
Mary Ann Fenlon, petitioner,
Appellant,

vs.

Steven Robert Fenlon,
Respondent.

**Filed September 5, 2017
Affirmed in part and reversed in part
Klaphake, Judge***

Dakota County District Court
File No. 19WS-FA-09-127

Brian L. Sobol, McGrann Shea Carnival Straughn & Lamb, Chartered, Minneapolis,
Minnesota (for appellant)

Katie M. Jarvi, Erin K. Turner, Johnson/Turner Legal, Forest Lake, Minnesota (for
respondent)

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

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

This is an appeal from a decision by a consensual special magistrate (CSM) to modify the amount and form of the parties' stipulated two-tier spousal maintenance. Appellant argues that the CSM abused his discretion by concluding that the tier-II award was not a disguised property settlement and by reducing the tier-I award based on an erroneous determination of her reasonable expenses. We affirm the CSM's reduction of the tier-I award but reverse the CSM's elimination of the tier-II award.

DECISION

Appellant Mary Ann Fenlon argues that the consensual special magistrate (CSM) erred by modifying the parties' two-tier spousal-maintenance award. Specifically, she contends that the CSM lacked the authority to eliminate the tier-II award, and that he abused his discretion by reducing the amount of the monthly tier-I award. Respondent Steven Robert Fenlon argues that the CSM acted within his authority and discretion.

This court applies the same standard of review to a CSM's ruling that it would apply to an order issued by the district court.¹ See Minn. Gen. R. Pract. 114.02(a)(2); *see also Buller v. Minn. Lawyers Mut.*, 648 N.W.2d 704, 710 (Minn. App. 2002). A district court's spousal-maintenance determination will not be disturbed absent an abuse of that court's

¹ Minn. R. Gen. Prac. 114.02(a)(2) sets forth various forms of alternative dispute resolution. A "consensual special magistrate" is specifically provided for under that rule: "Consensual Special Magistrate. A forum in which the parties present their positions to a neutral third party in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal to the Minnesota Court of Appeals." Minn. R. Gen. Pract. 114.02(a)(2).

discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). This court will not find an abuse of discretion unless the district court’s resolution of the matter ‘is against logic and the facts on record.’” *Id.* (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)). We will uphold the district court’s findings of fact unless they are clearly erroneous. *Id.*

I. Elimination of Tier-II Spousal-Maintenance Award

Appellant argues that the CSM abused his discretion by concluding that the stipulated tier-II spousal-maintenance award was not a disguised property settlement and that it was subject to modification under the maintenance-modification statute, Minn. Stat. § 518A.39, subd. 2 (2016).

A district court may modify an existing spousal-maintenance award

upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: (1) substantially increased or decreased gross income of an obligor or obligee;[or] (2) substantially increased or decreased need of an obligor or obligee

Minn. Stat. § 518A.39, subd. 2(a). But a property settlement is final, and may be reopened and modified only upon a showing of fraud or mistake. *See Id.*, subd. 2(g) *Greer v. Greer*, 379 N.W.2d 252, 254 (Minn. App. 1986).

To determine whether a spousal-maintenance award actually is a disguised property settlement, the courts look to “the true nature of the award, not the method of identification chosen by the parties in drafting their agreement.” *Ruud v. Ruud*, 380 N.W.2d 765, 766 (Minn. 1986); *see also Peterson v. Lobeck*, 421 N.W.2d 367, 368 (Minn. App. 1988); *Landwehr v. Landwehr*, 380 N.W.2d 136, 139-40 (Minn. App. 1985). In doing so, the

court examines the record to discern the circumstances surrounding the agreement. *See Ruud*, 380 N.W.2d at 766; *Peterson*, 421 N.W.2d at 368; *Landwehr*, 380 N.W.2d at 139-40. This court reviews a district court's finding of whether a spousal maintenance obligation is a disguised property settlement under a clear-error standard of review. *Landwehr*, 380 N.W.2d at 140. A finding is clearly erroneous "where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted).

In this case, the parties dissolved a 37-year marriage pursuant to a stipulated agreement that was incorporated into the May 19, 2010 divorce decree. During the marriage, appellant raised the parties' six children and did not work outside of the home. Respondent was self-employed by Midwest Healthcare Capital (MHC), a corporation jointly owned by the parties during the marriage. The parties agreed that respondent would be awarded all of MHC's stock, and that MHC would be ascribed no value for the purpose of property division. The parties agreed to divide all other assets, including proceeds from the sale of the homestead. The parties stipulated to a two-tier arrangement of spousal maintenance. "Tier I" provided appellant with a monthly sum of \$9,625, which is "based upon 42% of MHC's gross annual revenues of \$275,000." "Tier II" provided appellant with "a sum equivalent to 50% of all gross revenues received by [MHC] between \$275,000 and \$350,000, and 45% of all gross revenues over \$350,000 each calendar year, if, as, and when received."

