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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1163
A19-1332**

In re the Marriage of:
Joyce Marie Peterson, petitioner,
Respondent (A19-1163),
Appellant (A19-1332),

vs.

David Lee Peterson,
Appellant (A19-1163),
Respondent (A19-1332).

**Filed September 21, 2020
Affirmed
Segal, Chief Judge**

Ramsey County District Court
File No. 62-FA-08-3522

Joyce Marie Peterson, St. Paul, Minnesota (pro se appellant)

David Lee Peterson, Minneapolis, Minnesota (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

SEGAL, Chief Judge

In this appeal arising out of an order reducing respondent/cross-appellant wife's spousal-maintenance award, appellant/cross-respondent husband argues that the district

court abused its discretion because it did not make the reduction retroactive to 2012 and, in a related appeal, respondent/cross-appellant wife argues that the reduced award constitutes an abuse of discretion and must be reversed. We affirm.

FACTS

Appellant/cross-respondent David Lee Peterson (husband) and respondent/cross-appellant Joyce Marie Peterson (wife) were married in 1980. The parties divorced in 2011 and, as relevant here, the marriage dissolution judgment and decree required husband to pay wife \$4,000 per month in permanent spousal maintenance. Husband appealed and this court reversed and remanded to the district court for redetermination of the property division and spousal-maintenance award. *Peterson v. Peterson*, No. A12-1657, 2013 WL 2926845, at *8 (Minn. App. June 17, 2013). Following remand, the district court issued an amended judgment and decree in 2015 (2015 judgment) that reduced the amount of permanent spousal maintenance to wife from \$4,000 to \$2,500 per month due to the reallocation of an investment and the terms of the parties' agreement on dividing real estate. Neither party appealed and the judgment became final.

Throughout 2016, the parties filed numerous motions in the district court regarding husband's spousal-maintenance obligation. Of relevance to this appeal, husband filed a motion seeking a redetermination of spousal maintenance based on the evidence previously submitted to the district court. Following an evidentiary hearing, the district court determined that husband remained obligated to pay wife \$2,500 per month in spousal maintenance. The district court observed that, because husband did not appeal the 2015 judgment setting spousal maintenance at \$2,500 per month, his only recourse to reduce his

monthly spousal-maintenance payment was to file a motion to modify or terminate spousal maintenance. The district court noted that it had “expressly” invited husband to make such a motion previously, but he had not done so and therefore the district court could not modify the award. Wife had also filed a motion seeking a judgment for unpaid maintenance, and the district court ultimately entered judgment against husband in the amount of \$128,426.23 on wife’s motion. Neither party appealed from the district court’s orders on these motions.

On January 12, 2018, wife filed a motion to hold husband in contempt for failing to pay spousal maintenance. Husband filed a responsive motion on January 30, 2018, requesting any relief that “the Court deems fair, just, and equitable.” At the motion hearing, also held on January 30, 2018, the district court stated that it would construe husband’s motion as one to reduce or terminate spousal maintenance, sent the parties to mediation and deferred ruling on the motion related to modification of spousal maintenance. Husband ultimately filed a motion on October 9, 2018, explicitly requesting that the district court reduce or modify his spousal-maintenance obligation. Husband’s request was based on the assertion that his income had substantially decreased since the district court’s 2015 judgment and he was no longer able to pay the award. After an evidentiary hearing, the district court ruled on husband’s motion and reduced husband’s spousal-maintenance obligation to \$502 per month, retroactive to January 30, 2018, and entered another judgment against husband for the balance of unpaid maintenance consistent with the court’s modification ruling. This appeal follows.

DECISION

I. The district court did not abuse its discretion in reducing the spousal-maintenance award.

We turn first to the question of whether the district court's reduction in the spousal-maintenance award was an abuse of discretion. After spousal maintenance has been ordered, the district court may modify the maintenance award if there is a substantial change in circumstances and that change renders the maintenance order "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a) (2018). This includes a substantial increase or decrease in the "gross income of an obligor or obligee." *Id.* We review a district court's decision to modify existing spousal maintenance for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). The district court's determination of a party's income for maintenance purposes is a finding of fact that is reviewed for clear error. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

Here, the district court modified the maintenance award after determining that husband's gross income had substantially decreased since the district court's 2015 judgment. In the 2015 judgment, the district court determined that husband had a gross monthly income of \$9,000. This determination was based on husband's tax returns from 2005-2009,¹ which listed a yearly salary of \$166,000 in 2005, \$171,000 in 2006, and \$96,000 in 2007-2009 and total income ranging from \$180,781 to \$459,846 per year. The

¹ Wife petitioned for dissolution of marriage in December 2008, and the district court received submissions from the parties until October 2011. Following this court's remand in June 2013 to redetermine spousal maintenance, neither party submitted new evidence to the district court. As a result, the district court had to base its findings on the prior submissions of the parties.

district court also made findings regarding the financial circumstances of husband's business, Peterson's Entertainment Designs, Inc. (PED). Based on the tax returns, the district court found that PED had an overall value of \$84,074 and income, between 2005 and 2010, ranging from \$86,883 to \$250,241.

