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

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1407

In re the Marriage of:

Mark S. Steinmetz, petitioner,
Appellant,

vs.

Darlene D. Steinmetz,
Respondent.

Filed August 18, 2025
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-FA-000261958

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and Linda R. Allen, Gemberling Allen, P.A., St. Paul, Minnesota (for appellant)

Richard S. Eskola, Fridley, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this spousal-maintenance dispute, appellant Mark S. Steinmetz (husband) makes three arguments challenging the district court's order granting respondent/cross-appellant Darlene D. Steinmetz (wife) a cost-of-living adjustment (COLA) and effectively denying his motions to terminate or modify spousal maintenance, stop the COLA, and terminate the requirement that he maintain life insurance to secure his spousal-maintenance obligation. First, regarding terminating or modifying spousal maintenance, husband challenges the district court's findings regarding his income and wife's need. Second, regarding the COLA, husband argues that he met his burden to show that he did not have a sufficient increase in income to cover the COLA. Third, regarding the life-insurance requirement, husband argues that, because wife no longer has a need for spousal maintenance, she no longer has a need for the life-insurance policy. In her cross-appeal, wife argues that the district court erred when it made the COLA award effective after its order granting the COLA instead of making it retroactively effective as of the date it would have become effective had husband not filed his motions.

As to husband's appeal, we conclude that the district court did not abuse its discretion by denying husband's motions regarding spousal maintenance and the COLA because the record supports the district court's factual findings; we also determine that the district court acted within its discretion by continuing husband's life-insurance obligation because spousal maintenance was continuing. As to wife's cross-appeal, we conclude that the district court erred in determining the effective date of the COLA. Therefore, we affirm in part, reverse in part, and remand to the district court to correct the effective date of wife's COLA award.

FACTS

The parties married in 1977. Husband petitioned for dissolution of the marriage in 2000. In March 2002, the district court entered a judgment and decree (J&D) pursuant to the parties' marital termination agreement, resolving most issues but reserving the determination of spousal maintenance.

In June 2002, after a hearing to address the amount and duration of spousal maintenance, the district court entered an amended J&D, ordering husband to pay $3,000 per month in spousal maintenance. In an attached memorandum, the district court noted that the parties had stipulated that wife would receive "approximately $1,200,000 in stocks, bonds, cash, etc. and approximately $595,000 in liquid retirement accounts." As part of its spousal-maintenance analysis, the district court stated that, based on testimony from an expert witness, it expected the $1.2 million in non-retirement assets awarded to wife to generate $7,000 in income per month. The amended J&D also required husband to maintain a life-insurance policy with wife as the sole beneficiary "for so long as [husband] has a spousal maintenance obligation to [wife] or until further order of the Court."

Since then, husband's spousal-maintenance obligation has been repeatedly modified. The last modification of permanent spousal maintenance prior to the matters at issue here occurred on December 30, 2016.

On November 15, 2022, wife filed a notice for a COLA to increase husband's spousal-maintenance obligation from $4,970 to $5,668 per month. In response, husband moved to stop the COLA and terminate or reduce spousal maintenance, asserting that he had retired and had stopped receiving a salary from his previous employment. In a later filing with the district court, husband explained that he began entering retirement in May 2022, that he was paid by his prior employer for the last time on May 20, 2022, and that, over the following year, he "unburdened himself of his other financial projects."

A year later, on November 17, 2023, wife requested that the district court deny husband's motion to stop the COLA and modify spousal maintenance, grant her requested COLA, award her need-based and conduct-based attorney fees, and amend the amended J&D to reflect an increased life-insurance obligation requiring husband to secure his spousal-maintenance obligation to wife by carrying a $500,000 life-insurance policy naming wife as the beneficiary. At the time, husband was carrying a $150,000 life-insurance policy with wife as the beneficiary, as required by the amended J&D.

Three days later, husband filed an amended motion to stop the COLA and terminate or decrease spousal maintenance. In a supporting memorandum, husband asserted that his requests were warranted because (1) husband had retired and was no longer earning sufficient income to pay spousal maintenance unless he invaded his assets and post-dissolution investments to do so and (2) wife no longer needed spousal maintenance because she was receiving pension income and could access half of husband's Social Security benefit. Husband also filed a separate motion in response to wife's countermotion, requesting that the district court terminate his life-insurance obligation.

The district court held a motion hearing and then, in March 2024, filed an order granting the COLA and requiring husband to pay wife $5,668 per month in spousal maintenance starting April 1, 2024. By granting the COLA, the district court effectively denied husband's motions to stop the COLA and to terminate or modify spousal maintenance. The district court also effectively denied both parties' motions to modify husband's life-insurance obligation by stating: "Husband shall maintain a $150,000 life insurance policy with Wife named as the beneficiary . . . ."

