**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1291**

In re the Marriage of:
Jill Melisa Sinda, petitioner,
Respondent,

vs.

Richard Joseph Sinda,
Appellant.

**Filed August 10, 2020**
**Affirmed**
**Bjorkman, Judge**

Hennepin County District Court
File No. 27-FA-13-5280

Rodney H. Jensen, Mark E. Mullen, Jensen, Mullen, McSweeney & Meyer, PLLP, Bloomington, Minnesota (for respondent)

Edward F. Rooney, Minneapolis, Minnesota; and

Becky Toevs Rooney, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

**S Y L L A B U S**

A spousal-maintenance obligee's "cohabitation" with another adult constitutes a substantial change in circumstances that justifies modifying maintenance if consideration of the four factors enumerated in Minn. Stat. § 518.552, subd. 6 (2018), indicates that cohabitation makes the existing maintenance obligation unreasonable and unfair.

## O P I N I O N

**BJORKMAN**, Judge

Appellant-husband challenges the order reducing his spousal-maintenance obligation, arguing that the district court abused its discretion by declining to terminate or further reduce the obligation because it (1) made clearly erroneous findings as to respondent-wife's income, (2) made insufficient findings regarding her expenses, and (3) made insufficient findings regarding the economic benefit she receives from cohabitation. Appellant also argues that the district court abused its discretion by making the reduction retroactive without also ordering specific relief regarding the resulting overpayment. We affirm.

## FACTS

In April 2014, the 23-year marriage of appellant Richard Sinda and respondent Jill Sinda was dissolved based on a stipulated agreement. For purposes of spousal maintenance, the parties agreed that husband earned $20,000 per month and wife earned $5,286 per month. The parties did not detail their expenses but agreed that, after the sale of the marital home, each party would have monthly expenses of between $6,500 and $6,900, including $2,000 per month for either rent or a mortgage payment. Based on those income and expense figures, the parties agreed that husband would pay wife spousal maintenance of $4,500 per month for 60 months; then maintenance would increase by $300 (to $4,800) per month until husband turns 65, at which point his obligation would terminate.

In February 2018, husband moved to terminate or reduce his spousal-maintenance obligation, asserting that wife's circumstances have changed because (1) she is "cohabiting with her longtime partner," which reduces her need, and (2) her income has increased since the maintenance obligation was established. Wife opposed husband's motion, moved for a "cost of living adjustment" to meet her increased expenses, and requested conduct-based attorney fees.

After a hearing in October, the district court granted husband's motion, decreasing his spousal-maintenance obligation by $1,270 (to $3,230) per month, retroactive to when husband served the motion. The court based its decision on wife's acknowledgement that her housing costs are reduced by that amount because she is cohabiting. The district court denied wife's requests for a cost-of-living adjustment and attorney fees.

Husband moved for amended findings, urged the district court to reduce his spousal-maintenance obligation to $900 per month, and requested that the district court award him a credit against future maintenance payments to address the overpayment resulting from retroactive modification. The district court denied the motion in all respects. Husband appeals.

## ISSUES

I. Are the district court's findings as to wife's income clearly erroneous?

II. Are the district court's findings regarding wife's reasonable monthly expenses sufficient?

III. Did the district court correctly apply the law and make sufficient findings in addressing modification of spousal maintenance based on cohabitation?

IV. Did the district court abuse its discretion by awarding retroactive maintenance modification without ordering a remedy for the overpayment?

## ANALYSIS

A district court has broad discretion in its decisions regarding spousal maintenance, and we will not reverse absent a clear abuse of discretion. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009). A court abuses its discretion "if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record." *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

A party seeking to modify a spousal-maintenance obligation must demonstrate that a substantial change has occurred in the parties' circumstances and that the change renders the existing obligation "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a) (2018); *see Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003) (stating that the moving party must first demonstrate substantially changed circumstances, then "demonstrate that the change renders the original award unreasonable and unfair"), *review denied* (Minn. Aug. 5, 2003). The legislature has identified several types of changes that may warrant maintenance modification, such as a substantial increase in the obligee's income, Minn. Stat. § 518A.39, subd. 2(a), and several specific changes that presumptively justify maintenance modification, *see* Minn. Stat. § 518A.39, subd. 2(b), (4), (5) (2018). Maintenance also "may be modified pursuant to section 518A.39, subdivision 2," based on an obligee's cohabitation with another adult. Minn. Stat. § 518.552, subd. 6(a).

