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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0180**

In re the Marriage of:

John Edward Warrington, petitioner,
Respondent,

vs.

Karen Lee Warrington,
Appellant

**Filed January 3, 2022
Affirmed as modified; motion denied
Bratvold, Judge**

Hennepin County District Court
File No. 27-FA-16-3836

Anne M. Honsa, Deborah M. Gallenberg, Honsa & Mara, Minneapolis, Minnesota (for respondent)

Matthew J. Gilbert, Gilbert Alden Barbosa PLLC, Burnsville, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from the district court's order granting in part and denying in part motions to modify child support and spousal maintenance, appellant argues the district

court erred by (1) providing child support would terminate “when the child is 18 or deceased” even though their child will be attending secondary school after his eighteenth birthday; (2) determining no substantial change in circumstances rendered appellant’s existing spousal maintenance award unreasonable and unfair; (3) denying appellant’s motion to compel discovery about respondent’s financial status; and (4) denying appellant’s motion for need-based attorney fees. We conclude the district court committed a clerical error when it granted the motion to modify child support, therefore, we correct the clerical error by modifying the district court’s ruling on that point. We also conclude the district court did not abuse its discretion by denying appellant’s motions to modify spousal maintenance, compel discovery, and award need-based attorney fees. Thus, we affirm as modified.

FACTS

A. 2017 dissolution

Appellant Karen Lee Warrington and respondent John Edward Warrington were married in 2002.¹ *In re Marriage of Warrington*, No. A19-0482, 2020 WL 1501972, at *1 (Minn. App. Mar. 30, 2020) (*Warrington I*). They have one joint child, born in 2003. *Id.* The district court dissolved their marriage on July 6, 2017. *Id.* Before dissolution, the parties agreed on legal custody, but disputed other issues, including spousal maintenance and child support, which were tried to the district court. *Id.* at *2-3. Our previous opinion,

¹ For clarity, this opinion will refer to the parties by their first names.

portions of which we recount below as relevant to the issues in this appeal, summarizes the district court's dissolution decree.

John was employed as a pilot with FedEx, with a gross monthly income of \$28,729, or approximately \$345,000 per year. *Id.* at *1. Karen “was self-employed as a commodities broker, operated as a sole proprietor, . . . and had been affiliated exclusively with McVean Trading & Investments LLC (McVean) since 1994.” *Id.* To calculate spousal maintenance and child support, the district court found Karen's income was \$167,476. *Id.* But the district court declined to rely on this number, finding Karen had “credibly and sufficiently demonstrated that her income from McVean ha[d] decreased and [would] decrease further.” The district court relied in part on Karen's own testimony that she was contemplating a change in her career and this change would temporarily decrease her income. *Id.* The district court also relied on the cash-flow analysis by Karen's expert, who opined that, after entry of the dissolution decree, Karen's 2017 income would be only \$75,000.

The district court first found the parties had a high standard of living during the marriage and that Karen was temporarily unable to provide for her reasonable needs. The district court next awarded temporary spousal maintenance for three years of \$7,750 per month until the sale of the marital homestead and of \$2,250 following the sale of the homestead. *Id.* The district court also ordered John to pay child support of \$1,027 per month. *Id.* No appeal was taken from the dissolution decree.

B. Karen’s 2018 motion to modify child support and maintenance

Karen moved to modify spousal maintenance about one year later. *Id.* at *2. Karen alleged an increase in John’s income and a decrease in her income were substantial changes in circumstances that made the existing order unreasonable and unfair. *Id.* Specifically, Karen alleged her income had “plummeted from \$167,484 to \$89,568, reflecting a 46.5% decrease.” Karen also requested an increase in monthly child support. *Id.* The district court denied the motions, concluding Karen failed to prove a change in circumstances that rendered the existing maintenance and support awards unreasonable and unfair, as “the parties and the Court knew [at the time of dissolution] that [Karen’s] income would decrease. What was expected to happen cannot be considered a change of circumstances.”

