

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0602**

In re the Marriage of:
Angela Marie Backman, petitioner,
Respondent,

vs.

Charles Robert Backman,
Appellant.

**Filed May 1, 2023
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Blue Earth County District Court
File No. 07-FA-11-3317

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Minnesota (for respondent)

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Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Bryan,
Judge.

SYLLABUS

On a motion to modify an award of permanent spousal maintenance, this court's opinion in *Madden v. Madden*, 923 N.W.2d 688 (Minn. App. 2019), prevents the district court from finding that the obligee has potential income only if the obligor argues that the obligee failed to make reasonable efforts to increase his or her earning capacity by obtaining additional education or vocational training.

OPINION

JOHNSON, Judge

This appeal concerns a motion to modify an award of permanent spousal maintenance. At the time of the dissolution, the maintenance obligee was unemployed because of poor health. Eight years later, the maintenance obligor moved to modify the maintenance award and argued that the obligee's health had improved, that she is earning income through employment, and that she has the potential to increase her earned income. The district court denied the modification motion without considering whether the obligee has the potential to increase her earned income. The district court reasoned that the dissolution judgment and decree did not expressly require the obligee to increase her earning capacity by obtaining additional education or vocational training. We conclude that the district court erred by reasoning that the absence of such a requirement forecloses a finding that the obligee has the potential to increase her earned income in other ways. We also conclude that the district court erred by denying the obligor's motion for a vocational evaluation of the obligee. We further conclude that the district court did not err by granting the obligee's motions for need-based attorney fees. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

Angela Marie Backman and Charles Robert Backman were married in 1995. They have three joint children, two of whom are now adults. In 2011, Angela petitioned for dissolution of the marriage. The parties stipulated to a judgment and decree, which the district court approved in 2012.

The parties' economic circumstances at the time of the dissolution were set forth in the stipulated decree and are described in the district court's later orders resolving the modification motion. At the time of dissolution, Angela was unemployed. She was receiving Social Security disability benefits of \$927 per month, which included amounts for herself and for each of the three children. Her reasonable monthly expenses for herself only (excluding expenses for the children) were \$4,500. Charles's pre-tax gross income was \$135,000 per year (*i.e.*, \$11,250 per month), and his after-tax income was \$101,750 per year (*i.e.*, \$8,479 per month). His reasonable monthly expenses for himself only (excluding expenses for the children) were \$3,350. The stipulated decree requires Charles to pay Angela permanent spousal maintenance of \$2,650 per month.

In April 2020, Charles moved to modify the spousal maintenance award as well as his child-support obligation. Charles alleged three changes in circumstances: two of the parties' three children had reached the age of majority, his employer had temporarily but indefinitely reduced his salary by 20 percent because of the onset of the COVID-19 pandemic, and Angela's income had increased because she had obtained employment.

The parties engaged in discovery related to the modification motion. In November 2020, Charles moved for an order requiring Angela to submit to a vocational evaluation at Charles's expense. In February 2021, Angela filed an affidavit in which she described in detail her ongoing physical and mental-health issues and diagnoses and stated that her condition has worsened since the dissolution, during which time she has had five surgeries. She also stated that she was in a motor-vehicle accident in 2017, which led to additional medical complications. She stated that, since 2018, she has worked at a grocery store

approximately five to eleven hours per week at a wage of \$11.30 per hour. She explained that the job is “an opportunity for me to get out of the house and interact with other people, which generally is beneficial for my mental health.” She also provided other current information about her income and expenses.

In March 2021, the district court denied Charles’s motion for a vocational evaluation. The district court reasoned that it would be inappropriate to impute or attribute potential income to Angela for two reasons. Citing this court’s opinion in *Carrick v. Carrick*, 560 N.W.2d 407 (Minn. App. 1997), the district court stated that there is no evidence that Angela has limited her income in bad faith. Citing this court’s opinion in *Madden v. Madden*, 923 N.W.2d 688 (Minn. App. 2019), the district court stated that the dissolution decree did not expressly impose on Angela an obligation to increase her earning capacity.

Charles requested reconsideration by arguing that the district court had misapplied *Madden* and by asserting that Angela’s health had “improved immensely” since the dissolution. The district court denied the request for reconsideration. Three months later, after taking Angela’s deposition, Charles submitted a second request for reconsideration, which recited certain facts disclosed in the deposition. For example, Charles stated that Angela had turned down a job offer that would have paid her \$15 per hour and that no physician or psychologist has limited the number of hours that she can work each day. The district court denied Charles’s second request for reconsideration.

