STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0293

In re the Marriage of: Dennis D. Dickinson, petitioner,
Appellant,

vs.

Marymargaret Dickinson,
Respondent.

Filed December 3, 2018
Affirmed
Florey, Judge

Washington County District Court
File No. 82-FA-15-4665

Viet-Hanh Winchell, Susan D. Olson, Galowitz • Olson, P.L.L.C., Lake Elmo, Minnesota (for appellant)

Linda S.S. de Beer, Jenna K. Monson, de Beer & Associates, P.A., Lake Elmo, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

FLOREY, Judge

Appellant-husband challenges the district court's modification order increasing his spousal-maintenance obligation. He argues that, although the district court found that he had a substantial increase in income, respondent-wife must have shown an increased need in order to justify modification. Additionally, he argues that the district court erred in

including his overtime income and profit-sharing bonus and that its calculation of respondent's income and expenses was clearly erroneous. Because the district court's factual findings are not clearly erroneous and the district court did not abuse its discretion by increasing appellant's spousal-maintenance obligation to $7,000 per month, we affirm.

FACTS

The parties were married in 1999 but dissolved the marriage in 2017. At the time of the dissolution, the parties had a 16-year-old minor child. The parties were granted joint legal and joint physical custody of the child, but the child's primary residence was to be with respondent. Appellant is a pilot for a commercial airline, and respondent is self-employed as a stylist/cosmetologist. During their marriage, the parties enjoyed a comfortable standard of living. They owned multiple assets, including several real-estate properties; vehicles; and bank, brokerage, and retirement accounts.

Following a two-day trial in December 2016, the district court found that appellant, who had been the family's primary wage-earner, had the ability to meet his own needs while helping respondent meet hers. After considering each factor set forth in Minn. Stat. § 518.552, subd. 2 (2016), the court ordered appellant to pay respondent $5,000 per month in permanent spousal maintenance.

The district court found that appellant had a gross monthly income of $19,727 and a net monthly income of $12,424. Although appellant earned significantly more in 2013 and 2014, the district court found that—based on appellant's testimony—he would be reducing his monthly average flight hours due to his health condition, and, therefore,

bringing home less income.[1] The court also determined that he had reasonable monthly expenses of $6,275.

The district court found that respondent had, before tax, monthly income of approximately $2,512, and reasonable monthly expenses of $7,200 for herself and the parties' minor child. The court also noted that respondent would receive a cash equalizer from appellant of approximately $100,000; one-half of the proceeds from the sale of the homestead, which had a fair market value of $1,065,000; and one-half of the retirement accounts.

The district court found that "[r]espondent lost earnings and employment opportunities through the parties' decision to have her remain home with the minor child" while appellant worked significant hours as a pilot. The court concluded that "[r]espondent lack[ed] sufficient resources, including marital property apportioned to her, to provide for her reasonable needs." It determined that awarding respondent spousal maintenance of $5,000 per month and child support of $1,094 per month would give her approximately $6,900 per month net income and leave appellant with a net income of approximately $6,300 per month. The court stated:

> While this maintenance award will leave each party short of the expenses that they claim are reasonable given the

[1] Appellant suffered a heart attack in 2014 and was subsequently on medical leave and then disability leave until October 2015. Although the average pilot flies 75-85 hours per month, appellant, prior to his heart attack, was flying significantly more, often up to 120 hours per month. Appellant testified that his doctors advised him that the stress and demands of his work, as well as a genetic predisposition, contributed to his heart condition. He testified that his doctors discouraged him from flying more than 80 hours per month, and that retirement was a possibility depending on his health. The district court found his testimony about his work limitations to be credible.

> standard of the marriage, and leave respondent short of her expenses as reduced by the Court, it is not reasonable for the parties to believe that they can maintain their marital lifestyle given the health limitations on [appellant's] earning potential. The Court has taken this into account when awarding spousal maintenance.

In the fall of 2017, respondent moved the district court to modify the permanent spousal-maintenance award. Through newly acquired information, respondent discovered that appellant was earning approximately $18,000 more per month in gross income than he had represented to the court. Under a workers' agreement that went into effect two weeks before the parties' dissolution-of-marriage trial, appellant was entitled to a retroactive wage increase beginning January 1, 2016.