C. The first appeal

Karen appealed the order denying her motions. In *Warrington I*, this court reversed and remanded, concluding the district court abused its discretion by “fail[ing] to make findings necessary to determine whether the statutory presumptions apply to this case.” *Id.* at *5. We first stated, “[a] decrease in [Karen’s] income of at least 20% through no fault or choice of hers would require the district court to apply the two statutory presumptions to [Karen’s] spousal maintenance modification motion.” *Id.*, at *4 (*citing* Minn. Stat. § 518A.39, subd. 2(b)(5) (2018)). We therefore remanded with specific instructions for “the district court to determine the change in [Karen’s] income and to determine whether the change satisfies the thresholds set forth in section 518A.39, subdivision 2(b)(5).” *Id.* We also stated:

It is not enough to conclude that [Karen's] income decreased, as anticipated in the 2017 judgment and decree. The degree of decrease in income might exceed what had been anticipated at the time of [Karen's] initial testimony prior to the issuance of the 2017 judgment and decree. Alternatively, the decrease may have resulted from some reason other than what was contemplated prior to the issuance of the 2017 judgment and decree.

Id.

Before we issued our opinion in *Warrington I*, Karen moved for this court to award need-based appellate attorney fees of \$22,163. *Warrington v. Warrington*, No. A19-0482 (Minn. App. Mar. 30, 2020) (order). We remanded the motion to the district court because Karen's supporting documentation was "insufficient to facilitate this court's determination as to the reasonableness of the claimed time and fees" and "the proceedings on remand may affect the parties' ability to pay attorney fees." *Id.* at *3.

D. Karen's 2020 motion to modify maintenance

Three months after *Warrington I* was issued, and while Karen's remanded motions to modify child support and maintenance and for need-based fees were before the district court, Karen again moved to modify spousal maintenance and sought need-based attorney fees. This 2020 motion did not include child support and reiterated Karen's request to increase maintenance, asking for the same amount as Karen's 2018 motion, \$9,632 per month.

But Karen's 2020 motion requested for the first time that maintenance be modified to continue indefinitely, until the death of a party, Karen's remarriage, or further order of the district court. Karen argued permanent maintenance was warranted as "it is unknown

whether [Karen] will ever be able to earn sufficient income to meet her budget consistent with the marital standard of living.” Karen claimed several intervening circumstances had occurred since her 2018 motion to modify.

In the affidavit provided in support of her motion, Karen averred that two years earlier, shortly before the 2017 dissolution decree was issued, McVean had “dissociated with [her], leaving [her] without a CFTC registration, without clients, and without an ability to immediately earn income.”² Karen attested she founded her own business, “Ryder Capital LLC in an effort to continue working in the commodity trading industry” because she “believed [she] had the best chance to make a similar income to what [she] had earned at McVean.” She also attested she had had no income over a long time during which she was not registered and based on “the lengthy process of re-registering with the CFTC and NFA.”

Karen averred her income remained low after she formed Ryder due to market forces such as low commodity prices, a decline in assets allocated to commodity trading advisors, tighter compliance with regulatory requirements, and the effect of the COVID-19 pandemic. Karen attested that “while [she was] still agreeable to the Court imputing income to [her] of \$89,568 (the amount [she] last earned with McVean), the reality is [she] cannot realistically earn this amount and [she did] not know if [she would] ever be able to earn

² Registration with the Commodity Futures Trading Commission (CFTC) and National Futures Association (NFA) is a prerequisite for much of Karen’s work as a commodities trader.

[that] amount again.” Karen also submitted exhibits about her finances and a real estate company she started as an attempt to earn more income.

Several months later, Karen moved to compel discovery, requesting John be compelled to produce documents related to employee benefits, bank statements, bank-account statements, credit-card statements, and other business documents relating to John’s business “J&W Air LLC,” which she alleged provided commercial flights.

The district court conducted a hearing on Karen’s 2018 and 2020 motions to modify and her motion to compel discovery and the remanded motion for attorney fees. In a written order, the district court denied Karen’s 2018 and 2020 motions to modify spousal maintenance and granted her motion to modify child support. As for Karen’s 2018 motion, the district court found that Karen’s income had decreased, but also found this decrease was no greater than had been contemplated at the time of dissolution decree, and therefore no substantial change in circumstances had occurred. As for Karen’s 2020 motion, the district court found that while Karen’s income had “markedly decreased [] since the June 2018 motion,” this was in part because of Karen’s failure to make “reasonable efforts to become self-supporting.” The district court concluded Karen was “not entitled to an award of further spousal maintenance.”