Wife moved to amend the district court's order, requesting that the effective date of the COLA be amended from April 1, 2024, to December 1, 2022. In an attached memorandum, wife argued that, because the district court found that husband failed to establish insufficient income that would prevent him from complying with the COLA, the district court was required to grant the COLA "as of the date it would have become effective had no hearing been requested" pursuant to Minnesota Statutes section 518A.75, subdivision 3 (2024). Husband filed a responsive motion, arguing that the district court has broad discretion in spousal-maintenance matters and acted within that discretion when it made the effective date of the COLA April 1, 2024.

The district court held a hearing on wife's motion and then, in August 2024, denied wife's motion to change the effective date of the COLA. In its order, the district court determined that it had not abused its discretion when it declined to award wife retroactive relief because the district court "has broad discretion to resolve spousal maintenance issues equitably"; wife "received a significant property settlement from the parties' marriage dissolution"; and wife met her monthly budget between December 2022 and the date of the March 2024 order.

Husband appealed and wife filed a notice of related appeal.

DECISION

We address husband's challenges to the district court's denial of his motions to terminate or modify spousal maintenance, stop the COLA, and terminate his life-insurance obligation, and then turn to wife's challenge to the effective date of the COLA.

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

A district court may modify an existing spousal-maintenance order if the party seeking modification "makes a showing of a substantial change in circumstances that makes the existing award unreasonable and unfair." *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019) (quotation omitted). Whether there has been a substantial change of circumstances since the previous order is a threshold question in a motion to modify maintenance, and the circumstances that existed at the time of the original decree serve as "the baseline circumstances against which claims of substantial change are evaluated." *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). A substantial change in circumstances can include when (1) an obligor's gross income has substantially decreased since the last order setting spousal maintenance or (2) an obligee's need has substantially decreased since the last order. Minn. Stat. § 518.552, subd. 5b(b)(1), (2) (2024).[1]

Appellate courts review a district court's decision regarding a modification of an existing maintenance award for an abuse of discretion. *Madden*, 923 N.W.2d at 696.

> 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. To the extent that a modification decision depends on findings of fact, [appellate courts] apply a clear-error standard of review to those findings of fact.

[1] We note that, at the time that the district court filed the March 2024 order under review, modification of spousal-maintenance was listed under Minnesota Statutes section 518A.39, subdivision 2 (Supp. 2023), but the relevant statutory language has since been moved to section 518.552, subdivision 5b. 2024 Minn. Laws ch. 101, art. 2, §§ 5, at 871; 10, at 873.

Id. (citation omitted). When reviewing findings of fact for clear error, appellate courts (a) "view the evidence in a light favorable to the findings"; (b) do not find their own facts; (c) do not "reweigh the evidence"; and (d) do not "reconcile conflicting evidence." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted). "To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations omitted).

Here, husband challenges the district court's findings regarding his asserted decrease in income; in doing so, he appears to challenge the district court's finding that he had not met his burden of showing a substantial decrease in his gross income. Husband also challenges the district court's findings regarding wife's expenses and income, seemingly asserting that husband met his burden to show that wife's need had substantially decreased. We begin with the argument regarding husband's income and then turn to the argument regarding wife's need.

A. Husband's Income

Husband argues that the district court erred in its findings about his income. He argues that his income—from Social Security and a pension—is $4,597 per month, which is insufficient income to pay the spousal-maintenance award. He claims that, to fund his monthly living expenses, he has to use his "post-marital assets and the assets awarded to him in the marital dissolution," which, he argues, cannot be considered as income.

One of the substantial changes that can warrant a change in spousal maintenance is when an obligor's "gross income" has substantially decreased. Minn. Stat. § 518.552, subd. 5b(b)(1). "Gross income is any form of periodic payment to an individual." *Sinda v. Sinda*, 949 N.W.2d 170, 176 (Minn. App. 2020) (quotation omitted); *see also* Minn. Stat. §§ 518A.26, subds. 1, 8, .29 (2024); *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009). "[T]he term 'payment' . . . generally means that a benefit must be actually received by the [party], as opposed to merely vested or owed, in order to constitute income." *Haefele v. Haefele*, 837 N.W.2d 703, 710 (Minn. 2013). And the term "periodic" "generally means marked by repeated cycles[] or happening or appearing at regular intervals." *Id.* (quotations omitted). "A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). The party seeking to modify spousal maintenance has the burden to prove that a substantial change in income has occurred. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003).

