

*This opinion is nonprecedential except as provided by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
A21-0134**

In re the Marriage of:
John Thomas Peterson,
Appellant,

vs.

Colleen Marie Peterson,
Respondent.

**Filed November 1, 2021
Affirmed in part, reversed in part, and remanded
Frisch, Judge**

Aitkin County District Court
File No. 01-FA-11-504

Richard D. Crabb, Hill Crabb, LLC, Edina, Minnesota (for appellant)

Jana Aune Deach, Brittney M. Miller, Moss & Barnett, Minneapolis, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant/cross-respondent challenges the district court's denial of his motion to modify his spousal-maintenance obligation based on respondent/cross-appellant's alleged

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

cohabitation and argues that the district court abused its discretion by denying his motion to compel discovery. Respondent/cross-appellant, in turn, challenges the district court's summary denial of her request for need- and conduct-based attorney fees. Because the district court did not abuse its discretion by denying appellant/cross-respondent's motions to compel discovery and modify maintenance, we affirm those aspects of the district court's order. But because the district court's findings are inadequate for us to review its denial of need-based attorney fees, we reverse that part of the district court's order and remand for further proceedings.

FACTS

In 2011, the district court entered a judgment and decree dissolving the marriage of appellant/cross-respondent John Thomas Peterson (husband) and respondent/cross-appellant Colleen Marie Peterson (wife). At the time, husband was self-employed as an attorney and was a partner in a law firm with a gross monthly income of \$11,833 and reasonable monthly expenses of \$4,958. Wife was employed as a teacher with a gross monthly income of \$5,408 and reasonable monthly expenses of \$7,672. The district court awarded wife permanent spousal maintenance of \$2,215 per month.¹

In June 2019, husband moved to modify his spousal-maintenance obligation, alleging a substantial change in circumstances based on wife's cohabitation with another man (cohabitant). Specifically, husband alleged that (1) wife had been romantically involved with cohabitant for almost seven years, (2) wife had been living with cohabitant

¹ This obligation is now \$2,295 per month, reflecting a cost-of-living adjustment.

for 23 months, (3) and that cohabitant helped pay for wife's living expenses. Husband meanwhile claimed a gross monthly income of approximately \$16,000. In support of his motion, husband submitted an affidavit and various financial documents and argued that the changes in wife's circumstances were substantial and rendered his ongoing maintenance obligation unreasonable and unfair.

Wife claimed in her responsive affidavit that, while she and cohabitant lived together "off and on for a period of 23 months," cohabitant did not provide her any funds to pay housing or other expenses during that time. She also claimed that she and cohabitant currently maintain separate residences, do not have a joint bank account, do not co-own any assets, do not commingle funds, and do not share living expenses. She also claimed that she has no intention of marrying cohabitant.

In February 2020, husband moved the district court to compel discovery, arguing that wife failed to identify various bank account deposits in her answers to interrogatories. In her responsive affidavit to that motion, wife detailed her assets and expenses. She explained that the deposits that husband speculated originated from cohabitant were instead a combination of gifts and refunds. She requested that the district court deny both of husband's motions.

On July 14, 2020, the district court filed an order denying husband's motion to compel discovery, and on December 1, 2020, the district court filed an order denying husband's modification motion. It found that cohabitant and wife "temporarily and intermittently" resided together for 23 months but that at the time of the district court's order maintained separate residences. It further found that cohabitant did not meaningfully

contribute to wife's living expenses during the time he lived with her and that they maintained separate finances throughout their relationship. It also found that wife's income had not increased significantly and that she had a monthly deficit of \$1,383.² The district court meanwhile found that husband's income significantly increased, and he has remarried. The district court concluded that even if cohabitant and wife were cohabitating, husband failed to establish that the four statutory factors that the district court must consider when determining whether to modify a spousal-maintenance obligation rendered husband's maintenance obligation unreasonable and unfair. The district court also summarily denied the parties' attorney-fees motions without making findings. Husband appeals and wife cross-appeals.

DECISION

We address separately each issue raised by each party, beginning with issues raised by husband on his appeal before turning to issues raised by wife on her cross-appeal.

I. The district court did not abuse its discretion by denying husband's motion to compel financial discovery.

Husband argues that the district court erred by denying his motion to compel discovery because (1) he was prevented from "obtaining the very evidence that he needed to prove his case" and (2) the district court's findings are inadequate and we therefore cannot conduct meaningful review. We are not persuaded.

