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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1074**

In re the Marriage of:
Nathan Gregory Olstad, petitioner,
Appellant,

vs.

Stephanie Christine Olstad,
Respondent.

**Filed June 4, 2018
Affirmed
Stauber, Judge***

Hennepin County District Court
File No. 27-FA-13-8179

Shannon L. Ort, Terzich & Ort, LLP, Maple Grove, Minnesota (for appellant)

Jeffrey A. Berg, Mark V. Steffenson, Henningson & Snoxell, Ltd., Maplewood, Minnesota
(for respondent)

Considered and decided by Kirk, Presiding Judge; Hooten, Judge; and Stauber,
Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

Nathan Olstad challenges the denial of his motion to modify his stipulated spousal-maintenance and child-support obligations. He contends that his ex-wife, Stephanie Olstad, has had both a substantial increase in income and a substantial decrease in expenses that together make the terms of the original order unreasonable and unfair. He further maintains that the child-support order also is unreasonable and unfair for the same reasons and because one of the parties' children has become emancipated. Because appellant fails to demonstrate that the district court abused its discretion by concluding that there was no substantial change in circumstances warranting a modification of either obligation, we affirm.

FACTS

Nathan and Stephanie Olstad's marriage began in 1996, and was dissolved by stipulated decree entered in November 2013. Appellant is 47 years old and respondent is 45. The parties have three children together. At the time of dissolution, one of the children was emancipated, and the other two were still minors living with the parties.

The stipulated agreement called for appellant to pay spousal maintenance for seven years. For the first four years, appellant was required to pay respondent \$2,500 per month. Payments would then be reduced to \$2,000 per month and continue for the remaining three years. The parties agreed that, after the seven years of maintenance payments, the district court would be divested of jurisdiction to modify spousal maintenance but, within those seven years, either party could move the district court for modification. The parties also

agreed that appellant would pay respondent \$478 per month in child support and would pay ten percent of any bonus he received from his employer as additional child support.

At the time of dissolution, respondent's gross monthly income was \$2,878. She worked at Optum Services, Inc. as a coach, working about 20 hours a week and earning \$22 an hour, for a gross monthly income of \$1,907. She also worked at Lifetime Fitness part-time, earning an additional \$971 per month. Appellant also worked at Optum. He was and still is a director of information technology, earning about \$11,435 per month, with the potential for additional bonus income. The parties stipulated that respondent's reasonable monthly expenses were \$5,093 and that Appellant's were \$6,300.

About three years later, appellant brought a motion to terminate or modify both his spousal-maintenance obligation and his child-support obligation. He argued that respondent's income had substantially increased and her expenses had substantially decreased since the original order and that the existing maintenance order was, therefore, unfair and unreasonable. He also argued that, because the parties' second child was emancipated, he should no longer have to pay ten percent of any bonus income in child support or, in the alternative, that the obligation should be reduced to three percent. The district court denied his motion after a hearing. In its written order, the district court found that, although respondent's income slightly increased, so too did her expenses, and she was still unable to meet her needs. Therefore, the district court concluded that there was no substantial change in circumstances which would render the original award unreasonable and unfair. As for child support, the district court concluded that the parties' agreement explicitly stated that all child support would cease upon the last child's emancipation and,

because there was still a child not yet emancipated, the child-support order would remain intact.

Appellant appeals.

DECISION

Appellant argues that the district court improperly denied his motion for modification of both his spousal-maintenance and child-support obligations. We review a district court's decision regarding motions to modify support and maintenance for an abuse of discretion. *Haefele v Haefele*, 837 N.W.2d 703, 708 (Minn. 2013) (maintenance); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (support). A district court abuses its discretion when it makes clearly erroneous findings or bases its decision on errors of law. *Id.* We analyze appellant's spousal-maintenance and child-support arguments separately.

I

Appellant argues that the district court improperly denied his motion to modify his spousal-maintenance obligation to respondent. A party seeking to modify a spousal-maintenance award bears the burden of showing a substantial change in circumstances that renders the terms of the existing award "unreasonable and unfair," such as by showing a substantial increase in an obligee's gross income or a substantial decrease in her need. Minn. Stat. § 518A.39, subd. 2(a)(1)-(2) (2016). The baseline from which any change in circumstances is measured is the later of when maintenance was set or the last time it was modified. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

Appellant argued to the district court that the maintenance award became unreasonable and unfair because, since the dissolution in 2013, respondent's income substantially increased while her need substantially decreased. The district court disagreed, finding that a \$582 increase in respondent's gross monthly income did "not render the current spousal maintenance award unreasonable and unfair" and that, "[e]ven if [her] expenses were somewhat less today, her need would not be fully met even with the [existing] maintenance award." Appellant maintains that these findings were clearly erroneous. "To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations and ellipsis omitted). We now analyze the district court's findings related to respondent's gross income and expenses.

