

*This opinion will be unpublished and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
A17-0854**

In re the Marriage of: Jason John Helms, petitioner,
Appellant,

vs.

Mary Jo Helms, co-petitioner,
Respondent.

**Filed November 27, 2017
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-FA-06-8666

Todd R. Haugan, Haugan Law Office, Ltd., Wayzata, Minnesota (for appellant)

Del A. Blocher, Stillwater, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the denial of his motion to modify his spousal-maintenance obligation, arguing that the district court abused its discretion either because respondent's cohabitation alone should have warranted modification or because the district court failed

to consider the factors in Minn. Stat. § 518.552, subd. 6 (2016). Appellant also argues that the district court should have terminated his obligation to maintain life insurance to secure his support obligation. We affirm.

FACTS

Appellant Jason Helms and respondent Mary Helms married in 1977, and their marriage dissolved in 2007, pursuant to a stipulated dissolution judgment and decree. The judgment and decree awarded respondent \$1,000 per month in spousal maintenance and required appellant to maintain life insurance to secure his support obligations “[f]or so long as [appellant] has a child support obligation and a spousal maintenance obligation pursuant to this agreement[.]” The youngest of the parties’ children was a minor at the time of dissolution, but has since emancipated; thus, appellant’s child-support obligation has been terminated. Respondent concedes that she is cohabitating with an unrelated adult male, S.G., as joint tenants in her Hudson, Wisconsin homestead and in S.G.’s Wausau, Wisconsin real property.

In May 2017, the district court denied appellant’s motion to modify his spousal-maintenance obligation, finding that appellant’s and respondent’s circumstances have not substantially changed and that S.G. does not contribute to respondent’s share of her joint-living expenses or her individual expenses. The district court also ordered appellant to verify that he has maintained life insurance to secure his spousal-maintenance obligation. However, the district court refused to consider whether appellant was required to maintain such life insurance because the parties’ correspondences addressing this issue were untimely and not in motion form. This appeal follows.

DECISION

This court reviews a district court decision whether to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). Regarding maintenance, a district court abuses its discretion if its findings of fact are unsupported by the record or if it misapplies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997). This court reviews a district court's factual findings concerning maintenance for clear error. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

A district court may modify an award for spousal maintenance if the moving party proves that, since the spousal-maintenance obligation was established or last modified, there has been a substantial change in circumstances. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716-17 (Minn. App. 2009). "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). 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).

Appellant argues that respondent's admission that she is cohabitating warrants modification because cohabitation alone renders his obligation unreasonable and unfair. Appellant suggests that the court should "infer" that respondent has received an economic benefit from cohabitating with S.G., but the district court found that "[a]ny economic

benefit derived from cohabitating has not appreciably reduced [respondent's] monthly expenses since the date of the dissolution. Petitioner is currently unable to meet her reasonable monthly expenses without liquidating assets.” Prior to the enactment of Minn. Stat. § 518.552, subd. 6, Minnesota courts had consistently held that mere cohabitation was insufficient to modify spousal maintenance. *Abbott v. Abbott*, 282 N.W.2d 561, 566 (Minn. 1979) (holding that cohabitation in itself is not a basis for termination or reduction of maintenance, except as it affects recipient's economic wellbeing); *Sieber v. Sieber*, 258 N.W.2d 754, 757 (Minn. 1977) (holding the existence of meretricious relationship between divorced wife and another man, standing alone, would not be sufficient ground to justify spousal-maintenance termination). The plain language of Minn. Stat. § 518.552, subd. 6 requires more than cohabitation alone. It requires the fulfillment of at least some of the four factors that it lists. The statute says, “[i]n determining if maintenance should be modified due to cohabitation, the court shall consider: [the four factors.]” The district court did not abuse its discretion by refusing to modify appellant's spousal-maintenance obligation based solely on respondent's cohabitation.

Appellant alternatively argues that the district court erred by failing to analyze the circumstances under the factors of Minn. Stat. § 518.552, subd. 6. However, this argument has been forfeited because the district court did not consider it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that this court generally will not address issues raised for the first time on appeal). The district court found that at the modification hearing on January 11, 2017, appellant conceded that the law required him to satisfy Minn. Stat. § 518A.39, subd. 2 (2016) before the district court could consider whether maintenance

should be modified based on cohabitation. Appellant did not provide this court with a transcript of that hearing, and when no transcript is provided, we accept the district court's factual findings as true. See *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970). To the extent appellant now argues that Minn. Stat. § 518.552, subd. 6 gives him an alternate path toward maintenance modification, completely separate from Minn. Stat. § 518A.39, subd. 2, that argument has been forfeited. How those statutes interact with one another is unsettled law. After appellant's concession, as a threshold matter, the district court analyzed appellant's motion within the framework of § 518A.39, subd. 2, and it found that appellant did not meet his burden of proving his current maintenance obligation is unreasonable and unfair under the circumstances.

Based on all the evidence appellant provided, the district court found that although appellant's monthly expenses have increased, his income has also increased, and he is able to meet his monthly expenses, including his maintenance obligation. The district court also found that while respondent's monthly expenses have decreased, her monthly income has also decreased due to a disabling injury. Appellant provided no evidence that respondent's cohabitation has benefitted her financially.

Based on these factual findings, the district court concluded that appellant did not prove that there has been a substantial change in circumstances warranting a maintenance modification. Since the district court's findings are reasonably supported by the evidence, the findings are not clearly erroneous and the district court did not abuse its discretion in denying appellant's motion to modify.

Appellant also argues that the district court erred by refusing to terminate his obligation to provide life insurance to secure his maintenance obligation. However, the district court did not consider the merits of this argument. After the parties submitted their proposed orders regarding maintenance modification to the district court, respondent's attorney submitted correspondence concerning appellant's obligation to maintain life insurance under the judgment and decree. Neither of the parties' motions addressed this issue, so the district court refused to rule on whether the judgment and decree's life insurance requirement remained in effect. However, the district court did order appellant to either provide proof of life insurance or to clearly state that he is not maintaining life insurance. The district court expressly stated it will not consider whether appellant is required to maintain insurance until a party brings a motion addressing that issue. We will not review this issue before the district court has ruled on it.

Affirmed.