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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1994**

In re the Marriage of:  
Jeffrey Herman Goldenberg, petitioner,  
Respondent,

vs.

Karen Lisa Yashar,  
Appellant.

**Filed March 9, 2020  
Affirmed  
Bratvold, Judge**

Hennepin County District Court  
File No. 27-FA-15-7853

Kathleen M. Newman, Barbara J. Seibel, Kathleen M. Newman + Associates, P.A.,  
Minneapolis, Minnesota (for appellant)

Kathryn A. Graves, Jaime Driggs, Henson & Efron, P.A., Minneapolis, Minnesota (for  
respondent)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly,  
Judge.

**UNPUBLISHED OPINION**

**BRATVOLD**, Judge

Appellant-wife challenges the district court's third amended judgment and dissolution decree granting her temporary spousal maintenance. Wife argues that the district court abused its discretion (1) by denying permanent maintenance because the

record shows that her ability to meet her own needs is uncertain; and (2) by drawing an adverse inference against her for failing to complete specific tasks before a posttrial review hearing. Because record evidence supports the district court's findings that wife's inability to work is temporary and she will be self-supporting by November 2021, we conclude that the district court's award of temporary spousal maintenance was not an abuse of discretion. And because the district court reached its decision based on record evidence and independently of any adverse inference against wife, we conclude that we need not consider the adverse inference in this appeal. Thus, we affirm.

## **FACTS**

The following is a summary of the district court's findings of fact.

### **A. History of the parties' marriage and divorce proceedings**

Appellant Karen Lisa Yashar (wife) and respondent Jeffrey Herman Goldenberg (husband) married in 1991. Wife was born in March 1965 and husband was born in November 1964. The parties have two adult children.

The parties are both highly educated and, according to the district court's findings, "enjoyed a comfortable, upper-middle-class standard of living during their marriage." Wife graduated from law school in 1992; husband graduated from an MBA program the next year. Husband is a 50% owner in a payroll-processing business and has held this position since 1998. Wife worked as an attorney for about 12 years, first in private practice and then at two investment firms as in-house counsel. In 2004, wife became voluntarily unemployed because she felt that the work was "stressful and unsatisfying and . . . wanted to spend more time rearing her children."

In 2012, wife returned to full-time employment with Minneapolis Jewish Federation (Federation). Wife worked as a director and oversaw the awarding and administration of grants, making about \$90,000 per year. A few months before wife began working for Federation, she “began experiencing fatigue and ‘brain fog.’” Between 2012 and 2014, wife “saw numerous doctors, including a neurologist, a sleep specialist, and an infectious-disease specialist about her symptoms.” In 2012, wife also saw a psychiatrist “on and off” and saw a psychologist who diagnosed her with generalized anxiety disorder.

Beginning in October 2014, physicians at the Mayo Clinic in Rochester (Mayo) evaluated wife and diagnosed her with chronic fatigue syndrome. According to trial testimony, a diagnosis of chronic fatigue syndrome is based on “subjective symptoms,” such as problems with concentration and memory. And there is no known cure for chronic fatigue syndrome; instead, treatment focuses on amelioration and management of symptoms.

In October 2015, husband filed for divorce. The parties separated in January 2016. In February 2016, Federation terminated wife because “[t]oward the latter part of her tenure” she “struggled with deadlines, often bogged down in detail and seemed to ruminate over decisions.” Federation “lost confidence” in wife’s “ability to make difficult decisions or lead a team.” Wife was unemployed at the time of trial in August 2017.

In September 2016, the district court ordered husband to pay wife temporary spousal maintenance of \$3,868 per month and reduced the temporary maintenance to \$470 per month, beginning in December 2016. The district court determined that, absent evidence that wife cannot work, she “will be expected to search for employment and work full-time.”

Wife moved to amend the temporary order, arguing that she was unable to work because of her medical condition. In January 2017, the district court granted wife's motion to extend spousal maintenance and awarded wife continuing maintenance payments of \$3,868 "until further order of the Court."

