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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1511**

In re the Marriage of: Walter Stance Davis, petitioner,
Appellant,

vs.

Regina Kay Davis,
Respondent.

**Filed September 5, 2017
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-FA-09-2049

Walter S. Davis, Kodiak, Alaska (pro se appellant)

Amanda Porter, Porter Law Office, P.L.L.C., Bloomington, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant-husband challenges the district court's denial of his motion to modify his spousal-maintenance obligation, arguing that the district court abused its discretion because husband demonstrated a substantial change in his income. We affirm.

FACTS

Appellant-husband Walter Stance Davis and respondent-wife Regina Kay Davis married in May 1985 and divorced in 2009 pursuant to a stipulated judgment and decree order (the judgment). Prior to the divorce, husband moved to Alaska for employment, and he continues to live there. Under the judgment, the district court ordered husband to pay \$3,000 per month in permanent spousal maintenance with cost-of-living adjustments based on husband's gross annual salary of \$96,698 and wife's potential annual income of \$20,400.

From 2008 to September 2013, husband worked for Ayak, LLC, earning approximately \$100,000 per year. Additionally, in 2010 he opened Austerman Davis Associates, LLC, with his then-girlfriend, now-wife, C.A., whom he married in 2012. Husband has a 60% ownership interest, and C.A. has a 40% ownership interest in Austerman Davis. On September 30, 2013, husband was fired from Ayak.

In December 2013, husband filed a motion to modify his spousal-maintenance obligation on the basis of his job loss and reduced income. Husband alleged that, since being fired from Ayak, his annual income from Austerman Davis has been approximately \$9,000, or \$750 per month. At the hearing on his motion for modification of spousal maintenance, husband stated that his income from Austerman Davis increased to \$1,500 per month since being fired from Ayak. In April 2014, the district court filed its order denying husband's petition, finding husband's claim of income not credible because it was "unable, due to lack of supporting documentation, to determine [the] income [husband] receive[d] from his self-employment."

In August 2015, husband filed a second motion for modification of spousal maintenance, requesting termination or reduction of his spousal maintenance. Husband alleged that he had been “severely” underemployed since 2013 and that by the end of 2014 his income had “decreased by more than 50%, from about \$100,000 per year to under \$40,000 per year.” Husband also alleged that since opening Austerman Davis, he has never made more than \$20,000 per year from his self-employment. According to husband, his total annual income from Austerman Davis was approximately \$7,200 in 2012, \$13,200 in 2013, and \$15,383 in 2014, but he claimed that he only worked at Austerman Davis in the third and fourth quarter in 2014. Husband also listed unemployment benefits he received from the state of Alaska from 2013 to 2015. In support, husband submitted the following:

1. A self-prepared income chart showing change of income from 2011 to 2014 prepared by husband;
2. 2013 and 2014 federal tax return for husband and C.A.;
3. 2013 W-2 for husband from Ayak;
4. 2013 and 2014 corporate tax return for Austerman Davis;
5. 2013 and 2014 W-2 from Austerman Davis for husband and C.A.;
6. 2013 and 2014 K-1 profit statement for husband and C.A.;
7. 2014 W-2 from contract work husband performed for PAE corporation;
8. 2015 1st and 2nd quarter statements from Austerman Davis; and
9. A self-generated summary of husband’s and C.A.’s various bank account balances from December 2010, December 2011, December 2012, December 2013, December 2014, and June 2015

On April 11, 2016, the district court filed an order denying husband’s motion to modify spousal maintenance. The district court found that husband did not meet his burden of establishing the statutory criteria for spousal modification. The district court found neither husband, nor his reported income, nor his claimed corporate income from Austerman Davis, to be credible. The district court highlighted that many of the documents

husband submitted contained discrepancies that he did not clarify. The district court determined that it would not make a finding as to husband's income because of the court's concerns with husband's credibility and his inability to verify his purported income. Consequently, the district court found that husband failed to demonstrate a substantial change in circumstances.

On May 11, 2016, husband filed an affidavit in support of his motion for amended findings to modify spousal maintenance. On May 13, 2016, husband filed his motion. On May 31, 2016, husband filed a supplemental affidavit to support his motion. In sum, husband's filing with the district court regarding his motion for amended findings included the following:

1. W-2's and tax returns dating from 2009 to 2015;
2. September 2013 employment termination letter and final pay stub;
3. Corporate tax accountant letter;
4. MNSure health-care documentation of coverage for their children;
5. Keybank records from all accounts from 2012 to 2016;
6. Wells Fargo account transactions from 2012 to 2016; and
7. Navy Federal Credit Union account transactions from 2013 to 2016

In July 2016, the district court dismissed husband's motion for amended findings as untimely.¹ The district court also ordered the documents husband submitted with his motion stricken from the record because they were improperly submitted new evidence. Husband appeals.