In October 2021, the district court denied Charles’s motion to modify spousal maintenance. The district court made various findings concerning the parties’ incomes and

expenses. In its conclusions of law, the district court again cited *Madden* and explained that, because the decree “included no express (or even implicit) obligation that [Angela] make efforts to increase her earning capacity, this Court concludes that it is inappropriate to now impute income to her for a failure to do so.” The district court also repeated its earlier finding that Angela has not limited her income in bad faith. The district court concluded that the parties’ incomes and expenses had changed only slightly such that there is not a substantial change in circumstances that would make the existing spousal maintenance award unreasonable and unfair.

Charles moved for amended findings. In March 2022, the district court amended some findings related to the parties’ incomes and expenses. The district court’s findings, as amended, are that Angela presently receives Social Security disability benefits of \$894 per month, of which \$131 is for the parties’ one minor child, leaving \$763 for herself; that she has \$400 per month in earned income through her employment; and that she receives \$2,650 per month in spousal maintenance. The district court found that Angela’s reasonable monthly expenses are \$4,031. The district court found that Charles’s pre-tax gross income is \$135,000 per year (*i.e.*, \$11,250 per month) and that his after-tax income is approximately \$101,750 per year (*i.e.*, \$8,479 per month), which is the same as his gross income at the time of dissolution. The district court found that Charles’s reasonable expenses are \$3,975 per month.

Charles appeals.

ISSUES

I. Did the district court err by denying Charles's motion to modify spousal maintenance on the ground that this court's opinion in *Madden v. Madden*, 923 N.W.2d 688 (Minn. App. 2019), does not allow the district court to find that Angela has potential income?

II. Did the district court err by denying Charles's motion for a vocational evaluation?

III. Did the district court err by granting Angela's motions for need-based attorney fees and by awarding her \$6,500?

ANALYSIS

I.

Charles's first and primary argument is that the district court erred by denying his motion to modify spousal maintenance. He contends that the district court erroneously applied this court's opinion in *Madden* to preclude a finding that Angela has potential income, which limited his ability to show a substantial change in circumstances.

A.

Spousal maintenance is defined by statute to mean "payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2022). If a party requests spousal maintenance, a district court must engage in a two-step analysis. First, a district court must consider whether the spouse seeking spousal maintenance either

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1 (2022). This threshold inquiry asks, in essence, whether the party seeking spousal maintenance has made a “showing of need.” *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). A party has a need for spousal maintenance if, considering the standard of living during the marriage, the party is unable to provide for his or her reasonable expenses through employment income or investment income or a combination of both. *See* Minn. Stat. § 518.552, subd. 1; *Curtis*, 887 N.W.2d at 252.

Second, if a party has a need for spousal maintenance, the district court may award spousal maintenance “in amounts and for periods of time, either temporary or permanent, as the court deems just, . . . after considering all relevant factors.” Minn. Stat. § 518.552, subd. 2; *see also Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982). Eight relevant factors are prescribed by statute. *See* Minn. Stat. § 518.552, subd. 2(a)-(h). The first statutory factor is “the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party’s ability to meet needs independently.” *Id.*, subd. 2(a). The second statutory factor is “the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find

appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting." *Id.*, subd. 2(b). The sixth statutory factor is "the age, and the physical and emotional condition of the spouse seeking maintenance." *Id.*, subd. 2(f). No single factor is dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984).

B.

A district court may, upon a motion, modify an award of spousal maintenance if the moving party makes a showing of one or more statutory modification factors, any of which makes the existing maintenance award "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a), (b) (2022); *see also Honke v. Honke*, 960 N.W.2d 261, 267 (Minn. 2021). If the moving party makes such a showing, the district court may modify the maintenance award, in which case it would determine the amount and duration of the modified award by applying the same statutory factors that are relevant to an initial award of spousal maintenance, as those factors "exist at the time of the [modification] motion." Minn. Stat. § 518A.39, subd. 2(e) (citing Minn. Stat. § 518.552); *see also Honke*, 960 N.W.2d at 267-68; *Lee v. Lee*, 775 N.W.2d 631, 635-36 (Minn. 2009); *Madden*, 923 N.W.2d at 696.