Respondent also learned that appellant was averaging 84.46 flight hours per month, which, she argued, contradicted his testimony that he only intended to fly a monthly average of 75 hours. Based on appellant's 2016 W-2 and his wages as of August 2017, respondent argued there had been a substantial change in circumstances rendering the original maintenance award unreasonable and unfair.

Appellant opposed respondent's motion, arguing that he had not been made aware before trial of the workers' agreement retroactively increasing his pay, nor did he intend to maintain the number of flight hours he had recently been averaging. He argued that he temporarily had to fly more hours each month in order to meet his financial obligations resulting from the divorce decree, but that his intention to reduce his hours remained.

Following a hearing on respondent's motion, the district court ordered appellant to pay an additional $2,000 per month in spousal maintenance, totaling $7,000 per month and

commencing October 1, 2017. The court found that through the retroactively applied workers' agreement, appellant received an average of $25,682 gross income per month for 2016. Based on appellant's August 15, 2017 paystub, the court found that he was averaging $37,676 gross income per month, or $23,725 net income per month after subtracting the average deductions and taxes.

The district court concluded that, based on appellant's increased wages with the adoption of the workers' agreement, much of the effect of his health limitations on his income had been alleviated. The court determined that even if appellant reduced his work schedule to 75 flying hours per month, the industry standard, he would still have $12,840 per month to satisfy his needs.

The district court also found that respondent's financial circumstances had changed since the initial maintenance order. The court determined that she had reasonable monthly expenses of $7,714 and that her monthly gross income had decreased by approximately $500, leaving her with $2,093 per month of gross income after business expenses.

Based on the above, the district court concluded there had been a substantial change in circumstances rendering the original order of spousal maintenance unfair and unreasonable. The court found that the substantial increase in appellant's income would "allow an award of spousal maintenance sufficient to meet the financial needs of [r]espondent that were left unmet by the previous award."

In January 2018, appellant moved for amended findings, proposing, instead, a modified amount of $5,500 per month in spousal maintenance. He argued that the district court erred in its modification of spousal maintenance, contending that his average net

monthly income was substantially lower than the court had calculated. He also argued that any hours he flew over the standard 75 per month was considered overtime and not subject to respondent's maintenance award, and further, that respondent was not entitled to his "post-divorce profit sharing bonus."

Appellant also argued that the court's calculation of respondent's income and expenses was inaccurate. He contended that rather than increasing the maintenance award by $2,000 per month, the court should have found an additional $500 per month sufficient to meet respondent's needs. Ultimately, the district court denied appellant's motion, deeming it a request for reconsideration of the modification order pursuant to Minn. R. Gen. Prac. 115.11,[2] and this appeal followed.

D E C I S I O N

I. The district court did not abuse its discretion by increasing appellant's spousal-maintenance obligation from $5,000 to $7,000 per month.

A. The district court's calculation of appellant's income was not clearly erroneous.

Appellant argues that the district court abused its discretion in modifying spousal maintenance from $5,000 to $7,000 per month based upon inaccurate calculations of the parties' incomes and monthly living expenses. "A [district] court has wide discretion in determining spousal maintenance." *Haasken v. Haasken*, 396 N.W.2d 253, 259 (Minn.

[2] Although appellant argued below that his motion was one for amended findings and not a motion for reconsideration, appellant has failed to raise the issue on appeal. Because appellant has not briefed the issue, nor cited to any legal authority, we deem this issue waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating an issue not briefed on appeal "must be deemed waived").

App. 1986). An appellate court reviews a district court's decision regarding whether to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). 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).

Unless the district court's findings of fact are clearly erroneous, they must be upheld. Minn. R. Civ. P. 52.01; *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see also Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004) ("A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous."). We view the record in the light most favorable to the district court's findings and defer to its credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

A district court may modify an award of spousal maintenance based on a substantial change in circumstances rendering the existing award "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2 (2016). The circumstances that may warrant modification include a "substantially increased or decreased gross income of an obligor or obligee." *Id.*, subd. 2(a)(1). A district court also must consider the statutory factors that are relevant to an initial award of spousal maintenance. *Id.*, subd. 2(e) (citing Minn. Stat. § 518.552). The party moving to modify a spousal-maintenance award bears the burden of demonstrating a substantial change in circumstances that makes the existing order unfair and unreasonable. *Hecker*, 568 N.W.2d at 709.

