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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0284**

In re the Marriage of:

Paul Matthias Hobday, petitioner,
Appellant,

vs.

Mary Kay Hobday,
Respondent.

**Filed March 2, 2020
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-FA-10-9117

Alan C. Eidsness, Benjamin J. Hamborg, Henson & Efron, P.A., Minneapolis, Minnesota
(for appellant)

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Considered and decided by Jesson, Presiding Judge; Ross, Judge; and
Smith, John, Judge.*

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

UNPUBLISHED OPINION

JESSON, Judge

In this spousal-maintenance, childcare-expense, and parenting-time modification dispute, appellant Paul Matthias Hobday (husband) argues that the district court used an incorrect marital standard of living as the baseline for his spousal-maintenance modification motion. He asserts that the increase in respondent Mary Kay Hobday's (wife) income was not anticipated by the parties' stipulated judgment and decree. However, at the time of their dissolution, husband and wife stipulated to the amount of monthly spousal maintenance without agreeing to, or the district court finding, the marital standard of living against which any request for modification would be measured. Husband next argues that the district court should have retroactively modified his childcare-expense obligation back to the date wife stopped incurring this expense. Finally, husband argues that the district court failed to make adequate findings of fact to support its partial denial of his motion for increased parenting time. Because the district court's careful findings were supported by the record—particularly by the stipulation of the parties—the district court did not abuse its discretion. We therefore affirm.

FACTS

Husband and wife were married in July 1988. They have four children together, two of whom have emancipated. Husband filed a petition in December 2010 to dissolve their marriage. In February 2012, the district court entered stipulated findings of fact, conclusions of law, order for judgment, and judgment and decree.

Pursuant to the stipulated decree, husband and wife agreed to joint legal custody of the children, with wife receiving sole physical custody subject to husband's parenting time. Husband had one third of the parenting time with the two youngest children, on Tuesday evenings, alternating Wednesday evenings, and alternating weekends, with additional provisions for vacation and holiday time.

At the time of the dissolution, husband and wife could not agree upon their marital standard of living or their respective post-decree budgets. Despite this, they stipulated that husband would pay wife \$15,000 each month in spousal maintenance. With cost-of-living adjustments, this amount was \$16,102.42 per month at the time the district court decided the motion. Husband and wife each attached their proposed post-decree budgets to the 2012 stipulated judgment. In these attachments, husband proposed that wife's budget for herself and the children should total \$11,451 per month, while wife's proposed budget was \$17,120 per month, for herself plus an additional \$9,780 for the children.

At the time of the stipulated judgment, husband was earning \$571,000 per year as an orthodontist, and wife was earning \$42,000 per year as a registered nurse. For the five-year period following the dissolution, husband's average-yearly income increased to \$767,950, while wife's increased to \$72,420.

In November 2017, husband moved the district court to modify his childcare support obligations. Husband filed a second amended motion in October 2018, seeking, among other things, to expand his parenting time, reduce his spousal-maintenance obligation, and recover \$53,367 in overpaid childcare support. Despite the relative changes in their

incomes, husband sought to reduce his spousal-maintenance obligation from \$16,102 to \$5,830 per month.

Following a hearing, the district court found that wife's marital standard of living at the time of the dissolution was \$17,120, which meant that the stipulated-maintenance amount left her with a \$2,120 monthly shortfall. Therefore, the district court denied husband's motion to reduce his spousal-maintenance obligation. The district court granted husband additional parenting time on Sunday nights, but not the full amount of additional time he requested. Finally, the district court declined to order wife to reimburse husband for the overpaid childcare support he incurred prior to the date he served his notice of motion. Husband appeals.

D E C I S I O N

Husband argues that the district court used the incorrect marital standard of living as the basis for denying his motion to reduce his spousal-maintenance obligation. Relatedly, husband argues that his spousal-maintenance obligation should have been reduced because wife's increased income was not foreseeable at the time of the parties' stipulated judgment. Next, husband asserts that the district court should have retroactively modified his childcare-support obligation back to the date wife stopped incurring this expense. Finally, husband claims that the district court failed to fully analyze his motion for increased parenting time. We address each argument in turn.