A

Appellant first contends that the district court clearly erred in finding that respondent's gross monthly income had only increased to \$3,459 from the \$2,877 that she was earning at the time of dissolution. A district court considering a motion to modify maintenance must review all relevant factors "that exist at the time of the motion," including the parties' gross incomes. Minn. Stat. § 518A.39, subd. 2(d) (2016). In general, "gross income" includes "any form of periodic payment." Minn. Stat. § 518A.29 (2016). Here, the district found that respondent's gross monthly income was \$3,459 by adopting the calculations she provided in her affidavit. Respondent reached that figure by summing her gross monthly incomes from her employment with Optum, Life Time, and a yoga

retreat she hosted once a year. Appellant challenges only the calculation of her gross monthly income from the annual yoga retreat and Optum.¹

Respondent's income from the annual yoga retreat

Appellant contends that respondent earns significantly more from her annual yoga retreat than she claims. Respondent stated in her affidavit that she makes about \$1,000 a year from the retreat, which she divides by 12, to get \$83 per month. Appellant calculates her gross monthly income from the yoga retreat at about \$282 per month. To reach this figure appellant adds together a number of figures that appear in a document titled “Explanation of Alleged ‘Unknown Deposits and Withdrawals’” that respondent submitted to the district court. The document contains a list of transactions to and from respondent’s Wells Fargo bank account; each listed transaction is accompanied by an explanation of why money was being received or removed.

Appellant does not explain why he used deposits from yoga workshops and a three-month yoga contract with a school district in his calculation of respondent’s gross income from her annual-yoga retreat. Respondent’s affidavit explained that she no longer held the yoga workshops because she used to host them in her ex-boyfriend’s home, but “after [their] separation the opportunity to hold workshops [was] not available.” She also

¹ Appellant also argues that the district court clearly erred when it found that respondent’s income increase from \$2,877 to \$3,459 represented only a 16% increase in her income. He is right. $(\$3,459 - \$2,877) / \$2,877 = 0.2023$ or 20.23%. But the error is harmless because the district court’s finding that there had not been a substantial change in circumstances was not based on its percentage calculation, but the actual dollar difference: “An increase in her earned income of \$582 per month does not render the current spousal maintenance award unreasonable and unfair.” Therefore, we ignore this error. See Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

explained that her three-month yoga contract with the school district was a “one-time contract” that will not be offered again. Further, the “Explanation of Alleged ‘Unknown Deposits and Withdrawals’” document from which appellant gets his figures is a list of selected transactions that does not account for the hundreds of other transactions that appear in the record. Essentially, the district court made a credibility determination, and it found respondent’s figures more credible than appellant’s. We defer to the district court’s credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Appellant fails to demonstrate that the district court clearly erred by finding that respondent’s gross monthly income from her annual yoga retreat was \$83.

Respondent’s income from Optum Services, Inc.

Appellant next challenges the accuracy of respondent’s gross monthly income from Optum, which she calculated at \$2,270.03. He argues that her calculation of gross income is undermined by the paystub that she submitted with her affidavit that covered the November 13, 2016 to November 26, 2016 pay period. He notes that the paystub shows that her year-to-date gross income was \$27,569.88. He then divides that number by 47 to find her weekly gross income of \$586.59. (He uses 47 instead of 52 because the paystub did not include the five weeks remaining in 2016 that respondent had not yet worked.) He then multiplies that figure by 4.33 to get her gross monthly income of \$2,539.95. *See Minn. Stat. § 518A.29(d)* (2016) (“Weekly income shall be translated to monthly income by multiplying the weekly income by 4.33”). This is \$269.92 more than the \$2,270.03 figure that the district court used to determine whether there had been a substantial change in circumstances.

At first glance, appellant’s calculation appears to be right. But the paystub’s year-to-date figure includes \$100 for a “Bravo–Cash Award,” \$37.50 for a “Bravo Points Award,” \$413 for a “Rewarding Results” bonus, and \$1,875 for “Non-Taxable Expense Reimburse[ment].” Respondent factored in the \$413 for the “Rewarding Results” in her total gross monthly income, just not in her calculation of her gross monthly income from Optum. But she did exclude from her calculation the \$1,875 reimbursement, the \$37.50 from the “Bravo Points Award,” and the \$100 from the “Bravo–Cash Award.” The inquiry therefore becomes whether appellant has demonstrated that the district court, by its adoption of respondent’s calculation, clearly erred when it excluded these figures from its calculation of her gross monthly income from Optum. Appellant fails to meet this burden.