The district court also denied Karen’s motions to compel discovery and for need-based attorney fees.³ The district court granted Karen’s motion for increased child

³ The district court issued additional rulings on conduct-based attorney fees, a motion for ex parte relief, and a motion to exclude certain expert testimony, but none of these issues are raised in this appeal.

support, determining a substantial change in circumstances occurred under Minn. Stat. § 518A.39, subd. 2(b)(1). The district court found, based on the parties' new income, the amount of child support was "at least 20 percent and at least \$75 per month higher or lower than the current support order."

This appeal follows.

DECISION

I. Clerical error in the order modifying child support

For purposes of child support, a "child" is statutorily defined as "an individual under 18 years of age, [or] *an individual under age 20 who is still attending secondary school . . .*." Minn. Stat. § 518A.26, subd. 5 (2020) (emphasis added). Here, noting that the parties' child will attend secondary school after the child turns 18 and that neither party asked the district court to deviate from the statutory definition of "child," Karen argues that the district court erred by requiring John to pay child support only "until the child is 18 or is deceased." John candidly concedes that the duration of his support obligation is based on a clerical error.⁴ This court can correct clerical errors on appeal. *See Johnson v. Johnson*, 379 N.W.2d 215, 218 (Minn. App. 1985) (addressing clerical errors); Minn. R. Civ. P. 60.01. We therefore modify the duration of John's support obligation to require him to pay support while the parties' child is under age 18 or is under age 20 and attending secondary school. Thus, we affirm this portion of the district court's order as modified.

⁴ We appreciate John's candor on this point.

II. Karen’s motions to modify spousal maintenance

Karen argues the district court abused its discretion by denying her 2018 and 2020 motions to modify spousal maintenance. District courts have broad discretion in deciding spousal maintenance, and their orders are reversed only if the district court abuses that discretion. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021). “An abuse of discretion occurs when a district court makes findings unsupported by the evidence or when it improperly applies the law.” *Id.* (quotation omitted). A district court abuses its discretion if it makes findings unsupported by the evidence, or if it improperly applies the law, or if it resolves the discretionary question in a manner that is contrary to logic and the facts on record. *Id.*; *see also Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

By statute, “[t]he terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair.” Minn. Stat. § 518A.39, subd. 2(a). The statute then lists eight circumstances that could allow modification of an existing maintenance or support obligation, the first two of which are “substantially increased or decreased gross income of an obligor or obligee[,]” and “substantially increased or decreased need of an obligor or obligee or the child or children that are the subject of these proceedings.” *Id.*, subd. 2(a)(1), (2). Parties seeking a modification of support or maintenance (or both) have the burden of proving both the change in circumstances and that the change in circumstances renders the order unreasonable and unfair. *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009); *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001).

Subdivision 2(b) also provides specific thresholds at which a change in circumstance is presumed to be “substantial.” Minn. Stat. § 518A.39, subd. 2(b). For example, one threshold is whether “the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party.” *Id.* The statutory presumption works in two steps. *Id.*; *Rose*, 765 N.W.2d at 145; *Frank-Brewtisch v. Ryan*, 741 N.W.2d 910, 914 (Minn. App. 2007). First, a movant who establishes the threshold receives an irrebuttable presumption that a substantial change has occurred. Minn. Stat. § 518A.39, subd. 2(b); *Rose*, 765 N.W.2d at 145. Second, a movant who establishes the threshold also receives the benefit of a rebuttable presumption that the existing support order is unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(b); *see also Rose*, 765 N.W.2d at 145; *O’Donnell v. O’Donnell*, 678 N.W.2d 471, 477 (Minn. App. 2004).