² The district court's order lists wife's monthly deficit as \$1,883 in its findings of fact. However, its memorandum of law lists the deficit as \$1,383, the amount wife included in her affidavit. We presume the amount listed in the district court's order was an error and that wife's monthly deficit is \$1,383. On remand, the district court may correct this error.

District courts have broad discretion to grant or deny discovery requests, and we will not reverse in the absence of an abuse of that discretion. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Rule 26.02 of the Minnesota Rules of Civil Procedure sets forth the scope of discovery for civil cases. “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Minn. R. Civ. P. 26.02(b). Rule 37.01(b)(2) of the Minnesota Rules of Civil Procedure allows a party seeking discovery to move the district court for an order compelling a discovery response.

The district court did not abuse its discretion by denying husband’s motion to compel discovery. The record reflects that husband had ample time to conduct additional financial discovery and that he failed to do so. He requested two continuances, both of which were granted. He did not request or conduct a single deposition and did not move to compel discovery until seven months after he received wife’s answers to discovery. Even after the district court denied his motion to compel financial discovery, husband still had six weeks to request and conduct a deposition had he chosen to do so. Husband’s argument that the district court abused its discretion by denying his motion is thus not supported by the record.

Husband also argues that the district court erred by failing to make sufficient findings to support the denial of his motion. Here, the district court issued its order after a hearing on the motion to compel discovery. Minn. R. Civ. P. 52.01 requires:

In all actions tried upon the facts . . . 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 and conclusions of law *are unnecessary* on decisions on motions pursuant to Rules 12 or 56 or *any other motion* except as provided in Rules 23.08(c) and 41.02.

(Emphasis added.) Minn. R. Civ. P. 23.08 provides the process for the award of attorney fees in an action certified as a class action, while Minn. R. Civ. P. 41.02 deals with involuntary dismissals. Because neither exception applies, the district court was not required to include findings of fact or conclusions of law in its order denying husband's motion to compel discovery. We therefore affirm the district court's denial of husband's motion to compel discovery.

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

We review a district court's decision whether to modify spousal maintenance for an abuse of discretion. *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

A party seeking to modify a spousal-maintenance obligation must show that a substantial change has occurred in a party's 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 based on an obligee's cohabitation with another adult. Minn. Stat.

§ 518.552, subd. 6(a) (2020) (citing Minn. Stat. § 518A.39, subd. 2 (2020)). The cohabitation statute sets forth 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.

In *Sinda v. Sinda*, we considered the analytical framework that governs maintenance modification under the cohabitation statute. 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 held that pursuant to the terms of the cohabitation statute, (1) when a maintenance obligor shows that the obligee is cohabiting with another adult, the cohabitation constitutes a substantial change in circumstances; and (2) this change justifies a modification in 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 that wife’s past cohabitation with cohabitant and balancing the four statutory factors warrants terminating his spousal-maintenance obligation. Here, the district court found that cohabitant and wife cohabitated for a period of time, but it also

found that they are not presently cohabitating. We need not determine whether wife and cohabitant were cohabitating within the meaning of the statute, because the statute *also* requires a district court to consider the four factors enumerated in the statute to determine whether cohabitation warrants modification of maintenance. Minn. Stat. § 518.552, subd. 6(a); *Sinda*, 949 N.W.2d at 178. The district court found that husband failed to satisfy each of those factors and therefore was not entitled to a modification of maintenance. We review for clear error the district court’s findings on these factors. *See Madden*, 923 N.W.2d at 696. We address each of the four factors in turn.

A. Whether the Parties Would Marry but for the Maintenance Award

The district court found that wife and cohabitant do not hold themselves out as married and that there is no indication that wife would marry cohabitant but for the maintenance award. This finding is supported by the record. Both wife and cohabitant averred in their affidavits that they are not engaged, and they do not intend to marry.

Husband argues that the district court erred by failing to appropriately weigh photographs that he submitted showing wife and cohabitant at various family functions and a sign that he photographed which stated, “Welcome to our home . . . [Wife] & [Cohabitant].” He argues that these photos show that wife and cohabitant hold themselves out as married. In examining the competing evidence, the district court necessarily made credibility determinations. “We defer to the district court’s credibility determinations as to conflicting affidavits.” *Knapp v. Knapp*, 883 N.W.2d 833, 837 (Minn. App. 2016). Further, we “neither reconcile conflicting evidence nor decide issues of witness credibility,

which are exclusively the province of the factfinder.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

Here, the district court’s findings that husband challenges on appeal are supported by the evidence in the record, including cohabitant’s and wife’s sworn statements. In any event, the photos from the family functions merely show that wife and cohabitant are in a relationship and the sign, as wife explained, was a gift that is no longer displayed at her home. The district court did not commit clear error in its consideration of this factor.

