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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0813**

In re the Marriage of:
Marcia A. Hammond, petitioner,
Respondent,

vs.

Jeffrey Lyle Buchanan,
Appellant.

**Filed April 5, 2021
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-FA-255601

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Jeffrey Buchanan and Marcia Hammond's marriage ended in 2001 after they stipulated to a judgment and decree that required Buchanan to pay permanent spousal maintenance. Buchanan moved to modify the maintenance obligation, juxtaposing his

alleged decreased income and increased expenses against Hammond's alleged increased income and unreasonable expenses. Because Buchanan has not shown that the district court clearly erred in its factual findings and therefore has also not shown a substantial change in circumstances, we affirm the district court's refusal to modify spousal maintenance.

FACTS

Marcia Hammond and Jeffrey Buchanan divorced in 2001 after an 11-year marriage. At the time of the divorce, they had one minor child, now an adult. The parties stipulated to a judgment and decree dissolving the marriage. The stipulation states that Hammond was a homemaker with no income, and Buchanan earned \$400,000 a year "not including return on the business asset."

The stipulated judgment and decree outlined the parties' expenses and terms of the divorce. It stated that Hammond's reasonable monthly budget for herself and for the minor child, who would reside primarily with her, was \$15,989. It stated that Buchanan's reasonable monthly budget was \$18,000. The parties also stipulated spousal-maintenance and child-support obligations. They agreed that Buchanan would pay Hammond \$1,570 in monthly child support until 2007 and \$12,200 in permanent monthly spousal maintenance. Spousal maintenance was subject to a cost-of-living increase, which, by 2018, resulted in a \$15,632 monthly spousal-maintenance obligation.

The stipulated decree also divided the marital property. The property included Buchanan's company, JL Buchanan Inc., worth \$1,350,000 at the time of the dissolution. Buchanan possessed a nonmarital interest in one third of the company, and the other two

thirds were marital property. Buchanan received the entire company and Hammond received \$450,000 for her share.

Buchanan sold the company in August 2016, but the record does not include the terms. He continued working as a consultant earning a \$120,000 salary until his retirement at the end of 2017. He was 66 years old. Since retiring, Buchanan's income has derived from investment proceeds and retirement benefits.

Buchanan moved in 2018 to modify spousal maintenance based on alleged substantial changes in circumstances. He said that his current income was \$425,830 annually from a 4% return on his "approximately \$10 million" of capital investments. He also said that he could no longer meet his reasonable monthly expenses, which he maintained had increased from \$18,000 in 2001 to \$35,505 in 2018. Buchanan also argued that Hammond was voluntarily unemployed, maintained unnecessary expenses, and squandered the money she received in the divorce.

The district court denied Buchanan's motion to modify, and he appealed. We remanded the case to the district court to make specific findings supporting its decision. *Hammond v. Buchanan*, A18-1623, 2019 WL 5304175, at *2 (Minn. App. Oct. 21, 2019). On remand, the district court found that Buchanan's income at the time of the divorce was at least \$400,000 and that, although the record suggested that it was higher, the parties did not submit evidence allowing the district court to determine how much higher it was. It found that Buchanan had a 2018 net worth of \$12,174,141, which included \$8,499,871 in publically traded investments, \$475,979 in cash, \$560,000 in commercial rental property, \$2,134,629 in retirement assets, \$563,347 in "personal property," and \$1,400,000 in

personal residential real estate. The district court found that Buchanan could earn a 4% annual return on \$12 million, or \$480,000 annually.

The district court also made findings of Buchanan's expenses. It found that he failed to present credible evidence supporting his claimed expenses. It observed that he offered no evidence or information showing the categories of his expenses during the marriage, preventing it from comparing his pre-divorce and current expenses to assess reasonableness.

The district court made findings about Hammond's income and expenses also. It found that, at the time of the divorce, her monthly income was \$14,393 based on her return on investment and spousal maintenance. And it found that, including spousal maintenance, a return on investment, and social security, her monthly income in 2018 was \$15,978. The district court refused to impute any earned income to Hammond, observing that the stipulated decree afforded her with permanent spousal maintenance at a fixed amount with no assumption or condition of her employment, and it also found it "not reasonable at 69 to expect her to now find paying employment." The district court found that Hammond had not squandered her assets and that her income did not include retirement-account distributions that she was not yet required to take. Regarding monthly expenses, the district court found that her expenses at the divorce were between \$12,846 and \$14,419 and that they were currently \$15,178.

