*This opinion is nonprecedential except as provided by Minn.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**
**A20-0464**

William Gunder Reppe Jr.,
Appellant,

vs.

Karen Beckers Reppe,
Respondent.

**Filed May 17, 2021**
**Affirmed in part, reversed in part, and remanded**
**Bjorkman, Judge**

Dakota County District Court
File No. 19-FX-07-010085

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Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

**NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellant challenges the denial of his motion to modify spousal maintenance, arguing that the district court (1) abused its discretion by declining to terminate his maintenance obligation based on respondent's cohabitation, (2) erred by declining to impute full-time earnings to respondent, and (3) abused its discretion by awarding respondent need-based attorney fees. We affirm the determination of respondent's income and the attorney-fee award. But because the court misapplied the cohabitation statute, we reverse the denial of maintenance modification and remand for further proceedings.

## FACTS

In 2007, the 22-year marriage of appellant-husband William Gunder Reppe Jr. and respondent-wife Karen Beckers Reppe was dissolved. At the time, husband earned $6,417 in gross monthly income and had monthly expenses of $2,828, while wife earned gross monthly income of $2,566 and had monthly expenses of $2,900. Based on their agreement, husband was ordered to pay wife $1,450 per month in permanent spousal maintenance.

In October 2019, husband moved to terminate or reduce his maintenance obligation "due to a substantial change in circumstances and [wife's] cohabitation." Wife opposed the motion, requested a cost-of-living adjustment (COLA), and sought attorney fees. In February 2020, the district court denied husband's motion, reasoning that although wife has been cohabiting with her fiancé for at least eight years, husband did not demonstrate that the "cohabitation gives rise to a substantial change in circumstances rendering the existing maintenance obligation unreasonable and unfair." The court implemented a COLA and awarded wife need-based attorney fees. Husband appeals.

## DECISION

### I. The district court abused its discretion by denying husband's motion to modify maintenance without considering the cohabitation factors.

We review a decision whether to modify spousal maintenance for an abuse of discretion. *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). A district court abuses its discretion if the record does not support its factual findings, it misapplies the law, or its decision "is contrary to logic and the facts on record." *Id.*

A party seeking to modify a spousal-maintenance obligation must demonstrate that a substantial change has occurred in the parties' circumstances and that the change renders the existing obligation "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a) (2020). Often, the types of changes that warrant modification are substantial increases or decreases in the parties' income or expenses. *See id.*, subd. 2(a), (b) (2020). But maintenance also "may be modified pursuant to section 518A.39, subdivision 2," based on an obligee's cohabitation with another adult. Minn. Stat. § 518.552, subd. 6(a) (2020). The cohabitation statute lists four factors that a district court must consider before reducing, suspending, reserving, or terminating maintenance based on cohabitation:

> (1) whether the obligee would marry the cohabitant but for the maintenance award;
> (2) the economic benefit the obligee derives from the cohabitation;
> (3) the length of the cohabitation and the likely future duration of the cohabitation; and
> (4) the economic impact on the obligee if maintenance is modified and the cohabitation ends.

*Id.*

After the district court issued its decision in this matter, we considered the analytical framework that governs maintenance modification under the cohabitation statute. *Sinda v. Sinda*, 949 N.W.2d 170, 177-80 (Minn. App. 2020). We observed that the cohabitation statute incorporates the two-part test of Minn. Stat. § 518A.39, subd. 2(a), requiring a showing of substantially changed circumstances and resulting unreasonableness and unfairness. *Id.* at 179. And we mapped that test onto the terms of the cohabitation statute, holding that (1) when a maintenance obligor demonstrates that the obligee is cohabiting with another adult, the cohabitation constitutes a substantial change in circumstances; and (2) that change justifies modifying maintenance "if consideration of the four factors enumerated in Minn. Stat. § 518.552, subd. 6, indicates that cohabitation makes the existing maintenance obligation unreasonable and unfair." *Id.* at 180.

Husband contends the district court committed legal error by failing to apply the cohabitation statute as *Sinda* instructs. We agree that the district court, lacking the benefit of *Sinda*, did not make all the necessary findings. The court determined that wife is cohabiting with her fiancé but concluded that the cohabitation was not a substantial change in circumstances because it did not substantially change wife's financial circumstances. In light of that conclusion, it did not address any of the four factors enumerated in the cohabitation statute. As wife concedes, this was a misapplication of the law.

Generally, when a district court fails to consider necessary factors, the appropriate remedy is to remand. *See, e.g.*, *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *Kielley v. Kielley*, 674 N.W.2d 770, 778 (Minn. App. 2004). We may "treat" necessary factors "as addressed" only when the factors "are implicit in the findings" that the court actually made. *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). The decision under review is not susceptible of the necessary inference. The district court expressly indicated that it was not addressing the cohabitation factors. And while the court made numerous findings about the parties' financial circumstances, none of them indicates that it considered and weighed all four statutory cohabitation factors.