A. Karen’s 2018 motion

Regarding the 2018 motion to modify spousal maintenance, Karen argues the district court erred by determining her income had decreased by less than the 20% threshold that, under Minn. Stat. § 518A.39, subd. 2(b)(5), would entitle her to the statutory presumptions discussed above. The district court compared Karen’s anticipated 2017 income of \$75,000 at the time of the July 2017 dissolution judgment to her actual 2017 income of \$89,568. By doing so, Karen contends “[t]he district court impermissibly relied upon [Karen’s] speculation at trial [regarding future income] as the rationale for denying [her] motion to modify spousal maintenance.” Karen explains the district court should have compared her actual 2017 income of \$89,568 to her actual pre-dissolution income of \$276,484. Karen argues her drop in actual income was greater than 20%, entitling her to

the presumptions that a substantial change has occurred and that the existing order is unreasonable and unfair under section 518A.39, subd. 2(b)(5).

The district court followed our remand instructions, as it must. *See Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005) (district court “may act in any way not inconsistent with the remand instructions provided.”). As a result, we reject Karen’s argument. *Warrington I* remanded Karen’s 2018 motion and instructed the district court to first determine Karen’s “current income” (i.e., her 2018 income) because “the [modification] statute requires the district court to compare the current income to the income findings in the 2017 judgment and decree.” *Warrington I*, at *4. Thus, on remand, the district court correctly determined Karen’s current income, as of the time of the 2018 motion, and compared it to the income finding in the 2017 dissolution judgment. This complies with relevant caselaw, which states that the baseline from which any change in circumstances is measured is the later of when the award was set or the last time the award was modified. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003).

Our remand instructions also directed, “[i]t is not enough to conclude that wife’s income decreased, *as anticipated in the 2017 judgment and decree.*” *Warrington I*, at *4 (emphasis added). We stated a 20% decrease in Karen’s income would establish the statutory presumptions in either of two situations: (1) “[t]he degree of decrease in income [] exceed[ed] what had been anticipated at the time of wife’s initial testimony prior to the . . . 2017 judgment and decree”; or (2) “the decrease . . . resulted from some reason other than what was contemplated prior to the issuance of the 2017 judgment and decree.”

Id. Our remand instructions for the second situation provided that a decrease in Karen’s income cannot establish the statutory presumptions *unless* the decrease resulted from a cause not anticipated when the 2017 dissolution decree was issued. *Id.*

Karen’s brief to this court implies the district court erred but does not argue that the remand instructions were unclear. While not entirely clear, Karen’s argument to this court could be construed as a request that we reexamine parts of *Warrington I*. Any invitation to do so would constitute a request that this court rehear the relevant part of *Warrington I*. There is, however, no petition for rehearing in this court. Minn. R. Civ. App. P. 104.01. Thus, we decline any invitation to reexamine the remand instructions in *Warrington I*, which are law of the case. *See Loo v. Loo*, 520 N.W.2d 740, 744 n. 1 (Minn. 1994) (“The doctrine of law of the case is a rule of practice followed between the Minnesota appellate courts and the lower courts It ordinarily applies where an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings.”) (citation omitted).

We conclude the district court complied with our remand instructions. In considering the first situation outlined in *Warrington I*, the district court determined whether the “changed circumstances” prong of the test for modifying maintenance had been satisfied. The district court began by relying on testimony by Karen and her expert that, because of anticipated career changes, her actual income was expected to decrease for the 2017 tax year to \$75,000. The district court next found Karen’s 2017 actual income was \$89,568. The district court finally determined that, while Karen’s actual 2017 income

was a decrease from her income as found in the dissolution judgment,⁵ it was a “19% *increase*” over the amount anticipated by the dissolution judgment. This analysis correctly applies section 518A.39, subd. 2(b)(5), and our remand instructions. In short, while Karen’s actual 2017 income decreased, that decrease was less than “what had been anticipated at the time of wife’s initial testimony.” *See Warrington I*, at *4.

The district court also considered the second situation outlined in *Warrington I*, whether Karen’s income decrease “resulted from some reason other than what was contemplated prior to the issuance of the 2017 judgment and decree.” *Id.* The district court determined that “[none] of the reasons [Karen] identifie[d] for her decreased income during the first year after dissolution were not known at the time of trial or long before trial.” Again, the district court relied on Karen’s trial testimony that she was contemplating pursuing new career options and expected that this route offered the best opportunity to become self-supporting but would cause a short-term decrease of income. Because the district court’s analysis tracks our remand instructions, we conclude the district court correctly determined Karen failed to establish the statutory presumption of a substantial change in circumstances. *See* Minn. Stat. § 518A.39, subd. 2(b)(5).⁶

⁵ As noted above, the district court found Karen’s income to be \$167,476 for calculating initial spousal maintenance and child support.

