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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0185**

In re the Marriage of:
Kathleen Ann Gronvall, petitioner,
Respondent,

vs.

Kalmar Gene Gronvall,
Appellant.

**Filed December 11, 2017
Affirmed
Bratvold, Judge**

Goodhue County District Court
File No. 25-FA-06-3979

Andrea Derby Workman, Henschel Moberg Goff, P.A., Minneapolis, Minnesota (for respondent)

Bruce E. Scott, Bruce Scott Law Firm, New Prague, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant-husband challenges the district court's denial of his motion to terminate his spousal-maintenance obligation and to reduce garnishments. Because the district court

did not abuse its discretion in determining that appellant failed to show a substantial change in circumstances rendering the current order unreasonable and unfair, we affirm.

FACTS

Appellant Kalmar Gronvall (husband) and respondent Kathleen Gronvall (wife) were married in 1966. Husband and wife had nine children together. During their marriage, wife was a stay-at-home mother. Husband had several occupations throughout the marriage, but for the last “few years” of their marriage, husband worked as a gold-broker earning “good money.”

Husband and wife separated in 2005. At the time of their separation, only one of their nine children, D.G., born in 1991, was a minor. During the separation, wife and D.G. received public assistance in the form of cash supplements, groceries, and government-subsidized housing and health care. Goodhue County initiated a child support proceeding. In August 2006, an order for support directed husband to pay \$598 per month as of May 1, 2006, for ongoing child support, \$50 per month for medical/dental/health expenses, and \$129.60 per month toward reimbursement of past support. In April 2007, the district court filed an order for temporary relief in the parties’ then pending dissolution proceeding. That temporary order awarded attorney fees to wife and required husband to pay child support and spousal maintenance to wife.

On September 14, 2007, the district court entered a final judgment and decree in the dissolution proceeding. The district court found that husband had assets that he could “divert” to wife, his “testimony regarding financial hardship was not credible,” and he earned “thousands of dollars in net revenue every month.” The district court also

determined that, at the time of trial, husband had “not paid *any* child support, spousal maintenance or attorney fees to [wife].” (Emphasis added.)

Moreover, the court found that it was “impossible” to determine husband’s exact income because husband had provided inaccurate and false information to the court. After examining husband’s exhibits and bank records, the court found that his “gross revenue has been at least \$12,693 per month in 2007 based on his own ledger for the first five months of 2007.” The court also found that husband’s reasonable business expenses were around \$1,000 per month and his personal expenses were around \$1,605 per month. The court concluded that husband “ha[d] the ability to meet his own needs while meeting those of [wife].”

In the final decree, the district court directed husband to pay child support of \$1,439 per month and permanent spousal maintenance of \$358 per month. In making its maintenance determination, the court found that wife worked full-time as a paraprofessional and teacher, earning \$12.55 per hour as a paraprofessional and \$22.00 per hour as a teacher. The court determined that wife’s monthly expenses totaled \$3,031.33. Even with child support payments, wife had a budget deficit, and therefore, the court found that she needed \$358 in spousal maintenance each month to meet her reasonable needs and would continue to need maintenance even after child support ended.

After judgment was entered, husband did not appeal. Husband paid neither spousal maintenance nor child support, and wife obtained several monetary judgments against husband.¹

On February 13, 2013, a federal jury convicted husband of three counts of tax evasion. Husband failed to pay “federal income taxes on approximately \$1.3 million in net income earned during 2006 through 2008 from his business buying and selling gold and silver coins.” *United States v. Gronvall*, 550 F. App’x 331, 331 (7th Cir. 2014) (affirming conviction). Husband was sentenced to 48 months in prison.

On July 20, 2016, husband filed a motion to terminate his spousal-maintenance obligation and reduce the garnishments, arguing that the circumstances of both parties had changed substantially since the district court entered its judgment in 2007.² Both sides submitted affidavits, along with some exhibits, focused on whether circumstances had substantially changed.