Based on these findings, the district court repeated its denial of Buchanan's motion to modify spousal maintenance. It specifically concluded that the relevant circumstances

had not substantially changed and that, even if they had, the change did not render the original maintenance obligation unreasonable or unfair.

Buchanan again appealed. Hammond filed a conditional related appeal on the issues of her claims that Buchanan should have to post security for the spousal-maintenance obligation and to pay attorney fees.

DECISION

Buchanan presents four clear-error arguments challenging the district court's denial of his motion to modify spousal maintenance. He argues first that the district court wrongly found that his income did not substantially decrease. He argues second that the district court wrongly found that his reasonable expenses did not substantially increase. He argues third that the district court wrongly found that Hammond's monthly budget was reasonable. And he argues fourth that the district court wrongly found that Hammond's income had not substantially increased. We review the district court's decision on whether 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 the record does not support its factual findings or it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202, n.3 (Minn. 1997). We review the district court's underlying factual findings for clear error. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). For the reasons that follow, none of Buchanan's arguments persuade us to reverse.

I

We first address whether the district court clearly erred by finding that Buchanan's income did not substantially decrease from 2001 to 2018. Maintenance modification could

be appropriate if Buchanan's income at the time of the motion substantially decreased from his income at the time of the maintenance award. *See* Minn. Stat. § 518A.39, subd. 2(a) (2020). Buchanan argues that the district court misinterpreted his income after the divorce and failed to account for inflation, asserting that his current gross income is \$493,030 (not \$400,000 as found by the district court) contrasted with \$700,000 at the time of the divorce.

Buchanan builds his declined-income argument on his contention that the district court did not account for language in the judgment and decree, which stated that his income at the time was \$400,000, expressly "not including return on the business asset." Although the stipulation did not specify what, if any, return he was making "on the business asset," he maintains now that the district court should have surmised that it was \$300,000. It should have done so, he contends, because his monthly expenses at the time of the dissolution were \$18,000 and he agreed to pay \$13,770 in monthly spousal maintenance and child support from his "after-tax disposable income." He reasons that his reported monthly expenses combined with his spousal-maintenance and child-support obligations amount to \$381,000 in annual expenses, and that the district court should have worked backwards applying a 2001 federal tax rate of 39.1% and a 2001 Minnesota tax rate of 7.85% to determine his 2001 income. This formula, he maintains, requires a \$700,000 income finding, comprised of \$400,000 in salary and what must have been \$300,000 in return on the business asset.

We have reviewed the record and do not see that he presented this argument plainly to the district court. This presents a difficulty on appeal because it was Buchanan's burden to prove a substantial change in circumstances. *Youker v. Youker*, 661 N.W.2d 266, 269

(Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003); *cf.* Minn. Stat. § 518A.39, subd. 2(a). Having elected to be silent on the amount of any “return on the business asset” when he entered the stipulation, Buchanan’s argument rests on assumptions rather than established facts. Although one *might* accept the assumptions Buchanan urges, the assumptions are neither evidence nor are so certain that we can spot any clear error in the district court’s not basing its findings on them. Besides the stipulated facts in the judgment and decree, Buchanan submitted no evidence of his 2001 income. Perhaps the parties settled on the stipulated maintenance and support amounts based on these assumptions Buchanan now asserts, but perhaps they arrived at the amount based on entirely different factors. The sparse record affords mostly guesswork. As a result, the district court was not bound even to find a positive return from the business, let alone a return so substantial that it resulted in \$700,000 in income. Although the testimony might have supported a different finding, given our deferential review of factual findings, we cannot say that the district court clearly erred by finding that Buchanan earned \$400,000 in 2001.

Buchanan’s argument about his 2018 income is no more compelling than his argument about his 2001 income. He contends that he earned \$444,000 in 2018 and that the district court overstated his income by misinterpreting his JP Morgan financial statement and improperly increasing his investible liquid assets. He says that the district court inflated his investment funds by inappropriately including his \$1.4 million home and miscalculating income from his \$560,000 commercial rental property, which he alleged was \$13,200 in 2018. The argument stands on unsteady ground, because we defer to the district court’s credibility assessment, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn.

1988), and the district court found incredible Buchanan's self-created spreadsheet reflecting the 2018 \$13,200 return. Rejecting Buchanan's spreadsheet representations, the district court instead imputed a 4% annual return on his \$560,000 commercial rental property, or \$22,400. The record does not show that this approach clearly misstates the actual amount of the investment-property return. We add that accepting Buchanan's \$444,000 income assertion results in a \$44,000 increase from his \$400,000 2001 income. This 11% increase over a 17-year period would be insufficient to lead us to reverse the district court's finding of no substantial change in circumstances.