⁶ Karen also argues the district court erred by failing to apply the language of section 518A.39, subd. 2(b)(1), to her motion to modify spousal maintenance. This subdivision, however, refers only to “child support.” Karen provides no caselaw applying the cited subdivision to motions to modify spousal maintenance, therefore, we decline to consider this argument because it lacks legal authority. *See Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (“An assignment of error on mere assertion, unsupported by

Karen also argues that, even if the statutory presumptions under section 518A.39, subd. 2(b), do not apply to her 2018 motion, she demonstrated that a substantial change in circumstances rendered the existing maintenance award unreasonable and unfair. But, as already discussed, the record supports the district court's finding there was no unexpected change in circumstances. In other words, Karen's decrease in actual 2017 income was anticipated at the time of dissolution and was therefore not a change in circumstances supporting modification.

Finally, while John's 2017 income increased, our remand instructions stated that "for purposes of [Karen's] spousal maintenance modification motion, the district court should consider *decreases to [Karen's] income*." *Warrington I*, at *3 (emphasis added). As a result, any arguments about John's increased income were beyond the narrow scope of remand. The district court also followed existing caselaw stating that "a favorable change in an ex-spouse's income, absent a showing that the second threshold of Minnesota Statutes § 518.64, subd. 2 (unreasonableness and unfairness) has been met, does not by itself constitute sufficient grounds to change [spousal maintenance]."⁷ *Cisek v. Cisek*, 409 N.W.2d 233, 236 (Minn. App. 1987).

In sum, the district court did not abuse its discretion by denying Karen's 2018 motion to modify spousal maintenance.

argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection.").

⁷ Section 518.64 was later renumbered section 518A.39. *See generally Leifur v. Leifur*, 820 N.W.2d 40, 42 n.2 (Minn. App. 2012) (noting the child-support statutes were renumbered in 2005).

B. Karen's 2020 motion

Karen also challenges the district court's denial of her 2020 motion to modify spousal maintenance. This motion repeated Karen's 2018 request for an increased amount of spousal maintenance, and specifically requested that maintenance be made permanent. The district court found Karen's actual income had decreased 41% from the income she expected for the period July 1, 2018, through June 30, 2019, as stated in the dissolution decree, and that "this constitutes a change in circumstances." The district court still denied Karen's motion after finding Karen failed to make reasonable efforts to become self-supporting. On appeal, Karen argues the district court erred.

A party who receives an award of temporary maintenance must make reasonable efforts to become self-supporting. *Hecker v. Hecker*, 568 N.W.2d 705, 710 n.4 (Minn. 1997) ("[The supreme court has] recognized an implicit requirement that a temporary maintenance recipient make a reasonable effort to become self-supporting in accordance with the expectations of the parties.") (citing *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987)). *Youker v. Youker* clarified, indicating "[a]fter temporary maintenance has been awarded, an obligee generally has the duty to rehabilitate" and "the obligee must make reasonable efforts to become self-supporting." 661 N.W.2d 266, 269 (Minn. App. 2003).

The district court stated, "[t]his is the central and all-consuming conflict between the parties: what reasonable efforts did [Karen] make to rehabilitate?" The district court concluded Karen failed to make reasonable efforts to become self-supporting and made detailed findings of fact. Among other things, the district court stated it was "struck by the

absence of any explanation why [Karen] did nothing for 18 months following the trial.” In other words, Karen offered no evidence to explain why she did not leave McVean for 18 months after trial when, during trial, she testified that leaving McVean and forming her own business would give her the best chance of increasing future income. The district court also found Karen received significant assets during the dissolution and “was in an extraordinarily strong financial position at least for the first half of the period of temporary spousal maintenance.”

The district court reasoned Karen’s failure to become self-supporting was unreasonable given this strong economic position and her prior education and skills. The district court questioned Karen’s decision to invest significant assets into real estate, an area in which Karen admitted she had little experience. The district court was not persuaded by Karen’s argument that the COVID-19 pandemic had interfered with her ability to become self-supporting. The district court found Karen could have conducted business virtually, as many other professionals did during the pandemic.

