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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1471**

In re the Marriage of:
Janelle M. Schires, petitioner,
Respondent,

vs.

Vernon D. Schires,
Appellant.

**Filed July 13, 2020
Affirmed
Ross, Judge**

Roseau County District Court
File No. 68-FA-13-664

Alan B. Fish, Alan B. Fish, P.A., Roseau, Minnesota (for respondent)

Kevin T. Duffy, Duffy Law Office, Thief River Falls, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bratvold, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Vernon Schires moved to terminate his spousal-maintenance obligation, alleging primarily that his income from farming substantially decreased and his expenses substantially increased. After two evidentiary hearings, the district court denied the motion, unconvinced by Vernon's financial evidence in part because Vernon had manipulated

financial evidence during the divorce proceedings. Because the district court rested its decision on a credibility assessment and we are in no position to second-guess that assessment on appeal, and because we see no legal error, we affirm.

FACTS

The district court issued a judgment and decree in 2014 dissolving the 15-year marriage of Vernon and Janelle Schires, ordering Vernon to pay \$1,000 monthly in permanent spousal maintenance. The district court rested the spousal-maintenance award on Janelle's estimation of Vernon's annual net income at \$200,000 from various farming-related operations. It apparently favored this estimation despite Vernon's representation that he earned substantially less, finding that the five years of tax returns Vernon provided falsely showed that his business was operating at a loss. It found, "The income tax returns do not accurately reflect [Vernon's] income from his farming operation." Relying on testimony and Vernon's admissions, the district court concluded that various transactions generated income not reflected in his tax returns: he cashed checks instead of depositing them into his bank account, bartered his labor for goods or services rather than receiving cash payment, allowed crop-share rent to be claimed by his parents, wrote checks to his children in exchange for cash from them, and improperly claimed expenses on the tax returns. The district court also found that Vernon uncharacteristically deferred approximately \$115,000 of 2013 income until January 2014, artificially depressing his 2013 income.

Vernon appealed the district court's award of \$1,000 in monthly spousal maintenance, and we held that the district court failed to support the amount with specific,

statutorily required factual findings. *Schires v. Schires*, No. A15-0276, 2016 WL 456808, at *3 (Minn. App. Feb. 8, 2016), *review denied* (Minn. Apr. 19, 2016). The district court issued new findings and, based on Janelle's new income, ordered Vernon to pay \$839 in monthly spousal maintenance.

Vernon moved the district court in June 2018 to terminate spousal maintenance, alleging a substantial change in the parties' financial circumstances. The district court held an evidentiary hearing in September 2018, where Vernon presented his 2016 and 2017 tax returns. The returns showed that his gross income from his farming business was about \$100,000 less than it was during the divorce proceedings. Vernon testified that he had stopped selling straw and that he had to mortgage property to obtain the funds to pay Janelle the property equalizer required by the divorce decree.

The district court denied Vernon's termination motion. It was unpersuaded by his tax returns and testimony about his income, finding them "not credible." It made its credibility finding in part based on its understanding that Vernon had previously manipulated his income. The district court therefore found that Vernon "ha[d] not established that the tax returns he submitted in support of his motion . . . are an accurate representation of his actual income" because he failed to provide "receipts, invoices, or any other documentation to substantiate the returns." The district court also rejected Vernon's contention that a \$4,000 monthly repayment on a mortgage contributed to a substantial increase in his expenses because he chose that method to meet his obligation to pay Janelle the property equalizer. The district court found that Vernon failed to show a substantial change in circumstances warranting termination.

Vernon successfully sought a new hearing to supply the district court additional evidentiary support for his motion. Vernon provided the district court with receipts for expenses that he incurred in 2016, 2017, and 2018, along with his 2018 tax return. He also called two witnesses who testified that they had previously purchased straw and hay-baling services from Vernon but that they had not done so for several years. A loan officer testified about Vernon's agricultural loan with the bank, saying that Vernon acted on the bank's advice by taking out a mortgage-secured loan to pay the equalizer.

The district court again denied Vernon's motion to terminate spousal maintenance. It was unpersuaded by Vernon's additional evidence, finding that it was "entirely duplicative of past representations he has made." It stated that Vernon "provided limited copies of some receipts for one tax year" but no additional evidence to support the amounts on his tax returns. The district court disregarded the testimony of his former straw clients as not providing any new information, and it doubted the testimony from Vernon's loan officer because it was based on hearsay and tax forms that were created by Vernon. The district court concluded that Vernon did not provide sufficient evidence to meet his burden of showing a substantial change in circumstances.

Vernon appeals.

DECISION

Vernon appeals from the district court's denial of his motion to terminate his spousal-maintenance obligation. We review a district court's spousal-maintenance decision for an abuse of discretion. *See Hecker v. Hecker*, 568 N.W.2d 705, 709–10 (Minn. 1997). A district court abuses its discretion if it makes factual findings that are not

supported by the record, misapplies the law, or resolves the matter in a way that is contrary to logic and the facts in the record. *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). We review findings supporting a modification decision for clear error. *Id.* Vernon cannot prevail under this standard of review in light of the district court’s credibility findings.

