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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0482**

In re the Marriage of:
Anthony Hawthorne Jones, petitioner,
Respondent,

vs.

Julie Anne McMahon Jones,
Appellant.

**Filed March 3, 2014
Affirmed; motion denied
Kirk, Judge**

Hennepin County District Court
File No. 27-FA-08-5921

M. Sue Wilson, Tasya Rivera Martin, M. Sue Wilson Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Christopher D. Johnson, Rebecca A. Chaffee, Best & Flanagan LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Hooten, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In this child-support dispute, appellant-mother argues that the district court erred when it awarded respondent-father nunc pro tunc relief after it found that the amount of

his monthly child-support obligation as stated in the parties' dissolution stipulation and judgment was a clerical error. We affirm.

D E C I S I O N

I. Appellant waived her right to appeal the clerical error in the child-support calculation.

Whether to modify child support is discretionary with the district court, and its decision will be altered on appeal only if it resolved the matter in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986).

In October 2009, the parties signed a marital-termination agreement that was incorporated into the dissolution judgment and decree. At the time, appellant Julie Anne McMahon Jones was represented by counsel, but respondent Anthony Hawthorne Jones was pro se. The parties have three children. Under the terms of the November 2009 judgment and decree, respondent's monthly pro rata child-support obligation was \$1,414, which increased to \$1,834 after parenting time and child-care adjustments. Respondent also was ordered to pay temporary spousal maintenance.

In 2011, with the assistance of counsel, respondent moved the district court to lower his support obligations. The family court referee reviewed the terms of the November 2009 judgment and decree and alerted the parties to a suspected error in the calculation of respondent's basic monthly child-support obligation. Since the parties incurred no child-care costs and respondent qualified for a parenting expense adjustment, the referee calculated respondent's monthly child-support obligation to be \$1,244, a

significantly lower amount. The referee held a telephone conference and asked the parties to explain the potential discrepancy. At the conclusion of the hearing, the referee gave the parties the opportunity to address the issue in post-hearing submissions.

In an affidavit, respondent stated that he could not find any basis for his \$1,834 monthly child-support obligation, and speculated that the figure may have been a clerical error caused by the production of multiple drafts of the decree. Appellant submitted a letter and proposed findings to the district court. In the letter, appellant acknowledged that she could not offer any insight as to how the parties calculated respondent's original child-support obligation, and agreed that it should have been set at the pro rata child-support amount of \$1,414 minus appellant's share of dependent health care. Appellant's proposed findings stated that the district court discovered a typographical error in the judgment and decree, which resulted in a decrease in respondent's court-ordered child support, and the district court corrected the error retroactive to the date of the entry of the judgment and decree.

On January 6, 2012, the district court issued its findings and order for modification of spousal maintenance and child support. The district court found that neither party was able to explain the discrepancy in the calculation of respondent's child-support obligation. The district court determined that it was a typographical error and corrected the error nunc pro tunc effective to the date of the original November 2009 judgment and decree. The district court also recalculated respondent's child-support obligation after dependent health care contributions beginning in November 2009.

On February 3, respondent filed a notice of motion and motion for amended findings or a new trial. Appellant did not file a motion for amended findings regarding the retroactive correction of respondent's child-support obligation. In January 2013, the district court issued amended findings further lowering respondent's child-support and spousal-maintenance obligations.

On appeal, appellant argues that the parties' November 2009 judgment and decree correctly states respondent's child-support obligation, and it is not a clerical error. Appellant contends that the parties' child-support and spousal-maintenance obligations were bargained-for elements of the dissolution contract, and respondent agreed to pay a higher amount of child support. Appellant argues that if respondent's child-support obligation was a mistake, respondent could have moved for relief under Minn. R. Civ. P. 60.02(a) within one year after the judgment and decree was entered, but he never did.

As a threshold issue, appellant argues that she preserved her right to appeal when she appealed the district court's January 2013 amended findings, rather than filing a motion for amended findings. Appellant is correct that she was not required to file a motion for amended findings. *See Bliss v. Bliss*, 493 N.W.2d 583, 589 (Minn. App. 1992) (stating that a motion for amended findings is not mandatory but is encouraged), *review denied* (Minn. Feb. 12, 1993). But after the district court issued its January 2012 order correcting respondent's child-support obligation, respondent filed a motion for amended findings or a new trial on February 3, 2012. Respondent's motion also tolled the time for appellant to appeal under Minn. R. Civ. App. P. 104.01, subd. 2. *See Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168, 172 (Minn. 2000) (stating that the

filing of a proper and timely post-decision motion by any party tolls the time for appeal for all parties). The district court did not rule on respondent's motion until the court issued the January 2013 order.

After reviewing the record, we conclude that appellant waived her right to appeal the district court's retroactive correction of respondent's child-support obligation because she failed to raise the issue before the district court. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)). Here, appellant was put on notice by the referee at the telephone hearing that there was a potential discrepancy in the calculation of respondent's child-support obligation. Both parties had the opportunity to file post-hearing submissions to the referee about the potential error. Appellant conceded in her proposed findings that respondent's child-support obligation was a clerical error, and should be corrected retroactively to the date of the original judgment and decree. It is clear from the record that appellant waived the issue.

II. Respondent's motion for attorney fees is denied.

Respondent moves this court for attorney fees in the amount of \$7,358.50 under Minn. R. Civ. P. 139.01, subd. 1, and Minn. Stat. § 518.14, subd. 1 (2012), arguing that appellant engaged in bad faith in bringing this appeal. "An award of attorney fees on appeal rests within the discretion of this court." *Case v. Case*, 516 N.W.2d 570, 574 (Minn. App. 1994). Here, we conclude that appellant raised valid questions about whether respondent's child-support obligation was a mistake or clerical error and the

inherent power of the district court to correct findings retroactive to the date of the judgment. Accordingly, we deny respondent's motion for attorney fees on appeal.

Affirmed; motion denied.