In May 2017, the parties settled most dissolution issues. In accordance with the settlement, the district court issued partial findings of fact, conclusions of law, order for judgment, and judgment and decree (May 2017 order), which the parties reviewed and approved. The parties reserved spousal maintenance. While they agreed that wife is entitled to some spousal maintenance, the parties disagreed on duration and amount.

**B. Evidence submitted at the spousal-maintenance trial**

A two-day bench trial occurred in August 2017. Wife remained in the Hopkins marital home until she sold it in May 2017. An irrevocable trust, funded by wife's parents, owned the home. Wife is the sole beneficiary of the irrevocable trust, which received the sale proceeds and, since the sale of the home, has made a distribution to wife. Wife also is one of three beneficiaries (all siblings) of an investment trust established by her father, who is the trustee. Wife has received distributions from the investment trust. Based on the evidence at trial, the district court found that "[i]n the four months before trial, [wife] received distributions from the [irrevocable and investment trusts] totaling over \$310,000." The district court also found that wife would continue to receive \$1,916 per month in trust income.

Wife testified that from 2012 to 2013, her symptoms of brain fog and fatigue grew "worse and worse." Wife testified that she was unable to secure employment after she left

Federation in 2016, despite her best efforts. She also testified that, despite Mayo's recommendation that she participate in its three-day program on managing chronic fatigue symptoms, she decided not to because she did not want to travel to Mayo. She testified that she received care in the Twin Cities "at a higher level and more in depth" than what Mayo could provide.

Wife submitted many medical records to the district court, including records relating to her mental health. As summarized by the district court, wife was first diagnosed with generalized anxiety disorder in 2012. In 2016, she started to see psychologist Dr. Rebecca Biderman "on a regular basis for psychotherapy to deal with adjustment issues relating to her divorce and other stressors in her life." Dr. Biderman diagnosed wife with generalized anxiety disorder and adjustment disorder with anxiety and depression. Around the same time, wife began seeing a psychiatrist, Dr. Zvi Frankfurt, who provided wife with a "[w]orking diagnosis" of "depressive disorder [not otherwise specified] and anxiety disorder." The district court found, when wife was asked about these records at trial, she "vehemently denie[d]" that her mental-health diagnosis has had any impact on her physical health.

Wife offered videotaped trial testimony and medical records from Dr. Greg Plotnikoff, a specialist in "complex, chronic and mysterious illness," who began treating wife in 2016. He confirmed Mayo's diagnosis of chronic fatigue syndrome. The district court noted Dr. Plotnikoff's opinion that this diagnosis "would not qualify her for Social Security disability benefits." Dr. Plotnikoff also diagnosed wife with Lyme disease, mold toxicity, and hypertension.

Wife had two independent medical examinations (IMEs); both IME physicians provided videotaped trial testimony and their reports were admitted as evidence. Dr. Merlin Brown, who was retained by wife, testified, as summarized by the district court, that wife's "fatigue and brain fog limited her cognitive abilities, therefore, she was not capable of sustaining work." Dr. Beth Baker, who was retained by husband, testified that wife was not totally disabled from employment, but questioned whether wife could return to work as an attorney. Dr. Baker testified, as summarized by the district court, that wife "was able to run her household, drive a car, and balance her checkbook." In her report, Dr. Baker stated that wife "lifts weights and exercises at [a gym] three times a week and does yoga once a week." Dr. Baker recommended that wife see a neurologist to determine her level of cognitive functioning.

Wife followed up with a neuropsychological evaluation by Dr. Michael Fuhrman, who provided videotaped trial testimony. Dr. Fuhrman testified that wife's test results were "abnormal with mild to moderate memory loss." Dr. Fuhrman also testified that testing revealed that "anxious-depressive and somatoform/dissociative issues are paramount."<sup>1</sup> He concluded that wife experiences cognitive inefficiency, but he found no neurological basis for any cognitive impairment.

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<sup>1</sup> According to Dr. Fuhrman's testimony, "somatoform issues" involve "the displacement of emotional pain into physical or medical outlets." He also testified that "dissociative issues" refer to "a psychological process of numbing or zoning out whereby individuals may lose connection with hurtful feelings and may distance themselves in a psychological sense from feelings that are too painful to abide."

