

*This opinion is nonprecedential except as provided by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
A21-0495**

In re the Marriage of:

Pamela Delice Skeens, petitioner,
Appellant,

vs.

Adel R. Baqir,
Respondent.

**Filed April 18, 2022
Affirmed
Smith, John, Judge ***

Anoka County District Court
File No. 02-FA-08-2117

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota (for appellant)

Roselyn J. Nordaune, Nordaune & Friesen, PLLC, Wayzata, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Wheelock, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm because the district court did not abuse its discretion by denying appellant Pamela Delice Skeens's (wife's) motions for maintenance modification and attorney fees.

FACTS

Wife married respondent Adel R. Baqir (husband) in 1994. In 2008, the parties dissolved their marriage through a stipulated agreement. During the marriage, husband was the primary earner while wife supported him in his career and attended to the household. Husband earned \$248,000 and \$277,000 respectively in the two years before the dissolution. In the dissolution, the parties stipulated that (1) wife had no income and necessary monthly living expenses of \$8,000, and (2) husband had an income of approximately \$181,000, plus a bonus over which he had no control, and necessary monthly living expenses of \$7,000.

The parties agreed that wife was in need of spousal maintenance "on a temporary basis only." Accordingly, the parties agreed that husband would pay wife \$7,000 per month from November 2008 to December 2015. Then, the parties agreed that husband would pay wife \$6,000 per month from January 2016 to December 2022. Further, husband agreed to give wife 48% of his annual bonus until 2013, and then 23% of his bonus until 2018.

Subsequent modifications

The parties modified the original dissolution order three times before wife's current motion. In 2009, husband was laid off at work. He received a severance payment of

\$168,270.34. The parties stipulated that husband would pay wife \$84,000, a prepayment of one year of spousal maintenance, in exchange for his temporary maintenance obligation ending in December 2020 instead of 2022. The agreement required husband to recommence paying spousal maintenance one year from the date of the prepayment.

In 2011, husband moved to modify his spousal maintenance obligation retroactive to July 1, 2010—the date his maintenance obligation resumed. Wife opposed the motion. The district court found that husband was earning \$90,000 annually and that wife appeared to have remained unemployed. The court found that husband’s monthly expenses were \$2,792, and wife’s were \$4,970. Reviewing the parties’ needs and resources, the court granted husband’s motion to modify spousal maintenance and reduced his monthly obligation to \$3,500.

In 2014, wife moved, among other things, to modify the spousal maintenance obligation back to \$7,000 per month. The court found that wife was unemployed with monthly expenses of \$5,689 and that husband’s income for the purposes of calculating his obligation was \$125,000 with monthly expenses of \$3,370. The court concluded that the current maintenance award was unreasonable in light of husband’s increased income and modified his monthly obligation to \$6,000, to be paid through December 31, 2020.

Wife’s rehabilitation attempts

In 2015, wife took a sales position. But even after taking a refresher course on computers at a technical college, she was unable to master the technological aspects of the job. Wife quit the position after two months of substandard performance. In 2017, wife formed a consulting business called Mold Solution Experts. Earlier, wife had problems

with mold in her own home. The business was meant to assist others who had mold in their houses, but wife could not focus on the work and closed the business in 2018.

Wife's motion to modify spousal maintenance

In November 2020, wife moved the district court to modify the temporary award to grant her permanent spousal maintenance, and she sought an increase in husband's monthly obligation to \$8,000. Wife argued that two substantial changes in circumstances had occurred that rendered the award unreasonable and unfair: (1) her inability to become self-supporting; and (2) husband's increased income. She attached a report from a vocational evaluator in support of her motion, who concluded that she was not able to work. Wife also sought \$30,000 in need-based attorney fees. In an affidavit, wife outlined her health issues, current expenses, and lack of income other than income from the maintenance payments. Husband opposed the motion.