Vernon contests the district court’s findings of income and expenses. A party seeking to modify spousal maintenance must show a substantial change in circumstances that renders the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2018); *see also Hecker*, 568 N.W.2d at 709. A substantial change of circumstances may be shown through “substantially increased or decreased gross income of an obligor or obligee.” Minn. Stat. § 518A.39, subd. 2(a)(1). Vernon moved for termination of spousal maintenance partly on this basis, arguing that his income from his farming operation had substantially decreased. Vernon maintains that the district court clearly erred in its findings about his income.

Tax Returns and Farming Income

Vernon points to particulars in his tax returns from 2016 through 2018 as having proved that his farming income substantially decreased from the period of 2009 through 2013. If his returns represent his finances accurately, they establish a key premise of his motion. But the accuracy of the data in the tax returns is itself a question of fact and credibility. The problem for Vernon on appeal is that, during both the dissolution proceedings and the maintenance-termination proceedings, the district court found the tax returns to be not credible. And unlike the district court, this court cannot observe the

nuances in the testifying witnesses' tone, delivery, expressions, and body language that can influence a fact-finder's credibility assessments. We therefore defer to the district court's findings on witness credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). This includes credibility findings about a witness's representations about his income. See *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 241–42 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Although Vernon provided some documentation to support the data on his tax forms, the district court implicitly based its assessment on its belief that Vernon likely earned additional income that he failed to include in his tax filing. And the district court is basically correct that Vernon's 2016 through 2018 tax returns are "consistent with" his prior testimony and his 2009 through 2013 tax returns because they all reflect either net losses or minimal net income.

Not all of the district court's findings are supported by the record. After the second evidentiary hearing, the district court found that Vernon "provided limited copies of some receipts for one tax year, but brought in no further foundational records . . . supporting th[e] numbers on his income tax forms." Contrary to this finding, Vernon submitted extensive documentation for the tax years 2016 through 2018, including checks and receipts showing his expenses. Although the district court's reasoning is imperfect, making this a close call, it based its credibility finding on more than the lack of documents. We affirm despite the clear error we have identified because the district court's ultimate finding rests on a credibility determination and on its implied conclusion that Vernon did not prove that he fully and accurately revealed all of his income.

Straw and Related Businesses

It is true that Vernon provided witness testimony supporting his claims about his straw and hay-baling businesses. But we do not believe it was clearly erroneous for the district court to reject this testimony as providing no new information and demonstrating no substantial change in circumstances. As the moving party, Vernon had the burden to show “a substantial change of circumstances *since the last time maintenance was modified.*” *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003) (emphasis added), *review denied* (Minn. Aug. 5, 2003). The district court last modified Vernon’s maintenance obligation in January 2017, decreasing it from \$1,000 to \$839. The testifying former clients said that the last time they used Vernon’s services was six to seven years before they testified, which was before the divorce. That means this change in Vernon’s business occurred before rather than “since” the most recent maintenance modification.

The finding about Vernon’s straw-selling income presents a closer issue. Vernon argues that his income has decreased because he no longer sells straw to a major customer, a North Dakota company. He testified so at the first evidentiary hearing and points to the divorce decree, in which the district court had found that he received nearly \$100,000 from straw sales to the North Dakota company and included that amount in calculating his 2014 income. Because he no longer sells straw to that company, argues Vernon, the district court was obligated to find that his income reduced by that amount from \$200,000 to \$100,000. The argument is logical as far as it goes, but it does not convince us that the district court’s findings are clearly erroneous. The district court denied Vernon’s termination motion without making a specific finding about income from this company, and Vernon did not

ask the district court for a more specific finding or appeal on the ground that the district court abused its discretion by failing to substitute the finding with a more detailed one. In this context, Vernon's argument about his straw sales reveals only a potential factual mistake, not a clear error. A finding constitutes a clear error only if it leaves us "with the definite and firm conviction that a mistake has been made." *Thompson v. Thompson*, 739 N.W.2d 424, 429 (Minn. App. 2007). And here, again, the district court's conclusion that Vernon's income was not accurately and completely represented in his tax returns and testimony rests on its finding that Vernon's income evidence was not credible. The district court therefore might have both accepted Vernon's representation that he no longer received an income from this company and concluded that he failed to prove that his income from all sources substantially decreased. Although this is a close question, for these reasons we cannot say that the district court *clearly* erred in its finding about Vernon's income, nor can we reverse the district court's ultimate assessment that Vernon failed to carry his burden to prove a substantial change in circumstances.