I. Husband is not entitled to reduce his spousal-maintenance obligation because the stipulated amount is below the marital standard of living, and wife's increased income was foreseeable.

Husband argues that the district court abused its discretion by denying his motion to reduce his spousal-maintenance obligation. Specifically, husband asserts that the district court used the incorrect baseline to determine whether a substantial change in wife's circumstances had occurred and made unsupported findings regarding the parties' reasonable expectations of wife's future income.

Appellate courts review a district court's decision to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997). A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We will set aside a district court's findings of fact only if they are clearly erroneous. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

The terms of a maintenance order “may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: (1) substantially increased . . . gross income of an . . . obligee; (2) substantially . . . decreased need of an . . . obligee.” Minn. Stat. § 518A.39, subd. 2(a)(1)-(2) (2018). However, we note that the maintenance obligation that husband seeks to modify was the result of a stipulation between the parties. Courts only modify a *stipulated* maintenance obligation with reluctance. *Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981) (“Although the [district] court is vested with broad discretion to determine the propriety of a modification,

we have suggested that [district] courts exercise that discretion carefully and only reluctantly alter the terms of a stipulation governing maintenance.”).

The Marital Standard of Living

Husband argues that the district court abused its discretion by adopting wife’s budget as the marital standard of living. “The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances.” *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004). Generally, a stipulated judgment and decree’s “relevance in a modification context is in the identification of the baseline circumstances against which claims of substantial change are evaluated.” *Hecker*, 568 N.W.2d at 709.

Here, however, the parties’ stipulated judgment and decree does not contain an agreement as to the marital standard of living. Instead, the parties left the matter open and attached competing estimated budgets to their stipulation, without reaching any agreement as to the actual budget or appropriate standard. As pointed out by this court in *Maschoff v. Leiding*, unless a support order recites “the parties’ then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified.” 696 N.W.2d 834, 840 (Minn. App. 2005) (citing *Hecker*, 568 N.W.2d at 709). That unnecessary complication is precisely what has occurred here.

Because the parties did not stipulate to a marital standard of living in their 2012 judgment and decree, the district court, in resolving the present motion, chose to adopt

wife's proposed 2012 budget as the marital standard for the purposes of spousal maintenance. The district court based this determination on the following findings:

- (1) husband's proposed budget for wife did not differentiate between wife's expenses and those of the children;
- (2) husband's combined budget was significantly higher than his estimation of wife's combined budget, even though he had substantially less parenting time;
- (3) husband's budget lacked supportive analysis; and
- (4) wife's proposed budget was prepared by her financial expert based upon extensive evaluation of the family's actual expenditures.

Each of these findings is supported by the record. Accordingly, the district court did not abuse its discretion by adopting \$17,120 as the baseline marital standard of living for the purpose of evaluating husband's spousal-maintenance-modification motion. *See Dobrin*, 569 N.W.2d at 202 (stating that a district court abuses its discretion while considering a motion to modify a maintenance award if its findings of fact are unsupported by the record).

Still, husband argues that the district court abused its discretion because wife's 2012 budget included four line-items that lacked evidentiary support. *See Rask v. Rask*, 445 N.W.2d 849, 854 (Minn. App. 1989) ("A trial court's calculation of living expenses must be supported by the evidence."). The line-items that husband assails are: (1) \$4,625 per month for cabin expenses, when husband was awarded the cabin and wife does not currently own a cabin; (2) \$1,706 per month for home improvements, which included plans to finish the basement, redo the driveway, refinish wood floors, replace the carpet as needed, and hang new blinds; (3) \$2,969 per month for childcare expenses, which wife

stopped incurring in 2014; and (4) \$2,417 per month for private school tuition, even though the children did not end up attending private school. We disagree with husband's analysis.

First, wife did not include the per-month costs for childcare or private-school tuition in her monthly budget. Therefore, these items are irrelevant to whether the district court made unsupported findings regarding the baseline for spousal maintenance.

