This opinion will be unpublished and may not be cited except as provided by Minn.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
A17-0521

In re the Marriage of:
Barbara Ann Chadwick, petitioner,
Respondent,

vs.

Lawrence Jerome Chadwick, II,
Appellant.

Filed March 12, 2018
Reversed and remanded
Ross, Judge

Dakota County District Court
File No. 19AV-FA-14-878

Barbara Ann Chadwick, South St. Paul, Minnesota (pro se respondent)

Ronald B. Sieloff, Sieloff and Associates, P.A., Eagan, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

ROSS, Judge

We must decide whether the district court abused its discretion when it refused to modify an existing spousal-maintenance obligation after the obligor injured himself and stopped working. For most of Lawrence and Barbara Chadwick's marriage, Lawrence installed specialized dryers on the roofs of industrial-printing businesses. In the final years before their divorce, he worked up to 90 hours weekly to achieve an annual income of about $155,000, which the district court relied on to order Lawrence to pay Barbara $3,000 monthly in spousal maintenance. Lawrence later fell from a ladder, herniating two discs and preventing him from maintaining his previous workload. He moved the district court to reduce his maintenance obligation during his recovery period, but the district court denied his motion to modify. Because the district court's conclusion that Lawrence unjustifiably limited his income rests on legal errors and on fact findings that the record does not support, we hold that the district court abused its discretion, and we reverse and remand for more proceedings on the motion.

FACTS

Lawrence and Barbara Chadwick divorced in May 2015 after a 22-year marriage. The district court ordered Lawrence to pay Barbara temporary spousal maintenance of $3,000 monthly with step reductions through May 2021, after which the obligation would terminate. In the 17 years leading up to the divorce, Lawrence was a field-service technician installing rooftop dryers for industrial printing operations, sometimes working 70 to 90 hours weekly and earning about $155,000 annually.

Lawrence continued to work in that capacity after the divorce until he fell from a ladder while he was working at a job site in Texas in August 2015. He was 57 years old at the time and had recently strained his back, which caused his legs to give out and precipitated the fall. He landed on his neck and shoulder. An MRI revealed two herniated discs. His employer accommodated his injury by assigning him to light-duty training jobs but, by late December 2015, the employer no longer had full-time light-duty work for him.

In January 2016, Lawrence's physician referred him to a spinal specialist and informed his employer, "Despite [Lawrence's] reduced work hours and chiropractic care, [his] condition continues to deteriorate. Until results of his spinal evaluation [are] known, it is my recommendation that [he] significantly decrease his work schedule by reducing the number of hours and [that he avoid] extended sitting, prolonged standing, lifting or climbing of ladders." The spinal specialist recommended an "epidural injection" and restrictively released Lawrence to return to work, ordering that he not lift more than ten pounds and that he avoid bending over and reaching overhead. Lawrence's employer concluded that "the medical restrictions outlined by Larry's doctor . . . prevent [us] from scheduling Larry to provide onsite services to [our] customer base. The amount of customer service work available that does not require on site customer support is limited and this has resulted in a significant reduction in Larry's scheduled work hours." Although the company continued to employ Lawrence, aside from some specialized-training work during one week in January 2016 and two weeks in May 2016, he has been without work.

Lawrence applied for workers' compensation benefits but was denied because his employer's insurer determined that his injuries resulted from a pre-existing degenerative-disc disease. After he received the letter denying his request for workers' compensation benefits, Lawrence applied for short-term disability benefits. During this period, Lawrence was amassing spousal-maintenance arrearages.

Lawrence moved the district court to temporarily modify his maintenance obligation until he could return to work full time. He included an affidavit, detailing his medical and work situation and explaining that he was awaiting word on his request for short-term disability benefits. The affidavit stated that he was living on credit cards and was unable to satisfy his maintenance obligation. The affidavit appended the notes from his physicians and his employer and various other exhibits. During the hearing on Lawrence's motion, he also provided the district court two paystubs. The first paystub was from December 2015 and stated his year-to-date gross income of $155,195.62 (about $13,000 monthly for 2015). The second was from May 2016 and stated his year-to-date gross income of $9,355.44 (about $1,900 monthly for 2016). By the time of the hearing on his motion, Lawrence had been awarded short-term disability benefits to last six months, and he said that he planned to apply for long-term disability when his short-term benefits expired.

The district court denied Lawrence's motion to modify his spousal-maintenance obligation. It did so largely by finding that Lawrence's affidavit, which was filed in April 2016, lacked credibility because it stated that he had been out of work since December 2015, while a different document (the May 2016 paystub) showed that he had worked 25.5 hours in May 2016. The court concluded that Lawrence "failed to establish an actual and substantial decrease in his long-term gross income." The district court imputed to Lawrence $155,000 in income based on his 2015 earnings.

Lawrence moved for amended findings and conclusions, arguing that the district court's order was based on legal and factual errors and incorrectly relied on his 2015 income to determine his ongoing income. The district court "granted" the motion, and it modified its previous order by adding the following finding: "[Lawrence] has continually acted in bad faith regarding the disclosure of requested documentation, his delayed payment of spousal maintenance, and his self-limitation of income by refusal to document efforts made to seek employment outside of his former field of work."

