STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1502

In re the Marriage of: Lori Elaine Coleal, petitioner,
Appellant,

vs.

David Michael Coleal,
Respondent.

Filed May 15, 2017
Affirmed
Stauber, Judge

St. Louis County District Court
File No. 69DU-FA-08-210

Larry M. Nord, Orman Nord & Hurd, P.L.L.P., Duluth, Minnesota (for appellant)

James J. Vedder, Brittney M. Miller, Moss & Barnett, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Stauber, Judge; and Klaphake, Judge.*

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

STAUBER, Judge

In this spousal-maintenance dispute involving a provision in the parties' dissolution judgment for de novo "review" of the existing maintenance award, appellant-

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

wife argues that the district court abused its discretion by (1) denying her motion for an evidentiary hearing; (2) denying her motion to compel respondent-husband to respond to interrogatories and requests for documents; and (3) reducing appellant's maintenance award. We affirm.

FACTS

Appellant Lori Coleal and respondent David Coleal were married in 1992 and had three children during the marriage. In 2008, appellant petitioned to dissolve the marriage. After much litigation, including two appeals to this court, the district court entered an amended judgment on April 12, 2012. The amended judgment granted the parties joint legal custody of their children, with sole physical custody awarded to appellant. It also ordered respondent to pay child support of $1,893 per month, and permanent maintenance of $10,000 per month. The amended judgment further stated that the "issue of maintenance is subject to a motion for modification which may be made by either party pursuant to [Minn. Stat. §] 518.552, subd. 3. A review shall take place, upon either party's motion, after June 15, 2015, the projected date of [appellant's] completion of her current education program."

Respondent appealed from the amended judgment, arguing, among other things, that the provision in the judgment stating that the maintenance award is subject to "review" does not address the standard for that review. This court ruled "that a de novo standard should be applied at any 'review'" of spousal maintenance. *Coleal v. Coleal*, No. A12-1009, 2013 WL 1187987, at *3 (Minn. App. Mar. 25, 2013) (*Coleal III*). As a

result, this court "direct[ed] the district court to assure that any future requested review of maintenance will address that question de novo." *Id.*

In December 2015, respondent moved to terminate or substantially reduce appellant's maintenance award. The parties exchanged discovery, and in respondent's answers to interrogatories, he acknowledged that "he has the ability to pay spousal maintenance as ordered under the [a]mended [j]udgment and [d]ecree." However, respondent refused to provide any further financial information. In response, appellant moved to compel production of respondent's financial information. She also moved for an evidentiary hearing on respondent's maintenance motion.

After the parties submitted affidavits, the district court held a hearing on the parties' motions in March 2016. Following the hearing, the district court denied appellant's motion for an evidentiary hearing and to compel discovery. The district court also considered respondent's spousal-maintenance motion and found that appellant "is not able to provide adequate self-support considering the standard of living the parties had during the marriage and all other relevant circumstances." But the court also found that appellant is now employed as a registered nurse earning $3,510 per month. Thus, the district court reduced appellant's spousal-maintenance award to $6,500 per month. Appellant subsequently moved for amended findings, which was denied. This appeal followed.

D E C I S I O N

I.

Appellant challenges the district court's denial of her motion for an evidentiary hearing. Generally, we review the decision of whether to hold an evidentiary hearing on a motion for an abuse of discretion. *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007). But whether the district court applied the correct legal standard is a question of law that is reviewed de novo. *Ayers v. Ayers*, 508 N.W.2d 515, 518 (Minn. 1983).

In denying appellant's request for an evidentiary hearing, the district court found: "Both parties had the ability and opportunity to submit affidavits and supporting documentation regarding the factors for an award of maintenance." Appellant contends that "[t]his is not the standard for determining whether to allow an evidentiary hearing." Appellant argues that instead, the district court should have considered whether there is "good cause to hold an evidentiary hearing."

We agree. Generally, family law motions are decided on written submissions. Minn. R. Gen. Pract. 303.03(d)(1); *see also* Minn. R. Civ. P. 43.05 (stating that "[w]henever a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties"). "Under the Minnesota Rules of General Practice, it is presumed that a motion in family law, other than a motion for contempt, will be decided without an evidentiary hearing, unless the district court determines that there is good cause for a hearing." *Thompson*, 739 N.W.2d at 430 (citing

Minn. R. Gen. Pract. 303.03(d)). A failure to show "good cause" justifies denying an evidentiary hearing. *Id.* at 432.