Second, the record indicates that husband and wife owned a cabin and incurred home-improvement expenses during the course of their marriage. Because husband does not argue that these items were not indicative of the parties' standard of living *prior* to the divorce, instead asserting that wife did not continue to incur these expenses on a monthly basis *following* the divorce, the items reflected the marital standard of living. The district court did not abuse its discretion by including them in its determination of the \$17,120 baseline of the marital standard of living.

Finally, we note that this \$17,120 baseline was substantially consistent with the stipulated monthly maintenance amount of \$15,000. And we return to our earlier refrain: district courts should modify a stipulated spousal-maintenance agreement only with reluctance. *Claybaugh*, 312 N.W.2d at 449. The district court properly exercised this reluctance and did not abuse its discretion by determining that husband was not entitled to modification where the stipulated-maintenance amount is below the marital standard of living.

The Increase in Wife's Income

Husband also argues that the district court abused its discretion by finding that wife's increased monthly income did not constitute a substantial increase warranting

modification of husband's spousal-maintenance obligation. At the time of the dissolution, husband and wife stipulated that "[wife] is employed as a registered nurse . . . earning \$42,000 per year. The parties stipulate that [wife's] potential income/earning capacity [is] \$65,000 per year, working 32 hours per week." The district court determined that wife's current income of \$84,864 does not constitute a substantial increase because "the parties reasonably anticipated that [wife] would work full time after the children needed less care . . . [and] the increase was reasonably foreseeable given the ages of the children at the time of the J&D." Husband fails to establish that this finding is clearly erroneous.

Extending the stipulated hourly rate of \$39 per hour to a 40-hour work week, the district court determined that the parties reasonably expected that wife could eventually earn \$81,120 at the time they entered into the stipulation, even though by its express terms the stipulation only contemplated an increase to 32 hours per week. The district court's analysis of what the parties reasonably anticipated at the time of the stipulated judgment was not clearly erroneous.

When determining whether a substantial change in income has occurred, making the maintenance obligation unreasonable and unfair, "the stipulation may be relevant if one party claims this change was not or could not have been anticipated." *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). Here, the district court multiplied the hourly rate stipulated to by the parties by a normal 40-hour-work week, an amount of time reasonably anticipated as their children aged and became more independent. The district court did not clearly err by doing so, and as a result, appropriately determined that wife's

income of \$84,864 did not constitute a substantial change warranting modification of husband's maintenance obligation.

II. The district court was not required to retroactively modify husband's childcare-support obligation to the date wife stopped incurring this expense.

Husband has been paying \$941 per month for childcare support since 2012 based on anticipated monthly childcare expenses of \$1,642. Wife acknowledged that she has not incurred any actual childcare expenses since 2014. Husband therefore moved the district court in November 2017 to retroactively modify his childcare obligation back to the date wife stopped incurring this expense, and to order that she reimburse him for his overpayment of \$53,367. The district court granted husband's modification motion, but only made it retroactive to the first month after husband served his notice of motion, awarding him reimbursement of \$12,233.

Whether to modify child support is within the broad discretion of the district court. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). A district court has discretion to set the effective date of a childcare-support modification. *Finch v. Marusich*, 457 N.W.2d 767, 770 (Minn. App. 1990). "A modification of support is *generally* retroactive to the date the moving party served notice of the motion on the responding party." *Bormann v. Bormann*, 644 N.W.2d 478, 482 (Minn. App. 2002) (emphasis added). However, under Minn. Stat. § 518A.39, subd. 7 (2018), "[c]hild care support *must* be based on the actual child care expenses. The court *may* provide that a decrease in the amount of the child care based on a decrease in the actual child care expenses is effective as of the date the expense is decreased." (Emphasis added.)

The record indicates that the district court considered granting husband reimbursement back to 2014. It declined to do so, because the district court determined that husband knew that wife was not incurring childcare expenses at that time, and thus it would be inequitable to order her to repay the entire amount now when it would be financially difficult for her to do so. Because the statute uses the permissive word “may,” Minn. Stat. § 518A.39, subd. 7, the district court has discretion to modify a childcare-support obligation back to the date wife stopped incurring childcare expenses, but it is not required to do so. *See* Minn. Stat. § 645.44, subd. 15 (2018) (“‘May’ is permissive.”).

