

*This opinion is nonprecedential except as provided by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
A21-1461**

In re the Marriage of:
Michael F. Kohorst, petitioner,
Appellant,

vs.

Teresa L. Kohorst,
Respondent.

**Filed October 3, 2022
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-FA-13-2805

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Cathryn C. Schmidt, Sarah Peterson, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St.
Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Reilly, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges the district court's order modifying permanent spousal maintenance. Appellant argues the district court abused its discretion by (1) granting respondent's motion to increase maintenance after using an incorrect baseline to find a substantial change in circumstances and (2) denying appellant's motion to decrease

maintenance after the district court “refused to consider” respondent’s ability to contribute to her own support. Because the district court did not abuse its discretion by determining that a substantial change in circumstances made the existing maintenance unreasonable and unfair, and because the district court properly considered the relevant statutory factors, we affirm.

FACTS

Appellant Michael F. Kohorst and respondent Teressa L. Kohorst married in 1991.¹ In September 2013, Michael petitioned for divorce. The parties settled all issues except for spousal maintenance. Following a bench trial, the district court issued findings of fact, conclusions of law, and order for judgment and judgment and decree addressing spousal maintenance. Michael moved for amended findings, and on October 5, 2015, the district court issued an amended decree (2015 amended decree).

Relevant to the issues on appeal, the district court found that Michael’s gross monthly income was \$11,625, which the district court determined was available for spousal maintenance. The district court found that, on top of monthly income, Michael was “eligible to earn commission income.” The district court rejected Michael’s argument that his commission income was “too speculative,” reasoning that “the commission income is an integral part of his employment compensation package.” Because the amount of commission income was “unpredictable and uncertain,” the district court used Michael’s

¹ To avoid confusion, this opinion refers to the parties by their first names.

“base income [of \$11,625 per month] to calculate spousal maintenance” and also ordered “commission income in excess of this amount to be shared on a percentage basis.”

The district court also determined Teresa “needs spousal maintenance” and made detailed findings in support of permanent spousal maintenance. For example, the district court found that Teresa’s monthly disability income from Social Security was \$1,165 and that Teresa “did not receive resources or marital property from the dissolution which will assist her in generating additional income.” The district court heard testimony from a guardian ad litem (GAL) appointed to represent Teresa’s best interests. The district court credited the GAL’s testimony about Teresa’s struggles with addiction and mental-health issues and “the considerable impact those issues have on [Teresa’s] ability to provide” for herself. The district court found “it is likely [Teresa] will struggle with these issues for the rest of her life.” While the district court found that Teresa “was still able to work,” the court also found “now [Teresa] is not able to work” but “plans to become employed sometime in the future.” The district court ordered that Teresa “shall inform” Michael “immediately” if she becomes employed.

In considering the marital standard of living, the district court found that Teresa’s reasonable monthly expenses were \$3,547.² The district court found Michael’s reasonable monthly expenses were \$6,105. The district court awarded Teresa \$1500 per month in

² The district court determined Teresa’s budget depending on whether she was living independently or with her parents. The district court set two amounts of monthly maintenance and commission maintenance; which amount applied depended on whether Teresa was living independently. This opinion discusses the maintenance amounts set for when Teresa was living independently because the parties agree this is the relevant award for this appeal.

permanent spousal maintenance (monthly maintenance). As for Michael's commission income, the district court was "confident" that although the amount was "speculative," it was "meaningful" and ordered Michael to pay Teresa 35% of his monthly commission income as additional maintenance, with a \$3,500 cap per month (commission maintenance).

In March 2017, Michael moved to modify his maintenance obligation based on his recent job loss. On May 24, 2017, the parties stipulated that Michael's maintenance obligation during his period of unemployment was satisfied by reduced payments already made, that Michael had obtained new full-time employment that included "incentive compensation," and that Michael would "resume" paying spousal maintenance as stated in the 2015 amended decree and would pay Teresa 35% of "any gross quarterly incentive compensation." The stipulation capped the amount of commission maintenance at \$6,000 per quarter. The stipulation also stated that "[a]ll prior orders not modified herein shall remain in full force and effect." The district court approved the parties' stipulation without change (2017 stipulated order).