## I. Husband has not demonstrated that errors in the district court's findings regarding wife's income warrant reversal.

"A district court's determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous." *Melius*, 765 N.W.2d at 414 (quotation omitted). Factual findings are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006) (quotation omitted).

Husband argues that the district court made clearly erroneous findings regarding wife's gross income at the time of the dissolution and at the time of the motion—facts bearing on whether her increased gross income warrants modification of maintenance under Minn. Stat. § 518A.39, subd. 2(a). This argument has merit.

First, the district court found that wife's income at the time of the dissolution was $68,802. But the dissolution judgment establishes that wife earned gross income of $5,286 per month, which equals $63,432 per year. Wife does not dispute this $5,370 error in the district court's findings.

Second, regarding wife's gross income at the time of the motion,[1] the district court found that she earned annual income of $76,776, describing the change as an 11.5% increase. Husband asserts that wife's annual income was "at least" $78,000. We agree that all of the record evidence, including wife's August 2018 deposition testimony, reveals annual earnings of approximately $78,000 per year. The district court's lower figure comes

[1] On a motion for modification of maintenance, a district court must look to the conditions that exist "at the time of the motion." Minn. Stat. § 518A.39, subd. 2(e) (2018).

from wife's 2017 income tax return, which deducted wife's 401(k) contribution from her gross income. Consideration of the deduction was error. *See* Minn. Stat. § 518A.29(a) (2018) (disallowing deductions for "401 K" contributions in calculating gross income). Because the record evidence does not support a finding that wife's gross income at the time of the motion was $76,776, that finding also is clearly erroneous.

Husband also contends that the district court should have found wife's gross income to be nearly $80,000 because she receives bonuses. Gross income is "any form of periodic payment to an individual." *Id.* Bonuses may be included in a party's gross income, but only if they are a regular, dependable form of payment. *See Haasken v. Haasken*, 396 N.W.2d 253, 261 (Minn. App. 1986) (concluding annual bonuses ranging from $0 to $9,000 did not constitute income); *Desrosier v. Desrosier*, 551 N.W.2d 507, 508-09 (Minn. App. 1996) (concluding annual bonuses ranging from $7,000 to $17,000 constituted income). The only evidence that wife receives bonus income is her limited testimony that her employer "gives us a bonus at the end of the year" and her 2017 tax form indicating that she received a $1,784 bonus that year. Because this evidence provides little basis for determining that wife regularly receives a dependable amount of bonus income, we discern no clear error by the district court in declining to include bonus payments in wife's gross income.

In sum, the district court's findings regarding wife's gross income at the time of the dissolution and at the time of the motion are clearly erroneous. After accounting for the district court's exclusion of bonus payments, the only findings that the record supports are

that wife earned $63,432 at the time of the dissolution and approximately $78,000 at the time of the motion. The increase is not 11.5%, as the district court found, but 21%.

These errors require reversal only if they resulted in prejudice. Minn. R. Civ. P. 61 (requiring reviewing court to disregard harmless error); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a district court will not be reversed if it reached a correct result for the wrong reason). It is husband's burden to demonstrate prejudice. *See Melius*, 765 N.W.2d at 418 (requiring appellant to demonstrate both abuse of discretion and prejudice to warrant reversal); *Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (same). He has not done so.

