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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0177**

In re the Marriage of:

Michael Keith Rhyan, petitioner,
Appellant,

vs.

Marni Linette Rhyan,
Respondent.

**Filed September 11, 2017
Affirmed
Schellhas, Judge**

Dakota County District Court
File No. 19AV-FA-12-2905

Maury D. Beaulier, Beaulier Law Office, St. Louis Park, Minnesota (for appellant)

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(for respondent)

Considered and decided by Ross, 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UNPUBLISHED OPINION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 modify his spousal-maintenance obligation, arguing that the court abused its discretion by (1) failing to give sufficient weight to wife's cohabitation, and (2) understating wife's ability to support herself. We affirm.

FACTS

Appellant Michael Rhyan (husband) and respondent Marni Rhyan (wife) married in 1995 and separated in September 2012, when wife moved from the family home in Minnesota and to Missouri. In May 2013, the district court dissolved the parties' marriage by a bifurcated judgment and decree and, in May 2014, resolved, in relevant part, the parties' remaining financial issues. The court found that wife "[wa]s not capable of self-support and require[d] [husband's] assistance to meet her reasonable monthly expenses," and that husband "[wa]s capable of paying such support." The parties stipulated to an award of permanent spousal maintenance to wife as follows:

Commencing December 1, 2013, [husband] shall pay [wife] \$1,350.00 per month as and for spousal maintenance, inclusive of child support. This amount shall be payable in two equal installments of \$675.00 on the 1st and 15th of each month. This entire amount shall be characterized as spousal maintenance for income tax purposes. The amount may be modifiable pursuant to applicable Minnesota law. [Husband]'s maintenance obligation shall terminate upon the death or remarriage of [wife].

In December 2016, the district court denied a motion by husband to terminate his spousal-maintenance obligation or, alternatively, to suspend or modify it. This appeal follows.

D E C I S I O N

Appellate courts review a district court's decision to grant or deny modification of spousal maintenance for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709–10 (Minn. 1997). The district court abuses its discretion if it makes findings unsupported by the evidence or misapplies the law. *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996). Appellate courts review the district court's factual findings for clear error. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). Factual findings are clearly erroneous if they are “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009) (quotation omitted). This court defers to the district court's credibility determinations, including its opportunity to weigh the evidence, which may be in affidavit form. *Knapp v. Knapp*, 883 N.W.2d 833, 837 (Minn. App. 2016).

“A party moving to modify an award of maintenance bears the burden of showing a substantial change of circumstances since the last time maintenance was modified or, if maintenance has not been modified, since it was originally set.” *Hemmingsen*, 767 N.W.2d at 716–17 (quotation omitted). “After showing changed circumstances, the moving party must demonstrate that the change renders the original award unreasonable and unfair.” *Id.* at 717; see Minn. Stat. § 518A.39, subd. 2(a) (2016) (providing eight bases for a finding of changed circumstances including, among other things, substantially increased or decreased

gross income or needs of an obligor or obligee). A finding of changed circumstances is a factual finding. *Prange v. Prange*, 437 N.W.2d 69, 70 (Minn. App. 1989), *review denied* (Minn. May 12, 1989). “In modification of maintenance obligations, as well as in the initial determination, particularized findings are necessary to show that relevant statutory factors have been considered.” *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987).

Spousal maintenance also may be modified if the “cohabitation by the maintenance obligee with another adult following dissolution of the marriage” makes the spousal-maintenance obligation unreasonable and unfair. Minn. Stat. § 518.552, subd. 6(a) (2016).¹ To determine if spousal maintenance should be modified because of cohabitation, the district court must consider the following four factors: (1) “whether the obligee would marry the cohabitant but for the maintenance award”; (2) “the economic benefit the obligee derives from the cohabitation”; (3) “the length of the cohabitation and the likely future duration of the cohabitation”; and (4) “the economic impact on the obligee if maintenance is modified and the cohabitation ends.” *Id.*

A spousal-maintenance stipulation serves as a baseline “against which claims of substantial change are evaluated.” *Hecker*, 568 N.W.2d at 709. “[T]he district court considering the modification motion must appreciate that the stipulation represents the parties’ voluntary acquiescence in an equitable settlement.” *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). The supreme court has “cautioned the district court to exercise its

¹ Minn. Stat. § 518.552, subd. 6(a) (2016), became effective on August 1, 2016, and applies to modification motions brought on or after the effective date. See 2016 Minn. Laws ch. 132, § 1, at 203–04.

considerable discretion carefully and only reluctantly when it is faced with a request to alter the terms of an agreement which was negotiated by the parties.” *Id.*

A. Cohabitation

Husband argues that wife’s cohabitation with A.S. has significantly reduced her expenses and that the district court therefore abused its discretion by not finding that wife’s cohabitation with A.S. established a substantial change in circumstances. The district court found that the record contained no credible evidence to support a finding that wife was cohabitating with A.S. The court concluded, “Because Wife is not cohabitating with [A.S.], a modification is not warranted on that basis alone.” We agree.