One of the statutory modification factors that may support a finding of a substantial change in circumstances is the "substantially increased or decreased gross income of an obligor or obligee." Minn. Stat. § 518A.39, subd. 2(a)(1). In determining a party's "gross income," a district court must apply the statutory definition of that term in chapter 518A. *See* Minn. Stat. § 518A.26, subd. 1 (2022); *Lee*, 775 N.W.2d at 635 n.5; *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015), *rev. denied* (Minn. Dec. 15, 2015). The

statutory definition of “gross income” refers to section 518A.29. Minn. Stat. § 518A.26, subd. 8. Section 518A.29 states that “gross income” includes “any form of periodic payment to an individual,” such as salaries, wages, and disability benefits, among other things, and also includes “potential income under section 518A.32.” Minn. Stat. § 518A.29(a) (2022).

A district court may find that a party has potential income if the party “is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income.” Minn. Stat. § 518A.32, subd. 1 (2022). A party “is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the [party] that . . . the unemployment, underemployment, or employment on a less than full-time basis is because a [party] is physically or mentally incapacitated or due to incarceration.” *Id.*, subd. 3, 3(3). If it is necessary to determine the amount of a party’s potential income, the district court must do so based on one of three methods:

- (1) the [party]’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;

- (2) if a [party] is receiving unemployment compensation or workers’ compensation, that [party]’s income may be calculated using the actual amount of the unemployment compensation or workers’ compensation benefit received; or

- (3) the amount of income a [party] could earn working 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher.

Id., subd. 2.

This court generally applies an abuse-of-discretion standard of review to a district court's decision on a motion to modify spousal maintenance. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). 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 motion in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

C.

In this case, Charles sought to modify spousal maintenance by proving that, for two reasons, Angela's gross income has increased since the dissolution. First, Charles asserted that Angela had obtained employment and was earning wages, which was not so at the time of the dissolution. Second, Charles asserted that Angela is able to work more hours each week than she actually works or to obtain a different job with a higher rate of pay and, thus, has potential income that exceeds her earned income. The district court agreed with the first part of Charles's argument but disagreed with the second part. Only the second part of Charles's argument is at issue on appeal.¹

¹The district court included Angela's actual earnings in its finding of her gross income based on her affidavit, in which she stated that she is working and specified the amount of her earned income. It was appropriate for the district court to do so. The first statutory factor relevant to the amount and duration of a spousal maintenance award includes "the party's ability to meet needs independently." Minn. Stat. § 518.552, subd. 2(a). Angela's actual earned income is directly relevant to her ability to meet her needs independently. This court has stated that an award of permanent spousal maintenance "does not preclude an obligor from subsequently demonstrating that a recipient has, in fact, become self-sufficient." *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). Similarly, an award of permanent spousal maintenance does not prohibit an

The district court rejected the second part of Charles’s argument based primarily on its reasoning that this court’s *Madden* opinion applies and precludes a finding that Angela has potential income. In *Madden*, we discussed the differences between temporary and permanent spousal maintenance. We stated that, as a general matter, “if a district court makes an award of *temporary* spousal maintenance in a dissolution decree, there is an ‘assumption that the party receiving the award not only should strive to obtain suitable employment and become self-supporting but that he or she will attain that goal.’” *Madden*, 923 N.W.2d at 697 (quoting *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987)). As a consequence, “if a party moves to modify an award of temporary spousal maintenance, the district court may attribute income to the recipient of spousal maintenance if he or she has failed to make reasonable efforts to find suitable employment or to otherwise become self-supporting,” such as by “obtaining vocational training or work experience.” *Id.* (quoting *Hecker*, 568 N.W.2d at 708).

We stated further in *Madden* that, if a district court makes an award of *permanent* spousal maintenance at the time of dissolution, “without any conditions requiring the recipient to make efforts to increase his or her earning capacity,” the award typically “implies that the recipient will not become fully self-supporting, and has no obligation to increase his or her earning capacity.” *Id.* at 699. But the recipient “may have an obligation

obligor from proving that an obligee has increased his or her gross income and, thereby, increased the degree of his or her partial self-sufficiency. *See, e.g., Sinda v. Sinda*, 949 N.W.2d 170, 175-77 (Minn. App. 2020) (affirming modification of amount of temporary spousal maintenance based on obligee’s increased gross income by rejecting obligor’s argument for greater reduction).

to make a reasonable effort to become partially self-supporting” and, thereby, “to increase his or her degree of self-sufficiency and correspondingly reduce the need for spousal maintenance.” *Id.* at 698. We explained that, “if a district court determines that a recipient of permanent spousal maintenance should make reasonable efforts to increase his or her earning capacity so as to become partially self-supporting, the district court must *expressly* impose that obligation on the recipient” at the time of dissolution. *Id.* at 699.

