STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0540

Deborah Lynn Nichols,
Appellant,

vs.

Scott Gerald Nichols,
Respondent.

Filed February 8, 2021
Affirmed
Frisch, Judge

Dakota County District Court
File No. 19-F9-99-010273

John G. Westrick, Savage Westrick, PLLP, Bloomington, Minnesota (for appellant)

Ronald B. Sieloff, Sieloff and Associates, P.A., Eagan, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by granting respondent's motions for amended findings and modification of his spousal-maintenance obligation. We affirm.

FACTS

In 2001, the district court entered a judgment and decree dissolving the marriage of appellant Deborah Lynn Nichols and respondent Scott Gerald Nichols. At that time, appellant was employed as a special-education paraprofessional with a gross annual income of $18,328.13 and reasonable monthly expenses of $2,352. Respondent was employed as a cable splicer with a gross annual income of $56,837.40 and reasonable monthly expenses of $1,988. The district court awarded appellant permanent spousal maintenance of $275 per month.

In September 2019, respondent moved to modify his adjusted $300 spousal-maintenance obligation, alleging a substantial change in circumstances based on appellant's increased income and her cohabitation with another man (cohabitant). Specifically, respondent alleged that (1) appellant had received a master's degree and increased her gross annual income to approximately $68,000; (2) appellant had been romantically involved with cohabitant for ten years; (3) appellant had been living with cohabitant for over a year and paid only $51 per month for utilities in cohabitant's home; (4) appellant and cohabitant purchased a home together, which they leased to appellant and respondent's adult son; and (5) appellant had reasonable monthly expenses of somewhere between $2,974 and $3,289. Respondent meanwhile claimed a gross annual income of approximately $70,600 and monthly expenses totaling approximately $3,910. Respondent supported his motion with an affidavit and various financial documents. He argued that the changes in appellant's circumstances were substantial and rendered his ongoing maintenance obligation unreasonable and unfair.

Appellant claimed in her responsive affidavit that she had lived with cohabitant for less than one year, she had no intention of marrying cohabitant, and she paid $51 for electricity because cohabitant recognized her need to save for retirement. She detailed her various assets and expenses, explaining in part that she was making double payments on a student loan of $874.28 per month to eliminate the debt within five years. Separately, she claimed that she paid $500 per month toward mortgage payments and association fees totaling $1,128.53 for the home she co-owned with cohabitant, explaining that she and cohabitant each paid $500 into a joint account to subsidize her son and preserve funds for additional property expenses. She requested that the district court deny respondents' motion.

On October 11, 2019, the district court filed an order denying respondent's motion. It noted that appellant had earned several degrees since the parties' marital dissolution and that appellant had no medical condition impeding her ability to work. It found that appellant's gross annual income had increased from $18,328 at the time of the dissolution to $67,905 currently. It also found that her reasonable monthly expenses totaled $3,487.84, based in part on its acceptance of the representations regarding student-loan payments and the payments toward the co-owned home, concluding such payments were reasonable expenses. As for appellant's cohabitation, the district court found that appellant had cohabited for less than one year, she derived economic benefit from the arrangement, and it was likely the cohabitation would continue. But the district court doubted the stability of the cohabitation and reasoned that, were maintenance modified and the cohabitation to end, the negative economic impact on appellant would be substantial. The district court meanwhile found that respondent's income and budget demonstrated his ongoing ability to pay $300 per month in maintenance. The district court concluded that, although respondent demonstrated a significant change in circumstances, he had failed to demonstrate that the terms of the spousal-maintenance obligation were unreasonable and unfair.

Respondent moved for amended findings and conclusions pursuant to Minn. R. Civ. P. 52.02, citing various factual and legal bases for his proposed amendments. The district court granted the motion, and it issued an amended order granting respondent's motion to modify.