Appellant asserts that because the "good cause" standard is not defined, this is "a case of first impression defining when there is 'good cause' to require an evidentiary hearing on a motion for de novo review of spousal maintenance under" Minn. Stat. § 518.552. She argues that under *Thompson*, a summary-judgment standard should be applied to determine whether there was good cause to hold an evidentiary hearing. Appellant contends that when "viewing the evidence submitted by affidavits in the light most favorable to [her], there were genuine issues of material fact regarding her net income and expenses, and [respondent's] ability to meet his own needs while meeting hers." Thus, appellant argues that, under this summary-judgment standard, she established good cause for an evidentiary hearing.

We acknowledge that the "good cause" standard is not specifically defined. *See Thompson*, 739 N.W.2d at 430 (stating that the "definition of 'good cause' has yet to be articulated"). And appellant is correct that in *Thompson*, this court applied a summary-judgment standard to determine whether there was good cause to conduct an evidentiary hearing when a party moved to reopen a dissolution judgment and decree. *Id.*; *see also Doering v. Doering*, 629 N.W.2d 124, 130-32 (Minn. App. 2001) (concluding that "[b]ecause appellant's affidavits [were] sufficient to present a fact question of fraud, appellant established good cause for an evidentiary hearing on his motion to reopen the judgment"), *review denied* (Minn. Sept. 11, 2001). But *Thompson* and *Doering* are not dispositive here because they involved motions to reopen dissolution judgments, which at

that point in the proceedings carried a presumption of correctness due to the need for finality. *Thompson*, 738 N.W.2d at 428; *see also Doering*, 629 N.W.2d at 128. Therefore, we decline to hold that the summary-judgment standard should be applied to determine whether there is "good cause" to conduct an evidentiary hearing in the context presented in this case.

Nevertheless, even if we were to adopt appellant's position and apply the summary-judgment standard discussed in *Thompson*, and *Doering*, we conclude that appellant did not establish good cause to hold an evidentiary hearing under that standard. "[T]he summary-judgment standard requires a determination of whether, when viewing the evidence in the light most favorable to the nonmoving party, there are any genuine issues of material fact and whether the movant is entitled to the requested relief as a matter of law." *Thompson*, 739 N.W.2d at 431. "A party cannot rely upon speculation to demonstrate the existence of a genuine fact issue, and a party opposing summary judgment must do more than show that there is a metaphysical doubt as to material facts." *Limberg v. Mitchell*, 834 N.W.2d 211, 219 (Minn. App. 2013) (quotation omitted).

Appellant claims that there is an issue of material fact "regarding her net income and expenses and [respondent's] ability to meet his own needs while meeting hers." But respondent stipulated that "he has the ability to pay spousal maintenance." Thus, there is no issue of fact regarding respondent's ability to pay maintenance because, as the district court found, respondent's admission meant that the district court could have "under the right circumstances, determine[d] that [appellant] is now in need of increased

maintenance, and respondent would be unable to argue the inability to pay such increased amount."

Moreover, the record reflects that appellant failed to create an issue of fact regarding her income and expenses. In support of his motion for de novo review of spousal maintenance, respondent submitted an affidavit discussing whether maintenance should be awarded under Minn. Stat. § 518.552, subd. 1 (2016), and the factors that pertain to the amount and duration of spousal maintenance under Minn. Stat. § 518.552, subd. 2 (2016). In discussing the statutory criteria for an award of spousal maintenance, respondent detailed appellant's income and expenses and provided supporting documentation. Conversely, the affidavits submitted by appellant in response to respondent's motion and in support of her motions provide no evidence of her monthly budget. In fact, appellant provided no evidence rebutting respondent's claim as to appellant's income and expenses, nor did she provide any evidence indicating that her needs have changed since entry of the April 2012 amended judgment and decree. Instead, appellant simply claimed that "the correct figures can be supplied as part of the testimony presented when this matter is properly before the court and all of the information is available." This statement was insufficient to create an issue of fact regarding appellant's income and expenses. *See Limberg*, 834 N.W.2d at 219 (stating that party may not create issue of fact by claiming that critical facts will be developed through cross-examination at trial).

Appellant further argues that there was an issue of material fact regarding her needs because the district court, and this court in *Coleal III*, noted that appellant's budget

in April 2012 omitted taxes on her maintenance award, and did not include money for vacations, personal recreation, eating out, or similar items the parties enjoyed during the marriage. But a party resisting summary judgment "may not rest upon the mere averments or denials of [his] pleadings but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. Here, appellant had the opportunity to present evidence supporting her position and failed to do so. Instead, she simply made bald assertions that her current expenses exceed her expenses as found by the district court in the April 2012 amended judgment and decree. The lack of evidence submitted by appellant pertaining to her income and expenses indicates a failure to create an issue of material fact regarding appellant's need.