Three experts testified about wife's vocational assessment. First, Jan Lowe, retained by wife, concluded that wife was totally disabled from any employment "[a]t the present time" and saw no indication that she would improve. Lowe's conclusion relied, in part, on Dr. Fuhrman's testimony that wife was "anxious-depressive." Second, Dr. Justin King, also retained by wife, concluded that wife was totally and permanently disabled from any type of employment based on three days of vocational testing, during which wife had to take frequent unscheduled breaks.

Finally, Mark Raderstorf, retained by husband, testified, as summarized by the district court, that wife was "capable of working full-time after she received appropriate treatment to manage her chronic fatigue symptoms" and that wife's psychological testing "indicated depression and somatization disorders which were manifesting themselves in her chronic fatigue symptoms." Raderstorf concluded that work as an attorney may be too stressful for wife, but that she would be a "prime candidate" for a position as a paralegal, legal assistant, or administrative manager and could return to employment in six months and earn \$56,000 to \$88,000 per year. Raderstorf wrote in his report that wife "is capable of managing her daily hygiene and activities of daily living," "actively exercises," and "remains active socially, engaging in frequent walks with friends, and attending community social events."

### **C. Posttrial procedural history**

In November 2017, the district court issued its findings and order on spousal maintenance and amended judgment and decree (November 2017 order). The district court found that wife's "current symptoms" precluded her from employment. The district court

determined, however, that it needed “additional information to make a final determination whether [wife’s] disability is temporary or permanent” for three reasons. First, the district court found it was “unclear that [wife] has received comprehensive training in managing her chronic fatigue syndrome, despite her contention that she has received more extensive programming in this area than the program offered by Mayo Clinic.” Second, the district court found that wife “has not acknowledged the significant likelihood that her depression and anxiety are affecting her health, despite findings to that effect from her medical and mental healthcare providers.” The district court also found that wife had “not sought appropriate mental health treatment to assist her in managing her symptoms of depression and fatigue.”

Third, the district court found that wife “has made no serious effort to seek employment since losing her job in February 2016.” The district court found that wife “work[ed] full time for three-and-a-half years . . . while she was experiencing most of her current symptoms,” she “remained physically active, exercises, and is engaged with the community and her family,” and she “was able to orchestrate the sale of the large marital home.”

The district court thus ordered wife to do three things: (1) complete the Mayo program by January 31, 2018, (2) obtain a mental-health evaluation by February 28, 2018, and (3) “engage in a sustained, good-faith search for employment” until July 31, 2018. The district court determined that wife “will have the initial burden to document the completion and results of these three quests” and ordered husband to provide spousal maintenance until September 2018, after a scheduled review hearing.



Both parties moved for amended findings or a new trial, along with other posttrial motions. In March 2018, the district court denied the motions for new trial and issued amended findings and order on spousal maintenance and second amended judgment and decree (March 2018 order). The district court extended wife's deadline to complete the Mayo program until May 15, 2018, extended her deadline to get a mental-health evaluation until April 27, 2018, and provided that the mental-health professional must be "neutral" and "independent."

In April 2018, wife appealed from the district court's March 2018 order. Wife also moved for a partial stay in district court pending appeal, which the district court denied because its ruling was not final. In July 2018, this court dismissed wife's appeal as premature because the district court's maintenance award was not final.

At a scheduled review hearing in September 2018, the parties discussed wife's progress on the three tasks assigned by the district court. First, wife's attorney stated that wife tried to get into the Mayo program, but "that all was delayed" because of the appeal. Second, concerning the mental-health assessment, wife's attorney stated that one agreed-upon expert had a "long protocol" and was too expensive. After this court dismissed her appeal, she "immediately" searched for another expert, but the parties were unable to agree on a new expert. Third, about the job search, wife's attorney stated that she "applied for numerous jobs," but was unable to secure employment. Husband's attorney stated that wife "chose not to do anything" to comply with the court's order "until after the Court of Appeals dismissed her appeal on July 31st."