Husband argues that he was prejudiced by the district court's failure to recognize that wife's income increased 21%, because that percentage of increase supports a presumption in favor of modification. He points to Minn. Stat. § 518A.39, subd. 2(b)(5), which establishes a presumption in favor of maintenance modification if an obligee's gross income has decreased by at least 20% "through no fault or choice of the party." Husband essentially assumes that a 20% *increase* in income is equally as significant as a 20% *decrease* in income. By expressly establishing a presumption in cases of decreased income but not in cases of increased income, the legislature indicated that it does not consider the two changes equivalent. *See State v. Smith*, 899 N.W.2d 120, 123 (Minn. 2017) (stating "presumption that an omission in a statute is by deliberate choice, not inadvertence" (quotation omitted)); *Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) ("We cannot add words or meaning to a statute that were intentionally or inadvertently omitted.").

Moreover, husband identifies no other basis for determining that the agreed-to maintenance obligation is now unreasonable or unfair. Wife's income increased by 21% in the intervening four years. During that same time, husband's income increased even more substantially. And the parties' agreement regarding maintenance unambiguously reflects a commitment to supporting wife at the high marital standard of living. *See Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (stating that the purpose of a maintenance award is to allow the parties to have "a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances"). That agreement is the baseline against which the district court evaluated husband's motion. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). Because husband failed to demonstrate that the 21% increase in wife's income makes his maintenance obligation unreasonable and unfair, we discern no prejudice to him from the district court's erroneous findings regarding wife's income.

## II. The district court made sufficient findings regarding wife's reasonable monthly expenses.

In maintenance-modification proceedings, "particularized findings are necessary to show that relevant statutory factors have been considered." *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987). A remand is warranted if "the findings are insufficient to determine that the [district] court addressed the factors expressly mandated by the legislature." *Id.* But remand is not appropriate if the findings indicate that the court considered the relevant factors. *Id.*

Husband argues that remand is required because the district court made insufficient findings regarding wife's reasonable monthly expenses. This argument is unavailing. Wife claimed expenses of $9,066 per month; husband countered that a reasonable monthly budget is $4,720. The district court considered both parties' arguments, but also noted the difficulty in evaluating wife's claimed expenses when the baseline the parties stipulated to at the time of the dissolution—that each party will have reasonable expenses of between $6,500 and $6,900, including approximately $2,000 for housing—is so vague. *See Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (noting importance of identifying baseline circumstances in stipulated dissolution judgments). Nonetheless, the district court expressly assessed the reasonableness of wife's claimed expenses, rejecting as unreasonable wife's claim for debt payments of $1,853. The court also found that wife failed to substantiate the "high" amounts she claimed for medical expenses ($500), food and restaurant expenses ($1,000), and clothing ($400). While wife's evidentiary shortcomings would not have justified excluding those items from her budget entirely, her unsupported claims combined with the ambiguous baseline amply support the district court's finding that wife's reasonable expenses remain at the level the parties contemplated in the dissolution judgment.

## III. The district court correctly applied the law and made sufficient findings in addressing modification based on cohabitation.

In 2016, the legislature added a new basis for modifying spousal maintenance—an obligee's cohabitation with another adult. Minn. Stat. § 518.552, subd. 6; 2016 Minn.

Laws ch. 132, § 1.[2] In doing so, it articulated four factors that a district court must consider before reducing, suspending, reserving, or terminating maintenance based on cohabitation:

> (1) whether the obligee would marry the cohabitant but for the maintenance award;
>
> (2) the economic benefit the obligee derives from the cohabitation;
>
> (3) the length of the cohabitation and the likely future duration of the cohabitation; and
>
> (4) the economic impact on the obligee if maintenance is modified and the cohabitation ends.

Minn. Stat. § 518.552, subd. 6(a).

Husband argues that the district court did not make sufficient findings as to the second factor—the economic benefit that wife derives from the cohabitation. And he contends that cohabitation entitles him to further reduce his maintenance obligation, regardless of whether the cohabitation constitutes a substantial change in circumstances or causes his existing obligation to be unreasonable and unfair. The sufficiency of the district court's findings regarding cohabitation depends on what standard applies to a motion to modify maintenance based on cohabitation—an issue that no precedential case has addressed since the legislature enacted Minn. Stat. § 518.552, subd. 6. Accordingly, we turn first to the interpretation of the cohabitation statute.

