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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2221**

In re the Marriage of:

Jeffrey D. McCallum, petitioner,
Appellant,

vs.

Barbara J. McCallum,
Respondent.

**Filed December 9, 2008
Reversed and remanded
Shumaker, Judge**

Wright County District Court
File No. 86-F3-03-3508

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Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Jeffrey D. McCallum appeals from a district court decision modifying his spousal maintenance-obligation. He contends that the court overestimated his ability to pay maintenance and underestimated his ex-wife's ability to support herself. Because we conclude that the district court abused its discretion in its determination of the maintenance modification, we reverse and remand.

FACTS

Jeffrey D. McCallum and Barbara J. McCallum were married for 27 years and had four children together. Barbara McCallum worked part-time jobs at various times during in the marriage, but was generally a full-time homemaker. The couple dissolved their marriage in November 2004. The original decree contained language indicating that spousal maintenance was intended to be rehabilitative in nature. Specifically, it contemplated that Barbara McCallum would finish school and become a nurse. These events were expected to occur approximately two years from the date of the decree, at which time either party was entitled to move to modify the award, which would be reviewed de novo.

In July 2005, the parties stipulated to amend the original decree, and the court amended the decree accordingly in September 2005. The amended decree provided that Jeffrey McCallum would pay \$2,824 monthly as maintenance to Barbara McCallum until either one of them died or Barbara McCallum remarried. Jeffrey McCallum was also responsible for maintaining several life, health, disability, and automobile insurance

policies for and on behalf of Barbara McCallum. In February 2007, Jeffrey McCallum sought modification of his amended spousal-maintenance obligation based on Barbara McCallum's failure to finish school or obtain gainful employment, his medical condition, and the bankruptcy of his business.

The district court held an evidentiary hearing on the motion to modify. Jeffrey McCallum testified that he was diagnosed with throat cancer in 2003, and over the course of several years underwent three surgeries and two radiation therapies for treatment. His illness affected his business, Lundallum, Inc. (d/b/a Marksman Construction Company), and in April 2006 the company went bankrupt. The company's assets were sold to a Marksman employee for approximately \$14,300. This employee began Rich Construction the day after Marksman ceased operations, and hired Jeffrey McCallum as "Senior Account Executive." He is currently employed in this position.

In September 2007, the court issued an order modifying Jeffrey McCallum's spousal-maintenance obligation. The court found that the amended judgment and decree did not place an obligation on Barbara McCallum to finish her nursing degree or obtain gainful employment, and placed no conditions on the duration of spousal maintenance other than death of a party or Barbara McCallum's remarriage.

The court then calculated Jeffrey McCallum's income based on his "Exhibit A" and two of his paycheck stubs, and found he had a monthly net income of \$4,917.85. "Exhibit A" and the paycheck stubs included several monthly allowances from Jeffrey McCallum's employer for gas, truck payments, and health insurance. The court calculated Jeffrey McCallum's net income by adding \$1,509.43 (bi-weekly net pay) and

\$760 (bi-weekly allowances) to equal \$2,259.43. Then, the court multiplied \$2,259.43 by 2.167 (the correct factor for calculating monthly income from bi-weekly pay) to equal \$4,917.85 in monthly net income. The court found that there was no substantial difference between Jeffrey McCallum's current monthly net income and his prior monthly net income of \$5,101.30. The court also found that Jeffrey McCallum had received a \$4,000 net-bonus, but did not include this amount in the calculation.

At the hearing on the motion to modify, Jeffrey McCallum claimed living expenses of approximately \$7,242. However, he submitted "Exhibit B" which totaled his monthly expenses as \$5,152.64. In the exhibit, he deducted the allowances earned on his paycheck as expenses. The court found several of his expenses unnecessary, including payments for his adult-son's health insurance and \$160 for cigarettes. In calculating his expenses, Jeffrey McCallum did not include his \$2,824 monthly spousal maintenance payment. Nor did he include payments on (1) the mortgage for the cabin; (2) a \$1,500 debt to the Mayo clinic; (3) \$40,000 in credit card debt; (4) \$330 debt to a dentist; (5) \$78,000 promissory note to his father; (6) \$60,000 in back taxes to State of Minnesota; and (7) \$999 owed to the IRS. The court balanced expenses that Jeffrey McCallum failed to include with those the court found unnecessary, and consistent with his Exhibit B, found his original calculation of \$5,152.64 was "within reason." The court found that his monthly expenses had nearly doubled since the time of the amended order; that this was attributable to his assumption of health, life, and automobile insurance for Barbara McCallum's benefit, which were no longer covered by his employer; and that

this constituted a substantial change in circumstances justifying modification of his spousal-maintenance obligation.