In June 2020, Michael moved to terminate or reduce permanent spousal maintenance, among other issues not relevant to this appeal. Michael submitted an affidavit stating that Teresa was working, had failed to notify Michael, and did not respond to his requests to "review [her] financial situation as it relate[d] to" maintenance. Teresa opposed Michael's motion and provided additional financial information.

Teresa filed an amended response and moved to increase spousal maintenance. After hearing arguments from the parties and testimony from the GAL, the district court

issued an October 5 order (2021 order) granting Teresa's motion. The district court found that Michael's gross monthly income was \$14,037, a \$2,412 increase since the 2015 amended decree. The district court also found Teresa's monthly income was \$1,502, a \$232 increase since the 2015 amended decree. And the district court considered that Teresa "attempted to return to work. She worked part time . . . in 2019 and 2020," earning \$720 per month. But the district court also found that Teresa was not currently working and was hospitalized multiple times in 2020 and 2021. The district court credited the GAL's testimony and stated it "considers the past two years an example of [Teresa's] continued struggles with her mental health and addiction."

The district court found Teresa's reasonable monthly expenses were \$5,222, a \$1,675 increase from the 2015 amended decree. Michael did not submit a budget for the district court to review, but the district court noted that Michael is "now married and his current wife contributes to meet the family expenses." Teresa stated in her affidavit that Michael claims monthly expenses of \$5,900. The district court found "[i]t is fair to conclude that [Michael's] monthly expenses are lower than when the Court last reviewed them."

In denying Michael's motion to reduce maintenance, the district court determined that the evidence does "not support a finding that there has been an increase of income of either party or increase in expenses of [Michael] to make the current order unreasonable or unfair." In granting Teresa's motion, the district court found that Michael's income increased, and Teresa's expenses increased. The district court therefore concluded that Teresa "has shown that she is unable to provide adequate self-support, after considering

the standard of living established during the marriage and all relevant circumstances, through appropriate employment as required in Minn. Stat. § 518.552.” Thus, the district court determined a substantial change in circumstances had rendered the previous maintenance award unreasonable and unfair and, after reviewing the statutory maintenance factors, ordered Michael to pay monthly maintenance of \$2,500 along with 35% of his commissions up to a cap of \$7,500 per quarter.

Michael appeals.

DECISION

An appellate court reviews a district court’s decision on modification of spousal maintenance for abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705,709 (Minn. 1997).

Further,

[a] district court abuses its discretion in making such a decision 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 record. To the extent that a modification decision depends on findings of fact, we apply a clear-error standard of review to those findings of fact.

Madden v. Madden, 923 N.W.2d 688, 696 (Minn. App. 2019) (citation omitted). Appellate courts review “questions of law related to spousal maintenance de novo.” *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

A spousal-maintenance obligation may be modified if the moving party shows the existing maintenance obligation is unreasonable and unfair because of substantially increased or decreased gross income of an obligor or obligee or substantially increased or decreased need. Minn. Stat. § 518A.39, subd. 2(a) (2020). If modification is appropriate,

the district court will then determine the obligee's ability to meet their reasonable needs given the marital standard of living and their ability to "provide adequate self-support." Minn. Stat. § 518.552, subd. 1 (2020). The district court will then assess the amount and duration of the maintenance obligation by considering the enumerated statutory factors. *Id.*, subd. 2 (2020).

Michael first argues that the district court abused its discretion by granting Teresa's motion and increasing the amount of maintenance. Michael contends the district court's use of an incorrect baseline for his income was an error of law. Second, Michael argues the district court abused its discretion by denying his motion and refusing to reduce the amount of maintenance, because Teresa is "capable of contributing to her own self-support." Each argument is addressed in turn.

I. The district court did not abuse its discretion by granting Teresa's motion to increase the amount of spousal maintenance.

"Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify." *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (citing *Wiese v. Wiese*, 295 N.W.2d 371, 372 (Minn. 1980)) (applying standard to a decision to modify child support).

Michael argues the district court erred in comparing his 2021 income to that in the 2015 amended decree because his correct baseline income for purposes of this motion to modify maintenance is from 2017. It is true that the 2021 order compared Michael's 2021

income to his income as found in the 2015 amended decree. The district court found a monthly increase of \$2,412 for Michael, compared to a \$232 increase in Teresa's monthly income. The district court determined that Michael's income increased substantially and that this made the existing maintenance obligation unreasonable and unfair. After evaluating the relevant statutory factors for spousal maintenance, the district court increased the monthly maintenance obligation to \$2,500 and awarded 35% of commission income as maintenance up to a quarterly cap of \$7,500.

On appeal, Michael asks this court to reverse because "the lesser increase since the 2017 order is not so substantial as to render the prior order unreasonable and unfair." Though the 2017 stipulated order did not include findings on Michael's income, the 2021 order included a finding that Michael's 2017 monthly income was \$13,168. Michael asserts that although the district court found the \$2,412 increase in income from 2015 to 2021 to be substantial, the \$869 increase in income from 2017 to 2021 is not a substantial change. As noted, however, when addressing whether there was a substantial change in the parties' circumstances, district courts generally compare "the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify." *Maschoff*, 696 N.W.2d at 840. Michael's comparison of his 2021 and 2015 income figures assumes that the 2017 order modifies the maintenance award in the 2015 amended decree. As set out below, we disagree with this assumption.

Teresa argues Michael's 2017 income "is not the correct baseline for which to compare, because spousal maintenance was neither set nor modified" in the 2017 stipulated order. Teresa relies on two opinions from this court to support her argument, *Anderson v.*

Anderson, 421 N.W.2d 410 (Minn. App. 1988), and *Murray v. Murray*, 405 N.W.2d 922 (Minn. App. 1987), *rev. denied* (Minn. July 22, 1987).

The caselaw cited by Teresa is helpful because both cases address comparisons for modification of support payments. In *Anderson*, the parties stipulated to a six-month reduction in the obligor’s child-support payments—but not the obligation itself—because of economic hardship. 421 N.W.2d at 412. This court determined “the six-month reduction was not a modification within the meaning” of the statute then governing modification of child support. *Id.* In *Murray*, this court affirmed a district court’s determination that the original decree was the proper baseline for a modification motion rather than either of two postdecree orders. 405 N.W.2d at 924-25. We noted that the first postdecree order “reflected a quid pro quo for the termination of maintenance and did not alter [the obligor’s] total support obligation,” and the second merely “clarified [the obligor’s] support obligations but was not premised on the statute [governing modification].” *Id.* at 924.

We conclude *both* that the 2017 stipulated order did not modify maintenance *and* that Michael’s 2017 income is not the correct baseline for the modification at issue in this appeal. Like the stipulated order in *Anderson* and the second postdecree order in *Murray*, the 2017 stipulated order was not premised on the applicable modification statute. Michael’s short-term unemployment and his new position led to the 2017 stipulated order, which stated, “Commencing April 15, 2017, [Michael] shall *resume* payment of spousal maintenance as set forth in the Amended Judgment and Decree entered on October 5, 2015.” (Emphasis added.)

The key word is “resume.” The 2017 stipulated order did not change the amount of Michael’s monthly obligation from the 2015 amended decree or the percentage of commission maintenance. In the 2017 order, Michael’s obligation to pay commission maintenance was changed from monthly to quarterly. The cap on commission maintenance decreased from \$10,500 (adjusted to quarterly from monthly) in the 2015 amended decree to \$6,000 in the 2017 stipulated order, but, on this record, we cannot say that this stipulated alteration to the cap was litigated under Minn. Stat. § 518A.39.

Thus, the district court correctly used Michael’s 2015 income as the baseline for determining whether the existing maintenance award was unreasonable and unfair. *See* Minn. Stat. § 518A.39, subd. 2(a).