In October 2018, the district court issued supplemental findings, order on spousal maintenance, and third amended judgment and decree (October 2018 order). The district court found that wife did not complete the Mayo three-day program and did not obtain a neutral, independent evaluation of her mental health. As for the third task, the district court found that wife delayed her job search and did not make a “sustained, good faith effort.” The district court determined that wife’s “inability to work is temporary” and that she “will be able to work and be self-supporting by November 1, 2021.” The district court awarded wife rehabilitative maintenance of \$5,075 per month for one more year, through October 31, 2019, and in a reduced amount of \$2,335 per month through October 31, 2021.

Wife appeals.

## D E C I S I O N

### **I. The district court did not abuse its discretion by awarding wife temporary spousal maintenance.**

Wife argues that the district court abused its discretion by failing to award her permanent spousal maintenance. Appellate courts review a district court’s award of maintenance for an abuse of discretion. *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016). 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 & n.3 (Minn. 1997). “When evidence relevant to a factual issue consists of conflicting testimony, the district court’s decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal.” *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

The threshold requirement for any award of spousal maintenance is a showing of need from the spouse seeking maintenance. *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (citing Minn. Stat. § 518.552, subd. 1 (1988)). The district court found that wife’s reasonable monthly budget is \$6,050 and that wife is currently unable to work. The parties agree that wife is currently entitled to some spousal maintenance.

After a determination of need, the district court must determine the amount and duration of spousal maintenance. Minn. Stat. § 518.552, subd. 2 (2018). In making this decision, a district court considers eight relevant factors: (1) the financial resources of the recipient spouse, (2) the time necessary for the recipient spouse to acquire education to find appropriate employment, (3) the standard of living established during the marriage, (4) the duration of the marriage and the length of absence from employment, (5) the foregone employment opportunities of the recipient spouse, (6) the age and health of the recipient spouse, (7) the ability of the spouse from whom maintenance is sought to meet needs while providing for the recipient spouse, and (8) each party’s contribution to the marital property. *Id.* No single factor is dispositive. *Broms v. Broms*, 353 N.W.2d 135, 138 (Minn. 1984).

If the factors “justify a permanent award,” the statute does not favor a temporary award of maintenance over a permanent award. Minn. Stat. § 518.552, subd. 3 (2018). “Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.” *Id.* But if the uncertainty is based on *when* the spouse seeking maintenance will become self-supporting, not *whether* the spouse will become self-supporting, an award of temporary maintenance is appropriate. *See Maiers v. Maiers*, 775 N.W.2d 666, 669-70 (Minn. App. 2009).

Here, the district court made findings under the eight spousal-maintenance factors. First, the district court found that, based on interest from wife's marital property and her trust income, wife's gross income is \$26,832 per year. In its final order, the district court determined that the evidence supported an imputation of \$56,000 in employment income beginning one year after its final order and increasing to \$88,000 by November 2021.

Second, the district court found that, with a law degree, wife is "highly educated and requires no further education or training to obtain employment" and that all vocational testing found her "to be in the superior range of intelligence." The district court also found that "at least one expert from each side agrees she is currently totally disabled from working." After summarizing the testimony of several experts, the district court found wife "is unable to work at the present time, but that the Court needs additional information to determine whether the maintenance award should be temporary or permanent."

Third, the district court found that the parties "enjoyed a comfortable, upper-middle-class standard of living during their marriage," but that they also "lived beyond their means." Husband took loans from family members and drew equity from his business to pay for family living expenses. Because the parties inflated their standard of living, the district court determined that both parties "will have to live within their means, which results in a reduced standard of living for both following the divorce."

Fourth, the district court found that the parties were married for 25 years, and that wife worked during most of the marriage, staying home for about eight years, but "[t]here is no evidence [wife's] earning capacity is diminished by absence from the workforce."

The district court also found that wife “was recently employed earning an annual salary of \$90,000.”