The relevant inquiry in determining whether money is gross income is whether it is a “periodic payment to an individual.” *Haefele*, 837 N.W.2d at 710 (quoting Minn. Stat. § 518A.29(a)); see *Lynch v. Lynch*, 411 N.W.2d 263, 266 (Minn. App. 1987) (“Bonuses which provide a dependable source of income may properly be included in calculation of future income”), *review denied* (Minn. Oct. 30, 1097). In her affidavit—the one the district court adopted as fact—respondent explained that she did not include the “Bravo Points Award” and the “Bravo–Cash Award” because she only received the two payments “for sharing a good idea in the suggestion box and helping with a special project.” In other words, they were not periodic payments. We do not assume error on appeal. See *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that “on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it”

(quoting *Waters v. Fiebelkorn*, 216 Minn. 489, 495, 13 N.W.2d 461, 464-65 (1944)); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying this aspect of *Loth*). Appellant fails to explain why these payments are, in fact, periodic payments or why the payments should nonetheless be included in the gross-income calculus.

Respondent's affidavit is silent as to why it excluded the reimbursement funds from the calculation of her gross income. "[E]xpense reimbursements . . . received by a [party] in the course of employment . . . shall be counted as income *if* they reduce personal living expenses." Minn. Stat. § 518A.29(c) (2016) (emphasis added). In other words, reimbursements are excluded from gross income unless shown to reduce personal living expenses. *See id.* Appellant does not argue that the \$1,875 Optum reimbursed respondent was used to reduce her personal living expenses. Again, we do not assume error, and we cannot say that the district court erred by excluding the reimbursement from respondent's gross monthly income from Optum.

With the money from the "Bravo Points Award," the "Bravo-Cash Award," and the reimbursement properly excluded from the calculation, respondent's gross monthly income from Optum comes out to be \$2,262.08.² Adding to that figure the \$1,072 a month from Life Time, the \$83 a month from her annual yoga retreat, and the \$34 a month from her "Rewarding results bonus" equals \$3,451.08, which is \$7.92 lower than what respondent

² The paystub lists her bi-weekly income before tax at \$1,044.84. To find gross monthly income, we multiply weekly income by 4.33. Minn. Stat. § 518A.29(d). Because we are dealing with bi-weekly income, we multiply \$1,044.84 by 2.165 (half of 4.33), which equals \$2,262.08.

and the district court calculated her gross income to be. This small difference is *de minimis*. See *Huckbody v. Freeburg*, 388 N.W.2d 385, 388-89 (Minn. App. 1986) (concluding that an \$86.21 difference between its calculation and the district court's calculation of respondent's monthly income at \$2170.51 was *de minimis*). Appellant has failed to demonstrate that the district court clearly erred in calculating respondent's gross monthly income at \$3,459.

Imputation of income

Appellant next argues that, regardless of what respondent's actual income is, the district court abused its discretion by not imputing a higher income to her and using that imputed income to find that there had been a substantial change in circumstances. He bases his argument on the purpose of temporary maintenance. The terms "temporary maintenance" and "rehabilitative maintenance" are often used interchangeably. See *Gales v. Gales*, 553 N.W.2d 416, 418 (Minn. 1996) (contrasting "temporary rehabilitative maintenance" with permanent maintenance); *Torkelson v. Torkelson*, 373 N.W.2d 630 (Minn. App. 1985). And rehabilitative maintenance assumes that the recipient spouse will make an effort to reach self-sufficiency. See *Nardini v. Nardini*, 414 N.W.2d 184, 198-99 (Minn. 1987). But appellant ignores the fact that he and respondent stipulated to this maintenance arrangement. "[A] stipulation fixing the respective rights and obligations of the parties represents their voluntary acquiescence in an equitable settlement, and the district court should 'carefully and only reluctantly' alter its terms." *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004) (quoting *Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981)). In *O'Donnell*, this court concluded that the

presumption that a child-support order is unreasonable and unfair if it deviates more than 20% from the guidelines was rebutted by the fact that the parties stipulated to the order. *Id.* at 477.

Here, the district court stated,

[A]side from [appellant's] statements that the parties contemplated [respondent's] ability to work full time employment, there is nothing in the record to suggest that this was a part of the parties' initial contemplations when stipulating to the temporary spousal maintenance. Both parties also agree that prior to her re-entering the workforce, [respondent] was a stay at home mother for their three children. A maintenance award "must be evaluated in the context of other provisions of a dissolution judgment." *Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 543 (Minn. Ct. App. 2006). Given the context of the Decree and the circumstances of the parties at that time and currently, the Court does not find it appropriate to impute income to [respondent] simply because she is not working a full time position at United Health Group.