Husband acknowledges that wife’s residence in A.S.’s home in Missouri has not changed since the time of the dissolution; husband describes wife’s residence as “a continuation of a cohabitating relationship that [wife] previously described as temporary.” To support his modification motion, husband relied primarily on information that was available at the time of the dissolution, admitting that the information upon which he relied to prove wife’s cohabitation with A.S. “was available at the time of the divorce.” He submitted his own affidavit, describing events that occurred and statements that wife and others made in 2012 and 2013, prior to and contemporaneous with the marriage dissolution. But husband argues that the information in the record should be considered to determine whether a substantial change in circumstances has occurred because, at the time of the dissolution, “Minnesota Statutes . . . did not specifically address cohabitation as a basis for granting or modifying spousal support.” We reject husband’s argument because it is based upon a change of the law rather than a change of wife’s circumstances.

Regarding the statutory factors upon which maintenance may be modified based on cohabitation, the record contains no evidence to support a finding that wife would marry A.S. but for the spousal-maintenance award. Husband asserts that A.S. and wife are cohabitating because they are in a long-term romantic relationship. But the record evidence is conflicting about the nature of the relationship between A.S. and wife. Wife asserts that she and A.S. are simply roommates and platonic family friends with separate lives. She submitted an affidavit denying her cohabitation with A.S. and declaring that she rents a room from him and pays rent by paying for the electric and gas utilities at a cost of about \$300 per month, in addition to the cost of Internet service. A.S. submitted an affidavit, stating that he and wife are not, and never have been, involved in a romantic relationship.

The district court was required to resolve the conflict in that evidence by weighing the evidence and determining which evidence was credible. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that the district court's findings must be sustained unless clearly erroneous, and deferring to district court's credibility determinations). This court cannot "usurp[] the role of the [district] court by reweighing the evidence and finding its own facts." *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (quotation omitted). The district court found that husband's evidence of a romantic relationship of cohabitation was not credible, and this court must defer to the district court's credibility determinations. Our review of the record leads to the conclusion that the district court did not clearly err by determining that no credible evidence supports a finding of changed circumstances based on the cohabitation of A.S. and wife. Because husband has not met his burden of proving that wife and A.S. are cohabitating, he cannot satisfy any of the four required

factors articulated in Minn. Stat. § 518.552, subd. 6(a), for modification of spousal maintenance based on cohabitation. Husband's cohabitation argument therefore fails.

B. Substantial change of circumstances

Husband also argues that wife's needs have decreased because she does not live on her own—she lives with A.S.—and that her decreased need constitutes a substantial change in circumstances. After hearing husband's modification motion, the district court found that “Husband reports monthly expenses of \$6,141 and Wife reports monthly expenses of \$3,223.” In the dissolution judgment, the district court found that, “[t]he parties have not reached a complete agreement regarding expenses, and these figures [of husband's claimed monthly expenses in the amount of \$5,481.64 and wife's claimed monthly expenses of \$3,348.00] shall not be determinative for future spousal maintenance obligations.”

We acknowledge that, in light of the language in the dissolution judgment, husband's burden of proving a substantial change in circumstances is difficult. We agree that the amount of expenses wife reported for herself in response to husband's modification motion is less than the amount that she submitted to the court at the time of the dissolution judgment, but they are not substantially decreased. Wife's monthly expenses are \$225 less than the court noted in the dissolution judgment when it also noted that “these figures [about the parties' expenses] shall not be determinative for future spousal maintenance obligations.”

Husband also argues that the district court clearly erred by not finding that wife's salary is less than her earning potential and that, because wife did not enroll in interior design classes to increase her earning potential, a substantial change in circumstances

occurred. We disagree. First, nothing in the record suggests that wife has any obligation to engage in rehabilitative efforts to advance her earning capacity, and husband provides no legal authority to support his argument. In fact, husband admits that such an expectation “was not written into the parties Judgment and Decree.”

Secondly, as to wife’s income, the district court noted in its order, denying husband’s modification motion, that “[a]t the time of the Decree, Husband was earning \$7,500 each month and Wife was imputed income of \$1,884 each month. Husband currently earns \$7,980 each month and Wife earns approximately \$1,824 each month.” (footnote omitted). The record supports the district court’s findings. At the time of the modification motion, wife’s income was less than the income imputed to her at the time of the dissolution, but her actual earnings had more than doubled since the dissolution. And the parties stipulated to husband’s permanent spousal-maintenance obligation based not on wife’s earning potential but on income imputed to her at the time of the dissolution. She now earns less than the imputed amount. Moreover, since the dissolution, husband’s income has increased more than \$5,000 annually. We conclude that the district court did not abuse its discretion by finding that husband’s evidence was insufficient to meet his burden of proving a substantial change in circumstances that renders his spousal-maintenance obligation unreasonable and unfair.

Affirmed.