

*This opinion is nonprecedential except as provided by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
A23-0278**

In re the Marriage of:

Daniel Stephen Nelson, petitioner,
Appellant,

vs.

Katherine Lynn Nelson,
Respondent.

**Filed January 16, 2024
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-FA-11-7674

Laurie Mack-Wagner, Elizabeth E. Due, Mack & Santana Law Offices, P.C., Minneapolis,
Minnesota (for appellant)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Gerald O. Williams, Williams Divorce & Family Law, P.A., Woodbury, Minnesota (for
respondent)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Ede, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-husband challenges an order modifying his permanent spousal-maintenance obligation, arguing that the district court: (1) clearly erred in its findings regarding the parties' reasonable monthly expenses; and (2) abused its discretion by denying his motion to suspend spousal maintenance, instead reducing his obligation on a temporary basis. We affirm.

FACTS

Appellant Daniel Stephen Nelson (husband) and respondent Katherine Lynn Nelson (wife) were married in 1990 and have two adult children. In 2012, the marriage was dissolved pursuant to the parties' stipulation. At the time of the dissolution, husband was the CEO of Shadin Avionics with gross monthly income of \$16,667 (approximately \$200,000 annually) and monthly living expenses of \$7,408. Wife was an administrative assistant with gross monthly income of \$2,253 (approximately \$27,000 annually) and monthly living expenses of \$7,633. The dissolution judgment and decree requires husband to pay wife permanent spousal maintenance in gradually increasing amounts as the children aged and his child-support obligation decreased. When the younger child emancipated in 2016, husband began paying wife \$5,000 a month.

In November 2021, husband was discharged from his employment. At that time, he was earning approximately \$240,000 per year. The following month, husband moved the district court to terminate or suspend his spousal-maintenance obligation or, in the alternative, reduce it beginning in January 2022. During a February 2022 mediation, the

parties agreed to retroactively suspend spousal maintenance as of January on the condition that husband would make good-faith efforts to obtain comparable employment.

Husband did not secure a comparable job. In November 2022, husband moved the district court to continue the suspension of his spousal-maintenance obligation or, in the alternative, terminate or reduce the amount. In support of his motion, husband submitted an affidavit averring that he earns gross monthly income of \$1,213 from part-time employment at a gun club and has monthly expenses of \$11,413. Wife objected to the motion and requested need-based attorney fees. She submitted an affidavit averring that she earns net monthly income of \$2,164 and incurs monthly expenses of \$7,993. Wife's affidavit further states that husband received a large severance payment upon his discharge and that he remarried and may access his current wife's income to meet his monthly expenses. Following a hearing, the district court denied husband's motion to suspend or terminate spousal maintenance, instead temporarily reducing his monthly obligation to \$2,000 beginning in January 2023. The district court also denied wife's attorney-fee motion.

Husband appeals.

DECISION

An award of spousal maintenance “depends on a showing of need.” *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016) (quotation omitted). If a spouse demonstrates need, the district court will base the spousal-maintenance award on “all relevant factors,” including eight enumerated factors. Minn. Stat. § 518.552, subd. 2 (2022). Among the enumerated factors are the financial resources of the parties and the ability of the paying

spouse to meet their own needs while meeting those of the spouse seeking maintenance. *Id.*, subd. 2(a), (g).

Spousal maintenance may be modified if a party shows there has been a substantial change in circumstances that makes the existing award “unreasonable and unfair.” Minn. Stat. § 518A.39, subd. 2(a) (2022). A substantial change in circumstances may be based on, among other things, “substantially increased or decreased gross income of an obligor or obligee” or “substantially increased or decreased need of an obligor or obligee.” *Id.*, subd. 2(a)(1), (2). A party seeking to modify spousal maintenance has the burden of showing both a substantial change in circumstances and resulting unfairness. *Yonker v. Yonker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003). When modifying maintenance, the district court considers all relevant factors, including those that govern an initial maintenance award. Minn. Stat. § 518A.39, subd. 2(e) (2022).

Absent a prior modification order, the terms of the dissolution decree provide “the baseline circumstances against which claims of substantial change are evaluated.” *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). Spousal-maintenance awards based on the parties’ agreement carry great weight because they reflect the parties’ expectations and “their respective assessment of their own present and future needs.” *Cisek v. Cisek*, 409 N.W.2d 233, 237 (Minn. App. 1987), *rev. denied* (Minn. Sept. 18, 1987).

A district court has broad discretion in setting and modifying spousal maintenance, and we will not reverse absent a clear abuse of discretion. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009). 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 matter in a

manner that is contrary to logic and the facts on record.” *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). We will not disturb a district court’s findings of fact as to spousal maintenance unless they are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

Husband argues that the district court clearly erred in its findings of fact regarding the parties’ respective monthly expenses. And he contends the court abused its discretion by effectively imputing income to him without finding bad faith and basing the reduced spousal-maintenance award on his current expenses rather than his current income. We address each argument in turn.