In relevant part, the district court reduced the amount of appellant's monthly expenses it found reasonable, reasoning that student-loan payments beyond the monthly minimum were not reasonable and that appellant's $500 monthly payments toward the home co-owned by cohabitant were essentially gifts to her son. The district court amended its finding of $3,487.84 in reasonable expenses down to $2,551, noting that the reduction left appellant with a monthly budgetary surplus of approximately $1,007. The district court determined that appellant's increased earnings constituted a substantial change in circumstances that rendered the spousal-maintenance terms unreasonable and unfair.

Separately, the district court amended its findings regarding appellant's cohabitation. It found that "[appellant's] decade-long romantic relationship and cohabitation with [cohabitant], and the fact she owns no real property other than the jointly-owned investment property, sufficiently evidence the cohabitation will be permanent or long term." The district court also agreed that amendment was warranted regarding the potential impact were appellant's cohabitation to end, reasoning that appellant's overall financial circumstances indicated the impact would *not* be substantial or result in a budgetary shortfall. It found that appellant's financial circumstances would be negatively impacted but that "[t]he extent of the economic impact . . . is unknown . . . [but] it appears [that appellant] would have sufficient resources to support herself without the $300.00 per month in spousal maintenance." The district court found that modification of spousal maintenance was also appropriate based on appellant's cohabitation.

The district court terminated respondent's spousal-maintenance as of July 1, 2019, and ordered appellant to pay back any spousal maintenance received after that date. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by granting respondent's motions for amended findings and modification of spousal maintenance. We address the two decisions in turn.

I. The district court did not abuse its discretion by granting respondent's motion for amended findings.

Appellant argues that the district court erred by granting respondent's motion for amended findings because the original findings were not "clearly erroneous" as required by Minn. R. Civ. P. 52.01. Respondent argues that only Minn. R. Civ. P. 52.02 governs motions for amended findings and that the district court did not abuse its discretion by granting the motion.

"We review the district court's decision whether to grant a motion for amended findings for an abuse of discretion." *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927

N.W.2d 748, 754 (Minn. App. 2019). A district court abuses its discretion if "its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.*

The interpretation of rules of civil procedure raise questions of law that we review de novo. *See Lennartson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 662 N.W.2d 125, 129 (Minn. 2003). "When interpreting a rule, we look first to the plain language of the rule and its purpose." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). We apply plain and unambiguous language as it is written, but if the language is subject to more than one reasonable interpretation, we construe the rule further. *See id.*

Minn. R. Civ. P. 52.01 provides, in relevant part:

> In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment . . . . *Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.*

(Emphasis added.) Minn. R. Civ. P. 52.02 meanwhile provides, in relevant part:

> Upon motion of a party served and heard not later than the times allowed for a motion for new trial pursuant to Rule 59.03, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court.

Appellant essentially contends that Rule 52.01 establishes a prerequisite to amendment under Rule 52.02; that is, appellant contends that a district court may only amend its findings under Rule 52.02 if its original findings were clearly erroneous. We reject this argument.

First, Minn. R. Civ. P. 52.02 makes no reference to Rule 52.01. It does not condition the authority to amend findings on the existence of clear error. Had our supreme court wished to impose such a precondition, it could have easily done so. It did not.

Second, Rule 52.01 contemplates review by a court *other* than the original fact-finder. The rule requires that, "the court shall find the facts," and mandates that those findings "shall not be set aside unless clearly erroneous, *and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness*." Minn. R. Civ. P. 52.01 (emphasis added). If a district court's authority to amend its own findings were preconditioned upon clear error, the district court would be required to defer to its *own* credibility determinations. This reading defies logic.