Finally, the court considered Barbara McCallum's expenses and her ability to support herself. She testified that she had interviewed and received offers for approximately 12 different positions, but that she did not take them because they were low-paying with poor health benefits. She said that she is unable to lift more than 40 pounds because of a recent surgery, and that this prevented her from doing certain work. Although Barbara McCallum stood to gain approximately \$100,000 from the sale of the marital home, the court found that she lacked sufficient property to support her reasonable needs because the house had been on the market for two years and had not been sold. Furthermore, the court found Barbara McCallum needed at least \$3,400 per month to cover her monthly expenses and maintain her marital standard of living. The court imputed \$1,282 in monthly net earnings to Barbara McCallum because she had no mental or physical disabilities which prevented her from working; this left her with a shortfall of \$2,118 to cover her expenses.

Based on these findings, the court reduced Jeffrey McCallum's monthly maintenance payment from \$2,824 to \$2,118, and ordered that he cease paying health-insurance premiums for Barbara McCallum and his adult sons. Jeffrey McCallum appealed.

D E C I S I O N

We review spousal-maintenance awards and orders modifying maintenance for an abuse of discretion. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review*

denied (Minn. Aug. 5, 2003). We will not find an abuse of discretion unless the district court's decision is clearly erroneous and unsupported by logic or facts in the record. *Cisek v. Cisek*, 409 N.W.2d 233, 235 (Minn. App. 1987) (citing *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)), *review denied* (Minn. Sept. 18, 1987). While the court has broad discretion in setting the amount of maintenance, the award must be supported by adequate findings. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (requiring findings to support maintenance rulings).

Jeffrey McCallum contends that the court erred in calculating his net monthly income when it included his monthly allowances as income and construed a loan from his employer as a bonus. He claims his monthly net income is \$3,245.49, but it is unclear how he arrives at this number. It is apparent from the order that the court did not include his bonus or loan in calculating his income—that point is moot—and even if the court did not include his allowances as income, his net monthly would be \$3,270.93 ($\$1,509.43 \times 2.167$), not \$3,245.49. Regardless, we are concerned that the court may have overestimated Jeffrey McCallum's ability to pay maintenance in the modified amount of \$2,118 per month.

The court did not detail how it arrived at its total of \$5,152.64 for Jeffrey McCallum's monthly expenses. It removed the following items from his expenses: (1) \$160 for cigarettes; (2) \$75.80 for one son's health insurance; (3) \$186.25 in auto insurance for sons; and (4) \$393.78 for Barbara McCallum's health insurance (\$815.83 total deducted). The court noted Jeffrey McCallum had failed to include several large expenses in his list, and concluded that "such debt payments would be at least equal

to the unnecessary payments above, and the \$5,152.64 figure is within reason.” It is unclear how the court reached this figure because the court did not detail the expenses included in its calculations (*i.e.* did it offset the amounts for gas, truck payments, and health insurance payments that were included as allowances in his income against the money paid out for these expenses each month?). Considering the amounts involved, detailed findings on this issue are important.

Furthermore, assuming these figures are correct, it is unclear that Jeffrey McCallum has the ability to pay \$2,118 in maintenance each month and cover his expenses. Minn. Stat. § 518.552, subd. 2(g) (2006). There seems to be no possibility that an individual can pay over \$5,000 in expenses with income of \$2,799.85 (the amount left over after his spousal maintenance payment). Although there are no guidelines for determining the level of spousal-maintenance awards, it must be reasonably clear that an obligor has the ability to pay whatever award is made and meet his own reasonable expenses. *Beckstrom v. Beckstrom*, 385 N.W.2d 402 (Minn. App. 1986) (finding abuse of discretion where ex-husband lacked ability to pay). Based on the court’s findings, it is not apparent that the maintenance award was proper. Thus, the matter must be remanded for further proceedings as the district court deems appropriate.

Reversed and remanded.