Buchanan also wrongly contends that the district court improperly found an increase in his liquid assets based on his home. Contrary to his contention, the district court did not impute an investment return from his asset but rather subtracted Buchanan's equity in the \$1.4 million home from his 2018 capital base.

Finally, we reject Buchanan's argument that the district court was bound to apply inflation to find that his 2018 income is substantially less than his 2001 income. Inflation operates as an "undiscriminating influence" on both parties, "is already reflected in each person's income and expenses, and to consider it again as a separate factor gives it undue emphasis and distorts the actual circumstances of the parties." *Heaton v. Heaton*, 329 N.W.2d 553, 555 (Minn. 1983). We turn from Buchanan's argument about his income to his argument about his expenses.

II

Buchanan's arguments about his expenses are also unconvincing. He maintains that the district court clearly erred by finding that his reasonable expenses in 2018 were

substantially greater than his 2001 expenses. The district court could modify Hammond's spousal-maintenance obligation if his expenses increased and made the terms of the original maintenance order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a)(2). "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*, 675 N.W.2d at 358. The determination of a party's reasonable expenses is a fact-specific inquiry requiring the district court to assess the marital standard of living. *Lee v. Lee*, 775 N.W.2d 631, 642 (Minn. 2009). We therefore review the district court's factual findings regarding the credibility and reasonableness of proposed budgets for clear error. *See Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009) (citing *Nelson v. Nelson*, 189 N.W.2d 413, 415 (Minn. 1971) (articulating clear-error standard of review)). Because Buchanan did not demonstrate how the 97.5% increase in expenses he maintains was commensurate with the marital standard of living and because he did not submit sufficient information to allow the district court to assess his reasonable needs or whether they grew, the district court did not clearly err by finding that his reasonable expenses did not increase.

Buchanan stipulated that his reasonable monthly expenses at the time of the divorce were \$18,000, which he asserted by affidavit had increased to about \$35,550 in 2018. He also submitted a "personal cash flow model" showing categorized expenses from 2015 to 2017. Again, we defer to the district court's credibility assessments, *Sefkow*, 427 N.W.2d at 210, and the district court did not find the affidavit credible. The district court was concerned by the lack of supporting evidence for Buchanan's assertions and the fact that

he relied only on his self-created, beginning-of-year projection rather than an end-of-year report with proof of expenditures. Because Buchanan did not provide sufficient evidence for the district court to determine or compare his reasonable expenses, he cannot now contest the district court's determination. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). We conclude that the district court did not clearly err by finding that Buchanan did not prove a substantial increase in his reasonable expenses. This leads us to Buchanan's argument about Hammond's expenses.

III

Buchanan contends that the district court incorrectly accepted as reasonable Hammond's expense budget. The district court could modify spousal maintenance if it found that Hammond's reasonable expenses substantially decreased so as to render the terms of the extant maintenance order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a). Buchanan maintains that the district court improperly credited Hammond's "inflated and unreasonable" expenses. The argument does not compel reversal.

Buchanan argues that Hammond's budget wrongly included payment of her post-marriage credit-card debt as an expense and included expenses she pays for her child. The district court did not merely accept Hammond's proposed budget of expenses, it modified it and found the modified budget reasonable under the marital standard of living. It accurately recognized that the judgment and decree only generally assigned Hammond \$15,989 in monthly expenses, including child-related expenses, without specifying particular expense categories. The district court recognized that Hammond's maintenance-

based budget must be reduced to account for expenses she previously incurred for her now-adult son. *See Reif v. Reif*, 410 N.W.2d 414, 416 (Minn. App. 1987) (providing that expenditures for adult children cannot be considered part of an obligee's need for maintenance). It subtracted from Hammond's overall budget \$1,570 in child-support payments along with an additional estimated amount she would have spent as her share of child-related costs. It found that Hammond's reasonable needs at the time of the divorce were between \$12,846 and \$14,419. Buchanan does not dispute this finding. The district court also credited a report by a financial advisor who reviewed Hammond's bank and credit-card account statements for 2017 and categorized Hammond's 2017 expenses. The district court also credited a 2018 proposed budget for Hammond that a financial analyst prepared.