Even so, appellant cites caselaw for the proposition that a *successor* judge cannot set aside findings unless such findings are clearly erroneous. *See Kornberg v. Kornberg*, 525 N.W.2d 14, 18 (Minn. App. 1994) ("A successor judge may reverse a prior decision only if the successor judge believes the prior decision is clearly erroneous or unjust, or when a substantial change occurs in the essential facts, the evidence, or the applicable law."), *aff'd*, 542 N.W.2d 379 (Minn. 1996). Such a limitation on a *successor* judge is consistent with the language of Rule 52.01, which contemplates review by a court *other* than the original fact-finder. Assuming for the sake of appellant's argument that a successor judge cannot amend a predecessor judge's factual findings, the rule has no relevance here because the same district court judge issued the original and amended orders.

Last, the purpose of allowing a motion for amended findings and conclusions "is to permit the [district] court a review of *its own* exercise of discretion." *Stroh v. Stroh*, 383 N.W.2d 402, 407 (Minn. App. 1986) (emphasis added). The imposition of a clear-error prerequisite would frustrate the ability of a district court to reexamine the evidence originally produced, to consider its own findings and conclusions with regard to that evidence, and, when necessary or appropriate, to correct its own error or mistaken conclusion. We decline to so limit the discretion of the district court.

Aside from her procedural argument, appellant does not claim that the district court's factual and legal bases for amending its own findings reflect an abuse of discretion, and we discern no abuse of discretion from the record.

II. The district court did not abuse its discretion by granting respondent's motion to modify spousal maintenance.

Appellant urges us to reverse the district court's order terminating spousal maintenance because (A) the district court failed to make a specific finding as to respondent's gross income, (B) substantial changes in her circumstances did not render permanent spousal maintenance unreasonable and unfair, and (C) even if modification were warranted, the district court should have reduced or reserved maintenance rather than terminating it.

We review a district court's order modifying a spousal-maintenance obligation for an abuse of discretion. *See Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). A district court abuses its discretion if it makes clearly erroneous findings or misapplies the law. *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). The party seeking modification bears the burden of demonstrating a substantial change in circumstances that renders the existing maintenance obligation unreasonable and unfair. *Hecker*, 568 N.W.2d at 709. Numerous statutory circumstances may warrant modification if their presence renders a maintenance obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2018). One circumstance is the "substantially increased or decreased gross income of an obligor or obligee." *Id.*, subd. 2(a)(1). The district court may also modify a maintenance obligation based on the obligee's cohabitation with another adult following marital dissolution, but it must consider (1) whether the obligee would marry but for the maintenance award, (2) the economic benefit of cohabitation to the obligee, (3) the length of cohabitation and its likely future duration, and (4) the potential economic impact if maintenance were modified and cohabitation ended. Minn. Stat. § 518.552, subd. 6 (2018).

A. The district court did not abuse its discretion by failing to explicitly determine respondent's gross income.

Appellant contends that the district court's findings are insufficient because the district court failed to explicitly determine respondent's gross income. "In maintenance-modification proceedings, particularized findings are necessary to show that relevant statutory factors have been considered." *Sinda v. Sinda*, 949 N.W.2d 170, 177 (Minn. App. 2020) (quotation omitted). Remand is necessary if we cannot determine that the district court considered and addressed the appropriate statutory factors. *Id.*

We observe first that the modification statute regarding an increase in gross income is phrased disjunctively: "The terms of an order respecting maintenance . . . may be modified upon a showing of . . . substantially increased . . . gross income of an obligor *or* obligee" such that the terms are "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a)(1). The district court made explicit findings regarding appellant's substantially increased income, and it thus satisfied the relevant statutory requirement.

But the district court must also consider all relevant factors to maintenance in existence at the time of the motion, including but not limited to the parties' financial resources, their ability to meet their needs, and the obligor's ability to pay. *See* Minn. Stat. §§ 518.552, subd. 2(a)-(h), 518A.39, subd. 2(e) (2018). "In essence, the district court balances the recipient's needs against the obligor's ability to pay." *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). We have said that the district court must determine an obligor's net income to determine his ability to pay, *Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985), *review denied* (Minn. July 26, 1985), implying that a district court must also determine gross income. But because the finding is only necessary to determine *the obligor's ability to pay* spousal maintenance, no such finding is required when, as here, the obligor admits his ability to pay.

