

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0106**

In re the Marriage of: Mary Ann Fenlon, petitioner,
Appellant,

vs.

Steven Robert Fenlon,
Respondent.

**Filed April 19, 2021
Affirmed in part, reversed in part, and remanded
Florey, Judge**

Dakota County District Court
File No. 19WS-FA-09-127

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Minnesota (for appellant)

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Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey,
Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this post-dissolution proceeding, appellant argues that the district court erred by refusing to reopen the property settlement, modifying respondent's maintenance obligation, and declining to award attorney fees. Because the district court did not abuse its discretion by modifying maintenance and declining to reopen the property settlement,

we affirm those aspects of the district court's order. But because the district court's findings are inadequate to permit us to determine the basis for its refusal to award need-based attorney fees, we reverse that part of the district court's order and remand for further proceedings.

FACTS

Appellant Mary Ann Fenlon and respondent Steven Robert Fenlon stipulated to a dissolution of their 37-year marriage in 2009, and a judgment and decree of dissolution was entered in May 2010. Appellant had been a homemaker throughout the marriage and respondent was employed by First Midwest Municipal Lease Corporation, d/b/a Midwest Healthcare Capital (MHC), of which he was the sole owner and employee. Respondent had done well with this business; gross receipts for the five years prior to the dissolution were between \$350,000 and \$405,000. Besides the business, the parties' other major asset was the homestead. The parties had only nominal bank accounts and retirement savings.

Respondent was ordered to pay permanent spousal maintenance of \$9,625 per month, which was based on 42% of MHC's gross annual revenues of \$275,000 (Tier-I maintenance). Respondent was also ordered to pay as "additional spousal maintenance," a sum calculated using varying percentages of MHC's gross revenues over \$275,000 (Tier-II maintenance). MHC was awarded solely to respondent but was not assigned a property value.

Occupancy of the homestead was awarded to appellant, with sale contemplated to occur soon after the dissolution. The parties planned to split the proceeds, subject to certain

deductions upon sale, but the homestead was sold at a loss about five years later. Respondent was ordered to pay all marital debts, and both parties were made responsible for their own attorney fees.

In the ensuing years, the parties have repeatedly returned to the district court, primarily with motions to amend or to enforce the maintenance award. Respondent has been untimely with maintenance and life-insurance payments, but there are no outstanding arrearages. In 2015, in response to another motion, a consensual special magistrate (CSM) modified Tier-I maintenance from \$9,625 to \$9,000 per month and eliminated Tier-II maintenance payments. Appellant appealed to this court.

In *Fenlon v. Fenlon*, No. A16-2026, 2017 WL 3863844 (Minn. App. Sept. 5, 2017), this court stated that modification of the Tier-I maintenance payments was appropriate due to a change in circumstances, but concluded that the Tier-II maintenance payments were a disguised property settlement not subject to modification. *Id.* at *3. In March 2018, respondent closed his business and took a job in Georgia, earning roughly one-half of his former income and effectively eliminating Tier-II payments.

In June 2018, respondent moved to modify the Tier-I maintenance to \$4,950 per month. Appellant filed a countermotion, asking the court to deny respondent's motion, to enforce discovery¹, to impute income to MHC and order Tier-II payments totaling \$49,650 for the years 2016 and 2017, to enjoin respondent from moving to modify maintenance for five years, and to award conduct- and need-based attorney fees. This motion was amended

¹ The discovery requests involved respondent's father's estate, a nonmarital asset, and respondent's current wife's bank accounts.

to include a request to reopen the property settlement and award one-half of respondent's nonmarital property to appellant on the grounds of unfair hardship.

In July 2019, after attempts to mediate the disputes failed, appellant moved the district court to order respondent to produce his father's probate file to settle a dispute over his inheritance, or, in the alternative, to grant her motions filed in June 2018. Respondent renewed his earlier motions.

On September 11, 2019, the district court issued an order reducing respondent's Tier-I maintenance obligation to \$6,000 per month beginning October 1, 2019, without addressing the other motions. In November 2019, appellant moved for an amendment to the findings, alleging that respondent had not met his burden of proving a substantial change in circumstances and that he had made a bad-faith change in employment. Appellant also asked that the findings be amended to permit reopening the property settlement and to award need- and conduct-based attorney fees. Respondent filed cross motions.

On November 21, 2019, the district court issued an order denying respondent's motions to make modification of maintenance retroactive to June 2018, and for attorney fees but granting his motion for a reduction in life-insurance coverage. The district court denied appellant's motions for amended findings, thus affirming the modification of maintenance, refusing to reopen the property settlement, and denying attorney fees for the motion, while reserving the question of attorney fees with regard to respondent's inherited trust, and granted appellant's motion to compel discovery. The district court added, "Any motion not herein addressed is respectfully denied."

Appellant appeals from the September 27 and November 21 orders.