Because appellant failed to produce any evidence creating an issue of fact as to her income and expenses, she failed to establish good cause to conduct an evidentiary hearing. Moreover, respondent's motion sought a de novo review of spousal maintenance under Minn. Stat. § 518.552 (2016), and there is nothing in that statute requiring the district court to conduct an evidentiary hearing when establishing spousal maintenance. As our supreme court has noted, "a party is not entitled, as a matter of right to have a motion involving an issue of fact heard and tried on the oral testimony of witnesses." *Saturnini v. Saturnini*, 260 Minn. 494, 496, 110 N.W.2d 480, 482 (1961) (quotation omitted); *see also* Minn. R. Civ. P. 43.05 (stating that when "a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by

the respective parties"). Accordingly, the district court did not abuse its discretion by denying appellant's request for an evidentiary hearing.[1]

II.

Appellant challenges the district court's denial of her motion to compel respondent to provide full and complete answers to interrogatories and responses to requests for documents. "The district court has broad discretion in granting or denying discovery requests. Absent a clear abuse of discretion, the district court's decision regarding discovery will not be disturbed." *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006) (citation and quotation omitted), *review denied* (Minn. Mar. 28, 2006).

Under Minn. R. Civ. P. 37.01(b)(2), a party may request an order compelling discovery in the event of incomplete or nonresponsive discovery requests. But "[d]iscovery must be limited to matters that would enable a party to prove or disprove a claim or defense . . . and must comport with the factors of proportionality[.]" Minn. R. Civ. P. 26.02(b). And "[d]iscovery rules are not meant to be used for fishing expeditions." *State v. Hunter*, 349 N.W.2d 865, 866 (Minn. App. 1984) (quotation omitted).

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[1] Appellant's issue statement asserts that the district court abused its discretion by denying her motion for an evidentiary hearing "or, in the alternative, the opportunity to supplement the record." But aside from this issue statement, appellant makes no argument and cites no authority to support this assertion. It is well settled that when a brief does not contain an argument or citation to legal authority in support of the allegation raised, the allegation is deemed waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). Therefore, appellant has waived the issue.

Appellant acknowledges that her "motion to compel was based on the need for full disclosure from [respondent] regarding his earnings and finances to determine what amount of spousal maintenance he could provide." But respondent stipulated that "he has the ability to pay spousal maintenance." Under Minn. Stat. § 518.552, subd. 2, one of the factors relevant to an award of spousal maintenance is "the ability of the spouse . . . to meet [his] needs while meeting the needs of the spouse seeking maintenance." As respondent points out, by stipulating that he has the ability to pay spousal maintenance, he "essentially proved part of [appellant's] case for her." Because respondent's concession established one of the factors set forth in section 518.552, no further discovery on that issue was necessary. *See* Minn. R. Civ. P. 26.02(b) (stating that "[d]iscovery must be limited to matters that would enable a party to prove or disprove a claim").

Appellant argues that respondent's stipulation that he "could pay up to $10,000 per month was not a sufficient substitute for providing complete information" because it did not provide sufficient information to award maintenance in excess of $10,000 in the event that the district court determined that appellant's need exceeded $10,000 per month. We disagree. As addressed above, appellant failed to provide any evidence that her expenses exceeded the amount established in the April 2012 amended judgment and decree. Thus, evidence that respondent could provide maintenance in excess of $10,000 per month was unnecessary.

Moreover, as the district court found, respondent's concession that he has the ability to pay maintenance allowed the district court to "determine that [appellant] is now

in need of increased maintenance, and respondent would be unable to argue the inability to pay such an increased amount." Therefore, an order to compel discovery was unnecessary because respondent's concession provided the district court with sufficient information to award maintenance in excess of $10,000 per month if appellant established that such an amount was necessary to meet her expenses.

Finally, appellant's motion to compel discovery is more akin to a "fishing expedition" to discover respondent's true income. In other words, appellant appears to seek information regarding respondent's income in order to determine how much maintenance he has the ability to pay so that she can increase the amount of maintenance she seeks. But appellant is not entitled to more maintenance simply because respondent has the ability to pay it. Rather, the district court awarded appellant spousal maintenance because she was unable to meet her expenses to maintain the standard of living established during the marriage. *See* Minn. Stat. § 518.552, subd. 1. Appellant's expenses were was established in the April 2012 amended judgment and decree, and in response to respondent's motion, appellant provided no evidence that her expenses have increased. Therefore, the district court did not abuse its discretion by denying appellant's motion to compel discovery.