In the order modifying spousal maintenance, the district court found that husband's gross monthly income had decreased from \$9,000 to \$2,184 per month. The district court noted that this amount is a five-year average of husband's income based on information in his tax returns for the years 2013-2017. The district court also found that PED suffered significant financial losses in each of the prior five years, ranging from a loss of \$331 in 2013 to a loss of \$56,172 in 2017, and an overall net worth of *negative* \$220,769.35 in 2018.² Based on husband's reduced income, the district court determined that the \$2,500 spousal-maintenance award was unreasonable and unfair and warranted modification.

The district court then reviewed husband's monthly expenses to determine the scope of the modification. Husband submitted a monthly budget of \$5,719. The district court analyzed the claimed expenses and determined that many were unreasonable given husband's financial circumstances. The district court ultimately determined that husband's reasonable monthly expenses totaled \$1,682 and, based on his monthly income of \$2,184, he had the ability to pay \$502 per month in spousal maintenance and reduced the award to that amount.

² The district court also noted that the 2018 liabilities of PED included a personal loan by husband to PED in the amount of \$144,767.35.

Wife argues that the district court abused its discretion in reducing spousal maintenance. She argues that the district court erred in determining that a significant change in circumstances had occurred “because the documents and data [the district court] reviewed were insufficient and incomplete to make an accurate judgment.” Wife appears to be arguing that husband did not provide a complete overview of his finances, particularly with respect to PED’s operations. The district court addressed wife’s argument and noted that although she claimed husband manipulated the financial information, her assertion was based on “unsupported suspicion” and that the documents and husband’s testimony regarding the documents were credible.

In this appeal, wife similarly fails to base her claims on more than suspicion that husband is concealing financial information. She argues, in particular, that the district court failed to apply adequate scrutiny of PED’s financial information and that husband’s true financial situation is hidden in PED’s corporate accounting. Wife, however, fails to cite to evidence in the record that contradicts the district court’s findings.

Here, the district court relied on the same type of evidence – husband’s tax returns – to determine both the \$2,500 spousal-maintenance award in the 2015 judgment and the reduced award at issue here. Neither party appealed the 2015 judgment. The district court’s findings about a change in husband’s income are supported by both husband’s and PED’s tax returns. In fact, husband’s tax returns reflect a decrease in income such that the \$2,500 spousal-maintenance award actually exceeded husband’s entire gross monthly income.

We also note that in reaching its reduced maintenance award, the district court conducted a thorough analysis of husband's claimed monthly expenses of \$5,719 and found that his reasonable monthly expenses should only be \$1,682, reducing husband's reasonable expenses to less than a third of what he was claiming.

Finally, we note that the district court specifically found husband's testimony concerning his current financial condition to be credible and we defer to district court findings on credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

On this record, we conclude that the district court did not abuse its discretion in reducing the spousal-maintenance award.

II. The district court did not abuse its discretion in its determination of the effective date of the modification order.

We turn next to husband's appeal that the order modifying his spousal-maintenance obligation should have been retroactive to January 2012 instead of January 30, 2018. We review the district court's determination regarding the effective date of modification for an abuse of discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000).

By statute, a modification of spousal maintenance "may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification." Minn. Stat. § 518A.39, subd. 2(f) (2018). Husband argues that the district court should have construed a motion that he made on January 26, 2012, as a motion for modification of spousal maintenance and that the reduction, thus, should be retroactive to that date. We disagree.

As discussed above, after spousal maintenance has been ordered, a district court may only modify the award based on a substantial change in circumstances that renders the award unreasonable and unfair. *Id.*, subd. 2(a). The district court issued its initial judgment and decree dissolving the parties' marriage on December 21, 2011. But, as a result of the subsequent appeal and remand, husband's spousal-maintenance obligation of \$2,500 per month was not determined until the 2015 judgment. Thus, husband's January 2012 motion cannot be construed as a motion to modify the spousal-maintenance award because no final award had yet been entered. The motion was no more than a request that the district court amend the findings in the *initial* judgment and decree, not to modify an *existing* spousal-maintenance award based on changed circumstances. Husband's argument is therefore without merit, and the district court did not abuse its discretion in setting January 30, 2018, as the effective date of the modification order.

Affirmed.