DECISION

I. The district court did not abuse its discretion by refusing to reopen the property settlement.

Dissolution judgments and decrees are final when entered. *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). While maintenance is subject to modification, Minn. Stat. § 518A.39 (2020), property settlements may not be reopened except in limited circumstances. Minn. Stat. § 518.145, subd. 2 (2020). A judgment may be reopened if “it is no longer equitable that the judgment and decree or order should have prospective application.” *Id.*, subd. 2(5). After this court concluded that the Tier-II payments were a disguised property settlement, appellant moved to reopen the judgment under this subdivision. Appellant argues that the district court abused its discretion by denying her motion for amended findings to permit reopening of the property settlement and by failing to make findings on her motion.

We review the district court’s decision under the statute for an abuse of discretion. *Harding v. Harding*, 620 N.W.2d 920, 922 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001). In order to reopen a dissolution judgment because prospective application is no longer equitable, the “inequity must result from the development of circumstances substantially altering the information known when the dissolution judgment and decree was entered.” *Thompson*, 739 N.W.2d at 430 (quotation omitted). Something more than “merely a new set of circumstances or an unforeseen change of a known circumstance” is required. *Id.* at 430-31. For example, a mutual mistake of the parties, or “the development

of circumstances beyond the parties' control that substantially alter the information known when the judgment and decree was entered" could support reopening the property settlement. *Id.* at 431. "[M]ere unforeseen circumstances will not permit a reopening of the judgment." *Harding*, 620 N.W.2d at 923.

In *Harding*, appellant-wife was awarded an amount equal to one-half of the value of the parties' Subchapter S corporation, and the parties agreed to file joint income-tax returns for that year, based on the assumption that they generally received a small refund. *Id.* at 921. After an IRS audit, the parties owed federal and state tax liabilities nearly equal to appellant-wife's property settlement, and she was jointly liable for the tax. *Id.* This court concluded that it would be an "injustice" not to reopen the judgment after "the development of circumstances substantially altering the information on a topic that was accepted earlier." *Id.* at 924.

Appellant alleges that there has been a substantial change in circumstances—she assumed that the Tier-II payments would continue indefinitely and would provide her with the means to save for retirement. But, unlike *Harding*, where the parties stipulated to a fixed monetary settlement based on an appraised value, the parties here stipulated to the Tier-II structure without assigning a value to MHC, and making the Tier-II payments subject to elimination and dependent on annual revenue, rather than fixed either by MHC's value or a defined annual amount in appellant's favor. In two years, 2013 and 2017, appellant did not receive Tier-II payments. In addition, the parties were 54 and 55 years old when they entered into the dissolution stipulation. At the June 2018 hearing when the parties first argued these motions, the district court asked if they had thought about whether

respondent would ever retire, to which there was no informative response. The parties had at least contemplated respondent's death, based on the life-insurance policies securing maintenance payments, but retirement is not a particularly unforeseen circumstance. MHC was a one-man operation wholly dependent on respondent's activities and seemingly without assets that could be sold to finance a continuing property settlement.

The question of whether to reopen a judgment is discretionary with the district court. *Clark v. Clark*, 643 N.W.2d 459, 465 (Minn. App. 2002). Although findings assist an appellate court in reviewing a lower court's decision, the refusal to take a discretionary action generally indicates that a district court has not found a sufficient reason to act. See *Roberson v. Roberson*, 206 N.W.2d 347, 348 (Minn. 1973 ("We have held that where the record is reasonably clear and the facts not seriously disputed, the judgment of the [district] court can be upheld in the absence of trial court findings."))

We can affirm a district court's decision if the record provides sustainable evidence of findings underlying the district court's ultimate finding. *Rosenfeld v. Rosenfeld*, 529 N.W.2d 724, 726 (Minn. App. 1995) ("When underlying findings are undisputed or sustainable, the [district] court's 'ultimate' findings must be affirmed in the absence of an abuse of the [district] court's broad discretion."). Likewise, this court has stated that failure to specifically address a question can be an implicit denial of the request. *Anderson v. Anderson*, 897 N.W.2d 828, 832 (Minn. App. 2017) ("Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion." (quotation omitted)).

In conjunction with this concept, this court has stated:

On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.

Eisenschenk v. Eisenschenk, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

In appellant's motion and supporting affidavits for amended findings, she alleges that it is unjust to give the property settlement in the form of Tier-II payments, now ended, prospective effect because she has been left without enough money to finance her retirement. She also argues that respondent inherited money from his father that could provide a property settlement. But she has not alleged the basic grounds for reopening a property settlement—that an unforeseen circumstance has occurred that makes the prospective application of the original settlement unjust or inequitable. She has not addressed the question of whether the parties ever contemplated respondent's retirement or loss of business.

On this record, the district court's order denying amended findings to support reopening the property settlement was not an abuse of discretion and, therefore, we affirm that decision. We remind the district court that findings assist an appellate court in analyzing a decision and offer an explanation of the court's decision to the affected parties.