Further, courts ignore harmless error. Minn. R. Civ. P. 61. Any potential error in omitting an explicit finding of respondent's income was harmless. The district court adopted respondent's representation of his income by finding that "his income and budget *demonstrate[]* his continued ability to pay $300.00 per month in spousal maintenance" (emphasis added) and by citing respondent's supporting documentation, which set forth his income. In making this finding, we are satisfied that the district court *implicitly* found as fact respondent's representation as to his income. The district court therefore did not err, and even if it did, no remand is required.

B. The district court did not abuse its discretion by concluding that appellant's increased income and cohabitation rendered the terms of the maintenance obligation unreasonable and unjust.

Appellant contends that the district court abused its discretion by determining that the terms of the spousal-maintenance obligation were unreasonable and unfair given the small amount of maintenance and respondent's undisputed ability to pay. Although the district court must consider several statutory factors when setting or modifying spousal maintenance, "the issue is basically the financial needs of [the obligee] and her ability to meet those needs balanced against the financial condition of [the obligor]." *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). "Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify." *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005).

Appellant "doubts that, in almost any instance, an award in the $300 range can be rendered unreasonable or unfair given that the dissolution decree awarded her 'permanent' maintenance." But the fact that an award is deemed permanent "does not preclude an obligor from subsequently demonstrating that a recipient has, in fact, become self-sufficient." *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). And regardless of the amount of maintenance and an obligor's ability to pay, our statutes and caselaw recognize that a change in the *obligee's* circumstances may warrant modification.

Here, the district court considered respondent's income and expenses, respondent's undisputed ability to afford maintenance, appellant's income and expenses, and appellant's monthly budgetary surplus of $1,007. The district court also considered the fact of appellant's cohabitation, its financial benefit to her, the likelihood that cohabitation would continue permanently, and appellant's ability to self-support if her cohabitation were to end. The district court was also aware that the large disparity between the parties' incomes at the time of the dissolution no longer existed. Accordingly, we discern no abuse of discretion in the district court's conclusion that appellant's substantially increased income and the circumstances of her cohabitation rendered the maintenance obligation unreasonable and unfair.

C. The district court did not abuse its discretion by terminating spousal maintenance rather than reducing it or reserving the issue.

Appellant argues alternatively that, even if modification were proper, the district court abused its discretion by terminating respondent's maintenance obligation rather than reducing it or reserving the issue. If the district court terminates spousal maintenance rather than reserving the issue, it loses jurisdiction to reinstate or modify maintenance at a later date. *See Berger v. Berger*, 242 N.W.2d 836, 837 (Minn. 1976). "Whether to reserve jurisdiction over the issue of maintenance is within the district court's discretion." *Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001). "Reservation allows the court to later assess and address future changes in one party's situation as those changes arise, without prematurely burdening the other party." *Id.* A district court's failure to retain jurisdiction *may* constitute reversible error. *See Berger*, 242 N.W.2d at 837.

Here, appellant suggests that reservation or reduction of the spousal-maintenance obligation was appropriate because she would face the increased expense of having to secure housing if her cohabitation ended. But the district court accounted for this possibility in its findings and found it unlikely because "[appellant's] decade-long romantic relationship and cohabitation with [cohabitant], and the fact she owns no real property other than the jointly-owned investment property, sufficiently evidence the cohabitation will be permanent or long term." It also found that, even if her cohabitation ended, she was financially capable of meeting her needs without the $300 monthly maintenance payment. Appellant does not challenge these findings. Accordingly, the district court did not abuse its discretion by terminating respondent's spousal-maintenance obligation.

Affirmed.[1]

[1] Respondent filed a notice of related appeal in an apparent attempt to preserve appellate jurisdiction over the October 2019 order were we to reverse. Because we affirm the amended order terminating respondent's spousal-maintenance obligation, we need not consider respondent's related appeal.