Buchanan challenges as unreasonable certain particulars in her budget. He takes issue with her monthly payments of \$320 in storage fees, \$375 in monthly out-of-plan therapy costs, \$1,040 in automobile expenses, and \$600 in credit-card interest payments. The district court analyzed each expense category, assessing reasonableness. We are in a difficult position on appeal to second-guess those discretionary decisions. This is particularly so where, as here, our point of comparison is a stipulation that includes no expense categories at all. We emphasize that the question of reasonableness of expenses does not rest on a general societal standard, but on the parties' standard of living in the marriage. The way the spousal-maintenance statute is written, "the long-standing affluent lifestyle of the parties is an appropriate factor for the district court to consider." *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied*

(Minn. Oct. 25, 2000). And Buchanan does not contest the district court’s finding that the parties enjoyed an affluent lifestyle, including many “expensive luxuries,” such as a \$1.4 million home, numerous luxury cars, and other expenses for which they incurred tens of thousands of dollars in credit-card debt. That Buchanan stipulated to Hammond’s uncategorized \$15,989 in monthly expenses in 2001 supports the district court’s marital-living-standard assessment and its conclusion that \$15,178 in 2018 expenses is consistent with that standard.

We reach this conclusion over Buchanan’s characterization of Hammond’s admissions about what she had spent on her son before he reached adulthood. He says that she admitted spending for her son 25% to 30% of her bill for groceries, out-of-pocket medical expenses, fitness costs, and clothing. Buchanan admitted to spending 25% of her grocery budget (\$250) on her son and 25% of her acupuncture expenses (less than \$40) on her son, but she did not admit to spending 25% of her out-of-pocket medical expenses on him. She instead testified that her reported therapy expenses include only her personal expenses. And although she said that she bought clothes for him, she did not say that the cost was 25% of her clothing budget. Buchanan identifies no evidence from which we can hold that the district court’s calculations on these items constitutes clear error. We add that his own reported 97.5% increase in his expenses over 2001—which he proffered as reasonable under the marital standard of living—undermines his argument that Hammond’s roughly 18% increase is excessive under the same marital-living standard. We turn finally to Hammond’s income.

IV

Buchanan argues that the district court clearly erred by failing to impute extra income based on Hammond having “squandered” her assets since the divorce and failing to consider her retirement-account distributions as part of her income. The district court could have modified spousal maintenance if it found that Hammond’s income substantially increased after the maintenance award. Minn. Stat. § 518A.39, subd. 2(a). But our review informs us that the record supports the district court’s relevant factual findings.

The record supports the district court’s finding that Hammond’s 2001 income was \$14,393, based on \$12,200 in spousal maintenance and \$2,193 in investment income. Hammond received \$658,000 in liquid assets from the 2001 divorce, representing about half of the \$2,029,854 in marital assets minus \$347,880 of equity in the marital home. Although the district court listed her equity in the marital home as \$341,888 instead of \$347,880, this finding is not clearly erroneous because Hammond averred in her affidavit, which the district court found credible, that the home had unexpected mold and stucco expenses. The district court based its finding of \$2,193 in monthly investment income on a 4% annual rate of return on her \$658,000 in capital at the time of the divorce, the same return rate it adopted for Buchanan’s investment income.

The record also supports the district court’s finding that Hammond’s income in 2018 was \$19,410, based on \$15,632 in spousal maintenance, \$2,413 in investment income, and \$1,365 in Social Security income. It based the investment income again on a 4% return rate on \$724,003 in liquid assets. Although her investable assets would have increased to a larger amount than that, Hammond testified by affidavit that she spent funds to prepare the

marital house for sale, that she sold it in 2011 at a \$125,000 loss, and that she had to borrow money to pay taxes. On the evidence the district court found credible, the district court reasonably declined to impute additional income to Hammond.

Buchanan's 2001 and 2018 incomes reflect an increase of \$1,585 monthly without considering her increased spousal maintenance, or about 11%. The district court appropriately included no retirement income from her IRA or 401(k) accounts, because she was 69 years old at the time of Buchanan's motion and she was not required to begin taking withdrawals until December 2020, after the district court decided Buchanan's motion. *See* 26 I.R.C. § 401(a)(9)(C)(i) (2018) (providing that person who reaches age 70, 1/2 in 2018 must take their first required minimum withdrawal by April 2019). The district court did not clearly err in its findings related to Hammond's income.

Conclusion

Because Buchanan has not identified any clear error in the district court's findings as to either parties' income and expenses or as to the alleged substantial change in circumstances, we hold that the district court did not abuse its discretion by denying Buchanan's motion to modify spousal maintenance. And because we do not disturb the spousal-maintenance order, we need not address Hammond's conditional related appeal.

Affirmed.