In February 2021, the district court denied wife's motion to modify spousal maintenance. The court found that the parties' stipulated agreement for temporary spousal maintenance was reasonable because the 12-year term¹ gave wife ample time to become fully or partially self-supporting, and the agreement's step-down provisions evidenced the parties' intent that wife would become self-supporting by 2020. The court found that wife's medical issues were not debilitating, that wife knew of most of her medical issues when she stipulated to temporary maintenance, and that wife was capable of supporting herself. Finally, the court found that wife's failure to rehabilitate evidenced bad faith.

¹ We note that the term was originally 14 years, but in 2009 wife agreed to reduce the term to 12 years, and thus to become self-supporting two years earlier than originally planned.

Based on these findings, the district court concluded that wife had not shown a substantial change in circumstances that made the award unreasonable and unfair, and that wife's motion was an extension of her bad-faith failure to rehabilitate. Wife appeals.

DECISION

Wife contends that the district court abused its discretion by (1) denying her motion to modify spousal maintenance, and (2) denying her motion for need-based attorney fees. We consider each claim in turn.

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

A party seeking to modify a spousal-maintenance award must demonstrate (1) that a substantial change in circumstances has occurred, and (2) the substantial change renders the original award unreasonable and unfair. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997); *see also* Minn. Stat. § 518A.39, subd. 2 (2020) (controlling modification of maintenance orders generally). District courts have broad discretion regarding spousal maintenance. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021). A district court abuses its discretion when it makes findings of fact that are not supported by the record, misapplies the law, or resolves the discretionary question in a manner that is contrary to logic and the facts on record. *Id.*

The failure of a recipient spouse of temporary maintenance to become self-supporting may constitute a substantial change in circumstances. *Hecker*, 568 N.W.2d at 709-10. But a recipient spouse has a duty to make reasonable efforts to become self-supporting. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *rev. denied* (Minn.

Aug. 5, 2003). If a spouse does not make a sufficient attempt to rehabilitate, that spouse's ultimate failure to become self-supporting may not constitute a change in circumstances rendering the original award unreasonable and unfair. *Id.* at 270-71.

Here, the district court concluded that wife had not shown a substantial change of circumstances that rendered the original award unreasonable and unfair because her attempts to become self-supporting were not reasonable. *Youker* supports the district court's conclusion. In *Youker*, the district court awarded the wife temporary spousal maintenance for three years in its dissolution order. *Id.* at 268. At the time of the dissolution, wife worked at a department store. *Id.* She looked into several educational programs during the maintenance period, but she did not enroll in any degree-granting program. *Id.* In the last month of the maintenance period, wife moved to modify spousal maintenance to make the award permanent. *Id.* The district court granted the motion because it concluded that wife's failure to rehabilitate was a substantial change in circumstances. *Id.* But on appeal, we reversed. *Id.* at 271. Noting that wife was obligated to make reasonable attempts to rehabilitate, we concluded that wife's investigation into educational programs, without more, was "insufficient to demonstrate the substantial change in circumstances necessary for spousal-maintenance modification." *Id.* at 270.

The district court found here that, like in *Youker*, wife's two attempts to rehabilitate were not reasonable. And the record supports this determination. The court determined that the fact that wife only made two attempts, in 2015 and 2017, in the 12-year maintenance period evidences an intent to rely on permanent spousal maintenance instead of becoming self-supporting. And as the court noted, wife failed to obtain any new

education or training, except for a “refresher course” on computers, but she did not gain any new degrees, certificates, or vocational skills during the maintenance period. Further, the district court found that wife left the one job that she obtained after just two months and provided almost no information about the business that she avers she performed work for from 2017-2018. The wife in *Youker* was at least employed during the maintenance period and was the primary caretaker of the parties’ child. *Id.* at 268. By contrast, the district court found that wife here had no such obligations and failed to remain employed for any meaningful period of time.

Because wife did not show a substantial change in circumstances for lack of reasonable rehabilitation efforts, she has not met her burden to support her spousal maintenance modification motion. Minn. Stat. § 518A.39, subd. 2. Accordingly, the district court did not abuse its discretion by denying her motion.