Without such an express statement, a recipient of permanent spousal maintenance is not on notice that, contrary to the implication of such an award that the recipient has no obligation to increase his or her earning capacity, his or her inaction might lead to an adverse decision on a subsequent motion to modify spousal maintenance.

Id. Accordingly, we concluded, “A district court may attribute income to a maintenance recipient based on the recipient’s failure to make reasonable efforts to increase his or her earning capacity *through additional education or vocational training* only if the district court previously had *expressly* imposed such an obligation on the recipient.” *Id.* at 700 (first emphasis added). Because the district court had awarded *permanent* spousal maintenance in *Madden* without requiring the obligee to increase her earning capacity, we concluded that the court erred by attributing potential income to her when ruling on the motion to modify spousal maintenance. *Id.*²

²The circumstances of *Madden* implicated the first statutory factor relevant to the amount and duration of a spousal maintenance award, “the party’s ability to meet needs independently,” Minn. Stat. § 518.552, subd. 2(a), and arguably implicated the second statutory factor, “the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party’s age and skills, of completing education or training and becoming fully or partially self-supporting,” *id.*, subd. 2(b).

The circumstances of this case are different from the circumstances of *Madden*. Unlike the spousal-maintenance recipient in *Madden*, Angela had a limited earning capacity at the time of dissolution because of issues related to her physical and mental health. Given the underlying cause of Angela's limited earning capacity, there was no apparent reason to believe that the limitations could be alleviated by additional education or vocational training. In his modification motion, Charles did not ask the district court to impute potential income to Angela on the ground that she had failed to obtain additional education or vocational training. Rather, Charles asked the district court to impute potential income to Angela for other reasons that are unrelated to her education and vocational training.³

Caselaw illustrates that an obligee's health may affect the need for spousal maintenance and the amount and duration of an award. *See, e.g., Arundel v. Arundel*, 281 N.W.2d 663, 666 (Minn. 1979); *Cashman v. Cashman*, 256 N.W.2d 640, 641 (Minn. 1977). Caselaw also illustrates that the progressive worsening of an obligee's health may cause an increase in reasonable monthly expenses, which may give rise to a substantial change in circumstances warranting a modification of spousal maintenance. *See Rydell v. Rydell*, 310 N.W.2d 112, 114-15 (Minn. 1981). This court has recognized that reality by stating, "Clearly, a deterioration in a party's health provides adequate grounds for a substantial

³The circumstances of this case implicate the first statutory factor relevant to the amount and duration of a spousal maintenance award, "the party's ability to meet needs independently," Minn. Stat. § 518.552, subd. 2(a), and the sixth statutory factor, "the age, and the physical and emotional condition of the spouse seeking maintenance," *id.*, subd. 2(f).

change in circumstances.” *Sand v. Sand*, 379 N.W.2d 119, 124 (Minn. App. 1985) (citing *Rydell*), *rev. denied* (Minn. Jan. 31, 1986). By the same logic, an improvement in an obligee’s health may give rise to an increase in either earned income or potential income, which could result in a substantial change in circumstances that makes the existing award unreasonable and unfair. *See* Minn. Stat. § 518A.39, subd. 2(a). Accordingly, the district court must consider the possibility of potential income when finding Angela’s gross income at the time of the modification motion, to the extent that the requirements of section 518A.32 are satisfied, without regard for whether the dissolution decree imposed on Angela an obligation to obtain additional education or vocational training.

Thus, the district court erred by denying Charles’s motion to modify spousal maintenance on the ground that *Madden* applies and prevents the district court from finding that Angela’s gross income includes potential income. Given the circumstances of this case, such a finding is not foreclosed by *Madden*. Therefore, we reverse and remand for further consideration of Charles’s motion, including his argument that Angela’s gross income at the time of the modification motion includes potential income.⁴ After considering the parties’ evidence and comparing Angela’s gross income at the time of the dissolution decree to her gross income at the time of the modification motion, the district court shall proceed to consider whether there has been a substantial change in

⁴We are aware that the district court discussed potential income in its analysis of the issue of child support. But the district court expressly stated that potential income is not part of its analysis of the issue of spousal maintenance because of *Madden*.

circumstances that makes the existing maintenance award unreasonable and unfair.⁵ We express no opinion as to whether the standard for modifying spousal maintenance has been satisfied.