In May 2015, respondent filed a motion to reduce spousal maintenance. Respondent's motion sought to (1) reduce or eliminate the monthly tier-I obligation; and

(2) modify the tier-II award to a straight 42% of all MHC gross revenues. The parties agreed to give the CSM authority to decide the motion.

The CSM concluded that the tier-II award was not a disguised property settlement because “there is no indication in the Decree, and nothing was offered from the record in the divorce action, which supports the theory that the maintenance obligation was anything other than spousal maintenance,” and the parties’ “experienced counsel could have signaled to the court that this was a disguised property settlement,” but they did not.

Appellant contends that the CSM erred in finding that the tier-II award was not a disguised property settlement because the nature of the award is not consistent with spousal maintenance. We agree that the tier-II award is a disguised property settlement for several reasons.

First, despite the parties’ joint ownership of MHC, they stipulated that MHC would be awarded solely to respondent. In their stipulated agreement, the parties valued and divided all of their assets with the exception of MHC. Appellant received no other offsetting property award. The tier-II award resembled a profit-sharing arrangement because there was no cap to the amount of gross revenue to which appellant is entitled.

Next, respondent’s motion did not seek to eliminate the revenue-sharing arrangement in tier-II, but sought instead to reduce or eliminate the tier-I monthly payment, suggesting that the parties viewed the two tiers differently. Respondent submitted an affidavit, in which he stated, “I would like to create a formula by which [appellant] still receives *her negotiated share of MHC’s gross revenues*.” (Emphasis added). In his several past motions to modify or reduce spousal maintenance, respondent never sought to

eliminate the tier-II award. The first time respondent suggested that the tier-II award be eliminated was in a supplemental affidavit submitted to the CSM in early 2016.

Finally, an award of spousal maintenance considers the balance of the parties' needs and the parties' income. *See* Minn. Stat. § 518.552, subds. 1, 2 (2016). The stipulated tier-II award considered only respondent's income and awarded MHC's business revenue indefinitely and with no regard to appellant's needs.

In sum, the "true nature of the award" resembles payment by respondent to appellant for her shares of MHC. *See Ruud*, 380 N.W.2d at 766. Thus, the CSM clearly erred by finding that the tier-II award is not a disguised property settlement, and by modifying the tier-II obligation under Section. § 518A.39, subd. 2.

II. Reduction of Tier-I Spousal-Maintenance Award

Appellant argues that the CSM abused his discretion by reducing the monthly tier-I award based on erroneous findings in her reasonable monthly expenses. Respondent argues that the CSM did not err because he based his reduction of the tier-I award on a careful and independent analysis of appellant's reasonable monthly expenses.

We review a district court's spousal-maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We will not find an abuse of discretion unless the district court's resolution of a matter "is against logic and the facts on record." *Schallinger*, 699 N.W.2d at 22 (quotation omitted). A district court's "[f]indings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); Minn. R. Civ. P. 52.01.

A district court may modify an existing spousal-maintenance award “upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: (1) substantially increased or decreased gross income of an obligor or obligee; [or] (2) substantially increased or decreased need of an obligor or obligee” Minn. Stat. § 518A.39, subd. 2. Respondent’s motion asked the CSM to reduce the tier-I award because appellant’s financial needs had substantially decreased. The needs of the recipient spouse are determined by considering her available resources and her reasonable expenses. *Kemp*, 608 N.W.2d at 921. Here, the CSM found that there had been a substantial change in circumstances because appellant self-reported greatly reduced monthly expenses from the time of the entry of the 2010 decree. The CSM found no change in the parties’ income, and determined that the existing award was unreasonable because it “far exceeds” appellant’s current reasonable expenses. The CSM rejected appellant’s reported monthly budget of \$8,680, and adjusted her reasonable monthly expenses to \$6,405.

Having determined that there had been a substantial change in circumstances, the CSM considered the modification guidelines. Minn. Stat. § 518.552, subd. 2, 518A.39, subd. 2(e). When modifying the amount of maintenance, a district court considers “all relevant factors,” including, among others, the marital standard of living and the financial resources of the party seeking maintenance. Minn. Stat. § 518.552, subd. 2(a)(c). The CSM reduced the tier-I award from \$9,625 to \$9,000, and determined that it would be “the amount necessary to give [appellant] a net after-tax cash flow which will meet her reasonable budget.” This reduction of the tier-I award was within the CSM’s discretion.

In sum, the CSM erred by finding that the tier-II award was not a disguised property settlement and by modifying the tier-II award using the guidelines for modification of maintenance. However, the CSM did not err in reducing the tier-I award.

Affirmed in part and reversed in part.