Wife asserts that *Hecker* supports her argument that the district court abused its discretion by denying her motion to modify spousal maintenance. But the district court distinguished *Hecker*. The court found that unlike the wife in *Hecker*, wife here did not have children to take care of or any other obligations that prevented her from working. And the court found that wife did not obtain employment save her two brief efforts in 2015 and 2017, as opposed to the wife in *Hecker*, who at least worked part-time through almost the entire initial spousal-maintenance period.

To persuade us that the district court should have looked to *Hecker*, rather than *Youker*, wife argues that the district court based its conclusions on clearly erroneous findings of fact. A district court’s factual findings are clearly erroneous when they are

“manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). In applying this standard, we view the evidence in a light favorable to the findings. *Id.* And harmless errors do not require reversal. Minn. R. Civ. P. 61. With this standard in mind, we consider wife’s allegations of clearly erroneous findings.

First, wife argues that the district court clearly erred by concluding that the record does not support her claim that she is unable to work. The court reasoned that, looking at the record as a whole, the evidence showed that some of wife’s medical issues had improved since 2014. In particular, the court found that the record showed that wife’s depression, migraines, and back pain had improved. Wife argues that the vocational assessment and neuropsychological evaluation contradict these findings. But the neuropsychological evaluation showed only mild impairment and suggested that with treatment and therapy, wife’s condition could improve. And the court did not find the vocational assessment credible because its conclusion was contradicted by the medical reports that indicated only minor, not debilitating, impairment. Finally, the court noted that most of wife’s medical issues predated 2008, and thus the parties stipulated to temporary maintenance with full knowledge of the medical issues. Viewing the evidence in the light most favorable to the findings, *Kenney*, 963 N.W.2d at 221, wife has not shown that the district court clearly erred by concluding that the record did not support her claim that she was not able to work.

Second, wife argues that the district court clearly erred by setting aside the 2014 court's findings. In 2014, husband argued that the district court should impute reasonable income to wife because she had failed to work. The 2014 court rejected this argument because the stipulation evidenced the parties' belief that wife would become self-supporting by 2020. Because wife still had six years left in the temporary maintenance period, the court declined to impute reasonable income to her. Wife argues that the district court here clearly erred by finding that her failure to seek employment from 2008-2014 was evidence of bad faith, because the court in 2014 refused to impute income to her on that same basis. But the issue before the 2014 court was whether husband's increase in income justified wife's motion to return the maintenance award to the amount originally contemplated in the decree (because the monthly award had been reduced in 2012). The 2014 court returned the amount of the maintenance award to the stipulated amount. Here, the district court, with the benefit of reviewing the entire maintenance period, concluded that the stipulation was still fair and reasonable under the circumstances. Wife has not shown that the court clearly erred in this regard.

Third, wife argues that the district court clearly erred by finding that her attempts to rehabilitate were not reasonable. Wife argues that her 2015 attempt was reasonable because she got a sales position in the marine industry, which was the field in which she worked at the beginning of the marriage. She contends that her failure to succeed at this job, despite her "refresher course," is due to the changes in technology between 1997 and 2015. But wife provided little information about the "refresher course," and does not claim

to have sought out any other training. Further, wife did not attempt to find a different job after she quit.

Then, wife asserts that her attempt to start a business was reasonable. The district court disagreed, finding that the wife had no previous training, experience, or education in the field, and that the business was “beyond her qualifications.” Wife argues that “there is no evidence that [she] did not possess the requisite expertise,” and instead asserts that her medical problems were the cause of the business’ failure. But wife provided no evidence that she was qualified to run a mold-remediation business. The only evidence wife presented is her statement in her affidavit that she “could not focus, and did not have the stamina to continue with the work.” Because wife presented no evidence of her qualifications, she has not shown that the court erred by concluding that her business was not a reasonable attempt at rehabilitation. In light of the 12-year period of maintenance, the district court did not clearly err by finding wife’s two attempts were not reasonable.²

In sum, wife has not shown that the district court abused its discretion by denying her motion to modify spousal maintenance or clearly erred in its findings.³ Wife relies on

² Wife also contends that the district court clearly erred in its findings about her work history. In particular, wife asserts that the court erred by finding that she earned a base salary of \$80,000 in 1998. But wife conflates multiple findings, and even if the district court erred by finding that wife’s last employment was in 1998, wife has not shown that the court’s decision to deny her motion was based on its finding about the last date that she worked. The error, if any, did not affect wife’s substantial rights and must be disregarded. Minn. R. Civ. P. 61.