In his briefing to this court, husband does not identify what his income was at the time of the last modification order in 2016; in that order, husband's annual income is not precisely identified, but it appears to have been about $300,000. Husband claims that he now earns only $4,597 per month. In the March 2024 order, the district court noted that husband is retired. However, it found that the amount of monthly income that husband claimed to receive was not credible because he also (1) claimed that he had monthly expenses of $28,740, (2) received a $15 million payment in May 2020 from a company in which he held an ownership interest and would likely receive significant earnings from return on his investment, (3) was "a principal in various LLCs for which he likely receive[d] additional income," (4) has owned two homes worth $2.1 million and $2.4

million and had recently purchased a home worth $5.25 million, and (5) had a net worth of $22 million. The district court then found that, "[w]hile determining a precise income [for husband] is challenging, the record reflects that Husband has significant monthly earnings that allow him to afford high end purchases"; that "[t]he record reflects that Husband has ample financial resources and is capable of paying spousal maintenance while continuing to meet his own needs"; and that "Husband has not met his burden of a showing of substantial changes in circumstance since the last modification of spousal maintenance."

The district court's findings—specifically, that husband's testimony about his income was not credible, that he held an ownership interest and was a principal in various companies and was likely to receive significant earnings from those investments, and that "determining a precise income [for husband] is challenging"—are supported by the record and support the determination that husband did not meet his burden to establish that there was a substantial decrease in his income since the 2016 maintenance order. The district court's finding that husband was likely receiving additional income from investments is not clearly erroneous because husband's own affidavit states that, in 2023, he had "9.7 million dollars in stocks, bonds, [exchange-traded funds], and annuities." *See Rasmussen*, 832 N.W.2d at 797 (stating that appellate courts will not conclude that factual findings are clearly erroneous absent "the definite and firm conviction that a mistake has been made" (quotation omitted)). On appeal, husband argues that we should not consider income he is expected to receive from his assets but does not point to any caselaw supporting that income received from assets cannot be considered when determining maintenance. Because the evidence supports that husband is receiving income from his assets but he failed to produce evidence about the value of that income, we conclude that the district court did not abuse its discretion by determining that husband did not meet his burden to show a substantial decrease in income.

B. Wife's Need

Husband also argues that the order must be reversed because the district court erred by finding that wife has a continued need for spousal maintenance and that, as a result, the district court abused its discretion by not determining that husband met his burden to show that wife's need had substantially decreased since the 2016 order. We disagree.

Contrary to husband's argument, the district court made no finding about wife's need. In its factual finding addressing "Wife's Income and Expenses," the district court wrote:

> Wife earns \$1,021 per month from her pension and employment. Wife also has the ability to access her interest in Husband's social security benefits of \$1,798.50 per month. In total, Wife has the ability to access income of \$2,819.50 per month. Wife asserts that her reasonable monthly expenses are \$10,720.

Although these are factual findings, they do not find that husband has proved that wife no longer has a need for spousal maintenance or, more importantly, that there has been a substantial decrease in wife's need since the 2016 order.

An obligee's "need" for spousal maintenance is determined by evaluating whether, in light of "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." *Backman v. Backman*, 990 N.W.2d 478, 484 (Minn. App. 2023) (citing Minn. Stat. § 518.552, subd. 1 (2022); *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016)). The district court did not make a finding as to wife's current income or how it compared with her 2016 income. Nor did the district court make a finding as to wife's reasonable expenses—it merely stated what she "asserted"—or how her expenses compared to her 2016 expenses. We cannot conclude that the district court made an erroneous factual finding if the district court did not make the challenged finding.

Husband argues, though, that the district court implicitly found that wife has a continuing need for spousal maintenance and that that implicit finding is erroneous. The argument is unconvincing. The district court's findings do not evaluate wife's expenses or make any determination of her present need based on her income and expenses, let alone include language about a "substantial change in circumstances," which is a threshold determination for modification of spousal maintenance. *See* Minn. Stat. § 518.552, subd. 5b(b)(2); *Hecker*, 568 N.W.2d at 709. In contrast, the district court included that language in its finding regarding husband's claimed change in income. We therefore do not discern an implicit finding about wife' need in the district court's order.

Additionally, to the extent that husband makes the argument on appeal, we are not persuaded that we must reverse because the district court failed to determine whether husband had met his burden of showing a substantial change in circumstances due to a substantial decrease in wife's need. In his November 2023 motion to the district court, husband asserted that wife was "no longer in need of spousal maintenance." But husband did not explicitly tie that argument to the "substantial change in circumstances" language that applies to section 518.552, subdivision 5b(b)(2). Rather, husband referred to the statute and that key language only with respect to his argument that his decrease in employment income constituted a substantial change in circumstances. It is not surprising, then, that the district court did not make a finding as to whether wife's need had substantially decreased since the 2016 order. Moreover, we note that husband did not move the district court to amend its findings to address his claimed argument that he had established a substantial change in wife's need.

