STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0062

In re the Marriage of: Michele Lura Honderich-Flannery, petitioner,
Respondent,

vs.

Christopher John Flannery,
Appellant.

Filed November 20, 2017
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-FA-08-2078

Ryan M. Schmisek, Schmisek Law Office PLLC, Bloomington, Minnesota (for respondent)

Amy L. Helsene, Larkin Hoffman Daly & Lindgren, Ltd., Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and Worke, Judge.

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

LARKIN, Judge

Appellant-husband challenges the district court's denial of his motion to require respondent-wife to reimburse him for her use of an education fund and to terminate his spousal-maintenance obligation. We affirm.

FACTS

The district court dissolved the marriage of appellant-husband Christopher John Flannery and respondent-wife Michele Lura Honderich on December 16, 2008, pursuant to a stipulated judgment and decree. The judgment and decree established custody and parenting time regarding the parties' children and outlined each party's current financial circumstances. Wife reported monthly income of $478.83 and that she earned $9 per hour working 13 hours per week at a hardware store. She claimed a monthly budget of $6,700 with the children's expenses and $5,500 without the children's expenses. Husband reported a monthly income of $10,416.66 and a monthly budget of $5,500.

The district court ordered husband to pay wife spousal maintenance of $3,000 per month and child support of $1,300 per month. The parties agreed that wife had an obligation to increase her earning capacity to decrease husband's spousal-maintenance obligation. The judgment and decree provided that "[t]he amount of maintenance shall be reviewed four years after the entry of the Judgment and Decree to determine whether the [wife's] education and increased income justifies a reduction in the amount of maintenance paid by [husband]." The judgment and decree also provided that the parties would set aside $40,000 in an education fund for wife and that "[i]f [wife] does not successfully complete

her degree within a reasonable time, unless that occurs through no fault of her own, she shall refund half of the amount used from the account as well as half the remaining balance to [husband]."

On September 21, 2015, the district court adopted a stipulation of the parties in accordance with a binding mediation agreement, and it modified parenting time, child support, and spousal maintenance in accordance with the stipulation. The district court found that wife's monthly income was $2,000 per month, that she worked less than full time, and that she earned $16.59 per hour. The district court reduced husband's spousal-maintenance obligation to $2,500 per month and indicated that it would review the spousal-maintenance obligation in June 2016. The district court also reduced husband's child-support obligation to $800 per month. Lastly, the district court ordered husband to provide $8,100 for wife's continued education in a laboratory-assistant program, pursuant to the parties' agreement.

On August 3, 2016, husband moved the district court to terminate his spousal-maintenance obligation and to order wife to reimburse him for half of the education fund. The district court denied the motion. The district court reasoned that the judgment and decree established wife's budget as $5,500 per month. The court noted that it had reduced husband's maintenance to $2,500 in 2015, pursuant to the parties' stipulation. The district court found no reason to reduce wife's budget and that circumstances had not changed since the parties' 2015 stipulation.

Regarding the education fund, the district court found that wife "presented compelling evidence that her changes in her educational path were caused by legitimate

concerns over which she had little to no control" and concluded that she did not owe husband any reimbursement for her use of the fund. The district court also found that husband had waived his right to object to wife's use of the education fund when he entered into the 2015 stipulation, reasoning that because the 2015 agreement addressed the education fund and provided that wife would receive $8,100 toward further educational expenses, "husband waived any objection to amounts spent out of the education fund prior to September 2015."

Husband requested leave to move for reconsideration. Husband argued that the district court had misconstrued the parties' intent when it found that he would provide "an additional" $8,100 to further wife's education because the parties actually agreed that wife would receive the $8,100 remaining in the education fund and no more. Husband also argued that his agreement to provide the $8,100 should not preclude him from challenging wife's prior use of the fund. The district court denied the reconsideration request, reasoning that whether additional funds were provided did not affect the court's "conclusion that the parties had reached a settlement over the use of these funds and Husband cannot reopen issues regarding how the funds were used prior to the agreement." Husband appeals.

D E C I S I O N

I.

Husband contends that the district court erred when it did not order wife to reimburse him half of the $40,000 education fund. As support, husband assigns error to several of the district court's related findings of fact.