¹ In an order filed on October 11, 2016, this court concluded that the district court erred in dismissing husband's motion for amended findings as untimely but declined to remand because the district court also addressed the merits of husband's motion.

DECISION

I. The district court’s denial of husband’s motion to modify spousal maintenance was not an abuse of discretion because husband did not demonstrate a substantial change in circumstances.

Husband argues that the district court “erred” in concluding that he did not meet his burden of proving the existence of a substantial change in circumstances that rendered his spousal-maintenance obligation unreasonable and unfair. We disagree.

We review a district court’s decision regarding whether to modify spousal maintenance for an abuse of discretion. *Kielley v. Kielley*, 674 N.W.2d 770, 779 (Minn. App. 2004). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (quotation omitted). We view the evidence in the light most favorable to the district court’s findings and defer to its credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Husband, as the party seeking to modify the award, bears the burden of demonstrating (1) a substantial change in circumstances and (2) that the change renders the current maintenance amount unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2016). A party is entitled to a presumption of a substantial change of circumstances if he or she shows that their gross income “has decreased by at least 20[%] through no fault or choice of the party.” *Id.*, subd. 2(b)(5) (2016).

Husband argues that the district court erred in not presuming a substantial change of circumstance because he proved that his income had decreased by at least 20%. Specifically, husband argues that the district court “erred” in finding that his company’s

gross receipts could be counted as his income. Husband mischaracterizes the district court's ruling.

“[G]ross income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, [and] commissions.” Minn. Stat. § 518A.29(a) (2016). Section 518A.29(a) applies to spousal maintenance because “the legislature intended section 518A.29’s definition of gross income to apply to chapter 518, which governs maintenance.” *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009). We review a district court’s finding on an individual’s income for clear error. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

Here, the district court did not find credible husband’s assertion that, as a 60% owner in Austerman Davis, he has not made more than \$20,000 in a single year given that Austerman Davis’ gross receipts from 2013 and 2014 averaged approximately \$109,483. It is true that gross receipts of a corporation do not equal gross income of an individual. But here, the district court did not impute Austerman Davis’ gross receipts to husband as his income. *See generally*, Minn. Stat. § 518A.30 (2016) (addressing income from self-employment or operation of a business). Rather, the district court noted the wide discrepancy between Austerman Davis’ average gross receipts of \$109,483 and husband’s claim that he has never earned more than \$20,000 per year given his 60% ownership in Austerman Davis.

In addition, the district court found that husband failed to show a 20% decrease in his income due to his lack of credibility, discrepancies in the documents he submitted, and the limited information he provided. As a result, the district court concluded that it would

not make a finding as to husband's income. For example, the district court noted that husband submitted a document stating that his and C.A.'s income for 2014 totaled \$59,344, but his 2014 tax return listed the total of their incomes as \$75,544, with a total adjusted gross income of \$42,982. Additionally, the district court found that the limited information husband provided regarding his various bank accounts for only one month of each year between 2010 and 2015 was highly suspicious and prevented it from corroborating his reported income.

Our careful review of the record supports the district court's factual findings and determination. And we defer to the district court's credibility determinations. *Sefkow*, 427 N.W.2d at 210. Because husband failed to show his income decreased by at least 20%, he was not entitled to the presumption of a substantial change of circumstances. Nor did husband meet his burden to show a substantial change of circumstances. Therefore, the district court did not abuse its discretion in denying husband's motion to modify.

II. The district court's denial of husband's motion for amended findings was not an abuse of discretion because husband has not pointed to any findings of fact that were not supported by the record.

Husband also summarily challenges the district court's July 2016 order denying husband's request for amended findings. We are not persuaded.

"A motion to amend findings must be based on the files, exhibits, and minutes of the court, not on evidence that is not a part of the record." *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). "When considering a motion for amended findings, a district court must apply the evidence as submitted during the trial of the case and may neither go outside the record, nor consider new evidence." *Id.*

(quotation omitted). We will not disturb a denial of a motion for amended findings absent an abuse of discretion. *Preferred Fin. Corp. v. Quality Homes, Inc.*, 439 N.W.2d 741, 743 (Minn. App. 1989).

With his motion for amended findings, husband submitted numerous documents not previously submitted to the district court. The district court's July 2016 order struck these documents from the record. To the extent these documents were not previously submitted, this portion of the district court's order was not erroneous. *See Zander*, 720 N.W.2d at 364. Furthermore, husband has failed to establish which findings of fact from the district court's April 2016 order were clearly erroneous. As mentioned above, husband argues that the district court imputed Austerman Davis's gross income to husband, but this assertion is not supported by the record. Thus, the district court did not abuse its discretion in failing to make amended findings of fact to the April 2016 order.²

Affirmed.

² We decline to review the district court's April 2014 order as that order is not properly before us. *See Nordling v. Northern States Power Co.*, 465 N.W.2d 81, 87 (Minn. App. 1991) (stating that failure to file notice of appeal limits court's review to issues properly raised on appeal).