II. The district court did not abuse its discretion by denying Michael’s motion to reduce the amount of spousal maintenance.

As discussed above, on a motion to modify spousal maintenance, if a substantial change in circumstances renders the existing award unreasonable and unfair, the district court must consider all relevant statutory factors, including the obligee’s “ability to meet needs independently.” Minn. Stat. § 518.552, subd. 2(a).

Michael argues the district court abused its discretion by denying his motion to reduce his maintenance obligation because the “district court refused to consider [Teresa’s] ability to contribute to her own self-support” when evaluating the changed circumstances and in setting the increased amount. To begin, the district court did not refuse to consider Teresa’s recent work history. The district court found that Teresa was not currently working and could not continue part-time work because of her ongoing

struggles with mental health, as shown by her recent hospitalizations. Based on these findings, the district court determined that Teresa’s ability to provide for her own self-support was a factor that weighed in favor of maintenance.

Michael urges that Teresa “had an obligation to make reasonable efforts to contribute to her own self-support” and that Teresa’s demonstrated ability to work warrants consideration from the district court. Michael relies on *Passolt v. Passolt*, 804 N.W.2d 18 (Minn. App. 2011), *rev. denied* (Minn. Nov. 15, 2011). Michael argues the district court should read *Passolt* to mean that Teresa “should be expected to contribute to her own self-support when considering whether her maintenance award should be increased.”

We disagree with Michael’s reading of *Passolt*, where this court reversed after determining the district court erred in its legal analysis; we rejected the idea that bad faith was a prerequisite for imputing income to a maintenance recipient as inconsistent with both the maintenance statute and the caselaw. 804 N.W.2d at 21-25. This court summarized its ruling:

We therefore conclude that the district court read *Carrick*, *Maurer*, and *Nardini* too broadly by interpreting those cases to require a finding that a maintenance recipient whose post-dissolution employment is the same as that during the marriage must be found to have decreased his or her income in bad faith, in order to consider that recipient’s prospective ability for self-support after entry of a dissolution judgment. Therefore, we remand for the district court to reexamine its award of spousal maintenance in light of a correct reading of *Carrick*, *Maurer*, and *Nardini*.

804 N.W.2d at 25. Thus, we held that a district court may consider a maintenance obligee’s prospective ability to become fully or partially self-supporting without making a finding of bad faith. *Id.* Our remand instructions directed the district court to consider a step reduction in maintenance based on its findings relating to wife’s retraining. *Id.*

Generally, to impose an obligation to increase earning capacity on the recipient of permanent maintenance, “the district court must *expressly* impose that obligation.” *Madden*, 923 N.W.2d at 699. This is because “an award of permanent spousal maintenance, by itself, without any conditions requiring the recipient to make efforts to increase [their] earning capacity, implies that the recipient will not become fully self-supporting, and has no obligation to increase [their] earning capacity.” *Id.*; see Minn. Stat. § 518.552, subd. 3 (2020) (requiring district courts to award permanent maintenance when the recipient will not become self-supporting or there is doubt about whether the recipient will become self-supporting).

Here, the 2015 amended decree contemplated that Teresa might return to work but did not “expressly impose” any obligation to do so, as discussed in *Madden*. Teresa’s obligation to notify Michael of any employment she may acquire is not equivalent to an express condition requiring her to increase her earning capacity. In determining Teresa’s ability to meet her own needs in the 2021 order, the district court acknowledged Teresa’s recent work history but also determined that Teresa was not currently working. The district court relied on the GAL’s testimony from the 2015 trial that Teresa would continue to struggle with mental-health and addiction issues for the rest of her life. Teresa, therefore, does not have an obligation to increase her earning capacity because the district

court awarded permanent spousal maintenance and did not impose a duty to increase her earning capacity.

Thus, the district court did not abuse its discretion in considering Teresa's ability to meet her own needs and denying Michael's motion to reduce maintenance.

Affirmed.