A district court's findings of fact are not set aside unless clearly erroneous. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). "Findings of fact are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009) (quotation omitted), *review granted* (Minn. Sept. 29, 2009) *and appeal dismissed* (Minn. Feb. 1, 2010). "When determining whether findings are clearly erroneous, [an] appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). "We defer to the district court's credibility determinations as to conflicting affidavits." *Knapp v. Knapp*, 883 N.W.2d 833, 837 (Minn. App. 2016). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness*, 607 N.W.2d at 474.

The parties' stipulated judgment and decree provided as follows: "If [wife] does not successfully complete her degree within a reasonable time, *unless that occurs through no fault of her own*, she shall refund half of the amount used from the account as well as half the remaining balance to [husband]." (Emphasis added.) Husband argues that the district court erroneously found that "[wife] had completed her education as a laboratory technician," that "the entire education fund had been spent at the time the parties entered into the Stipulation," and that husband "specifically agreed to [wife's] career in the laboratory assistant field." Because these findings do not materially impact the dispositive issue—whether wife failed to complete a degree within a reasonable time through no fault of her own—any associated error is not prejudicial. To prevail on appeal, an appellant

must show both error and prejudice resulting from the error. *Toughill v. Toughill*, 609 N.W.2d 634, 639 (Minn. App. 2000). We therefore focus our review on the district court's finding that is most relevant: wife "presented compelling evidence that her changes in her educational path were caused by legitimate concerns over which she had little or no control."

Wife submitted evidence regarding many circumstances that prevented her from completing a degree. These circumstances included mental-health issues, allergic reactions, medication issues, and other practical difficulties. Wife's evidence included her diagnoses of major depressive disorder, anxiety, attention deficit disorder, and a parasite-induced gastrointestinal problem. Wife's affidavit opposing husband's motion stated that she was forced to reconsider her course of education after being denied a letter of recommendation based on her attention-deficit-disorder diagnosis. This evidence supports the district court's determination that wife presented compelling evidence showing that the changes in her educational path were beyond her control.

In sum, the evidence supports the district court's determination that wife's failure to obtain a degree was beyond her control. The district court therefore did not err by denying husband's request for reimbursement from wife. Because we affirm the district court's ruling on the merits of husband's request for reimbursement, we do not address husband's argument that the district court erroneously concluded that he waived his right to request reimbursement.

II.

Husband contends that the district court erred by denying his request to terminate his spousal-maintenance obligation. He argues that the district court erred by applying the statutory standard for modification instead of reviewing his request de novo as the parties' stipulation intended. *See* Minn. Stat. § 518A.39, subd. 2(a)-(b) (2016) (stating that maintenance may be modified when a substantial change in circumstance makes the terms unreasonable and unfair and listing bases for determining that terms are unreasonable and unfair).

De novo review of a maintenance award is appropriate when a stipulated order "clearly calls for" and the "parties specifically agreed to" such review. *LeRoy v. LeRoy*, 600 N.W.2d 729, 732-33 (Minn. App. 1999), *review denied* (Minn. Dec. 14, 1999). "In general, a district court should defer to a stipulation entered into by the parties." *Id.* at 732. Courts treat stipulated marriage-dissolution judgments as contracts for purposes of construction. *Grachek v. Grachek*, 750 N.W.2d 328, 333 (Minn. App. 2008), *review denied* (Minn. Aug. 19, 2008).

Husband's challenge to the district court's failure to engage in de novo review under the parties' stipulation is unavailing because husband is not entitled to modification under the stipulation. The 2008 stipulated judgment and decree provided that "[t]he amount of maintenance shall be reviewed four years after the entry of the Judgment and Decree to determine whether [wife's] education and *increased income* justifies a reduction in the amount of maintenance paid by [husband]." (Emphasis added.) The parties reviewed husband's spousal-maintenance obligation in 2014 and reached a stipulated agreement that

was ordered by the district court in 2015. The stipulated agreement provided that husband's spousal-maintenance obligation would be reduced to $2,500 and that the reduced amount would be reviewed again in June 2016. The relevant portion of the resulting 2015 order provides as follows:

> Maintenance shall be reviewed on or about June 1, 2016, and that review shall be limited to the monthly amount of spousal maintenance . . . . The amount of maintenance shall be reviewed to determine whether Wife's *increased income* following completion of the additional education referenced below justifies a reduction in the amount of maintenance paid by Husband.

