STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1636

In re the Marriage of:
Peter M. Boldon, petitioner,
Respondent,

vs.

Claudia M. Hendrix,
Appellant.

Filed November 30, 2020
Reversed and remanded
Segal, Chief Judge

Ramsey County District Court
File No. 62-FA-12-1732

Eric B. Bjerva, Arctos Law PLLP, Minneapolis, Minnesota (for respondent)

Victoria A. Elsmore, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Segal, Chief Judge; and Hooten, Judge.

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

SEGAL, Chief Judge

Appellant appeals the denial of her motion for modification of spousal maintenance. Because there was a misapplication of law, we reverse and remand.

FACTS

Appellant-wife Claudia M. Hendrix and respondent-husband Peter M. Boldon were married for 26 years before their divorce in 2013. The parties have two sons, now in their twenties, who have autism and related conditions. Hendrix was the primary caretaker of the two boys and, as set out in the district court's findings, "chose a career which gave her flexibility to be present for the children during the marriage and afterwards." The older son is now self-sufficient, but the younger son still has ongoing needs and attends a college to learn independent life skills.

The parties entered into a partial marital termination agreement (MTA), which the district court incorporated into its December 2013 judgment dissolving the parties' marriage. The judgment states that each party claimed living expenses of about $8,665 per month, but that "[f]or purposes of the settlement," their then-current monthly living expenses were $7,500. At the time of dissolution, Boldon had a yearly gross income of $207,400 and Hendrix had a yearly gross income of $68,000. The only significant marital assets of the parties were retirement accounts that the judgment divided as the parties agreed.

The judgment also provided for temporary spousal maintenance to Hendrix to be stepped down as follows: $3,500 per month for 36 months; then $3,000 per month for 18 months; $2,000 per month for the next 18 months (through February 2019); and, finally, $1,000 per month with temporary maintenance ending after September 2022. The judgment did not contain any restrictions on Hendrix's right to seek modification of spousal

maintenance, but did contain an express waiver (known as a "*Karon* waiver"[1]) barring Boldon from seeking spousal maintenance from Hendrix.

On April 30, 2019, Hendrix moved the district court to increase her monthly maintenance award to $3,000, and to make the award permanent. To support her motion, Hendrix asserted that, since the dissolution, her annual income had increased by approximately $9,800, giving her a monthly income of $6,483, but that her reasonable monthly expenses were $9,880. Hendrix claimed that, as a result, she had not become self-supporting at the marital standard of living.[2] She also asserted that Boldon's monthly income had increased to over $19,000.

The district court denied Hendrix's motion to modify maintenance. The court relied, in significant part, on the fact that the temporary maintenance award in the judgment was pursuant to a stipulation. The court noted that, while there was no evidence in the record to demonstrate that Hendrix had anticipated the possibility that she may not achieve self-sufficiency during the temporary maintenance period, there was also no evidence that she had not. The court thus excluded Hendrix's failure to achieve self-sufficiency as a basis for claiming a "substantial change of circumstances" justifying a modification. Hendrix appeals.

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[1] *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989) (allowing parties to stipulate that they waive any right to future modification of maintenance; codified into law pursuant to 1989 Minn. Laws. ch. 248, § 7, at 838 (Minn. Stat. § 518.552, subd. 5)).

[2] Hendrix also states that she took on a second job as an assistant teacher in addition to her full-time position as a research associate, but there does not appear to be evidence in the record on the amounts earned from this second job or whether it is ongoing.

D E C I S I O N

In this appeal, Hendrix challenges the denial of her motion to modify spousal maintenance. We review decisions regarding modification of spousal maintenance awards for an abuse of discretion, but review questions of law de novo. *Hecker v. Hecker*, 568 N.W.2d 705, 710 (Minn. 1997); *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

A maintenance award may be modified upon a showing of one or more of eight statutory factors, "any of which makes the terms [of the existing award] unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a) (2018). In a proceeding to modify maintenance, the burden on the party seeking modification is to show that there has been both a substantial change in circumstances, and that the change renders the existing award unreasonable and unfair. *Nardini v. Nardini*, 414 N.W.2d 184, 198-99 (Minn. 1987); *see Hecker*, 568 N.W.2d at 709 (citing this aspect of *Nardini*). If a district court modifies a maintenance award, it determines the amount and duration of the modified award by using the factors for an award of maintenance under Minn. Stat. § 518.522. Minn. Stat. § 518A.39, subd. 2(e) (2018).

