This opinion is nonprecedential except as provided by Minn.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
A21-0169

In re the Marriage of:
Kevin Max Peterson, petitioner,
Appellant,

vs.

Rebecca Jane Peterson,
Respondent,

County of Dakota,
Intervenor.

Filed July 26, 2021
Reversed and remanded
Ross, Judge

Dakota County District Court
File No. 19AV-FA-10-3872

Kevin Max Peterson, Cushing, Wisconsin (pro se appellant)

Francis Herbert White III, Francis White Law, P.L.L.C., Woodbury, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Kevin and Rebecca Peterson's marriage ended in 2010 by a judgment and decree that required Kevin Peterson to pay permanent spousal maintenance. Kevin Peterson unsuccessfully moved the district court to modify his spousal-maintenance obligation in 2016, arguing that changes to the parties' relative incomes made the decree's spousal-maintenance obligation unreasonable or unfair. Three years later he again moved to modify the obligation based on the parties' 2019 incomes and expenses. The district court denied the motion, deeming the argument foreclosed by collateral estoppel. Because the 2016 holding that the parties' financial circumstances were not then substantially different from the 2010 circumstances has little bearing on whether the 2019 circumstances were substantially different from the 2010 circumstances, collateral estoppel does not preclude the 2019 motion. We reverse and remand.

FACTS

The district court issued a judgment and decree in 2010 dissolving husband Kevin Peterson and wife Jane Peterson's marriage and ordering husband to pay permanent spousal maintenance. Husband moved to modify his spousal-maintenance obligation in 2016 based on alleged substantial changes in the parties' relative financial circumstances. The district court held an evidentiary hearing in February 2016. Husband testified that his income had decreased after the divorce when he closed his business and became employed at a lumber company. He alleged that, by contrast, wife had transitioned from being a stay-at-home mother to gainful employment, increasing her income. He argued that the relative changes in the parties' financial circumstances from 2010 to 2015 were substantial and rendered his spousal-maintenance obligation unreasonable and unfair.

The district court denied husband's motion, concluding that he was voluntarily underemployed. It also concluded that the fact of wife's employment was not a basis to modify the maintenance obligation because, at the time of the decree, husband had stipulated without qualification to pay wife permanent spousal maintenance while also stipulating that she was "currently seeking employment." Because wife's income through employment was implicitly contemplated by the decree, it concluded that her employment was not a substantial change in circumstances.

Husband again moved the district court in October 2019 to modify his spousal-maintenance obligation. He alleged that wife had changed jobs, had begun receiving an increased income, and was receiving additional income by moving in with her boyfriend and renting out her house. Relying on collateral estoppel, the district court denied the motion by reasoning that husband had previously unsuccessfully litigated the issue of spousal-maintenance modification arising from differences in the parties' incomes.

This appeal follows.

DECISION

Husband correctly maintains that the district court erroneously relied on the doctrine of collateral estoppel to deny his spousal-modification motion. We usually review a district court's decision on a motion to modify spousal maintenance for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). "The application of collateral estoppel presents a mixed question of law and fact that we review de novo." *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011) (citations and internal quotation marks omitted). Once we determine that collateral estoppel is available, whether to apply collateral estoppel is a discretionary decision for the district court. *Id.*

The district court did not properly apply the doctrine of collateral estoppel here. Collateral estoppel precludes parties from relitigating previously determined issues. *Tarutis v. Comm'r of Revenue*, 393 N.W.2d 667, 669 (Minn. 1986); *see Maschoff v. Leiding*, 696 N.W.2d 834, 838 (Minn. App. 2005) (observing that "the availability and application of res judicata and collateral estoppel in family matters is limited, but 'the underlying principle that an adjudication on the merits of an issue is conclusive, and should not be relitigated, clearly applies'") (quoting *Loo v. Loo*, 520 N.W.2d 740, 744 (Minn. 1994)). The district court failed to precisely consider what issues the latest motion presented by contrast to the first. A party seeking to modify spousal maintenance must show a substantial change in circumstances that renders the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2020). A substantial change of circumstances may be shown through "substantially increased or decreased gross income of an obligor or obligee." *Id.*, subd. 2(a)(1). The collateral-estoppel doctrine does not apply to foreclose a second motion to modify after a prior motion was denied for a lack of changed circumstances if the second motion rests on the question of "whether the change since the denied motion has been significant enough that it might, because of its incremental effect, require the trial court to examine the cumulative changes since the order setting the support level." *Phillips v. Phillips*, 472 N.W.2d 677, 680 (Minn. App. 1991).

It is true, as the district court observed, that "[t]he parties have previously litigated the issue of modification of spousal maintenance." But this conclusory statement is far too imprecise to sufficiently analyze whether any of the newly raised issues are precluded by collateral estoppel. And the record informs us that the prior litigation did not resolve the primary issue husband raises, which is whether wife's alleged new job with greater income and her other increased income from rent proceeds constitute substantially changed circumstances rendering the current obligation unreasonable or unfair. The district court seems to have concluded that, once husband unsuccessfully sought to modify spousal maintenance in 2016, he is forever foreclosed from moving to modify, regardless of the amount of increase in wife's income, or the reasons for it, or the possible effect that the increase might have on the fairness of leaving the obligation intact. And it implicitly reasoned that, by holding in 2016 that wife's 2015 employment was not a change in circumstances, the district court was deciding that any new and different employment would also not be a change in circumstances. Nothing in the district court's analysis, or in wife's attempt on appeal to justify the reasoning, provides any authority to support these legal conclusions.

We do not reach the arguments about the district court's factual findings or its choice in applying findings to the issues. We remand for the district court to analyze and decide husband's motion to modify on the merits, leaving to the district court the discretion whether to reopen the record.

Reversed and remanded.