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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0657**

In re the Marriage of: Mark Allen Kedrowski, petitioner,
Appellant,

vs.

Masako Kedrowski,
Respondent.

**Filed March 25, 2019
Affirmed in part and reversed in part
Schellhas, Judge**

Washington County District Court
File No. 82-FA-11-283

Kevin S. Sandstrom, Jordan N. Feis, Eckberg Lammers, P.C., Stillwater, Minnesota (for appellant)

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Considered and decided by Worke, Presiding Judge; Schellhas, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant argues that the district court abused its discretion by denying his motion to terminate his spousal-maintenance obligation and erred by retaining jurisdiction over the disposition of any proceeds from his personal-injury action. We affirm the denial of

husband's motion to terminate his maintenance but reverse the district court's retention of jurisdiction over the disposition of any proceeds from husband's personal-injury action.

FACTS

Appellant Mark Kedrowski (husband) and respondent Masako Kedrowski (wife) married in October 2001, and had two children during the marriage. Throughout the parties' marriage, husband was the majority owner and chief executive officer (CEO) of Blue Earth Internet, LLC (BEI), an interactive development company. As owner of BEI, husband received an annual salary in excess of \$100,000.

The parties separated in August 2009. Approximately one year later, husband sustained serious injuries when a plane that he was piloting crashed. He underwent numerous surgeries, his left leg was amputated, his right ankle was completely reconstructed, his face was disfigured, and he suffered a traumatic brain injury. Husband sued Lycoming Engines (Lycoming), claiming that the airplane's engine, which was a model designed, manufactured, and sold by Lycoming, lost power and caused the crash.

In May 2012, with the advice of independent legal counsel, husband and wife stipulated to the dissolution of their marriage and that BEI, valued at \$324,000, would be awarded to husband; that the homestead, valued at \$250,000, would be awarded to wife; that husband's gross annual income was \$170,724, which included his "current salary" from BEI, \$2,227 per month in social security disability insurance, and \$2,000 per month in private disability insurance; that wife's monthly income was \$924; that husband would pay wife spousal maintenance of \$2,700 per month for three years, after which spousal maintenance would be reviewed; and that husband would pay wife child support of \$1,681 per month. The

parties did not stipulate to a reservation of the district court's jurisdiction over husband's personal-injury action. The district court incorporated the parties' stipulated terms in its findings of fact, conclusions of law, order for judgment, and judgment and decree.

In August 2012, husband married Jeri Kedrowski (second wife). In March 2015, husband moved for a review of his spousal-maintenance obligation to wife. Following a hearing, the district court found that, since the time of the dissolution judgment, husband's income had not substantially "changed/decrease[d]" to warrant a termination of his spousal-maintenance obligation. But the court reduced husband's spousal-maintenance obligation to \$1,800 per month, "continuing until [wife] remarries, dies, or until further Order of this Court."

In January 2016, a jury awarded husband \$27.7 million in damages in his lawsuit against Lycoming. But the district court in that action granted Lycoming's posttrial motion for judgment as a matter of law (JMOL). On appeal, this court affirmed the district court's JMOL ruling, and the supreme court granted review. *Kedrowski v. Lycoming Engines, a division of AVCO Corp.*, No. A17-0538 (Minn. App. May 15, 2018), *review granted* (Minn. Aug. 7, 2018).

In December 2016, husband and second wife dissolved their marriage through stipulated findings of fact, conclusions of law, order for judgment, and judgment and decree. The stipulated dissolution judgment awarded second wife 100% ownership in BEI and awarded husband a cash property settlement of \$243,000 for his combined interest in BEI, the marital homestead, and his interest in second wife's 401(k). The stipulated dissolution judgment requires second wife to pay husband the \$243,000 cash property settlement in

monthly payments of \$5,946.81, including principal and 4% interest, for a period of 44 months until the cash settlement is paid in full.

In September 2017, husband again moved to terminate his spousal-maintenance obligation to wife, claiming that his income “has dramatically decreased as a result of [second wife’s] acquisition of [BEI],” and that his decreased income constitutes a substantial change in circumstances rendering his existing maintenance obligation unreasonable and unfair.