Husband’s income and expenses

Husband’s affidavit averred the following: he is 72 years old, retired, and lives “solely” on social security. He was released from prison in May 2016, and placed on probation for three years. Before his release, husband applied for and was awarded social

¹ As of January 18, 2013, monetary judgments against husband totaled \$82,423.95. On October 21, 2015, an additional monetary judgment was entered in the amount of \$13,048. Husband’s brief to this court claims that he owes “over \$140,000” in child support and maintenance.

² According to wife’s affidavit in opposition to husband’s motion, husband’s spousal-maintenance obligation is currently \$422 per month due to cost of living adjustments.

security retirement benefits. Husband submitted his social security notice deeming him eligible for benefits, commencing July 2015, in the amount of \$2,162 each month. Husband also receives \$194 each month in food assistance.

Starting June 2016, the Minnesota Child Support Center began garnishing 65% of husband's monthly income, which is \$1,405 each month. Husband also attested that the IRS garnishes \$113 each month. Additionally, husband's terms of supervised release state that he owes the IRS restitution in the total amount of \$433,450, of which he must pay \$50 each month or 10% of his "net earnings," "whichever is greater."

Husband attested that, after restitution, he had "less than \$500 to pay all the rest of my monthly expenses." Husband's affidavit included a monthly budget of "reasonable expenses," including restitution to the IRS and Bureau of Prisons, and the budget totals \$2,156, nearly the exact amount of his social-security benefit. Husband's affidavit provided no additional information on how he arrived at this budget, nor did he attach any supporting documentation.

Wife's income

Wife's affidavit averred the following: she is 72 years old and employed full time as a special-education teacher. After the dissolution, wife received additional education and obtained her teaching license. Wife stated that their youngest child, D.H., emancipated on September 11, 2009. Wife also averred that she was diagnosed with breast cancer in June 2016 and underwent daily radiation treatments until November 2016. Wife

additionally attested that she maintained full-time employment throughout her cancer treatment, as well as medical treatment for other afflictions in 2009 and 2012.

Husband's motion

Husband moved the district court to terminate spousal maintenance because wife's financial circumstances are "at least as good as" his circumstances. Husband's affidavit averred that he has "no present or future income earning potential."

Wife responded that husband had not offered any evidence to support his claim that he is "retired." Wife argued that husband "appear[ed] to base his 'change in circumstances' solely on his choice to not obtain employment." Wife's affidavit also attested that husband has never voluntarily paid *any* of his maintenance or support obligations. Wife asked the court to reject husband's claimed "reasonable expenses" of \$2,156 each month because he provided "no evidence" to establish his expenses. Specifically, wife pointed out that, when asked to document his expenses in response to discovery requests by wife, husband objected, saying the "question is not clear." Husband did not provide documentation, although he did produce bank statements from February to August 2016.

Wife submitted husband's bank statements to the court and noted the following: (1) the bank statements do not reflect payments for food, rent, or utilities, even though husband stated in answers to interrogatories that this is his sole bank account; and (2) the bank statements indicate that husband's social security benefit is automatically deposited and then withdrawn each month. Moreover, wife noted that husband received his first social security payment on March 1, 2016, as a lump sum of approximately \$17,000 for the previous eight months, but this lump-sum payment was withdrawn the next day.

Similarly, wife noted that husband made other substantial large withdrawals in May and June 2016.

At the motion hearing, husband expanded on the changed circumstances alleged in his affidavit. Husband's attorney argued that husband has a medical condition, cellulitis, that has made it difficult for him to stand for "too long" and has "limited [] what he can do." Counsel also argued that husband's felon status has restricted his ability to find a job. Husband did not offer evidence in support of either assertion.

On December 7, 2016, the district court filed its order denying husband's motion. The district court determined that husband had not proven a substantial change in circumstances or that the current order was unreasonable and unfair. The district court concluded that garnishment "is as provided for by law." Finally, the district court denied wife's motion for attorney fees.

Husband appeals. Before oral argument, this court granted in part and denied in part wife's motion to strike portions of husband's brief that alleged matters outside the record.