Fifth, the district court found that wife did not forego employment opportunities because she “chose to leave the practice of law which she found to be stressful and unsatisfying, and preferred working in the nonprofit sector.” Wife also “left the marriage with substantially more retirement funds” than husband.

Sixth, the district court considered wife’s age and physical and emotional condition. While the district court’s findings on the sixth factor are set out in three separate orders, we focus on the supplemental findings in its final order because that is what wife challenges on appeal. In the October 2018 order, the district court determined that “there is no doubt that [wife] has chronic fatigue syndrome” and “[t]he only doubt” about wife’s condition “relates to its effect on her ability to work.”

The district court found that wife “was unable to work at [this] time,” but that wife’s “inability to work is temporary” for “two independent, but separately sufficient grounds.” (A) The district court found that “[t]he credible evidence suggests . . . that psychological issues played a significant role in her symptoms and that those issues could be, but had not been, addressed by appropriate evaluation and treatment, partly because [wife] denies their existence.” (B) Based on wife’s failure to complete the Mayo program and obtain an independent psychological evaluation, the district court drew “an adverse inference” against wife that more information would have been unfavorable to her position.

Seventh, the district court found that husband’s annual income would be \$185,000 by 2018 and he could cover his monthly budget of \$7,011 while paying temporary spousal

maintenance to wife. Eighth, the district court found that both parties contributed to the value of the marital estate.

Weighing the eight factors, the district court awarded temporary maintenance of \$5,075 per month through October 31, 2019, and in a reduced amount of \$2,335 per month through October 31, 2021.

Wife argues that the district court's decision to award temporary maintenance was an abuse of discretion, giving four reasons.<sup>2</sup> First, wife argues that conflicting record evidence establishes that there was uncertainty about whether she would become self-supporting, and that Minnesota law requires an award of permanent spousal maintenance in the face of this uncertainty. Second, wife argues that the district court clearly erred in determining that her "illness is attributable to mental health." Third, wife argues that the district court "abused its discretion in finding wife's disability is temporary." And fourth, wife argues that the district court erred as a matter of law because it stated that "de novo review" applies when a court reserves jurisdiction on spousal maintenance, but the district court did not reserve jurisdiction. We consider each of wife's arguments in turn.

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<sup>2</sup> Wife also emphasizes that husband filed a proposed order that included factual findings stating that permanent maintenance is appropriate. We are not persuaded by these proposed findings for two reasons. First, the district court must, and did, conduct an "independent assessment of the evidence and this is best accomplished by the district court exercising its own skill and judgment in drafting its findings." *In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2 (Minn. 2005). Second, even though husband proposed permanent maintenance, the *amount* of permanent maintenance husband proposed was much lower than what wife proposed and lower than what the district court ordered temporarily.

**A. The district court did not abuse its discretion when it weighed conflicting medical evidence and determined that wife will become self-supporting.**

Wife argues that conflicting record evidence established uncertainty about whether she would become self-supporting, therefore, the district court abused its discretion by awarding temporary maintenance. Wife cites *Nardini v. Nardini*, in which the trial court awarded temporary maintenance to one spouse, Marguerite. 414 N.W.2d 184, 195 (Minn. 1987). On appeal, we affirmed because “Marguerite could renew her request for permanent maintenance sometime prior to the expiration of the temporary award.” *Id.*

The supreme court granted review and reversed the award of temporary maintenance. *Id.* The supreme court observed that it was unclear whether the trial court gave “any consideration . . . to the factors necessary to a determination of the amount and duration of maintenance.” *Id.* at 197. The supreme court reasoned that Marguerite had left the labor market for 29 years “to become a homemaker” and “must reenter the labor force at age 56, possessed of only a high school education and without special employment skills of any kind.” *Id.* Under these circumstances, the supreme court determined that the trial court abused its discretion because Marguerite’s employment prospects were too uncertain for an award of temporary spousal maintenance. *Id.* at 198. The supreme court also stated that “the delicate balancing of property division and spousal maintenance necessary to place the parties in comparable financial positions is reserved to the good judgment of the trial court.” *Id.* at 199.