(Emphasis added.)

The plain language of the order, which is based on the parties' stipulation, shows that any reduction of husband's spousal-maintenance obligation must be based on wife's increased income. In addressing husband's motion to terminate spousal maintenance, the district court found that wife's income had decreased—and not increased—since the most recent stipulated order. Specifically, the district court found that wife's income was $2,000 per month in 2015 and only $817 per month at the time of the 2016 motion hearing.

Husband challenges the district court's findings regarding wife's reduced income. He generally argues that wife's reduced income is voluntary. He specifically argues that "[t]he district court made no finding as to what future income could or should be produced by [wife] with reasonable effort." He also argues that, based on the district court's findings, "a step reduction may also be appropriate."

We do not consider these arguments because husband did not ask the district court to determine wife's future income or impose a step reduction. We generally do not consider

issues that were not raised and determined in district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And we do not fault the district court for not making findings it was not asked to make. *See Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (citing *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003)) (holding that it was not error to decline to make findings regarding party's expenses where party failed to submit party's expenses for consideration). In sum, because husband did not ask the district court to determine wife's future income or impose a step reduction, he cannot assign error to the district court's failure to do so.

As to wife's current financial circumstances, the district court noted that the parties stipulated to wife's standard of living in the original judgment and decree. The court received evidence regarding wife's current income, which shows that she made significantly less at the time of the motion hearing than she made when the district court last modified maintenance. Lastly, the court found that the changes in wife's career path were involuntary. Under these circumstances and the standards that govern our review, husband does not persuade us that the findings regarding wife's reduced income are clearly erroneous.

In the alternative, husband argues that he demonstrated a substantial change in circumstances justifying modification of his spousal-maintenance obligation under the statutory standard for modification. That standard provides:

> The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair:

> (1) substantially increased or decreased gross income of an obligor or obligee;
>
> (2) substantially increased or decreased need of an obligor or obligee . . . .

Minn. Stat. § 518A.39, subd. 2(a). We review a district court's analysis of an alleged change of circumstances, as well as its decision whether to modify the terms of a stipulated judgment and decree, for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997).

Husband asserts that "[t]he frustration of the parties' expectations on which a stipulation was based can satisfy the modification analysis." *See id.* at 709-10 (stating that "the frustration of the parties' expectations" was a substantial change in circumstances warranting modification of spousal maintenance). Husband notes that wife's obligation under the 2008 decree was to "*significantly increase* her earning capacity in order to decrease the amount of maintenance [husband] needs to pay in order for [wife] to meet her budget." Husband argues that wife "has not upheld her share of the parties' agreement" and that wife's "failure to perform with respect to both the Decree and the 2015 Stipulation in contrast to [husband's] consistent performance under both constitute a qualifying change of circumstance upon which a complete review of the entire arrangement is necessary."

Husband's argument that wife failed to uphold her end of the agreement is unavailing given the district court's finding that wife "has not violated the terms of the [judgment and decree] requiring her to 'successfully complete her degree within a reasonable time, unless that occurs through no fault of her own.'" Moreover, the district court found, and the record supports, that wife's income has decreased since the 2015 order

reducing husband's spousal-maintenance obligation, whereas the district court found, and husband does not dispute, that his projected earnings for 2016 included $150,000 in salary and a bonus of $185,000.

On this record, the district court did not abuse its discretion in concluding that husband did not establish a substantial change in circumstances justifying termination of his spousal-maintenance obligation. Because husband has not demonstrated a basis to modify his spousal-maintenance obligation under either the terms of the parties' stipulation or the statutory standard for modification, husband's remaining arguments assigning error to the district court's findings regarding wife's budget are immaterial. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) ("The failure to show [a substantial change in circumstances] precludes a modification of maintenance obligations under Minn. Stat. § 518.64, subd. 2. Therefore, it is not necessary for the [district] court to make findings regarding any other factors addressed in the statute.").

In conclusion, the district court did not err by denying husband's request for reimbursement or his request for termination of his spousal-maintenance obligation. We therefore affirm.

Affirmed.