II. The district court did not abuse its discretion by modifying respondent's maintenance obligation.

Appellant argues that the district court abused its discretion by modifying respondent's maintenance obligation after he voluntarily changed employment. A maintenance order may be modified upon a showing of one or more circumstances, including substantially increased or decreased income of the obligor or obligee, if that substantial change would make the terms of the existing maintenance order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2020). We review the district court's order modifying maintenance for an abuse of discretion. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *pet. for rev. granted* (Minn. Sept. 29, 2009), *appeal dismissed* (Minn. Feb. 1, 2010). "A district court abuses its discretion when its decision is against logic and facts on record." *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004). The district court's findings are reviewed for clear error. *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). We defer to the district court's credibility determinations. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

Generally, a district court faced with a motion for maintenance modification considers whether there has been a substantial change in circumstances that renders the previous award unreasonable and unfair. *Hemmingsen*, 767 N.W.2d 716-17. But "[w]here an obligor voluntarily creates a change in circumstances, the [district] court should consider obligor's motives," and whether the change was made in good faith. *Richards v. Richards*, 472 N.W.2d 162, 164-65 (Minn. App. 1991). The district court should look at the obligor's health, employment history, retirement expectations at the time of dissolution, and

prevailing economic conditions. *Hemmingsen*, 767 N.W.2d at 717. Retirement at a customary retirement age weighs in favor of good faith but is not conclusive of good faith. *Id.*

In its September 27, 2019 order, the district court made the following findings: (1) respondent dissolved MHC due to “diminished demand for MHC’s services” because of increased competition and adverse effects of the 2017 tax law; (2) respondent took a job at a bank earning \$152,500 per year, a diminution of 53.39% of his gross annual income; (3) respondent’s monthly income was \$8,400 at the new job; (4) respondent’s monthly expenses were \$5,785 and appellant’s were either \$8,545 or \$12,000 per month; and (5) a maintenance award of \$6,000 per month would reasonably balance the parties’ needs and resources. In addition, the district court concluded that respondent’s income had been diminished “through no fault or choice of his own.” The district court interviewed both parties at the June 19, 2018 hearing, with both parties informing the court that they were in their sixties and had health limitations. Although the district court made no express credibility determination, its findings demonstrate a good knowledge of the dissolution history, and the interview provided a basis for judging credibility.

We view the record in the light most favorable to the district court’s findings. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000). The fact that “the record might support findings other than those made by the [district] court does not show that the court’s findings are defective.” *Id.* at 474. “A district court abuses its discretion when it makes findings unsupported by the evidence or when it improperly applies the law.” *Hemmingsen*, 767 N.W.2d at 716. The district court considered the appropriate

modification factors and its findings of fact are not clearly erroneous. Based on this, the district court's maintenance order was not an abuse of discretion. We therefore affirm the district court's order modifying maintenance.

III. The district court's decision to deny need-based attorney fees was not supported by adequate findings.

Appellant argues that the district court abused its discretion by refusing to award need- and conduct-based attorney fees. Minn. Stat. § 518.14, subd. 1 (2020), provides that a party in a dissolution action *shall* be awarded need-based attorney fees if (1) “the fees are necessary for a good faith assertion of the party’s rights . . . and will not contribute unnecessarily to the length and expense of the proceeding;” (2) the party from whom fees are sought has the means to pay them; and (3) the party seeking fees does not have the means to pay them. *See Muschik v. Conner-Muschik*, 920 N.W.2d 215, 225 (Minn. App. 2018) (“A district court must award attorney fees and costs to enable a party to carry on or contest the proceeding, provided it finds” the standard for need-based fees is met). A party who “unreasonably contributes to the length or expense of the proceeding” may be ordered to pay attorney fees, regardless of the ability to pay or the other party’s need. Minn. Stat. § 518.14, subd. 1 (describing standard for award of conduct-based attorney fees). We review attorney-fee-award decisions for an abuse of discretion and the associated findings for clear error. *Muschik*, 920 N.W.2d at 225.

On this record, we see no basis for conduct-based attorney fees. But appellant alleged the basic elements for a need-based award: the attorney fees were incurred for

a good-faith assertion of her rights, she is unable to pay them, and respondent has the means to pay. In the absence of findings, we cannot discern whether the district court concluded that appellant was not engaged in a good faith assertion of her rights or that she could afford to pay the attorney fees or that respondent could not. Although the district court has discretion in awarding attorney fees, the language of the statute provides that a need-based award shall be granted if the statutory standards are met.

We therefore reverse the district court's order denying appellant's motion for need-based attorney fees and remand for further proceedings to determine whether the standard for an award of need-based fees has been met. The district court has the discretion to reopen the record to the extent necessary to make findings on whether appellant has met the statutory standards for an award of need-based attorney fees.

Affirmed in part, reversed in part, and remanded.