The district court summarized its reasoning about Karen’s failure to become self-supporting:

In sum, the Court finds [Karen] did none of the things she testified at trial she would do to reverse the downward trend of her income and become a self-supporting in the commodities markets. She never accepts responsibility for this and never even considered working as a salaried employee or becoming credentialed in a related field. Instead she offers weak and sometimes contradictory explanations regarding her failure to rehabilitate. The Court does not find her activity in real estate to be a reasonable effort to rehabilitate because [Karen] admits she spends little time on this activity, she has no experience or track record earning income from real estate,

and [she] does not even try to show that her few real estate investments can be considered a full-time profession now or in the future. In sum, she has shown very little to rehabilitate and certainly not the genuine effort that is required by Minnesota law.

Comparing these factual findings to the record, they are not clearly erroneous. “Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). The record, including the facts recited by Karen, support the district court’s finding that Karen mismanaged her financial position post-dissolution and failed to make reasonable efforts to become self-supporting. Karen had a duty to undertake reasonable efforts to become self-supporting, and the record supports the district court’s findings that Karen did not do so. We see no clear error.

Karen, though, argues the district court misapplied the relevant caselaw, and that “[t]he district court should have analyzed [her] shortfall in meeting her monthly expenses . . . based upon her imputed employment income of \$89,568.” Karen points to a nonprecedential opinion for the proposition that even when there is “willful failure to rehabilitate” the district court should not deny a motion to modify maintenance outright, but rather should “impute income to [the obligee] spouse.”

First, nonprecedential opinions are not binding legal authority. Minn. R. Civ. App. P. 136.01, subd. 1(c). Second, we are not persuaded by Karen’s argument that *Hecker* required the district court to grant permanent maintenance based on imputed income. It is accurate, as Karen argues, that in *Hecker*, the supreme court affirmed a district court’s decision to impute income to a maintenance recipient who had failed to make reasonable

efforts to become self-supporting and still awarded permanent maintenance. 568 N.W.2d at 710.

At the same time, nothing in the *Hecker* opinion mandates that a district court must impute income after a maintenance recipient fails to make reasonable efforts during a period of temporary maintenance. Rather, the supreme court in *Hecker* merely stated that awarding permanent maintenance under these circumstances was “within the bounds of the trial court’s *considerable discretion*” and complied with the mandate that maintenance awards be “just.” *Id.* (citing Minn. Stat. § 518.552, subd. 2) (emphasis added). Like the supreme court in *Hecker*, we defer to the district court’s “considerable discretion” in crafting a just outcome based on Karen’s failure to make reasonable efforts to become self-supporting. The district court properly exercised its discretion and applied *Nardini*, *Hecker*, and *Youker*, when it concluded Karen failed to make reasonable efforts to become self-supporting and then denied her motion to make temporary maintenance permanent.

In sum, the district court did not abuse its discretion by denying Karen’s 2018 and 2020 motions to modify spousal maintenance.

III. Karen’s motion to compel discovery

Karen challenges the district court’s decision denying her motion to compel discovery. Generally, parties may discover only evidence relevant to the claim or defense of any party. Minn. R. Civ. P. 26.02. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. The district court has wide discretion to issue discovery orders, and, absent a

clear abuse of discretion, such orders will not be disturbed. *In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007).

Karen sought to compel John’s disclosure of documents related to employee benefits, bank statements, bank-account statements, credit-card statements, and business documents related to John’s business, “J&W Air LLC.” The district court denied this motion after finding “while [John’s] income is [] not straightforward, the Court is confident that it can be calculated reasonably accurately without access to [his] bank accounts, credit card statements, etc.” and that “information related to [John]’s private business” were not needed because “he report[ed] no income from this business.” The district court concluded Karen’s request was unlikely to lead to the discovery of admissible evidence.

The district court did not abuse its discretion. The issues presented by Karen’s motions to modify maintenance depended in the first instance on the district court’s determination of Karen’s current income and her lack of reasonable efforts to become self-supporting. John’s ability to pay spousal maintenance was uncontested—at every stage in the proceedings John acknowledged he has substantial income and was able to pay spousal maintenance. Because Karen sought more documentation of John’s income and his ability to pay maintenance was not in dispute, the district court’s denial of Karen’s motion to compel was not an abuse of discretion.