Appellant argues that this finding was erroneous, but his argument falls short. According to appellant, the fact that the parties agreed that the maintenance order could be modified during the seven-year window in which it was to be paid is evidence that the parties contemplated that respondent may rehabilitate more quickly than the seven year temporary payment duration. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In order to successfully challenge a district court's findings, the challenging party "must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake has been made." *Id.* Appellant's

subjective view of the stipulation—which explicitly stated that the consideration for the parties’ agreement to deprive the district court of jurisdiction after maintenance terminated included “the terms of the spousal maintenance agreement”—is not enough to overturn the district court’s finding.

The district court also offered a separate, independent reason for why it would not impute income to respondent. Citing *Carrick v. Carrick*, 560 N.W.2d 407 (Minn. App. 1997), the district court stated that it could impute respondent’s earning capacity to her income only if it first found she was underemployed in bad faith, which it concluded was not the case. Appellant argues that *Carrick* is inapplicable. He cites to *Passolt v. Passolt*, 804 N.W.2d 18 (Minn. App. 2011), and maintains that the *Carrick*-bad-faith inquiry does not apply in cases like this one. But *Passolt* never said that a district court *must* impute income to an obligee based on her ability to earn a higher income; rather it simply held that a district court considering the appropriateness of a maintenance award “*may* consider a maintenance recipient’s prospective ability to become fully or partially self-supporting without making a finding that the recipient has acted in bad faith to remain unemployed or underemployed.” 804 N.W.2d at 19 (emphasis added). And here, it is clear that the district court considered respondent’s ability to earn a higher income; it just also concluded that appellant and respondent agreed to a maintenance award that did not require respondent to try and earn a higher income. The district court did not err by giving more weight to one factor over another. See *Robert v. Zygmunt*, 652 N.W.2d 537, 545 (Minn. App. 2002). Appellant has not demonstrated that the district court clearly erred by refusing to impute income to respondent.

B

Appellant argues that the district court abused its discretion by adopting respondent's claimed monthly expenses as fact. Based on his own analysis of respondent's bank and credit-card statements, appellant claims that her actual monthly expenses are \$4,188.57 and not \$5,809 as the district court found. Because the district court, despite appellant's analysis, found that respondent's monthly budget was reasonable, it implicitly did not find his analysis credible on this point. As noted above, we defer to the district court's credibility determinations, *Sefkow*, 427 N.W.2d at 210, even when those determinations are implicit. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

Appellant also argues that the district court erred by failing to find that respondent was living a "luxury lifestyle" far beyond the marital standard of living. Specifically, he states that Respondent

[s]pent an average of \$396.56 per month on clothes and shoes (\$1,506.69 in one month alone); \$345.02 per month in travel; \$211.14 per month for hair, nails, and spa expenses; and \$220.38 per month for restaurant dining. These increases and additions are discretionary and not in accordance with the marital standard of living.

But that is it. Appellant does not explain how those figures are not in accord with the marital standard of living. And, as touched on above, the district court found that respondent's budget was "reasonable in light of the lifestyle and income that [the parties] earned together during the marriage, and does not find that [respondent] is using excess funds to support a 'luxury lifestyle.'" To show a substantial change in circumstances that renders the existing

award unreasonable and unfair, appellant is required to compare the parties' circumstances at the time of dissolution to their circumstance at the time he brought his motion to modify. *See Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (making this observation in the context of a child support dispute). Appellant's conclusory statement that respondent's clothes, shoes, nails, travel, and spa expenses are inconsistent with the marital standard of living is not enough to overcome the district court's finding that respondent's budget was reasonable.

II

Appellant also challenges the district court's decision to deny his motion to modify child support as an abuse of discretion. As the order stands, appellant is required to pay ten percent of any bonus he receives as child support. He says this is unreasonable and unfair because, since the order was first imposed, one of the two children respondent was caring for has been emancipated. He also notes that Minnesota Statutes section 518A.39, subdivision (2)(b)(4) (2016), states, "It is presumed that there has been a substantial change in circumstances" that makes the terms of an existing child-support order unreasonable and unfair if "the existing support obligation is in the form of a percentage and not a specific dollar amount."

But this ten percent obligation is in addition to his set specific dollar amount payment of \$478 per month. And appellant agreed to this structure. This court must give the plain and ordinary meaning to the unambiguous terms of a stipulated judgment and decree. *See Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977) (applying general rule for construction of contracts to dissolution). The language is clear:

In the event [appellant] receives a bonus through his employment, he shall pay 10% of the gross amount of the bonus to [respondent] within 20 days of receipt, together with verification of receipt of the bonus (including a copy of the bonus paystub), as and for additional child support. *This obligation shall terminate together with the basic support obligation upon the last child's emancipation.*

(Emphasis added).

Under the stipulation, the bonus obligation continues until the last child's emancipation, and when appellant moved for modification, the last child had not yet been emancipated. There was no abuse of discretion.

Affirmed.