*Nardini* is not on point for two reasons. First, unlike the trial court in *Nardini*, which did not evaluate the statutory spousal-maintenance factors and “made no findings with

respect to the needs of either party,” the district court here separately evaluated each of the eight statutory spousal-maintenance factors and articulated more than 100 findings of fact in three separate orders. *Id.* Weighing the evidence, the district court found “credible evidence” established that wife’s inability to work is temporary because wife had psychological issues that “could be, but had not been” addressed. The district court, therefore, found that wife “will be able to work and be self-supporting by November 1, 2021.”

Second, the spouse awarded temporary maintenance in *Nardini* was in a materially different position from wife. Marguerite left the workforce for 29 years to become a homemaker; wife voluntarily left legal employment because of stress and job dissatisfaction, remained out of the workplace for about eight years while she cared for their family, and then worked as a director at a nonprofit making a salary of about \$90,000 per year until 2016. And Marguerite had a high-school diploma; wife has a law/ degree.

Still, wife argues that, “[b]ased on the evidence,” there was “some uncertainty” that she could be fully employed because of her poor health. The district court duly considered conflicting expert testimony, some of which opined that wife’s inability to work was permanent. But the district court made a credibility determination and found that there was *no uncertainty* that wife’s inability to work is temporary and she will be self-supporting by November 1, 2021. The mere existence of record evidence that supports wife’s position does not create “some uncertainty as to the necessity of a permanent award” under Minn. Stat. § 518.552, subd. 3. *See Foster v. Foster*, 802 N.W.2d 755, 759 (Minn. App. 2011) (“[W]e are not permitted to reweigh the evidence when reviewing a district court’s decision



to determine whether the court abused its discretion.”); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (“That the record might support findings other than those made by the trial court does not show that the court’s findings are defective.”). The district court did not abuse its discretion when it weighed conflicting medical evidence and determined that wife would become self-supporting by November 2021.

**B. The record evidence supports the district court’s finding that wife’s mental health contributed to her symptoms.**

Wife argues that the district court “nonsensical[ly]” found that “psychological issues played a significant role in her symptoms and that those issues could be, but had not been, addressed by appropriate evaluation and treatment.” Wife argues that the evidence shows that “to the extent [she] had mental health issues, they were being adequately treated.”

We conclude that the record supports the district court’s finding. Wife testified at trial that she had never been diagnosed with depression, she does not believe she is depressed, and she does not believe she has any mental-health issues affecting her physical health. But, as wife recognizes in her brief to this court, the record evidence establishes that she had been diagnosed with depression. Additionally, the neurologist (Dr. Fuhrman), concluded that wife showed “anxious-depressive” characteristics during testing. And even one of wife’s vocational experts assessed the effect of depression on wife’s employability. The district court found that wife “vehemently denies that her mental-health diagnosis has any impact on her health.” And the record does not show that wife has ever sought treatment to address her depression, other than psychotherapy to deal with the divorce. We

conclude that the record evidence supports the finding that wife's unaddressed mental-health issues contributed to her symptoms.

**C. The record evidence supports the district court's finding that wife is temporarily unable to work.**

Wife argues that the award of temporary spousal maintenance should be reversed in favor of permanent maintenance because Minnesota caselaw has "repeatedly confirmed the poor health of a dependent spouse mandates a permanent maintenance award." Wife cites *McConnell v. McConnell*, where the district court awarded temporary spousal maintenance to the husband after a 16-and-a-half-year marriage. 710 N.W.2d 583, 585-86 (Minn. App. 2006). In *McConnell*, the district court's findings of fact included that husband suffered many chronic health issues and had "received social security disability since December 1993." *Id.* at 585. The district court also found that, since his disability determination, husband had "been largely absent from the work force," was "unable to do his previous job," and had "been out of the work force for about ten years." *Id.* Despite these findings and "undisputed medical evidence," the district court found that the husband's efforts to earn income through home-based sales and a family-owned restaurant supported an award of temporary maintenance. *Id.*