II.

Charles also argues that the district court erred by denying his motion for a vocational evaluation of Angela.

A motion for a vocational evaluation is governed by rule 35 of the rules of civil procedure. *Wills v. Red Lake Mun. Liquor Store*, 350 N.W.2d 452, 453-55 (Minn. App. 1984). The rule provides:

In an action in which the physical or mental condition or the blood relationship of a party, or of an agent of a party, or of a person under control of a party, is in controversy, the court in which the action is pending may order the party to submit to, or produce such agent or person for a physical, mental, or blood examination by a suitably licensed or certified examiner. The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made.

Minn. R. Civ. P. 35.01. “The rule does not require that the party to be examined place his or her condition in controversy, but only that the condition be in controversy.” *Haynes v.*

⁵On remand, the district court also shall revisit its finding that Angela has not limited her earned income in bad faith. The district court cited this court’s opinion in *Carrick v. Carrick*, 560 N.W.2d 407 (Minn. App. 1997), in connection with that finding. This court more recently has held that a district court need not find bad faith in order to find that an obligee is able to become fully or partially self-supporting after dissolution. *See Passolt v. Passolt*, 804 N.W.2d 18, 22-25 (Minn. App. 2011), *rev. denied* (Minn. Nov. 15, 2011). Thus, the absence of bad faith also does not preclude a finding of potential income. *See id.*

Anderson, 232 N.W.2d 196, 199 (Minn. 1975). “The nature and extent of the showing that must be made to demonstrate ‘good cause’ under the rule differs from case to case, turning largely upon the nature of the examination sought.” *Id.* This court has affirmed a district court’s order for a vocational evaluation in a personal-injury case in which the parties disputed “[w]hether plaintiff will be able to obtain gainful employment” and his “future ability to earn wages.” *Wills*, 350 N.W.2d at 455.

In this case, the district court did not engage in the analysis contemplated by the rule and the accompanying caselaw. Rather, the district court determined that a vocational evaluation was inappropriate on the ground that the district court was not allowed to find potential income. We have concluded above that *Madden* does not apply and that the district court must consider Charles’s argument concerning potential income. *See supra* part I. Thus, *Madden* does not foreclose the possibility of a vocational evaluation, which conceivably might lead to the discovery of evidence that is relevant to the issue of potential income.

This conclusion is not meant to imply that Charles necessarily is entitled to a vocational evaluation. A rule 35 examination is “not available as a matter of right.” *Loveland v. Kremer*, 464 N.W.2d 306, 308 (Minn. App. 1990). Rather, the moving party must establish good cause for a vocational evaluation, which inevitably calls for a case-by-case determination. *Haynes*, 232 N.W.2d at 199. One of the relevant considerations is a balancing of “the need for the examination and the anticipated probative value of the evaluation” against “any unnecessary intrusion on the examinee’s privacy.” *Id.* at 200. A

district court has “broad discretion” in ruling on a motion for a rule 35 examination. *Kresko v. Rulli*, 432 N.W.2d 764, 770 (Minn. App. 1988), *rev. denied* (Minn. Jan. 31, 1989).

Thus, the district court erred by denying Charles’s motion for a vocational evaluation of Angela on the basis of *Madden*. Therefore, we reverse and remand for further consideration of Charles’s motion, which is intertwined with his motion to modify spousal maintenance. On remand, the district court shall consider, among other issues, whether Angela’s physical or mental condition is in controversy and, if so, whether Charles has shown good cause for an examination.

III.

Charles last argues that the district court erred by granting Angela’s motions for need-based attorney fees and by awarding her \$6,500.

In a proceeding under chapter 518 or chapter 518A of the Minnesota Statutes, the district court “shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding” if it 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.

Minn. Stat. § 518.14, subd. 1 (2022). This court applies an abuse-of-discretion standard of review to a district court’s award of need-based attorney fees. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

In this case, Angela twice moved for need-based attorney fees. In August 2021, she sought \$12,888 in fees for time spent by her attorneys between May 2020 and August 2021. In October 2021, the district court granted that motion in part and awarded Angela \$5,000 in fees. In February 2022, she sought \$3,200 in fees for time spent by her attorneys in November and December 2021. In March 2022, the district court granted that motion in part and awarded Angela \$1,500 in attorney fees. In the two orders, the district court made identical findings:

A certain amount of attorney fees, costs, and disbursements are necessary for [Angela] to have presented a good faith assertion of her rights, and those fees will not contribute unnecessarily to the length and expense of this proceeding;

[Charles] has the means to pay a certain amount of attorney fees, costs, and disbursements; and

[Angela] does not have the means to pay for all of her incurred attorney fees, costs, and disbursements.