D E C I S I O N

I. The district court did not abuse its discretion in denying husband's motion to terminate spousal maintenance.

On appeal, husband argues that the district court erred by denying his motion to terminate his spousal maintenance obligation. A district court may modify an award of spousal maintenance if there has been a substantial change in circumstances that makes the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a), (b) (2016). The circumstances that may warrant modification include a "substantially increased or

decreased gross income of an obligor or obligee” and a “substantially increased or decreased need of an obligor or obligee.” *Id.*, subd. 2(a)(1), (2). A substantial change of circumstances is presumed if, “the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party.” *Id.*, subd. 2(b)(5). The party moving to modify carries the burden of demonstrating both (1) a substantial change in circumstances and (2) that the change renders the existing award unreasonable and unfair. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

This court reviews a district court’s decision regarding modification of spousal maintenance for an abuse of discretion. *Gossman v. Gossman*, 847 N.W.2d 718, 721 (Minn. App. 2014). A district court abuses its discretion 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). This court applies a clear-error standard of review to a district court’s findings of fact concerning spousal maintenance. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

Husband argues that his physical limitations due to health and age limit his ability to return to full-time employment. Wife responds that husband failed to carry his burden to prove that circumstances have changed since 2007. Wife also argues that husband voluntarily created any change in circumstance because he chose to retire; moreover, wife claims that husband retired in bad faith to avoid his obligations.

“Where an obligor voluntarily creates a change of circumstances, the trial court should consider the obligor’s motives.” *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711,

717 (Minn. App. 2009), *review granted* (Minn. Sept. 9, 2009) and *appeal dismissed* (Minn. Feb. 1, 2010). An obligor's decision to retire at a "normal or customary retirement age" weighs strongly in favor of finding that the decision to retire was made in good faith. *Id.* But when the obligor seeks to terminate maintenance, "and the obligee raises a colorable claim of bad faith," the burden shifts to the obligor to show "that the decision to retire was not primarily influenced by a specific intent to decrease or terminate [maintenance]." *Id.*

Based on our decision in *Hemmingsen*, husband's age is within the range of a normal and customary retirement. *Id.* at 717-18 (concluding that, in that case, 65 was generally considered a normal or customary retirement age). In support of her claim that husband is acting in bad faith, wife offered evidence of husband's long history of nonpayment, his conviction for tax evasion, his lack of candor with the court in proceedings leading to the dissolution decree, and his repeated attempts to avoid garnishment. Specifically, wife submitted husband's bank statements to show that immediately after he has received his social security benefits, husband has withdrawn almost the entire deposit, presumably, to avoid garnishments. Because wife made a colorable claim of bad faith, the burden to prove voluntary retirement shifted to husband, who must show that his decision was not motivated by a "specific intent to decrease or terminate maintenance." *Id.* at 717.

The district court's decision implicitly concluded that husband did not carry his burden when the district court found that husband did not prove "a substantial change in circumstances." The district court's decision is fully supported by the record. Husband's affidavit makes conclusory statements that he is "retired." Apart from documenting the monthly amount of his retirement benefit, husband did not produce any documentation

regarding his income, assets, or expenses. Moreover, husband's bank statements do not support his claimed monthly budget and instead indicate that he may be making withdrawals to avoid his obligations. Husband also did not submit any evidence in support of his claim that he has physical or other limitations that prevent him from working. In short, husband "failed to present a complete picture of his assets and debts making [specific] findings impossible." *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987). On appeal, "a party cannot complain about a district court's failure to rule in [his] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Based on this record, the district court did not clearly err in finding that husband had not proven a substantial change of circumstances.