IV. Karen’s motions for need-based attorney fees

Karen challenges the district court’s denial of her motion for need-based attorney fees. During *Warrington I*, Karen first sought need-based fees of \$22,163. We remanded this motion to the district court, which denied the motion. During this appeal, on August 31,

2021, Karen filed a second motion for need-based attorney fees, seeking fees of \$20,867 for fees incurred in pursuing this appeal. The accompanying affidavit stated that between February 1, 2021, and August 31, 2021, Karen incurred \$19,367.25 in attorney fees, and anticipated another \$1,500.00 in attorney fees and costs related to oral argument.

We first review the district court's decision to deny Karen's first motion for need-based attorney fees. "The standard of review for an appellate court examining an award of attorney fees is whether the district court abused its discretion." *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). Minn. Stat. § 518.14, subd. 1 (2020), provides that courts "shall" award attorney fees if the district court finds

(1) that the fees are necessary for the good-faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Id.

The district court determined that "[Karen] cannot establish that an award of fees is necessary for the assertion of her rights in the appeal and she has not established that she does not have the ability to pay her attorney fees." The district court cited *Hall v. Hall*, 417 N.W.2d 300 (Minn. App. 1988), where this court concluded that requiring both parties to pay their own attorney fees was appropriate and affirmed a district court's decision to deny attorney fees. In *Hall*, we reasoned the marital home was "the *only* significant asset," the parties sold the home and distributed the proceeds, and the district court found that "the

home sale proceeds would cover each party's attorney fees and [movant] received \$11,000 from the sale." 417 N.W.2d at 303 (emphasis added). The district court also cited *Schultz v. Schultz*, 383 N.W.2d 379 (Minn. App. 1986), where this court reversed a district court's decision to deny a motion for need-based attorney fees. In *Schultz*, we reasoned the movant-spouse would have been required "to liquidate *a substantial portion* of her property award to pay the fees." 383 N.W.2d at 383 (emphasis added).

Here, the district court found Karen had sufficient assets to pay for her attorney fees, stating:

[Karen] was awarded over half a million in assets at the time of the dissolution . . . ; she also received another \$60,000 in June 2017 (half the proceeds of sale of the parties' airplane) and then received over \$257,000 from the sale of the proceeds of the house in October 2018. Given her amount of retirement assets, cash of almost \$320,000, in addition to her income, spousal maintenance, child support, and nearly \$1900 a month from [John's] pension plan, [Karen] cannot show that she would have to invade a substantial portion of her assets to pay for attorney fees of approximately \$22,000 incurred in bringing her appeal.

These findings are supported by the record, including the dissolution judgment.

The district court's reasoning follows existing caselaw. In *Schultz*, the movant-spouse would have had to liquidate "a substantial portion" of her property award to pay her fees, so the movant-spouse made the necessary need-based showing. 383 N.W.2d at 383. In contrast, the amount of fees incurred by Karen is only a small portion of her property award. Moreover, in *Hall*, we affirmed a denial of attorney fees where the district court found both parties' fees would be covered by sale of the marital home, "the only significant asset." 417 N.W.2d at 303. Karen is in a much better position

than the parties in *Hall* because she received many marital assets, valued far more than the approximately \$22,000 she seeks.

Karen tries to distinguish her case from *Schultz* by arguing that *Schultz* was decided at the time of dissolution, while this motion is being considered three and a half years after dissolution. We are not persuaded. The passage of time does not explain why Karen would be unable to pay \$22,000.00 in fees, after she was awarded over half a million dollars in the dissolution decree, besides her not insignificant income. The district court did not abuse its discretion by denying Karen's motion for need-based attorney fees.

We finally consider Karen's motion, filed with this court, seeking need-based attorney fees on appeal. Because the district court's finding that Karen received sufficient assets to cover her attorney fees is not clearly erroneous, we conclude Karen has failed to demonstrate an inability to pay the \$20,867, as required by Minn. Stat. § 518.14, subd. 1. Thus, we deny Karen's motion for need-based attorney fees.

Affirmed as modified; motion denied.