Lawrence appeals.

D E C I S I O N

Lawrence argues that the district court improperly denied his motion to modify his $3,000 monthly maintenance obligation. On appeal we review a district court's denial of a motion to modify spousal maintenance for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We review fact findings for clear error and legal conclusions de novo. *Id*.

Lawrence maintains that leaving the 2015 order intact imposes on him a spousal-maintenance obligation that has become unreasonable and unfair. A party seeking to modify a spousal-maintenance award bears the burden of showing both a substantial change in circumstances, such as either party's "substantially increased or decreased gross income," and that the changed circumstances render the terms of the existing award "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a)(1) (2016). We focus our analysis on the district court's conclusion that Lawrence's gross income had not substantially decreased.

The district court ascribed to Lawrence a $155,000 annual gross income. To determine an obligor's gross income, a district court will typically use the obligor's actual income, but it may instead use his earning capacity if it is impracticable to determine his actual income or if he has unjustifiably self-limited his income. *Melius v. Melius*, 765 N.W.2d 411, 415 (Minn. App. 2009). The district court used Lawrence's earning capacity rather than his actual income as his gross income because it found that he unjustifiably self-limited his income. We see both legal and factual errors in the district court's reasoning.

The district court found that Lawrence unjustifiably self-limited his income by "refus[ing] to document efforts made to seek employment outside of his [former] field of work." The district court did not cite any legal authority for its premise that an obligor's failure to provide this sort of documentation necessarily demonstrates that he has unjustifiably self-limited his income, and we are aware of none. By contrast, we have affirmed district court findings that an obligor has unjustifiably self-limited his income after the district court found that the obligor was unemployed or underemployed in bad faith. *See Doherty v. Doherty*, 388 N.W.2d 1, 2–3 (Minn. App. 1986). And we have specifically held that the district court cannot use a person's earning capacity to determine a maintenance obligation "absen[t] . . . a finding that he was underemployed in bad faith." *Bourassa v. Bourassa*, 481 N.W.2d 113, 116 (Minn. App. 1992); *see also Melius*, 765 N.W.2d at 415–16 (rejecting argument "that the district court may consider the ability of an obligor to earn a certain amount of money in computing spousal maintenance without a finding of bad faith or unjustifiable self-limitation of income"). Although the district court never expressly found that Lawrence was underemployed in bad faith, one inevitably infers the finding from the court's reasoning. *See Warwick v. Warwick*, 438 N.W.2d 673, 677 (Minn. App. 1989) (identifying implicit finding of bad faith in district court's analysis). We turn to see if the evidence supports the bad-faith finding.

We agree with Lawrence that the district court's finding of his bad-faith underemployment is clearly erroneous. A finding of fact, whether it is express or implied, is clearly erroneous when it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *See Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). The district court’s underemployment-in-bad-faith finding rests on five underlying findings, all of which appear to be premised on errors of law or are manifestly contrary to the weight of the evidence. The first finding is that Lawrence provided no evidence of his efforts to increase his income; the second is that he “refus[ed] to document efforts to seek employment outside his former field of work;” the third is that his April 2016 affidavit lacked credibility; the fourth is that he provided “limited income information for the period since his . . . motion [for modification];” and the fifth is that he has the ability to continue earning $155,000 a year. We address each of these underlying findings in turn.

The district court’s finding that Lawrence “has not provided *any* evidence of his efforts to increase his income” is clearly erroneous. “Gross income” includes not only earned income, but also “workers’ compensation” and “disability payments.” *See* Minn. Stat. § 518A.29(a) (2016). Lawrence informed the district court by affidavit supported by documentary evidence that, promptly after his employer said it could no longer provide him with full-time work, he applied for workers’ compensation benefits and that, promptly after he was denied those benefits, he applied to receive disability payments. The district court’s finding that Lawrence provided no evidence of his income efforts is belied by the record. If the district court did consider these efforts but dismissed them, it failed to explain why it did so.

The district court also found bad-faith underemployment partly by reasoning that Lawrence "refus[ed] to document efforts . . . to seek employment outside of his former field of work." That Lawrence "refused" to document any alternative employment efforts suggests that there was some order or legal requirement imposing an obligation on him to document his efforts to seek employment outside of his field of work. Our thorough review of the record reveals no order or request that would have informed Lawrence of any duty to seek some other type of employment, let alone of any duty to document his efforts toward that employment. The record does not reveal and the district court does not explain what other types of work Lawrence is qualified for within the limitations imposed by his spinal condition. Although Lawrence has the burden of establishing the elements of his modification motion, the finding that Lawrence "refus[ed] to document efforts . . . to seek employment outside of his former field of work" does not support the consequent finding of bad faith.