### A. The cohabitation statute requires a showing of "cohabitation" and resulting unreasonableness and unfairness.

Statutory interpretation presents a question of law that we review de novo. *Muschik v. Conner-Muschik*, 920 N.W.2d 215, 221 (Minn. App. 2018). Our goal when interpreting

[2] We observe that this statute applies only to cohabitation by a "maintenance obligee," not an obligor. Minn. Stat. § 518.552, subd. 6.

a statute is to ascertain and effectuate the legislature's intent. Minn. Stat. § 645.16 (2018); *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). We presume the legislature intends all provisions in a statute to be effective. *Wolfer v. Microboards Mfg., LLC*, 654 N.W.2d 360, 364 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). "When the language of the statute is plain and unambiguous, we will look only to that language in ascertaining legislative intent." *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). If a statute is unambiguous, our role "is to enforce the language of the statute and not explore the spirit or purpose of the law." *Christianson*, 831 N.W.2d at 537.

The cohabitation statute provides: "Spousal maintenance may be modified pursuant to section 518A.39, subdivision 2, based on the cohabitation by the maintenance obligee with another adult following dissolution of the marriage." Minn. Stat. § 518.552, subd. 6(a). Cohabitation may only support downward modification—"a reduction, suspension, reservation, or termination of maintenance"—as it is premised on its economic benefit to the obligee. *Id.*; *accord Abbott v. Abbott*, 282 N.W.2d 561, 566 (Minn. 1979) (stating that cohabitation "may be a basis for reducing or terminating [maintenance]" under what is now Minn. Stat. § 518A.39, subd. 2 (2018), "to the extent it improves a former spouse's economic well-being). Consequently, in determining whether to reduce maintenance, a district court must consider the extent of that economic benefit, as well as the three other enumerated factors, to determine whether the cohabitation warrants modification of maintenance. Minn. Stat. § 518.552, subd. 6(a).

Husband contends that the cohabitation statute supplants the standard two-part modification test because it does not expressly require a district court to consider

(1) whether the cohabitation constitutes a substantial change in circumstance or (2) whether that change renders the existing maintenance obligation unreasonable and unfair. He argues that this omission signals the legislature's intent that the four factors listed in the cohabitation statute substitute for the standard two-factor test and create a rebuttable presumption in favor of modification, like the circumstances listed in Minn. Stat. § 518A.39, subd. 2(b). We are not persuaded.

We begin by noting that the legislature did not omit the two factors set out in Minn. Stat. § 518A.39, subd. 2(a), from the cohabitation statute. Rather, it expressly incorporated that test by permitting cohabitation-based modification of maintenance "pursuant to section 518A.39, subdivision 2." Minn. Stat. § 518.552, subd. 6(a). It then identified four factors specific to the cohabitation context that district courts should consider in determining whether cohabitation "may" warrant maintenance modification. *Id.* Far from establishing a presumption favoring modification when an obligee cohabits, this layered framework underscores the fact-specific analysis that guides the court's discretion in determining whether modification is appropriate. And while the reference to section 518A.39, subdivision 2, necessarily includes a reference to subpart (b), nothing in the two portions of subpart (b) that relate to spousal maintenance warrants a presumption in favor of modification when an obligee cohabits. *See* Minn. Stat. § 518A.39, subd. 2(b)(4) (permitting presumption when "the existing support obligation is in the form of a statement of percentage and not a specific dollar amount"), (5) (permitting presumption when "the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party").

In short, if the legislature had intended for cohabitation to support a presumption in favor of maintenance modification, it would have said so. That it knows how to do so is demonstrated by Minn. Stat. § 518A.39, subd. 2(b).[3] Its use of expressly conditional, fact-specific language in the cohabitation statute indicates a contrary intent.