We reversed and remanded for the district court to reconsider spousal maintenance, holding that "the finding that husband could become self-supporting by working at such employment is pure speculation and not supported by any evidence in the record." *Id.* at 586. This was because "other than earning about \$500 selling prepaid legal services, husband has not held profitable employment since leaving his job [12 years ago], a job to

which he was unable to return because his total disability made him incapable of performing it.” *Id.*

*McConnell* is unpersuasive here for three reasons. First, unlike the husband’s health conditions in *McConnell*, the permanence and severity of wife’s inability to work was hotly contested at trial. And record evidence supports the district court’s finding that wife is temporarily unable to work. Raderstorf testified that wife will be self-supporting if she receives appropriate treatment to manage her chronic fatigue syndrome.

Second, unlike the district court in *McConnell*, the district court did not connect wife’s inability to work with a disability status determination based on “undisputed medical evidence.” To the contrary, the district court found that wife’s “diagnosis of chronic fatigue would not qualify her for Social Security disability benefits.” The district court also never found that wife’s current unemployment resulted from chronic fatigue syndrome.

Third, the husband in *McConnell* had been out of work “about ten years.” *Id.* at 585. Wife worked until 2016, more than a year after Mayo diagnosed her with chronic fatigue syndrome and about 18 months before her spousal-maintenance trial.<sup>3</sup>

Wife also argues that the district court erred in finding that her disability is temporary because the district court found it needed “additional information” in its

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<sup>3</sup> Wife cites a second published case to support her argument, but we conclude that case is inapposite because of its procedural posture—we *affirmed* a district court’s award of permanent spousal maintenance. *See Lynch v. Lynch*, 411 N.W.2d 263, 265 (Minn. App. 1987) (“The trial court found that [the spouse seeking maintenance] is chronically ill and presently disabled with no clear prognosis for recovery.”), *review denied* (Minn. Oct. 30, 1987). Wife also cites an unpublished case from this court, which we reject as unpersuasive for the same reason.

November 2017 order. Wife asserts that “no additional evidence resolve[d]” the district court’s “uncertainty” before the district court issued its October 2018 order with supplemental findings. It is true that the district court did not receive additional evidence before making its supplemental findings. But the district court relied on what it described as “credible evidence” submitted at trial and, in particular, wife’s testimony that “psychological issues” did not contribute to her symptoms and did not require treatment. Wife continued to assert this view at the review hearing. We discern no abuse of discretion in the district court’s determination that wife is temporarily unable to work.

**D. The district court’s reference to “de novo review” for post-decree review of spousal maintenance was not an abuse of discretion.**

Wife argues that the following finding of fact in the October 2018 order shows that the district court intended to reserve jurisdiction on spousal maintenance for later “de novo review”:

The burden will be on [wife] to establish that any disability continues beyond November 1, 2019. This burden is not inequitable, for the reasons stated above, and because the information relating to any continuing disability is within her control and not easily accessible by [husband]. This is, in substance, no different from authorizing a temporary award while reserving jurisdiction thereafter to review the situation de novo.

Wife contends that, because the district court did not reserve spousal maintenance, her only recourse is modification of maintenance, which requires her to prove a substantial change in circumstances. *See* Minn. Stat. § 518A.39, subd. 2 (2018). Husband concedes that the district court’s reference to de novo review misstated the law because it did not reserve jurisdiction over spousal maintenance. *See generally McMahon v. McMahon*, 339 N.W.2d

898, 900 (Minn. 1983) (holding that when a district court reserves making a maintenance determination “at a later date” it “must base its determination upon the facts and circumstances existing at the time the application [for maintenance] is made, as if the entire [divorce] action had been brought at the later date” (quotation omitted)).

We conclude that the district court’s misstatement of law did not amount to an abuse of discretion because the district court was not obliged to reserve jurisdiction on spousal maintenance. The district court determined that wife “*will* be able to work and be self-supporting by November 1, 2021.” (Emphasis added.) In *Maiers v. Maiers*, this court held that even if some uncertainty exists about when a spouse will be self-supporting, the evidence may be sufficient to support an award of temporary spousal maintenance. 775 N.W.2d at 669-70. Wife contends *Maiers* does not apply because it “was not a case involving health issues.” But *Maiers* affirmed the district court’s award of temporary maintenance because the district court “found that [the spouse seeking maintenance] will become self-supporting at some point in the future.” *Id.* That is also what happened here.