Change in Farming Operation

Vernon argues that the district court clearly erred by finding that "very little has changed with the financial make-up of [his] business plan." He implies that his increasing farming and livestock purchasing, together with the loss of straw and hay business, demonstrate a change. But the district court's finding acknowledged his purchases and is contextualized by the district court's broader discussion of his farming business's continuing economic struggles.

Expenses and Ability to Pay

We turn to Vernon's challenge to the district court's findings about his expenses and ability to pay spousal maintenance. The district court must consider an obligor's ability to pay spousal maintenance. Minn. Stat. § 518.552, subd. 2(g) (2018). The district court found that Vernon "added more than \$125,000 in new livestock and machinery in 2016 and 2017, despite testifying that he did not take on *any* new debt in his ranching operation during those years." This fact helped persuade the district court that Vernon could afford spousal maintenance but chose to incur additional expenses.

As to expenses, Vernon acknowledged spending \$125,000 for livestock and machinery and choosing to cover the cost from his current assets. He points to the bank's loan officer's testimony that he sold equipment encumbered by bank liens to make the purchases and that the bank approved the transactions, suggesting that the debt attached to the liens entitled the bank to all the sale proceeds. Vernon argues that this testimony establishes that he could not have used any of the assets toward spousal maintenance. The district court found otherwise based again on its credibility determinations. The district court was skeptical about the loan officer's testimony, finding that he "testified about the finances but admitted he relied entirely on the hearsay, unaudited tax forms which [depended on] foundational information . . . provided solely by [Vernon]." The record corroborates the district court's characterization, and we must defer to its underlying credibility assessments.

As to ability to pay, Vernon challenges the district court's finding that "his bank payments went down from \$72,000 a year at the time of the divorce in prior years to

\$40,000.00 per year currently, freeing up an extra \$32,000.00 per year.” Because we cannot second-guess the district court’s credibility-based finding that Vernon’s income did not decrease, we would not reverse on ability-to-pay grounds even if the district court clearly erred by finding that his expenses decreased. But the finding is not clearly erroneous. Vernon acknowledges that his loan-repayment obligation to the bank decreased by the amount found by the district court. Vernon cites the loan officer’s testimony for the proposition that the reduction did not afford him funds to pay spousal maintenance because the reason the bank agreed to the reduction was Vernon’s failure to remain current on his \$72,000 annual obligation. His rationale is flawed; the reason for the reduction does not undermine the district court’s finding that a reduction in fact occurred. That Vernon’s obligation to the bank was reduced shows that his annual expenses decreased significantly.

Mortgage Payment

We next address Vernon’s \$4,000 monthly home mortgage payment, which the district court rejected as a basis to find a substantial change in circumstances. The district court found that Vernon voluntarily incurred the obligation as “a self-choice and manipulation of expenses.” Again, Vernon relies on the loan officer’s testimony that the bank endorsed Vernon’s decision to incur this debt. The district court recognized that the divorce decree outlined options for Vernon to meet his \$371,000 property-equalizer obligation: he could pay Janelle \$50,000 annually or satisfy it in a lump sum. The loan officer testified that Vernon consulted with the bank and decided to refinance his home on a 20-year mortgage to provide the funds for a single equalizer payout. Vernon’s position is essentially that his chosen manner of meeting his property-equalizer obligation resulted

in an expense that relieves him of his spousal-maintenance obligation. But his property-equalizer obligation, which existed at the time of the decree, is not a change in circumstances. And we have held that increased expenses resulting from a property division, including increased mortgage expenses, provide no basis for finding a substantial change in circumstances. *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004).

We recognize that Vernon faced a Gordian knot: having previously been found by the district court to lack credibility about his financial circumstances, how could he prevail on a motion that depends significantly on the district court believing his testimony about his financial circumstances? And we acknowledge that Vernon responded to the district court's restatements of doubt by providing the sort of evidence that the district court said was lacking. But the district court's decision hangs largely on its credibility findings, and this appeal hangs largely on whether extraordinary grounds lead us to reject those findings. We conclude that, on this record, although reasonable minds may differ about the proper weight to give Vernon's testimony and documentary evidence, we will not substitute our judgment for that of the district court. We hold that the district court did not clearly err by finding that Vernon failed to meet his burden to show a substantial change of circumstances.

Vernon argues separately that the district court erred as a matter of law by requiring him to show a substantial change of circumstances since both the January 2017 order and the November 2018 order denying termination. He bases the argument on the following statement in the district court's 2019 order: "[Vernon] has failed to meet his burden of

[proving] a change in circumstances as no evidence was presented which the Court finds shows any change of circumstances from the Court's Order dated November 13, 2018 nor the Order from January [2017]." Vernon maintains that, because the second evidentiary hearing merely supplemented the first and that he never filed a second motion to terminate, the district court errantly required him to prove a change from both dates. But Vernon simply misconstrues the district court's language. We read the language as commenting that Vernon had not shown a substantial change of circumstances since either of two dates, not that he had a duty to show a change since both of them. We see no legal error.

Affirmed.