Appellant argues that "[a]n increase in the paying spouse's income is not in itself a reason to increase spousal maintenance" and that "[r]espondent must show an increased need to justify modification." We reject this argument. It is undisputed that the district court acknowledged that the maintenance awarded to respondent in the dissolution judgment was insufficient to allow her to meet her reasonable monthly expenses at the marital standard of living. This court has stated:

> The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances. Thus, a maintenance obligor has a duty, to the extent equitable under the circumstances, to support the maintenance recipient at the marital standard of living. . . . Indeed, if a substantial increase in the income of a maintenance obligor renders the existing maintenance award unreasonable and unfair, a maintenance obligation can be modified, despite the lack of an increase in the maintenance recipient's reasonable monthly expenses.

Peterka, 675 N.W.2d at 358-59 (citations and footnote omitted). Further, at oral argument before this court, appellant's counsel candidly conceded there was a substantial change in circumstances based solely on appellant's increased income. We appreciate counsel's candor on this point.

Based on appellant's increased income and the court's initial finding that the original order was unable to sufficiently provide for respondent's needs, we affirm the district court's determination that there was a substantial change in circumstances rendering the provisions of the original decree unreasonable and unfair.

Next, we consider whether the district court erred, as appellant contends, in including appellant's overtime pay and profit-sharing bonus in its calculation of his 2017 income. Appellant argues that his overtime income should not have been included in the calculation of his wages because his excess flying hours were voluntary, not a condition of employment, and occurred subsequent to the dissolution as a means to manage his divorce-related financial obligations. Respondent, on the other hand, argues that the discussion of overtime income in the modification statute, Minn. Stat. § 518A.39, subd. 2(e), applies exclusively to child-support modifications.

Initially, we note that maintenance is an award of "payments from the future income or earnings of one spouse for the support and maintenance of the other." Minn. Stat. § 518.003, subd. 3a (2016). The supreme court has ruled that the "income" from which maintenance payments are made is the "gross income" defined in Minn. Stat. § 518A.29 (2016). *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009). Under Minn. Stat. § 518A.29, and subject to certain exclusions and deductions not at issue here, "gross income includes any form of periodic payment to an individual[.]" "Gross income," however, "does not include compensation received by a party for employment in excess of a 40-hour work week, provided that [certain conditions are met.]" Minn. Stat. § 518A.29. Here, the district court did not find the existence of the conditions allowing an exclusion of overtime income. Therefore, the district court's inclusion of appellant's overtime in his income for maintenance purposes is not inconsistent with the statutory definitions.

Regarding appellant's argument that, under Minn. Stat. § 518A.39, subd. 2(e), his overtime income should not be used to determine his ability to pay maintenance, his

argument requires us to examine the meaning of the statute. We review issues of statutory interpretation de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). We start by looking at the language of the statute to see whether it is clear or ambiguous. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the language is unambiguous, we do not engage in any further construction; rather, we interpret the statute's text according to its plain meaning. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010).

Minn. Stat. § 518A.39, subd. 2(e), governs the modification of both spousal maintenance and child support. It provides, in relevant part:

> On a motion for ***modification of maintenance***, including a motion for the extension of the duration of a maintenance award, the court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under section 518.552 that exist at the time of the motion. On a motion for ***modification of support***, the court:
> . . . .
> (2) shall not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the court finds, that:
> (i) the excess employment began after entry of the existing support order;
> (ii) the excess employment is voluntary and not a condition of employment . . . .

Minn. Stat. § 518A.39, subd. 2(e) (emphasis added). Based on a literal reading of the statute, we conclude that the district court did not clearly err in including appellant's "overtime income" because the statute does not explicitly preclude such a consideration.[3]

[3] Notwithstanding our conclusion that the district court was not precluded from considering overtime pay in its calculation of income, we highlight the district court's finding that "[e]ven without the additional hours, [appellant's] increased income with the adoption of

Appellant also argues that the district court erred in including his profit-sharing bonus in the calculation of his 2017 gross income. The district court did not specifically address this question. Therefore, the district court either did not consider the question or it implicitly rejected appellant's argument. If the former, the question is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, appellate courts address only those questions previously presented to and considered by the district court). If the latter, the district court's rejection of the question is consistent with the idea that raising a question for the first time in a motion for amended findings is "too late" for the question to be properly presented to the district court. *Allen v. Central Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939); *see Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (stating that an issue is raised "too late" if it is first raised in a motion for a new trial); *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (citing these aspects of *Antonson* and *Allen* in a family law appeal), *review denied* (Minn. Oct. 15, 2002). And a district court cannot abuse its discretion by rejecting an argument that is not properly before it.