³ Finally, wife asserts that the district court clearly erred by finding that she did not submit evidence that she applied for jobs. But wife misrepresents the court’s finding. The court noted that wife made no effort to seek employment from 2008-2020 except for her 2015 job and 2017 business. In describing the periods in which wife was not seeking

Hecker to support her abuse-of-discretion claim, but she misunderstands the discretionary nature of the standard of review. That the *Hecker* court did not abuse its discretion by awarding permanent spousal maintenance does not mean that the district court here abused its discretion by declining to do so under a different set of facts. And wife's position is different than the wife in *Hecker* because she has no children, and she did not work for the vast majority of the maintenance period. Further, like in *Youker*, because wife failed to reasonably attempt to rehabilitate, her present lack of employment is not a substantial change in circumstances. 661 N.W.2d at 270-71.

II. The district court did not abuse its discretion by denying wife's motion for need-based attorney fees.

A district court "shall" award a party need-based attorney fees if (1) the fees are necessary for the good-faith assertion of the party's rights, (2) the other party has the means to pay the fees, and (3) the requesting party does not have the means to pay the fee. Minn. Stat. § 518.14, subd. 1 (2020). This court reviews an award, or the denial of an award, of attorney fees for an abuse of discretion. *Muschik v. Conner-Muschik*, 920 N.W.2d 215, 225 (Minn. App. 2018).

Here, the district court denied wife's motion for need-based attorney fees because it concluded that wife's modification motion was not a good-faith assertion of her rights. The court concluded that wife had acted in bad faith by failing to reasonably attempt to become

employment, the court found that wife "did not submit evidence that she ever applied for jobs or even looked for jobs for which she was qualified." Because wife did not submit any evidence of searching or applying for jobs beyond the two attempts acknowledged by the district court, this finding is not clearly erroneous.

self-supporting. The court reasoned that wife's motion to modify spousal maintenance was "an extension of her bad faith as it appears she intended, all along, to convert temporary spousal maintenance into permanent maintenance." Finally, the court found that wife could pay her attorney fees because she has savings and very little debt. Accordingly, the court concluded that wife was not entitled to attorney fees.

Wife argues that the court abused its discretion by concluding that she acted in bad faith and that whether she acted in bad faith is irrelevant. She further argues that the court abused its discretion by denying her need-based fees because she did not act in bad faith. But she does not explain why the court's conclusion that she acted in bad faith is irrelevant; Minnesota Statutes section 518.14, subd. 1(1) makes a party's "good faith assertion of the party's rights" a prerequisite to an award of need-based fees. Wife concedes that she had a duty to attempt to become self-supporting. *Youker*, 661 N.W.2d at 269. The court's conclusions regarding wife's efforts in this respect are relevant to its ultimate determination to deny wife's motion.

Further, wife has not shown that the district court abused its discretion by concluding that she acted in bad faith. Wife relies on cases holding that a court must find that an obligee has acted in bad faith before imputing reasonable income to them. *Walker v. Walker*, 553 N.W.2d 90, 95 n.1 (Minn. App. 1996). But that same case supports the district court's consideration of wife's bad faith in determining whether to modify maintenance. *Id.* at 95. And wife presents no argument as to why she did not act in bad faith here, except to assert that her rehabilitation efforts were reasonable. But, as discussed above, the district court did not clearly err by concluding that her attempts were not

reasonable. Accordingly, wife has not shown that the district court abused its discretion by denying her motion for need-based attorney fees.

Affirmed.