Having concluded that the cohabitation statute is an adjunct to and not a substitute for the standard two-part modification test, we consider how the two statutes work together. Our examination of the cohabitation statute as a whole, including the two factors incorporated from Minn. Stat. § 518A.39, subd. 2(a), leads us to two conclusions.

First, by designating cohabitation as a basis for modifying maintenance "pursuant to" Minn. Stat. § 518A.39, subd. 2, the legislature signaled that cohabitation constitutes a substantial change in circumstances like those indicated in that statute. Among those changes is a substantial decrease in the obligee's "need." Minn. Stat. § 518A.39, subd. 2(a). Minnesota courts have long recognized that sharing a residence with another adult may substantially decrease an obligee's need. *E.g.*, *Abbott*, 282 N.W.2d at 566. By enacting the cohabitation statute, the legislature likewise signaled that such an arrangement may afford the obligee an "economic benefit." *See* Minn. Stat. § 518.552, subd. 6(a)(2).

The legislature also ensured that the cohabitation statute applies only to those shared living arrangements that represent a true change in circumstances, limiting its application to cohabitation "following dissolution of the marriage." Minn. Stat. § 518.552, subd. 6(a).

[3] Similarly, the legislature knows how to state a categorical rule for terminating maintenance, as it has in cases of an obligee's remarriage. Minn. Stat. § 518A.39, subd. 3 (2018).

And it ensured that the change is a substantial one. The statute applies only to a long-term cohabitation arrangement. *Id.*, subd. 6(a)(3) (requiring consideration of length and likely future duration of the cohabitation), (c) (providing that cohabitation cannot support modification unless a year has passed since the dissolution). And it contemplates a cohabitation arrangement that is similar to marriage. *Id.*, subd. 6(b) (providing that cohabitation may justify modification only if the cohabitants could legally marry); *accord Abbott*, 282 N.W.2d at 565-66 (describing cohabitation as similar to common-law marriage, which Minnesota does not recognize). Thus, an obligee's establishment of a long-term cohabitation arrangement with another adult after the dissolution constitutes a substantial change in circumstances.

Second, the determination whether cohabitation renders the existing maintenance obligation unreasonable and unfair turns on the four factors enumerated in the cohabitation statute. Those factors require consideration of the obligee's motive in cohabiting rather than marrying, the actual benefit the obligee obtains from cohabitation, the durability of the cohabitation, and the likely effect of a reversal of cohabitation if maintenance is modified. Minn. Stat. § 518.552, subd. 6(a). These mirror considerations of fairness and reasonableness relevant to other changes in circumstances. *See Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 717 (Minn. App. 2009) (permitting consideration of a party's motives in voluntarily creating a change of circumstances). But they also account for considerations that are unique to the cohabitation context. *See Abbott*, 282 N.W.2d at 566 (noting that a cohabitation arrangement "can be readily broken off without obligation," leaving the obligee in need). By enumerating these factors, the legislature established

almost the opposite of the presumption husband urges—it is fair and reasonable to reduce or terminate maintenance based on cohabitation only if that arrangement actually reduces or eliminates the obligee's need, the change in need is reasonably expected to be long-term and durable, and the arrangement is not merely a means of avoiding the automatic termination of maintenance that remarriage would necessitate.

In sum, a maintenance obligee's cohabitation with another adult constitutes a substantial change in circumstances that justifies modifying maintenance if consideration of the four factors enumerated in Minn. Stat. § 518.552, subd. 6, indicates that cohabitation makes the existing maintenance obligation unreasonable and unfair.

The district court correctly followed this framework, finding that wife is in a long-term relationship that is likely to continue for some time, the two have shared a residence for multiple years, and they do not intend to marry regardless of the maintenance award. And the court found that this cohabitation arrangement affords wife an economic benefit of $1,270 per month in the form of reduced housing costs, making it unreasonable and unfair not to reduce husband's maintenance obligation accordingly. Husband challenges only this last aspect of the district court's findings.