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the [workers' agreement] has alleviated much of the effect of [appellant's] health limitations on his income." The district court found that even without the overtime pay, appellant's net income was "substantially more . . . than the [c]ourt previously found that he earned for 2016." Based on the findings in the district court's modification order, we conclude there was a substantial change in circumstances based on appellant's income *with or without* the overtime pay.

B. The district court's calculation of respondent's income and expenses was not clearly erroneous.

Appellant's main contention at oral argument before this court—since his counsel conceded, after all, that there was a substantial change in circumstances based solely on appellant's increased income—was that the district court abused its discretion by increasing his monthly maintenance obligation by $2,000 when respondent's financial needs did not increase by more than $1,000.

The appellate courts will not usurp the district court's role as factfinder. *Dobrin*, 569 N.W.2d at 202 (reiterating that the supreme court has "criticized before the court of appeals' misapplication of the scope of review when it has usurped the role of the [district] court by reweighing the evidence and finding its own facts") (quotation omitted). We are "mindful of the [district] court's extensive commentary on the record in its response to appellant's request for different findings of fact." *Vangsness*, 607 N.W.2d at 472. To successfully challenge a district court's findings of fact, the moving party "must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Id.* at 474. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.*

The dissolution judgment found that respondent's average monthly expenditures were $7,714 (exclusive of attorneys' fees and the mortgage payment), but reduced her monthly budget to $7,200 after noting that her expenses would decrease upon the sale of the homestead. The court found that a spousal-maintenance award of $5,000 per month,

along with the court-ordered child support, would provide respondent with a monthly net income of approximately $6,900—leaving her with a shortfall of $300 per month.

Less than twelve months later, the district court's order modifying spousal maintenance, found that respondent maintained reasonable monthly expenses of $7,714—of which approximately $500 per month was not being met with the original maintenance award that reduced her monthly budget to $7,200. The court also found that her gross monthly income was approximately $2,093—about a $500 per month reduction since the time of the decree. Based on a $1,300 monthly deficit ($300 + $500 + $500), combined with the estimated tax consequences of a spousal-maintenance award, the district court found that an additional $2,000 per month would allow respondent to meet her expenses.

Neither party asserts that the district court's estimated tax calculation of $700 is incorrect. Appellant argues that the district court abused its discretion by increasing the spousal-maintenance award by $2,000 per month; however, when asked at oral argument before this court how the district court clearly erred in its factual determination about the tax consequences, appellant's counsel responded with, "I don't know."

Although a more comprehensive breakdown from the district court of its findings on the respective tax consequences would have been useful for our analysis, the district court generally has discretion to estimate taxes on a maintenance award, so long as such a calculation is not speculative. *See Grigsby*, 648 N.W.2d at 725 (applying the proposition to the consideration of tax consequences of a distribution of marital property).

Here, we conclude that the district court's estimated tax consequences were neither speculative nor clearly erroneous. In its order modifying spousal maintenance to an

additional $2,000 per month, the court referenced its original findings based on evidence presented at trial, including an after-tax cash flow submitted by a certified public accountant. The court also expressly stated that, given the possible variables, it was not able to determine the *exact* tax consequences of a maintenance award. But a district court's inability to provide the *exact* tax consequences of a spousal maintenance award does not render its calculation clearly erroneous, especially when its calculation of those tax consequences is not challenged, and there is no specific assertion of how the calculation is incorrect. We, therefore, conclude that the district court did not abuse its discretion by increasing the spousal-maintenance award by $2,000.

C. Appellant fails to brief the district court's denial of his motion for amended findings, therefore, waiving this issue on appeal.

In appellant's brief, he states his intention to challenge the district court's denial of his motion for amended findings, however, he fails to formally brief the issue. Generally, appellate courts decline to address inadequately briefed questions. *State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see also Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (concluding that the issue not properly briefed was waived), *review denied* (Minn. Oct. 24, 2001).

As a result of appellant's failure to brief the district court's denial of his motion, we conclude appellant waived this issue for consideration on appeal.

Affirmed.