STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1705

In re the Marriage of:

Laura M. Engelhart, petitioner,
Respondent,

vs.

Robert J. Engelhart,
Appellant.

Filed June 3, 2013
Affirmed
Kalitowski, Judge

Dakota County District Court
File No. 19-FX-08-002319

Richard D. Goff, Law Offices of Richard D. Goff, Minneapolis, Minnesota (for respondent)

Jennifer M. Evans, Evans Law Office, Eagan, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

In this appeal from a post-decree order, appellant Robert Engelhart argues that the district court abused its discretion by (1) denying his motion to modify his permanent spousal-maintenance obligation to respondent Laura Engelhart; (2) denying his motion to

establish that respondent pay him child support; and (3) granting respondent's motion that he pay one-half of their minor child's private-school tuition. We affirm.

D E C I S I O N

Appellant and respondent married in 1989 and divorced pursuant to a stipulated judgment and decree in 2010. The parties stipulated to their monthly incomes and expenses and agreed that appellant would pay respondent permanent spousal maintenance of $4,700 per month. The parties also agreed to share legal and physical custody of their three minor children and stipulated to a reservation of child support. In April 2012, appellant moved to modify his spousal-maintenance obligation based on changed circumstances and to establish child support concerning M.E., the parties' only remaining minor child. Respondent moved to require appellant to pay one-half of M.E.'s private-school tuition. The district court denied appellant's motions and granted respondent's motion.

I.

We review a district court's decision concerning modification of spousal maintenance established in a divorce decree for an abuse of discretion. *Rubenstein v. Rubenstein*, 295 Minn. 29, 32, 202 N.W.2d 662, 663-64 (1972). A district court abuses that discretion if it makes a clearly erroneous conclusion that is against logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We defer to a district court's findings of fact, and will uphold them unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has

been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted).

"When a stipulation fixing the respective rights and obligations of the parties is central to the original judgment and decree, the district court considering the modification motion must appreciate that the stipulation represents the parties' voluntary acquiescence in an equitable settlement." *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). The Minnesota Supreme Court has "cautioned the district court to exercise its considerable discretion carefully and only reluctantly when it is faced with a request to alter the terms of an agreement which was negotiated by the parties." *Id.*

Modification of spousal maintenance is appropriate if a change in circumstances makes the original amount unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2012). Changed circumstances can be established by showing a substantial increase or decrease in the gross income or need of either the obligee or the obligor. *Id.* The movant for modification bears the burden of demonstrating a substantial change in circumstances and that the change renders the current maintenance amount unreasonable and unfair. *Beck*, 566 N.W.2d at 726. When the party seeking modification fails "to present clear proof of a substantial change in circumstances," the district court is not required to consider other statutory factors. *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987).

The district court concluded that appellant did not satisfy his burden to prove that his income and respondent's expenses had substantially decreased. Appellant challenges the district court's conclusion, arguing that many of its findings of fact are clearly

erroneous and that his decreased income and respondent's decreased expenses are a substantial change in circumstances that make the original stipulated amount of his spousal-maintenance obligation unreasonable and unfair.

Appellant's Income

At the time of the dissolution, the parties stipulated that appellant earned a monthly "base income" of $11,000. Based on appellant's 2010 tax return, the district court found that appellant's current monthly salary is $10,000. Appellant challenges the district court's finding. When present income information is available, past income or earning capacity usually is an inappropriate measure of income. *Beede v. Law*, 400 N.W.2d 831, 835 (Minn. App. 1987). But here, any error was harmless because appellant's 2012 pay documentation establishes a greater monthly salary of $10,333. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Based on a monthly salary of $10,333, appellant would demonstrate a decrease in income from his "base income" of $11,000 of only $667 per month. Thus, the district court did not abuse its discretion by concluding that appellant's income does not establish a substantial change in circumstances for purposes of maintenance modification.

Appellant's Expenses

Appellant also asserts that the district court abused its discretion by failing to make a finding on his expenses. But appellant's argument for modification was based only on his assertions of his decreased income and respondent's decreased expenses. *See* Minn. Stat. § 518A.39, subd. 2(d) (stating that on a motion for maintenance modification, the district court must apply all relevant factors at time of motion). The district court

acknowledged appellant's asserted expenses of $6,593 per month, which is a decrease of $498 per month from the time of the dissolution. On this record, the district court's lack of a specific finding on appellant's expenses does not indicate that it did not consider the relevant statutory factors. *See Tuthill*, 399 N.W.2d at 232 (explaining that the district court's findings are sufficient when we can determine from the findings that the relevant statutory factors were considered).

Respondent's Income

At the time of the judgment and decree, the parties stipulated that respondent's monthly income from her employment as a teacher was $2,043. The district court found that respondent's current monthly income from teaching is $1,262, which is a decrease of $781. This finding is supported by the record. The district court also found that respondent is not underemployed.

We reject appellant's assertion that respondent is underemployed. In her affidavit, respondent explains that from August to December 2011, she had a contract position and worked as a substitute teacher. And since January 2012, she worked two substitute-teaching positions, which provided an average monthly income of $1,262. In addition, the record shows that respondent applied for positions for which her education and experience qualify her, but has not received an offer of employment.

Respondent's Expenses

At the time of the dissolution, the parties stipulated that respondent's monthly expenses were $8,272. The district court found that respondent's "reasonable monthly expenses are currently $7,614.00, which includes private school tuition of $945.00, for

which [appellant] has refused to provide contribution." This is a decrease in respondent's expenses of $658 per month. The district court concluded that respondent's current income and expenses support a conclusion that she remains in need of spousal maintenance.