In April 2018, the district court denied husband’s motion to terminate his spousal-maintenance obligation. In its order, the court stated that it “struggle[d] with what it finds to be the inequities based upon circumstances out of [wife’s] control. Those inequities could be due to poor decisions on [husband’s] part, bad faith by [husband], or just a result of very unfortunate circumstances.” The court found that wife “is in need of spousal maintenance to pay her monthly living expenses,” that she “is using, and will probably continue to use, her property settlement to pay some of her monthly living expenses,” and that husband “has the ability to contribute towards [wife’s] expenses.” Although the court found that the marriage dissolution between husband and second wife “has created a change of circumstances,” it concluded that “when viewing the parties’ respective circumstances as a whole in connection with the background that brought them to this point, . . . the existing maintenance obligation of \$1,800 per month is both reasonable and fair.” And the court specifically “retain[ed] jurisdiction of [husband’s] personal injury/products liability claim to adjudicate, mediate or otherwise dispose of any marital interest the parties may have in any potential award.”

This appeal follows.

DECISION

I. Denial of motion to terminate husband's spousal-maintenance obligation

Husband challenges the district court's denial of his motion to terminate his spousal-maintenance obligation. Appellate courts review 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, 709–10 (Minn. 1997). A district court abuses that discretion by making findings of fact that are unsupported by the record or by improperly applying the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). A reviewing court defers to a district court's findings of fact and will uphold them unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Spousal maintenance is an award of “payments from the future income or earnings of one spouse for the support and maintenance of the other.” Minn. Stat. § 518.003, subd. 3a (2018). Our supreme court has ruled that the “income” from which maintenance payments are made is the “gross income” defined in Minn. Stat. § 518A.29 (2018). *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009). Under Minn. Stat. § 518A.29(a), “gross income includes any form of periodic payment to an individual.”

If spousal maintenance has been ordered, the district court may modify the maintenance award after determining that (1) a substantial change in circumstances has occurred, (2) which has made the existing support award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2018). Changed circumstances can be established by showing a substantial increase or decrease in the gross income or need of either the obligee or the

obligor. *Id.* The movant bears the burden of demonstrating a substantial change in circumstances that renders the current maintenance amount unreasonable and unfair. *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997).

Husband argues that the district court abused its discretion by denying his motion to terminate his spousal-maintenance obligation because his “primary source of income ended as a result of [second wife’s] acquisition” of BEI pursuant to the terms of the stipulated dissolution decree between husband and second wife. Husband contends that without his previous salary from BEI, his gross monthly income consists of social security benefits of \$2,300, and long-term disability benefits of \$2,000, the combination of which is less than his claimed reasonable monthly living expenses of \$5,250. Although husband acknowledges that he receives monthly property-settlement payments of \$5,946.81 from second wife, he maintains that the entirety of the payments cannot be considered as income for purposes of determining his ability to pay maintenance to wife because the payments represent his property settlement from second wife. Husband does not address the fact that a portion of each monthly payment consists of income in the form of interest.

We acknowledge that Minnesota caselaw provides that absent fraud, mistake, newly discovered evidence, or other extraordinary circumstances, the district court does not have authority to modify a marital property division once the time for appeal from the judgment and decree has expired. *Lee*, 775 N.W.2d at 639–40; *Kiesow v. Kiesow*, 133 N.W.2d 652, 661–62 (Minn. 1965); *Kruschel v. Kruschel*, 419 N.W.2d 119, 121 (Minn. App. 1988); *Boom v. Boom*, 367 N.W.2d 536, 538 (Minn. App. 1985), *review denied* (Minn. June 27, 1985). And because of the finality of a property distribution under a judgment and decree,

neither the obligee nor the obligor is generally required to invade the principal of his or her property settlement to meet his or her monthly needs for purposes of determining spousal maintenance. *See Lee*, 775 N.W.2d at 640 (concluding that district court could not properly include previously divided martial assets in its determination of husband's income for maintenance purposes); *see also Dougherty v. Dougherty*, 443 N.W.2d 193, 195 (Minn. App. 1989) ("It is established law that spouses are not required to invade the principal of their property settlement to meet their monthly needs."); *Kruschel*, 419 N.W.2d at 122 (concluding that basing a maintenance obligation on a property award inappropriately redistributed the property as income).

Nonetheless, the district court never specifically found that the periodic payments husband receives from his second wife constitute income for purposes of spousal maintenance. Rather, the court found that despite the changed circumstances, the "existing maintenance obligation of \$1,800 per month is both reasonable and fair." In determining that the existing maintenance award was reasonable and fair, the district court considered all of the circumstances presented in the case. The court found that wife "is in need of spousal maintenance to pay her monthly living expenses," and that she is, in fact, "using . . . her property settlement to pay some of her monthly living expenses." The court also considered husband's living expenses and found that "with his reduced income, [husband] continues to contribute to charity, and enjoy a highly discretionary level of spending related to eating out, shopping and entertainment." In addition, the court found that aside from the monthly payments he receives from second wife, husband has income of \$4,300 per month from social security disability and long-term disability. These findings are supported by

the record. And although under *Lee*, husband is not required to pay maintenance from the periodic payments he receives from second wife that stem from his property award, the portion of the periodic payments derived from interest is available for purposes of satisfying husband's maintenance obligation.¹ See 14 Michael P. Boulette, *Minnesota Practice* § 10.2 (2018-19 ed. 2018) (stating that income from which maintenance can be paid includes any form of periodic payment, including interest); see also *Kruschel*, 419 N.W.2d at 123 (stating that once obligor has received from pension "amount equivalent to its value as determined in the original property distribution," court may properly consider any subsequent pension benefits as "income" for maintenance purposes).