Husband also argues that we should determine that he met his burden to show a substantial decrease in wife's need because that is the only possible finding based on the record. We are not persuaded because there are facts in dispute. For example, wife contends that her pension and Social Security payments should be excluded from her current income just like her similar amount of employment earnings were excluded from her income in the 2016 maintenance order, based on circumstances that the district court found then and that wife asserts remain unchanged. But, in deciding the matter before it, the district court did not make findings about those circumstances, and it is our role to review, not make, factual findings. *See Kenney*, 963 N.W.2d at 221-22.

Finally, we observe that the usual remedy for the district court's failure to make a necessary finding on an issue before it is to remand for further findings. *See, e.g.*, *Stevens v. Stevens*, 501 N.W.2d 634, 637 (Minn. App. 1993) ("Even where the record supports the trial court's decision, the failure to make specific findings compels a remand."). But husband has not asked for that remedy on appeal. Even if husband did present the argument in the district court, we are disinclined to grant a remedy that was not sought by an appellant and that the respondent therefore had no opportunity to address.

In sum, the district court did not abuse its discretion by determining that husband failed to meet his burden of showing a substantial change in circumstances since the last modification of spousal maintenance. Because husband did not establish this threshold requirement, the district court did not abuse its discretion by denying his motion to modify spousal maintenance.

II. The district court did not abuse its discretion by denying husband's motion to stop the COLA.

Next, husband argues that the district court abused its discretion by denying his motion to stop wife's COLA, arguing that he did not have a sufficient increase in income to cover the COLA. We are not persuaded.

The burden is on the obligor to show why a COLA should be waived or reduced. *Bartl v. Bartl*, 497 N.W.2d 295, 301 (Minn. App. 1993). If an obligor shows that their income is insufficient to provide for the COLA, the district court may order that a COLA increase not take effect. Minn. Stat. § 518A.75, subd. 1(b) (2024). If a hearing is held and the obligor fails to establish an insufficient increase in income that would prevent payment of the COLA, the COLA "shall" take effect. *Id.*, subd. 3. Appellate courts review a district court's COLA order for an abuse of discretion. *Anderson v. Anderson*, 897 N.W.2d 828, 832 (Minn. App. 2017), *rev. granted* (Minn. Aug. 22, 2017) *and appeal dismissed* (Minn. Jan. 30, 2018).

We conclude, for the reasons we explained in addressing husband's first argument, that husband failed to prove his amount of income, let alone whether he has had an insufficient increase in income that would prevent him from paying the COLA.

Accordingly, we conclude that the district court did not abuse its discretion by determining that husband failed to prove that he made insufficient income to support the COLA and by denying husband's motion to stop the COLA.

III. The district court did not abuse its discretion by denying husband's motion to terminate the life-insurance obligation.

Finally, husband argues that the district court abused its discretion by ordering husband to maintain a $150,000 life-insurance policy with wife named as the beneficiary, arguing that wife no longer needs such a policy because she no longer has a need for spousal maintenance. Because we have concluded that the district court did not abuse its discretion by continuing husband's spousal-maintenance obligation, we also conclude that the district court did not abuse its discretion by denying husband's motion to terminate his life-insurance obligation.

IV. The district court erred in setting the effective date of the COLA.

In her cross-appeal, wife argues that the district court erred when it made the effective date of the COLA April 1, 2024, instead of December 1, 2022, because it did so in violation of the unambiguous language of Minnesota Statutes section 518A.75, subdivision 3. We agree.

The district court declined to amend the effective date of the COLA to December 2022, asserting that its decision about the effective date fell within the district court's broad discretion over spousal-maintenance matters. But Minnesota Statutes section 518A.75 (2024) governs COLAs and states in subdivision 3:

> If, at a hearing pursuant to this section, the obligor establishes an insufficient cost of living or other increase in income that

> prevents fulfillment of the adjusted maintenance or basic support obligation, the court or child support magistrate may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish this insufficient increase in income, the adjustment shall take effect as of the date it would have become effective had no hearing been requested.

Under this provision, because husband did not establish that he experienced an insufficient increase in income to support the COLA, the COLA was required to "take effect as of the date it would have become effective had no hearing been requested." Minn. Stat. § 518A.75, subd. 3. In the circumstances of this case, the statute does not afford the district court discretion to determine a different effective date. *See id.* Wife requested the COLA on November 15, 2022, so the COLA would have become effective December 1, 2022, had husband not challenged it. Accordingly, the district court erred by failing to make the COLA retroactively effective as of December 1, 2022.

In conclusion, we affirm the district court's denial of husband's motions, but we reverse the district court's decision regarding the effective date of the COLA and remand for the district court to make the COLA effective starting on December 1, 2022.

Affirmed in part, reversed in part, and remanded.