III.

In awarding spousal maintenance, the district court must consider all relevant factors, including the financial resources of the party seeking maintenance, the time necessary for the requesting party to acquire sufficient education to become self-supporting, the contribution of both parties to the preservation of marital property, and

the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the requesting spouse. Minn. Stat. § 518.552, subd. 2. "In essence, the district court balances the recipient's needs against the obligor's ability to pay." *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). "[T]he district court is not required to make specific findings on every statutory factor if the findings that were made reflect that the district court adequately considered the relevant statutory factors." *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004).

We review spousal-maintenance determinations for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion when it makes findings unsupported by the record or improperly applies the law. *Id.* "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

Appellant argues that the district court's reduction in her maintenance award "was based on an inaccurate, understated budget in 2012 that failed to consider the amount of income taxes [she] would pay on the spousal maintenance and her earnings, which reduces her net income." Appellant also contends that the April 2012 maintenance award "omitted expenses that should have been included as part of the family's lifestyle during the marriage, such as vacations." Appellant argues that, because the April 2012 award of $10,000 per month in spousal maintenance "had not been sufficient based on the parties' standard of living during the marriage," the district court's decision to use that award as a baseline when reducing her maintenance award was an abuse of discretion.

To support her position, appellant refers to this court's decision in *Coleal III*, which quoted the following finding from the April 2012 judgment and decree:

> Without including possible taxes on the spousal maintenance, the monthly budget for [appellant] and the children is approximately $12,789 per month. The current budget does not include any money for vacations, personal recreation, eating out, or similar items enjoyed by the parties when they resided together in Duluth. [Appellant] spends a significant amount of money per month on horses. She began a horse breeding business that allows her to "write off" losses. The cost of the horse business is included in the budget. A reasonable monthly budget for [appellant] is $12,789.00.

2013 WL 1187987, at *6. This court then stated in a footnote:

> It is also possible to read this finding to suggest that a $12,789 monthly budget for respondent and the children understates both their actual expenses (because $12,789 omits taxes on respondent's maintenance award) and the marital standard of living (because $12,789 omits several expenses typically incurred during the marriage).

Id. at *6 n.5.

Appellant argues that the footnote in *Coleal III* is "instructive and should have been followed by the district court" in considering respondent's motion to reduce his maintenance obligation. But appellant misconstrues the import of the footnote. This court simply stated that it is "*possible*" to read the finding from the April 2012 amended judgment and decree that a $12,789 monthly budget understates appellant's expenses. 2013 WL 1187987, at *6 n.5 (emphasis added). It does not state that a $12,789 monthly budget definitively understates appellant's expenses. Moreover, the language referred to by appellant from *Coleal III* was part of this court's analysis of an award of need-based attorney fees. *See id.* at *5-6. That footnote did not concern a review of the spousal

maintenance award. And appellant never appealed the April 2012 amended judgment and decree. If appellant believed that the district court's award of maintenance in the April 2012 amended judgment and decree "understated" her expenses, she could have appealed that award.

Additionally, as noted above, appellant failed to present evidence concerning her need. By failing to present evidence concerning her monthly budget, appellant provided no basis for the district court to determine that her monthly budget in 2016 exceeded the budget established in the April 2012 amended judgment and decree.

Appellant further argues that the district court's maintenance award was an abuse of discretion because the district court was required to make findings regarding respondent's income and expenses in order to determine respondent's ability to pay more than $10,000 per month in maintenance. But as addressed above, the district court found that respondent admitted his ability to pay maintenance, and the district court construed this admission as a concession that respondent has the ability to pay more than $10,000 per month in spousal maintenance if appellant established such a need. Thus, no additional findings or evidence on this issue were necessary.

In analyzing the spousal-maintenance issue, the district court found that appellant is "not able to provide adequate self-support considering the standard of living the parties had during the marriage and all relevant circumstances." As a result, the district court concluded that appellant is entitled to maintenance under Minn. Stat. § 518.552, subd. 1. The district court then considered the factors set forth in section 518.552, subdivision 2, including appellant's income, the standard of living established during the marriage, the

duration of the marriage, appellant's years as a homemaker, appellant's age and physical and emotional condition, and respondent's ability to pay maintenance while meeting his own needs. After considering all these factors, the district court awarded appellant maintenance in the amount of $6,500 per month.[2] In light of her failure to submit any evidence demonstrating that a different amount was needed, appellant is unable to establish that the district court's maintenance award was an abuse of discretion.

Affirmed.

[2] We note that respondent has also maintained the same level of child support, notwithstanding the fact that two of the parties' children are fully emancipated.