Wife also contends that showing a substantial change in circumstances to modify maintenance “puts her in a nonsensical and illogical quandary” because proving her continuing disability would only “demonstrate that no change in circumstances has occurred.” We disagree. A district court may determine that a substantial change in circumstances has occurred when a maintenance recipient has failed to rehabilitate despite reasonable efforts to do so. *See Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (holding that maintenance recipient’s inability to meet her needs frustrated “the parties’ expectations of self-sufficiency” and constituted a substantial change in circumstances);

*Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003) (“If, despite the obligee’s reasonable efforts, the spouse fails to become fully rehabilitated, that failure may constitute a change in circumstances.”), *review denied* (Minn. Aug. 5, 2003). Based on this caselaw, wife may move to modify maintenance if her medical condition prevents her from working despite her reasonable efforts.

Because record evidence supports the district court’s conclusion that wife’s inability to support herself is temporary, we conclude that the district court did not abuse its discretion by awarding temporary spousal maintenance.

**II. Wife has not shown that the district court’s adverse inference prejudiced her because the district court independently concluded that wife would become self-supporting based on record evidence.**

Wife challenges the adverse inference that the district court drew against her for failing to complete three tasks before the September 2018 review hearing. Wife argues that the district court “abused its discretion in ordering Wife to complete impossible tasks, which were largely out of her control and further frustrated by appellate procedural issues.”

The district court may draw adverse inferences under certain circumstances, such as when a party conceals or fails to produce financial information in a divorce proceeding. *See, e.g., Bollenbach v. Bollenbach*, 175 N.W.2d 148, 155 (Minn. 1970). If the district court makes an error of law when it draws an adverse inference, an appellant must show that the error prejudiced her to obtain reversal. *See* Minn. R. Civ. P. 61 (harmless-error rule); *see also Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (appellant must show both error and that the error caused prejudice to prevail on appeal).

In its November 2017 order, the district court sought “additional information to make a final determination whether [wife’s] disability is temporary or permanent,” directing wife to complete the Mayo program, obtain a mental-health assessment, and engage in a good-faith search for employment. The district court scheduled a review hearing and later extended wife’s deadlines for the first two tasks.

After the review hearing, the district court determined that wife had not completed any of the three tasks and then drew an adverse inference against wife that her compliance with the district court’s directives would have hurt her position. Wife asserts that her tasks were “impossible,” but she does not challenge the district court’s findings that she failed her tasks because did not try to get in the Mayo program “until shortly before the deadline,” she delayed finding a mental-health expert until her appeal was dismissed, and she waited six months to start her employment search.

All the same, we conclude that we need not decide whether the district court abused its discretion in drawing an adverse inference because wife has shown no prejudice. *See* Minn. R. Civ. P. 61; *Midway Ctr.*, 237 N.W.2d at 78. The district court articulated “two independent, but separately sufficient, grounds” for its determination that wife’s inability to work is temporary. The first reason relied on its assessment of the evidence received during trial. As detailed above, the record evidence supports the district court’s determination that wife is temporarily unable to work and she has not adequately addressed her mental health, which contributed to her symptoms.

In awarding temporary spousal maintenance, the district court thoroughly analyzed the evidence and made detailed findings under the spousal-maintenance factors. *See Brooms*,

353 N.W.2d at 138 (“Each case must be decided on its own facts and no single statutory factor for determining the type or amount of maintenance is dispositive.”). We conclude that the district court’s findings supported its decision to award temporary maintenance, including findings about wife’s financial resources, her high level of education and training, her decision to voluntarily leave the practice of law because of stress and job dissatisfaction, and her recent employment in a director-level position “while she was experiencing most of her current symptoms.” Because wife does not show that the district court’s decision to draw an adverse inference prejudiced her, we do not determine whether the district court abused its discretion in doing so.

**Affirmed.**