Wife also argues that, even assuming husband is retired, he has not carried his burden to prove that any changed circumstance has rendered the existing award unreasonable and unfair. "Unreasonable and unfair are strong terms which place upon the claimant a burden of proof more than cursory." *Kielley v. Kielley*, 674 N.W.2d 770, 779 (Minn. App. 2004) (quotation omitted). Husband responds that the current award is unreasonable and unfair because, after garnishment and other deductions, he is left with less than \$1,000 each month. Garnishments appear to deplete a substantial portion of husband's current income. But, as already discussed, husband has produced no evidence regarding his general financial situation. In fact, wife, and not husband, submitted husband's bank statements to the court.

In *Kielley*, the court held that, without sufficient information on the appellant's "overall financial picture[]," denying a motion to modify maintenance was not an abuse of discretion. *Id.* at 779-80. *Kielley* concluded that merely asserting "loss of employment alone" did not require that a district court modify spousal maintenance. *Id.* at 779. A similar analysis applies here. Husband has a history of nonpayment, hiding his income, evading taxes, and failing to accurately portray his financial condition to the court. Husband's brief makes broad claims that "nobody can get by on less than \$1,000 per month," but does not document his expenses or assets. Like the spouse in *Kielley*, husband has simply averred that his income has declined, but did not offer any evidence of his "overall financial picture[]." *Id.* Thus, we conclude that the district court did not abuse its discretion by ruling that husband failed to show that the existing decree is unreasonable and unfair.

II. Despite the district court's failure to make detailed findings, remand is not necessary because the district court's conclusions are reasonably clear from the record.

Husband argues that because the district court failed to issue detailed findings to support its decisions, remand is required. Best practices call for a district court to make specific and detailed findings. *See Kelzenberg v. Kelzenberg*, 352 N.W.2d 845, 847 (Minn. App. 1984) ("[T]he trial court failed to make specific findings . . . and it is better practice to make such findings . . ."). But appellate courts have held, "where the record is reasonably clear and the facts not seriously disputed, the judgment of the trial court can be upheld in the absence of trial court findings However, where the record is not clear and the facts are in dispute, findings of fact by the trial court, made pursuant to [Minnesota Rule of Civil Procedure] Rule 52.01, should be made." *Roberson v. Roberson*, 296 Minn.

476, 478, 206 N.W.2d 347, 348 (1973). Remand is not necessary if we are able to infer findings from the district court's conclusions. *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996).

After careful review of the appellate record and the district court's order, we conclude that the record is "reasonably clear," the facts are "not seriously disputed," and we are able to infer the necessary findings. *Roberson*, 206 N.W.2d at 348. Husband's claim of "physical limitations" does not warrant findings. Husband's initial affidavit in support of his motion to terminate did not include any references to his inability to find or perform work, nor did he supplement his affidavit with other evidence. We conclude that the district court's order was "sufficient to indicate that the decision was based on appellant's failure to present clear proof of a substantial change in circumstances and it is not necessary to remand the matter for further findings." *Tuthill*, 399 N.W.2d at 232.

Because the district court's decision is supported by the record and the court did not improperly apply the law, we affirm the district court's order denying husband's motion to terminate his spousal-maintenance obligation.

III. The district court did not err in denying husband's motion to reduce the monthly garnishment amount.

Husband argues that the district court erred in denying his motion to reduce the amount garnished each month. The district court ruled that the current arrangement is as provided for by law. Minn. Stat. § 571.922(b)(4) (2016) provides that garnishments for child support may not exceed, "65 percent of the judgment debtor's disposable income." Husband receives social security payments of \$2,162 per month, and of that amount,

\$1,405 is garnished by the Minnesota Child Support Center for child support. In other words, husband's garnishment is set at 65%, the statutory maximum.

The district court has equitable discretion to reduce the amount being garnished. *LaFreniere-Nietz*, 547 N.W.2d at 898. The district court's equitable power in dissolution actions authorize it to "grant relief that is required in [each case] to justly deal with the interests of the parties." *Scott v. Scott*, 373 N.W.2d 652, 654 (Minn. App. 1985). We review equitable determinations for an abuse of discretion. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011). Because the court's decision refusing to reduce the monthly garnishment amount was within its equitable power and not an abuse of discretion, we affirm.

Affirmed.