We acknowledge the unique facts and circumstances presented in this case. See *Curtis v. Curtis*, 887 N.W.2d 249, 254 (Minn. 2016) (noting that "each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties" (quotation omitted)). We agree with the district court that this is a case of "unfortunate circumstances," and that in light of these unfortunate circumstances, both parties must invade their property settlements to meet their monthly expenses that include a highly discretionary level of spending that was established during the parties' marriage. The district court's determination that, as a result of these "unfortunate circumstances," the existing maintenance award is both reasonable and fair is based on thoughtful analysis, and precisely describes the situation.

¹ Husband's brief includes a copy of the amortization schedule for second wife's cash property-settlement payment of \$243,000, payable with 4% interest, totaling \$18,659.64 over the course of the payment schedule.

The fact that husband stipulated to his spousal-maintenance obligation to wife further supports the district court's decision that the maintenance award is reasonable and fair. *See Beck*, 566 N.W.2d at 726 (cautioning district courts to “exercise . . . considerable discretion carefully and only reluctantly when . . . faced with a request to alter the terms of an agreement which was negotiated by the parties”). Despite the changed circumstance of husband's decreased income, we therefore conclude that the court's denial of his motion to terminate his spousal-maintenance obligation was well within its broad discretion.

II. Retention of jurisdiction over husband's personal injury action

Husband also challenges the district court's retention of “‘jurisdiction’ over [his] personal injury action.” The court specifically “retain[ed] jurisdiction of [husband's] personal injury/products liability claim to adjudicate, mediate or otherwise dispose of any marital interest the parties may have in any potential award.” The court appears to have retained jurisdiction over the disposition, i.e., division, of “any marital interest” of the parties in husband's potential personal-injury award. To that extent, the order is erroneous.

Wife contends that the district court properly retained jurisdiction over husband's personal-injury action “as an extension of its continuing jurisdiction over spousal maintenance.” Wife's argument is unnecessary. A district court “may reserve jurisdiction of the issue of maintenance for determination at a later date.” Minn. Stat. § 518A.27, subd. 1 (2018). Reservation permits a district court to “later assess and address future changes in one party's situation as those changes arise, without prematurely burdening the other party.” *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). And district courts always retain jurisdiction to hear later motions to modify existing maintenance awards upward or

downward, unless the parties and the court together adopt as part of the judgment and decree provisions providing that future jurisdiction is divested. *See* Minn. Stat. § 518.552, subd. 3 (2018) (stating that where there is uncertainty as to the necessity of a permanent spousal-maintenance award, an award of permanent maintenance should be left open for later modification).

But as stated above, property settlements are final and may be modified only upon a showing of fraud, mistake, newly discovered evidence or other extraordinary circumstances. Minn. Stat. § 518.145, subd. 2 (2018); Minn. Stat. § 518A.39, subd. 2(g) (2018); *see Kerr v. Kerr*, 243 N.W.2d 313, 314 (Minn. 1976) (stating that property awards in dissolution judgments are generally final and not subject to alteration). Here, although husband was injured in the plane crash prior to the dissolution of his marriage with wife, wife stipulated to the division of the parties' assets without reference to, or reservation of, any interest that she might have had in husband's personal-injury action. The division of the parties' marital property became final when the judgment and decree was entered in 2012, and the time for appeal expired. Thereafter, the property award was subject to modification only if wife showed fraud, mistake, or otherwise satisfied the requirements for reopening a dissolution judgment. *See* Minn. Stat. § 518A.39, subd. 2(g) (stating that a property settlement is final and may be modified only upon a showing of fraud or mistake); *see also* Minn. Stat. § 518.145, subd. 2 (addressing reopening of dissolution judgments). We therefore reverse that part of the district court's order that retains jurisdiction over husband's personal-injury award. This reversal does not preclude wife from arguing the existence of a substantial change

in circumstances in a maintenance-modification motion in the event that husband recovers a substantial personal-injury award.

Affirmed in part and reversed in part.