B. Whether Wife Received an Economic Benefit from the Relationship

The district court found that wife does not receive an economic benefit from her relationship with cohabitant. It found that wife and cohabitant maintain separate finances, do not have joint bank accounts, do not jointly own any real or personal property, and do not share in the burden of major monthly living expenses. These findings, too, are supported by the record.

Husband speculates that various deposits that wife received must have originated from cohabitant or that wife must have undisclosed bank accounts. But wife explained those deposits in her sworn affidavit: she averred that she paid off her cable bill and subscribed to YouTube TV, she received several refunds from her insurance provider, she received several Christmas gifts, and she transferred \$2,000 to her daughter’s account. Further, the record lacks evidence suggesting that wife has nondisclosed bank accounts. The record also reflects that wife pays for her own monthly expenses, including rent and utility payments. Other than speculation, husband does not offer any evidence that wife

derives any economic benefit from cohabitant. We conclude that the district court did not clearly err in its determination of this factor.

C. The Likely Duration of Future Cohabitation

The district court found that there is no evidence as to the likely duration of cohabitation as the parties are not currently cohabitating. It relied on two rental agreements that cohabitant furnished. Husband challenges this finding by arguing that cohabitant's rental agreement is not credible and that cohabitant must reside with wife because he spent a night at her house recently. We defer to the district court's credibility determinations, *id.* at 514, and here, husband has not shown clear error by the district court in regard to its rental-agreement findings. We see no reversible error in the district court's refusal to find the parties are currently cohabitating when they maintain separate residences and cohabitant occasionally spends the night at wife's home. Again, we discern no clear error by the district court.

D. The Economic Effect on Wife if the Maintenance Obligation is Terminated

Finally, the district court found that even if wife received some economic benefit from the cohabitation, the termination of spousal maintenance would have a significant detrimental economic effect on her. The district court relied on wife's affidavit in which she claimed that she currently has a monthly deficit of \$1,383. Husband argues that the district court abused its discretion by taking wife's budget "at face value without any analysis of it." But wife submitted evidence confirming her budget as well as her financial-

plan calculation, and the district court did not err in crediting and then relying on that evidence.

Husband therefore failed to demonstrate that the district court's findings on any of the four statutory factors are clearly erroneous. And because the findings that the district court did make do not support his argument that his current spousal-maintenance obligation is unreasonable and unfair, we conclude that the district court did not abuse its discretion by denying his modification motion.

III. The district court erred by denying wife's motion for need-based attorney fees without making findings.

In her cross-appeal, wife argues that the district court erred by denying her motion for need- and conduct-based attorney fees without making findings of fact. We agree with wife in part.

Minn. Stat. § 518.14, subd. 1 (2020), provides that a party to a dissolution action “shall” be awarded need-based attorney fees if (1) “the fees are necessary for the 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. *Muschik*, 920 N.W.2d at 225.

The record contains no basis for an award of conduct-based attorney fees. But wife alleged the basic elements for a need-based award: the attorney fees were incurred for a good-faith assertion of her rights, she cannot pay them, and husband has the means to pay. Citing *Gully v. Gully*, husband argues that a lack of specific findings on the statutory factors for a need-based attorney-fee award is not fatal to an award when the order reasonably implies that the district court considered the relevant factors. 599 N.W.2d 814, 825-26 (Minn. 1999). But here, unlike *Gully*, the district court did not make *any* findings. And without any findings, we cannot discern whether the district court determined that wife was not engaged in a good-faith assertion of her rights or that she could afford to pay the attorney fees or that husband 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. Minn. Stat. § 645.44, subd. 16 (2020) (stating that “shall” is mandatory).

We therefore reverse the district court’s order denying wife’s motion for need-based attorney fees and remand for further proceedings to determine whether the standard for an award of need-based attorney fees has been met. On remand, the district court may in its discretion reopen the record to the extent necessary to make findings regarding whether wife has met the statutory standards for an award of need-based attorney fees.

Affirmed in part, reversed in part, and remanded.