I. The district court did not clearly err in its factual findings as to the parties’ monthly expenses.

Husband asserts that the district court clearly erred by finding his monthly expenses total \$11,413 because he is not actually incurring expenses in that amount. We are not persuaded. The court made its findings based on the budget *husband submitted* with his modification motion. As the district court observed, that budget represents a substantial increase from the \$7,408 in monthly expenses husband incurred at the time of the 2012 dissolution. The district court found certain expenses unreasonable, including approximately \$900 for clothing, a roughly \$1,000 car payment, almost \$500 for health-club dues and a golf membership, and just over \$600 for entertainment and restaurant expenses. By eliminating these unreasonable monthly expenditures, the district court found husband has the ability to meet wife’s needs. On this record, we discern no clear error in the district court’s findings regarding husband’s monthly expenses.

In contrast, wife's budget shows monthly expenses of \$7,993, very near the amount she incurred at the time the marriage was dissolved. It is undisputed that wife's monthly income does not cover those expenses, leaving a shortfall of \$5,829. Still, husband objected to approximately \$1,300 of wife's expenses, including funds allocated to retirement and emergency savings. Husband urged the district court to find that these expenses do not reflect the marital standard of living, one relevant factor for determining maintenance. Minn. Stat. § 518.552, subd. 2(c). Husband also asserted that because wife's bank records show average monthly withdrawals of \$4,115, her monthly expenses should be capped at \$4,849. The record supports the district court's finding that wife's claimed monthly expenses are reasonable. But even if we accept husband's contrary position and deduct the challenged expenses, wife would still have a monthly deficit of at least \$2,000. Accordingly, we see no prejudicial clear error by the district court in finding that wife needs \$2,000 to meet her monthly expenses.

II. The district court did not abuse its discretion by modifying spousal maintenance on a temporary basis.

Husband first contends that the district court misapplied the law by imputing income to him without finding that he was voluntarily underemployed and improperly considering the severance payment he received and his current wife's income. These contentions are unavailing.

We agree with husband that a district court may not impute higher income to a spousal-maintenance obligor without first finding "bad faith or unjustifiable self-limitation of income." *Melius*, 765 N.W.2d at 415. But the district court did not do so, choosing

instead to focus on husband's ability to meet both his own needs and a portion of wife's unmet needs as measured by husband's monthly budgeted expenses. Nor did the court base its temporary spousal-maintenance award on husband's severance pay or the income husband's current wife earns. Indeed, the district court expressly rejected wife's invitation to do just that, stating it "declines to consider [husband's] spouse's income when analyzing his obligation to pay spousal maintenance." We are mindful that husband stipulated to permanent spousal maintenance. While he may not have expected to lose his job when he agreed to pay \$5,000 per month in permanent maintenance, he also earned income that exceeded the \$200,000 annual salary he earned at the time of the dissolution. Moreover, wife agreed to suspend all payments after he lost his job, even though husband's ability to meet their respective needs—as measured by his ongoing high standard of living—was unchanged. In short, the record supports the district court's determination that husband has the financial resources and ability to meet part of wife's essentially unchanged need for maintenance.

Husband next argues that the district court misapplied the law by using his monthly expenses as the basis for modifying spousal maintenance. He asserts that because spousal maintenance is tied to income, modification decisions must be solely based on the parties' income. We disagree. While income can be a relevant factor, it need not be the basis for determining the proper obligation under the circumstances of a particular case. Modification of spousal maintenance is based on "all other relevant factors," including the financial resources of the parties, standard of living established during the marriage, and the ability of the paying spouse to meet their own needs while meeting those of the spouse

seeking maintenance. Minn. Stat. §§ 518.552, subd. 2(a), (c), (g), 518A.39, subd. 2(e). The only budget husband submitted to the district court includes expenses that are substantially higher than those he had at the time of the dissolution. And many of them represent discretionary expenditures for club dues and monthly entertainment expenses. The district court found the amount and nature of husband's expenses are indicative of his ability to pay a reduced maintenance amount despite his current limited income. On this record, we see no abuse of discretion by the district court in using husband's expensive lifestyle as a proxy for the financial resources available to him and his ability to pay maintenance.

We also discern no abuse of discretion in the district court's assessment of wife's continued need for maintenance. Unlike husband, wife does not assert that her expenses have significantly increased during the 11 years since the marriage ended. As the district court implicitly found, the fact wife's monthly expenditures have changed as the children grew up and her retirement approaches is not remarkable and does not undermine her need for maintenance. Minnesota law requires that "the separated spouse should share in the hardship as they would have had the family remained together." *Melius*, 765 N.W.2d at 414 (quoting *Giesner v. Giesner*, 319 N.W.2d 718, 720 (Minn. 1982)). Wife has done so. For almost a year, she shared in the hardship of husband's November 2021 job loss by agreeing to suspend spousal maintenance altogether while husband sought comparable employment. And by not challenging the district court's decision to temporarily reduce the amount of maintenance she receives, wife continues to share in the hardship.

As the party seeking to modify a spousal-maintenance award, husband had the burden of proving a substantial change of circumstances that makes his obligation to pay permanent maintenance of \$5,000 per month unreasonable and unfair. Based on our careful review of the record, we discern no abuse of discretion by the district court in granting husband's alternative requested relief—temporary reduction of his monthly spousal-maintenance obligation from \$5,000 to \$2,000.

Affirmed.