While we may have imposed a different effective date for the modification, in light of the various equitable factors considered by the district court—including the amount of time and expense wife incurred caring for the parties’ children—the district court did not abuse its discretion by declining to make its childcare-modification order retroactive to the date wife stopped incurring the actual expense. *See Bauerly v. Bauerly*, 765 N.W.2d 108, 111-12 (Minn. App. 2009) (remanding childcare overpayment issue back to the district court to weigh the equities regarding mother’s financial hardship and father’s desire for compensation and make appropriate findings).

III. The district court properly analyzed husband’s motion for increased parenting time.

Husband argues that the district court failed to make adequate findings of fact to support its partial denial of his motion for increased parenting time and failed to consider the expert affidavit he submitted in support of his motion. The district court has broad

discretion in deciding parenting-time questions and will not be reversed absent an abuse of discretion. *Shearer*, 891 N.W.2d at 75. We address each of husband’s arguments in turn.

Findings of Fact

Husband first argues that the district court failed to make the statutorily required findings when deciding his motion for increased parenting time. Husband moved the district court to modify his parenting-time schedule for the two youngest children by adding Sunday nights to his alternating weekends and every Wednesday, instead of every-other Wednesday. In the alternative, he requested that the district court implement a 5-2-2-5 parenting-time schedule. The district court granted husband’s request to add every-other Sunday night and denied his request to add the additional Wednesday, but did not explicitly address his request to switch to a 5-2-2-5 schedule.

A district court is required to “make detailed findings on each of the [best-interests] factors in paragraph (a) based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time.” Minn. Stat. § 518.17, subd. 1(b)(1) (2018). Here, the district court analyzed each factor set forth in section 518.17, subdivision 1(a) (2018) and explained why the factor supported its conclusion to add only the alternating Sunday night.

The district court found that adding only the additional Sunday night maximizes parenting time with both parents while avoiding wife’s concerns that it would add to the children’s transitions between homes. And while the district court did not explicitly address husband’s request for a 5-2-2-5 schedule, appellate courts treat a district court’s silence on a motion as an implicit denial. *Anderson v. Anderson*, 897 N.W.2d 828, 832

(Minn. App. 2017), *review granted* (Minn. Aug. 22, 2017) and *appeal dismissed* (Minn. Jan. 30, 2018).

Husband's reliance on *In re Custody of M.J.H.* for the proposition that remand is required when a district court fails to consider an alternative parenting-time modification request does not persuade us otherwise. 899 N.W.2d 573 (Minn. App. 2017), *rev'd on other grounds* 913 N.W.2d 437 (Minn. 2018). In *M.J.H.* the father alternatively requested to increase his parenting time, and this court remanded the parenting-time issue because the district court neither specifically addressed the father's alternative request nor made sufficient findings regarding the child's best interests. *Id.* at 575, 580-81.

Unlike in *M.J.H.*, here, the district court analyzed *all* of the statutory best-interests factors and stated why they supported the district court's conclusion. Therefore, the district court complied with Minn. Stat. § 518.17, subd. 1(b)(1) by making the necessary findings to demonstrate why adding only the alternating Sunday night is in the children's best interests.

Expert Affidavit

Finally, husband argues that the district court abused its discretion by not considering the expert affidavit he submitted in support of his motion to modify his parenting time. But evidentiary rulings are reviewed for an abuse of discretion, *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009), and the only authority provided by husband in support of his assertion that the district court was required to consider his expert's affidavit is an unpublished opinion, which is distinguishable in addition to lacking precedential authority. Minn. Stat. § 480A.08, subd. 3 (2018).

The district court acted within its broad discretion when it did not consider the expert report. The district court explained that it reviewed husband's expert's affidavit, but did not rely on the report in making its findings and conclusions. Because father does not point to any authority requiring a district court to consider expert testimony when deciding a motion to modify a parenting-time schedule, the district court did not abuse its discretion by declining to rely on the affidavit in its findings.

Affirmed.