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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0941**

Teresa J. Bulen, petitioner,
Respondent,

vs.

Michael E. Bulen,
Appellant

**Filed December 4, 2017
Affirmed
Worke, Judge**

Lake County District Court
File Nos. 38-FA-10-26, 38-CR-09-666

Teresa J. Bulen, Finland, Minnesota (pro se respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for
appellant)

Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by denying his request
to modify his spousal-maintenance obligation. We affirm.

FACTS

In June 2012, appellant-husband Michael E. Bulen and respondent-wife Teresa J. Bulen obtained a divorce. The district court awarded wife temporary spousal maintenance of \$200 per month for a period of ten years. At the time of the dissolution decree, husband was incarcerated at Minnesota Correctional Facility (MCF)-Faribault with an anticipated release in June 2019. Husband was employed in prison, earning an average monthly income of \$640.

By March 2015, husband's earnings increased to approximately \$1,000 per month. In June 2015, husband was transferred to Freeborn County Jail, lost his job, and was unable to obtain employment. Husband moved to modify his spousal-maintenance obligation, but the district court denied his motion in February 2016, concluding that husband failed to sufficiently prove his change in financial circumstances. Husband subsequently filed a request for reconsideration proffering evidence that he was earning no income, and the district court granted husband's request.

In June 2016, husband returned to MCF-Faribault and obtained employment at a rate of \$0.50 per hour. The district court modified husband's spousal-maintenance obligation, in September 2016, to 50% of his total monthly earnings. The district court ordered that, upon his release, husband's monthly spousal-maintenance obligation would be \$50 for the first two months and then return to \$200 per month through May 2022.

Husband requested permission to move for reconsideration, arguing that his monthly income was so low that the district court's award would create substantial hardship

for him while failing to provide wife with necessary support. The district court denied husband's request. This appeal followed.

D E C I S I O N

Husband argues that the district court abused its discretion by declining to eliminate his spousal-maintenance obligation for the remainder of his incarceration. The district court has broad discretion in deciding whether to modify an existing spousal-maintenance award. *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004). This court reviews a district court's decision regarding whether to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997). Similarly, a district court's maintenance award will not be reversed absent a clear abuse of discretion. *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006). The district court abuses its discretion when its decision is against logic and the facts in the record. *Kielley*, 674 N.W.2d at 775. "Findings 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).

The spousal-maintenance-modification statute provides that the terms of a spousal-maintenance award may be modified upon a showing that the obligor's gross income has substantially increased or decreased, making the terms of the maintenance award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a)(1) (2016). The district court, in its September 2016 order, concluded that husband established that his earnings had substantially decreased and that his income was unlikely to substantially increase in the near future, rendering the terms of the previous spousal-maintenance award unreasonable

and unfair. Husband does not contest the district court's conclusion that he was entitled to a modification of the spousal-maintenance award. Rather, he argues that the district court abused its discretion by declining to entirely eliminate his spousal-maintenance obligation for the remainder of his incarceration for two reasons: (1) wife does not need spousal maintenance, and (2) husband cannot afford to pay spousal maintenance.

These assertions are not supported by the record, which contains no evidence concerning wife's ability to support herself or her current lifestyle. Similarly, the record contains no evidence concerning husband's inability to pay for his basic necessities. Therefore, because husband does not challenge the district court's finding that wife is entitled to spousal maintenance, and because husband failed to produce evidence demonstrating that wife no longer requires maintenance or that he cannot afford to pay for his basic necessities if spousal maintenance continues, we conclude that the district court's findings were not clearly erroneous.

In September 2016, the district court acknowledged that wife had obtained an accounting degree and the parties' minor child had reached the age of majority. The district court noted, however, that spousal maintenance was necessary only "in part[] to assist [wife] in supporting the parties' minor child until he graduated from high school, and to assist [wife] in obtaining her accounting degree." The district court also explained that it chose to award a percentage of husband's monthly income "[i]n order to establish a fair ongoing spousal maintenance obligation that will increase if [husband]'s wages increase while incarcerated." In its subsequent order denying husband's request for reconsideration, the district court clarified that although husband's earnings at the time of the order were

low, “[his] income while incarcerated has fluctuated greatly over the course of these proceedings. The [district] [c]ourt set [husband]’s spousal maintenance obligation at 50% of his earnings to balance his ability to pay with [wife]’s need for support.”

The district court’s analysis reveals that it considered wife’s financial need, as well as her ability to meet that need, balanced against husband’s financial condition. See *McConnell*, 710 N.W.2d at 585 (“The basic consideration is the financial need of the spouse receiving the maintenance, and the ability to meet that need balanced against the financial condition of the spouse providing that maintenance.”). Because the district court’s findings are not clearly erroneous and because the district court properly analyzed husband’s modification motions, we hold that the district court did not abuse its discretion by declining to eliminate husband’s spousal-maintenance obligation for the remainder of his incarceration.

Affirmed.