Appellant challenges the district court's finding on respondent's reasonable monthly expenses, arguing that respondent's expenses "decreased dramatically" since the judgment and decree because two children emancipated and respondent sold the marital home. Appellant claims that because "so many of the expenses related to the care of the children" are reduced, "it is no longer fair to continue to pay support to [respondent] to cover those expenses." We disagree.

A decrease of $658 per month is not significant in light of respondent's decrease of $781 in her monthly income from teaching. Moreover, at the time of the judgment and decree, appellant stipulated to paying respondent permanent spousal maintenance of $4,700 per month. Nothing in the stipulation indicates that permanent maintenance in the future was to be based on expenses related to the parties' children. In addition, both parties would have known that, within two years, two of their three minor children would become adults. *See, e.g.*, *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (stating that the circumstances anticipated by a stipulated agreement in divorce decree are baseline against which courts consider whether there is a substantial change in circumstances, and holding that *unexpected* nature of parties' changed circumstances met standard for modification). And the emancipation of minor children is not a factor the district court is required to consider when determining whether there has been a

substantial change in circumstances. *See* Minn. Stat. § 518.552, subd. 2 (2012) (identifying factors to consider in determining maintenance); Minn. Stat. § 518A.39, subd. 2(a) (stating standard to modify spousal maintenance).

Appellant challenges the reasonableness of several of respondent's specific expenses, but points to no evidence in the record to establish that the district court's findings are clearly erroneous. Thus, appellant has not left us "with the definite and firm conviction that a mistake has been made." *Greenwood*, 748 N.W.2d at 284 (quotation omitted).

We conclude that the district court did not abuse its discretion by denying appellant's motion to modify his spousal-maintenance obligation.

II.

The district court has broad discretion in reaching a decision concerning child support. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We will not determine that the district court abused its discretion unless there is "a clearly erroneous conclusion that is against logic and the facts on record." *Id.* "[A] stipulation is an important consideration in determining child support because it often results from barter concerning child support, spousal maintenance, and property settlement." *McNattin v. McNattin*, 450 N.W.2d 169, 171 (Minn. App. 1990) (quotation omitted). "It is well to bear in mind that on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it." *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (quotation omitted).

Appellant and respondent stipulated in the judgment and decree that child support was reserved and agreed that "[b]ased upon current circumstances, [they would] each be responsible for the children when they were in their custody." Currently, M.E. is the parties' only minor child, and it is undisputed that the parties share legal and physical custody of M.E. and share parenting time equally. Appellant argues that the district court abused its discretion by denying his motion to establish child support. We disagree.

Appellant challenges the district court's denial of his motion on two grounds. He asserts that the district court erred by (1) failing to make findings under Minn. Stat. § 518A.34 (2012), which governs the district court's computation of a child-support obligation; and (2) not calculating his and respondent's gross income under Minn. Stat. § 518A.29 (2012). But because the district court did not establish child support, it was not required to make findings applicable when calculating the amount of a child-support obligation. *See Tuthill*, 399 N.W.2d at 232 (stating that in the maintenance-modification context, a failure to show substantially changed circumstances precludes modification, and therefore the district court need not make findings regarding any other statutory factors). And in challenging the district court's findings on his and respondent's income, appellant focuses on the district court's findings in its memorandum of law attached to the order, which the district court "provided solely to address the issue of spousal maintenance." We distinguish a motion to *establish* support from a motion to *modify* support; in an action to establish support, the statute governing modification of support is inapplicable. *Davis v. Davis*, 631 N.W.2d 822, 827 (Minn. App. 2001) ("Where support is reserved in the original decree, a subsequent establishment of a support obligation is

treated as an initial support order rather than a modification of a prior support order.") (quotation omitted).

The record does not reveal a basis on which the district court could have compelled respondent to pay appellant child support. We note that the stipulated judgment and decree contained no conditions or requirements concerning a future action to establish child support. Thus, the stipulated judgment and decree in no way restricts the district court's broad discretion in addressing this motion to establish child support. There is no indication in the record that the parties' circumstances have subsequently changed to an extent that would justify an order that respondent pay child support to appellant.

Because appellant has not shown that the district court's denial of his motion to establish child support was against logic or facts in the record, we conclude that the district court did not abuse its broad discretion in denying appellant's motion.

III.

The district court has "broad discretion" concerning support obligations. *Mancuso v. Mancuso*, 417 N.W.2d 668, 671 (Minn. App. 1988).

The district court granted respondent's motion that appellant pay one-half of the cost of M.E.'s private-school tuition. Appellant argues that this was an abuse of discretion. Appellant asserts that the tuition is an expense that is beyond the marital standard of living because during the marriage he and respondent did not send their children to private school. *See Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App.

2004) (stating that the purpose of spousal maintenance is to allow obligor and obligee to maintain standard of living established during marriage). We disagree.

The district court—with full knowledge of the marital standard of living—found that under the parties' current circumstances, this expense is reasonable. This finding is supported by the record, including evidence that M.E. struggled academically at public school and is now succeeding at the private school and wants to be there. Because we are not left with the definite and firm conviction that a mistake has been made, the district court's finding that the tuition is a reasonable expense is not clearly erroneous.

Finally, we note that the district court did not adjust respondent's and appellant's monthly expenses to reflect its order concerning the payment of M.E.'s tuition. But even if this was error, we would conclude that it was de minimis error that does not require reversal. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (declining to remand for technical, de minimis error).

Affirmed.