Hendrix claims that the district court misapplied the law by placing too much emphasis on the fact that the judgment was based on a stipulation and should not have relied on the case of *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997), as the guiding precedent. In denying Hendrix's motion to modify spousal maintenance, the district court noted that "[w]hile the court does not have evidence that [Hendrix] attempted to negotiate a provision which enabled her to claim a change of circumstances should she not be able

to become self-supporting, there is no evidence that she did not anticipate this as a possibility." Relying on *Beck* as its authority, the district court thereby reached the conclusion that Hendrix's claimed failure to achieve self-sufficiency was not a change of circumstances that could justify a modification of spousal maintenance.

The district court's reliance on the case of *Beck v. Kaplan*, however, is misplaced. In *Beck*, the former wife moved the court for an increase in a stipulated *permanent* award of maintenance that had been in place for nineteen years. 566 N.W.2d at 725. The former wife claimed she had not been able to achieve self-sufficiency and that there had been a substantial increase in the cost of living since the divorce without any increase in her spousal maintenance payments. *Id.* at 725-26. The Minnesota Supreme Court rejected the former wife's arguments on the grounds that the record demonstrated she had specifically sought, but failed to obtain, a cost-of-living adjustment clause during the negotiations for the stipulated marital termination agreement. *Id.* at 726-27.

The *Beck* case is distinguishable in several significant ways. First, as the district court acknowledged, there is no evidence in the record in the current case that Hendrix sought, but failed to obtain, a provision allowing her to seek future modification of spousal maintenance. We further note that *Beck* involves a stipulation providing for a permanent award of spousal maintenance, not a temporary award as in this case.

In addition, Minn. Stat. § 518.552 was amended eleven years after the divorce in *Beck* was finalized to provide that, in the event of "uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification." Minn. Stat. § 518.552, subd. 3; 1985 Minn. Laws ch. 266, § 2. After this

amendment, an award of permanent maintenance became the default in the event of uncertainty over need.[3] *See Nardini*, 414 N.W.2d at 196 (noting that the 1985 amendment served to clarify the legislature's intent that "doubts with respect to duration [of maintenance] are to be resolved in favor of permanency").

Instead of *Beck,* more apt guidance can be found in the Minnesota Supreme Court's opinion in the case of *Hecker v. Hecker*, decided only a month after *Beck*. In *Hecker*, the supreme court affirmed an award of permanent maintenance even though there had been a stipulation between the parties providing only for *temporary* maintenance. On the question of deference to be accorded a stipulated agreement, the court stated that, while the

> stipulation represents the parties' voluntary acquiescence in an equitable settlement, . . . once it has been merged into the judgment and decree, it does not operate as a bar to later consideration of whether a change in circumstances warrants a modification. . . . Instead, its relevance in a modification context is in the identification of the baseline circumstances against which claims of substantial change are evaluated.

568 N.W.2d at 709 (citation omitted). The court then affirmed the district court's conclusion that a substantial change in circumstances had been demonstrated under the facts presented in that case, even though the stipulated agreement provided for temporary spousal maintenance.

[3] In addition, this same session law also introduced the concept of seeking to maintain the "standard of living established during the marriage" as a consideration in the award of spousal maintenance. Minn. Stat. § 518.552, subd. 1(b); 1985 Minn. Laws ch. 266, § 2. In 1988, another amendment provided for biennial adjustments in maintenance to account for increases in the cost of living. 1988 Minn. Laws ch. 668, § 25 (currently codified in Minn. Stat. § 518A.75, subd. 1(a) (2018)).

Similarly here, the fact that the temporary maintenance award was the result of a stipulated agreement should not be determinative in the absence of an actual waiver of the right to seek modification in the future. Instead, the motion for modification should be analyzed under the factors set out in Minn. Stat. § 518A.39, with the stipulation serving as "the identification of the baseline circumstances against which claims of substantial change" are to be evaluated.[4] *Id.* This is particularly true where, as in this case, the MTA contained an express waiver barring Boldon from seeking future spousal maintenance, but contained no corresponding restriction on Hendrix, thereby preserving her right to seek future modifications.

For all of the above reasons, we conclude that the district court misapplied the law by failing to consider, as a possible basis to support Hendrix's motion to modify her maintenance award, her allegation that she failed to achieve self-sufficiency. Therefore, we reverse the denial of that motion and remand for the district court to readdress whether Hendrix showed a substantial change in circumstances rendering her existing maintenance award unreasonable and unfair. In reaching our conclusion, we do not express any opinion on the merits of those questions. On remand, the district court shall have discretion regarding whether to reopen the record.

Reversed and remanded.

[4] Thus, for example, the district court should determine Hendrix's *current* reasonable expenses as part of its evaluation of Hendrix's motion for modification, and measure that against the baseline of her expenses at the time of the dissolution set out in the judgment.