The district court's amended order emphasizes that it made a credibility finding against Lawrence in its original order. This court accords great deference to a district court's credibility determinations. *Tonka Tours*, 372 N.W.2d at 726. Credibility determinations, like findings of fact, are reviewed for clear error. *See In re Estate of Torgersen*, 711 N.W.2d 545, 554 (Minn. App. 2006), *review denied* (Minn. June 20, 2006) ("Based on the evidence in the record, we cannot conclude that the district court's credibility findings are clearly erroneous."). We conclude that the district court's credibility finding against Lawrence is clearly erroneous. Its original order includes a finding that Lawrence's "current affidavit lacks credibility." The district court gave its specific reasoning for that credibility finding, but the reasoning misses an essential fact and a key circumstance, and either of these mistakes defeats the finding that the affidavit lacks credibility:

> 4. Paragraph five (5) of [Lawrence's] affidavit states "with the exception of some specialized training the first week of January 2016, the last time I worked was 12/16/15."
>
> 5. [Lawrence's] exhibit four (4) shows 25.5 hours of work during the period of May 2 – 15, 2016.
>
> 6. [Lawrence's] exhibit four (4) shows over $155,000 in gross income in 2015.
>
> 7. [Lawrence's] current affidavit lacks credibility.

The district court's reasoning is evident. The court reasoned that the claim in Lawrence's affidavit that he did not work after December 2015, except for a limited period in January 2016, is false because exhibit 4 proves that he worked about 25 hours during a two-week period in May 2016. Despite our great deference on credibility findings, two fatal flaws in the district court's reasoning prevent us from affirming the finding here.

The first flaw is that the reasoning overlooks the relevant dates. It was April 2016 when Lawrence signed and filed his affidavit saying he had not worked substantially since December 2015; but exhibit 4 (the exhibit the district court relied on to find that the affidavit is not credible) is a paystub that Lawrence submitted covering work he completed in May 2016—the month *after* he filed his affidavit. The record reveals that this May 2016 paystub was not an exhibit attached to his April 2016 affidavit but rather was an exhibit he submitted during the June 2016 motion hearing. That Lawrence worked in May cannot logically call into doubt his April affidavit testimony that he had not worked substantially since December. Because the district court cannot reasonably rely on the evidence showing that Lawrence worked in May to discredit Lawrence's April affidavit statement that he had not worked before May, the credibility finding constitutes clear error.

The second flaw is that the reasoning overlooks the consistency between Lawrence's limited May work and his April affidavit's main point, which is that his injury rendered him unable to work at the level he was working when the court originally determined the spousal-maintenance obligation. That Lawrence worked only 25 hours during a two-week period in May 2016 (or about 13 hours a week) tends to support, not discredit, his contention that he could no longer work full time (let alone the 70 to 90 hours he had occasionally worked to achieve his $155,000 income level). We observe that neither Lawrence nor Barbara testified at the hearing, so the district court's credibility determination rests solely on its mistaken assessment of the affidavit.

The district court's order denying Lawrence's motion for amended findings also improperly faults Lawrence because he provided "limited income information for the period since his . . . motion [for modification]." A district court deciding a motion to amend findings under Minnesota Rule of Civil Procedure 52.02 (2016) must consider only the evidence presented at the time of the original motion and "may neither go outside the record, nor consider new evidence." *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). Because the rules prohibit the district court from considering any evidence not previously submitted in Lawrence's motion to modify, the district court should not have implied that it was denying Lawrence's motion to amend in part on its finding that Lawrence failed to provide new evidence to support the motion.

The district court's finding that Lawrence "has the ability to earn an income similar to his income in 2015" lacks evidentiary support. The district court does not identify the employment supposedly available to Lawrence that would return him to his 2015 income level. Our caselaw exposes the problem with this omission. In *Schneider*, we reversed a district court's finding that the obligor had not maintained employment to the best of his ability because it abused its discretion by "not consider[ing] or mak[ing] findings on the availability of jobs or on [the obligor's] qualifications or education." *Schneider v. Schneider*, 473 N.W.2d 329, 332 (Minn. App. 1991). We face a similar circumstance here. The district court did not identify any employment for which Lawrence is qualified that would both meet his restrictive medical condition and afford him "the ability to earn an income similar to his income in 2015." Without explaining why or identifying supporting evidence, the district court's order seems to summarily reject the evidence showing that this 57-year-old laborer has a degenerative spinal condition that restricts his hours and limits him to lifting less than ten pounds, and the resulting circumstance that he cannot secure employment that produces the same income he received when he was healthy enough to work up to 90 hours per week in a highly specialized position. This is error.

Lawrence asks us to reverse and remand the district court's decision with instructions to reduce his maintenance obligation to zero until further order by the court. But we conclude only that the district court abused its discretion in its bases for denying Lawrence's motion to modify. Specifically, we reverse the district court's credibility finding to the extent it is premised on the disparity between the April affidavit and the May paystub, the finding that Lawrence has not offered any evidence of his efforts to obtain income, the finding that other work is available to Lawrence that would afford him his previous income, the ultimate finding that Lawrence has unjustifiably self-limited his income, and the consequent conclusion from these findings that it is neither unreasonable nor unfair to preserve the extant spousal-maintenance amount. We remand for the district court to address and decide Lawrence's motion to modify based on findings adequately supported by the evidence presented.

Reversed and remanded.