An appropriate amount of attorney fees, costs, and disbursement, representing the amount necessary to assert her rights, an amount [Charles] has the means to pay, and the amount that [Angela] does not have the means to pay, is [\$5,000 or \$1,500].

Charles contends that the district court erred by not making adequate findings to support its conclusions. Specifically, Charles contends that the district court “did not discuss income, debts, or assets of the parties” and that, as a consequence, this court is

unable to review the district court's award. He contends further that he does not have the means to pay Angela's attorney fees and that Angela does have the means to pay them.

The district court's orders awarding attorney fees do not explain the three required findings in detail. But a lack of detail is not necessarily fatal to the awards. In *Gully*, the district court did not make the first required finding, but the supreme court nonetheless upheld the district court's fee award on the ground that the district court's order "reasonably implie[d]" that the responding party had the ability to pay the moving party's fees. 599 N.W.2d at 825-26. The supreme court's willingness to infer the missing finding also was justified by the fact that the district court "was familiar with the history of the case" and "had access to the parties' financial records." *Id.* at 826; *see also Ludwigson v. Ludwigson*, 642 N.W.2d 441, 448-49 (Minn. App. 2002).

In this case, the district court was familiar with the case and had access to the parties' financial records because of the extensive proceedings on Charles's motions, which required findings of the parties' incomes and expenses. The district court filed its two orders on attorney fees simultaneously with its orders resolving Charles's motions for modification and for amended findings. The same judge was assigned to the case throughout the modification proceedings. The district court made nuanced findings that Charles "has the means to pay *a certain amount of*" Angela's fees and that Angela "does not have the means to pay *all of her*" fees. (Emphasis added.) Thus, the district court did not err on the ground that its findings are inadequate.

Charles also contends that the district court erred by finding that he has the means to pay some of Angela's attorney fees. He asserts that his reasonable monthly expenses of

\$3,975 exceed his monthly after-tax income of \$3,188. But the district court found that Charles's after-tax income is more than \$3,188. The district court found that his after-tax income is \$8,479 per month, and Charles has not challenged that finding. Given the district court's findings, Charles has a monthly surplus of \$1,854 after paying his reasonable monthly expenses and paying spousal maintenance of \$2,650. Thus, the district court did not abuse its discretion by finding that Charles has the means to pay less than half of Angela's attorney fees.

Charles last contends that the district court erred by finding that Angela does not have the means to pay all of her attorney fees. He asserts that she has monthly after-tax income of \$4,079, has purchased a vehicle, has improved her home, and has received more than \$26,000 in a settlement of a personal-injury lawsuit arising from the 2017 motor-vehicle accident. Given the district court's findings, the sum of Angela's monthly after-tax income and the spousal maintenance award is \$3,813, which is less than her reasonable monthly expenses of \$4,031. The record reflects that the lawsuit settlement occurred approximately two years before Charles' motion to modify and four years before the district court's awards of attorney fees, that Angela used some of the settlement proceeds to buy a vehicle for the adult children, that she recently borrowed money to purchase a vehicle and to replace a leaky roof on her home, that she refinanced her home to pay off debts, that she owes approximately \$28,000 on a personal loan, and that she still owes money to her attorney. Given the evidentiary record, the district court did not abuse its discretion by finding that Angela does not have the means to pay all of her attorney fees. *See Beck v. Kaplan*, 566 N.W.2d 723, 727 (Minn. 1997) (affirming award of need-based

fees on ground that obligee otherwise “would be required to deplete the limited capital assets available to her” (quotation omitted)).

Thus, the district court did not err by granting in part Angela’s motions for need-based attorney fees and by awarding her a total of \$6,500.

DECISION

The district court erred by denying Charles’s motion to modify spousal maintenance without considering whether Angela’s gross income at the time of the modification motion includes potential income. The district court erred by denying Charles’s motion for a vocational evaluation of Angela based on the mistaken premise that it would be error to make a finding of potential income. The district court did not err by granting in part Angela’s motions for need-based attorney fees and by awarding her a total of \$6,500. Therefore, we affirm in part, reverse in part, and remand for further proceedings, as described above in parts I and II.

Affirmed in part, reversed in part, and remanded.