The findings come closest to addressing the second factor—the economic benefit wife "derives from the cohabitation." Minn. Stat. § 518.552, subd. 6(a)(2). The district court considered wife's fiancé's contribution to housing and vehicle costs and found that "sharing of certain household expenses with [her fiancé] has allowed [wife's] overall financial circumstances to approximate the standard of living the parties established during their marriage." But it is unclear whether this finding means, as wife suggests, that the court believed wife does not derive any "economic benefit" from cohabiting, or that the court found the benefit wife derives is insufficient to reduce her need for maintenance.

Findings regarding the other three cohabitation factors—whether wife would marry her fiancé "but for the maintenance award,"[1] the length and likely duration of the cohabitation, and "the economic impact on [wife] if maintenance is modified and the cohabitation ends," Minn. Stat. § 518.552, subd. 6(a)(1), (3), (4),—are almost entirely absent. The district court found that wife has cohabited for at least eight years but otherwise made no findings that support an inference that it considered these factors. And most important, it did not weigh the four factors, explaining how any factors favoring modification weigh against any factors disfavoring modification.

In short, the district court neither expressly considered the cohabitation factors nor made findings that support an inference that it considered them. Accordingly, we reverse the denial of husband's motion and remand for the district court to address and determine whether the four statutory factors indicate that wife's cohabitation makes husband's

[1] A maintenance obligation generally terminates upon the obligee's remarriage. Minn. Stat. § 518A.39, subd. 3 (2020).

maintenance obligation unreasonable and unfair. On remand, the district court may, in its discretion, reopen the record.

## II. The district court did not err by declining to impute full-time earnings to wife.

We review de novo the application of caselaw regarding imputation of income to a maintenance obligee. *Passolt v. Passolt*, 804 N.W.2d 18, 22 (Minn. App. 2011), *review denied* (Minn. Nov. 15, 2011).

Husband challenges the district court's determination of wife's income based on part-time employment. He appears to argue that the district court committed legal error by not imputing full-time income to wife because, although she worked part-time at the time of the dissolution and continues to do so, she is "capable of working full-time." As authority, he points to our statement that a district court may impute employment income to a maintenance obligee based on the obligee's "present earning capacity" if the court "makes a finding of the [obligee's] earning capacity as of the time of the modification proceeding." *Madden*, 923 N.W.2d at 700. We are not persuaded.

As we explained in *Madden*, an obligee's current earning capacity is relevant only if there is a basis for imputing income to the obligee. *Id.* And a district court may impute income to a maintenance obligee only if she was obligated to make reasonable efforts to increase her earnings. *Id.* A permanent-maintenance obligee generally has no such obligation. Rather, an award of permanent spousal maintenance "implies" that the obligee "will not become fully self-supporting, and has no obligation to increase his or her earning capacity." *Id.* at 699. A permanent-maintenance obligee must seek to increase her earnings only if the district court "*expressly* imposed such an obligation." *Id.* at 700.

The dissolution judgment awarded wife permanent spousal maintenance with no condition that she increase her employment to full-time or otherwise endeavor to become self-supporting. Accordingly, the district court did not err by declining to impute full-time earnings to wife.

**III. The district court did not abuse its discretion by awarding wife need-based attorney fees.**

A district court "shall" award attorney fees if it finds that (1) the fees "are necessary for the good faith assertion of the party's rights," (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." Minn. Stat. § 518.14, subd. 1 (2020). We review attorney-fee awards for an abuse of discretion. *Muschik v. Conner-Muschik*, 920 N.W.2d 215, 225 (Minn. App. 2018). A court abuses its discretion "if it makes findings of fact that are not supported by the record." *Madden*, 923 N.W.2d at 696. We review factual findings for clear error. *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004).

Husband argues that the district court clearly erred by finding that wife lacks the means to pay attorney fees because she has a monthly budgetary shortfall. But he does not explain the claimed error, and review of the record reveals ample evidentiary support for the court's finding. Wife presented evidence that she has monthly expenses of $3,172, which accounts for her fiancé's contribution to housing and vehicle expenses. The district court found wife's expenses largely reasonable but reduced the amount to $2,919 to account for paycheck deductions. Wife also presented evidence that her net monthly income is $1,359. Between that income and the $1,450 maintenance award, she still falls short of her expenses by $110.[2]

On this record, the district court did not clearly err by finding that wife lacks the means to pay her attorney fees. Based on that finding, and the unchallenged findings that the fees were necessary for wife to oppose the motion and husband has the ability to pay them, we discern no abuse of discretion in the district court's award of need-based attorney fees.

**Affirmed in part, reversed in part, and remanded.**

[2] Husband also contends the difference between wife's income and expenses does not accurately represent her ability to pay attorney fees because it does not account for assets like the home she owns with her fiancé. But this issue is not properly before us because he did not present it to the district court and the district court did not address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate review is limited to issues presented to and decided by the district court). Moreover, husband identifies no authority for the proposition that a maintenance obligee should be expected to liquidate assets to pay attorney fees incurred in responding to a motion to reduce or eliminate maintenance when the obligor has ample income from which to pay them.