### B. The district court made sufficient findings regarding wife's economic benefit from cohabitation.

Husband contends the district court made insufficient findings to address the extent of wife's economic benefit from cohabitation. He asserts that the court should have found that wife receives a greater economic benefit because her cohabitant can afford to contribute more than $1,270 per month. The district court considered husband's argument

that wife's cohabitant should contribute toward other expenses, such as pet care and insurance premiums, and agreed that "it is reasonable for [wife] to expect him to contribute more financially to the household." But there is no evidence that he actually does so. Absent such evidence, we discern no error by the district court in declining to find that wife receives a greater economic benefit.

We conclude the district court's finding that wife receives an economic benefit of $1,270 per month from cohabitation is sufficient to demonstrate the court addressed that aspect of the cohabitation statute. That finding has ample support in the record, and it supports the court's determination that it would be unfair and unreasonable not to reduce husband's maintenance obligation by that amount. Accordingly, husband's challenge to the $1,270 reduction of his maintenance obligation based on wife's cohabitation fails.

## IV. The district court did not abuse its discretion by awarding retroactive maintenance modification without ordering a remedy for the overpayment.

A district court may make a modification of spousal maintenance "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). We review the district court's decisions regarding retroactivity for an abuse of discretion. *See Melius*, 765 N.W.2d at 414 (recognizing that a district court has broad discretion in decisions regarding spousal maintenance); *Kemp*, 608 N.W.2d at 920 (stating that the decision to set a retroactive effective date for the modification of maintenance is reviewed for an abuse of discretion).

The district court modified maintenance in January 2019, making the modification retroactive to March 2018, when husband served his motion. An 11-month overpayment

of $1,270 per month results in a total overpayment of $13,970. Wife does not dispute this amount or her obligation to repay it. And the record shows she is making payments to husband, albeit not in the manner or amount than he would like.[4]

Husband contends the district court erred by declining to order a specific "remedy" to address the overpayment. He is correct that when a retroactive reduction or termination of maintenance results in an overpayment, the obligor "has a right" to recover the overpayment. *Peterson v. Lobeck*, 421 N.W.2d 367, 368 (Minn. App. 1988) (addressing overpayment after obligee's remarriage). But he identifies no authority requiring any particular remedy to effectuate that right. Indeed, when husband requested that the district court order a 20% credit against his modified maintenance obligation ($180 per month) until the overpayment is eliminated, he candidly acknowledged that, while Minn. Stat. § 518A.52 (2018) prescribes that approach to resolve a child-support overpayment, no caselaw requires such an approach with respect to a maintenance overpayment.

Husband contends it would be inequitable to require him to submit the arrearage order to a judgment because a maintenance obligee is afforded a "simple" statutory remedy to obtain a judgment for unpaid maintenance. *See* Minn. Stat. § 548.091, subd. 1 (2018). But that remedy, by its terms, does not apply to an obligor who is held to have overpaid maintenance by virtue of a retroactive modification, particularly absent any evidence that failure to provide the remedy will cause hardship. On this record, husband has not

[4] At the April 2019 hearing on husband's motion for amended findings, wife stated that she "made at least three payments" of $50 toward the overpayment since the court's January 2019 order. The parties disputed the process for delivery of the payments, but husband has not denied that wife is actually making payments.

demonstrated that the district court abused its discretion by declining to order wife to repay the overage at a particular rate or in a particular way.

## D E C I S I O N

Despite flaws in its factual findings, the district court did not abuse its discretion by declining to reduce husband's spousal-maintenance obligation based on wife's increased income. In determining the amount by which to reduce that obligation based on wife's cohabitation, the district court correctly applied the cohabitation statute and made sufficient findings regarding the applicable factors. And the district court did not abuse its discretion by declining to order specific relief regarding the overpayment that resulted from retroactive modification.

**Affirmed.**