STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1687

In re the Marriage of: Jane Swenson Amdal, petitioner,
Respondent,

vs.

Keith Solomon Moheban,
Appellant.

Filed August 31, 2020
Affirmed in part, reversed in part, and remanded; motion denied.
Reyes, Judge

Hennepin County District Court
File No. 27-FA-15-2713

Jana Aune Deach, Moss & Barnett, Minneapolis, Minnesota (for respondent)

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

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

REYES, Judge

On appeal from the district court's denial of his motion to modify his spousal-maintenance obligation, appellant-husband argues that (1) the appropriate standard of review for the district court's interpretation of a prior district court's dissolution judgment and decree is de novo; (2) the district court misinterpreted the dissolution judgment and decree; (3) the district court erred by applying res judicata to preclude its consideration of

his arguments; (4) the district court abused its discretion by reducing his spousal-maintenance obligation by $14,400 when respondent-wife's budget decreased by $23,556; and (5) the district court abused its discretion by awarding wife conduct-based attorney fees. We affirm in part, reverse in part, and remand, and we deny as moot wife's motion to strike portions of appellant's brief.

FACTS

In March 2017, the district court (dissolution court) entered a final dissolution judgment and decree (2017 judgment), dissolving the marriage between appellant Keith Solomon Moheban (husband) and respondent Jane Swenson Amdal (wife). Husband is a partner at a law firm in Minneapolis and receives income in the form of an annual salary, quarterly distributions to make tax payments, and year-end distributions. Husband's historical income for 2011 through 2015 ranged from $297,800 to $464,827. The dissolution court found that wife had a reasonable budget of $9,617 per month and that she could make an average of $10,000 per year, given her medical limitations. In light of the variability of husband's income, the dissolution court awarded wife spousal maintenance in two tiers: tier-I spousal maintenance as a fixed monthly amount of $4,135 and tier-II spousal maintenance as 50% of husband's year-end distributions, "subject to a cap when Wife's established reasonable needs are met."

The dissolution court described tier-II maintenance as support in "any additional amount necessary to meet Wife's needs," subject to the cap. The dissolution court noted, as a conclusion of law, that "[f]or 2017 and 2018, tier two spousal maintenance shall be up to and shall not exceed [a cap of] $55,784." The dissolution court also noted, as a finding

of fact, that the parties would be able to request an administrative review to modify the tier-II spousal-maintenance cap per Minn. Stat. § 518A.39, subd. 2 (2018), no earlier than November 2018, after the anticipated termination of wife's mortgage-payment obligation.

In April 2017, husband and wife both filed motions for amended findings per Minn. R. Civ. P. 52.02, seeking to change the amount of the tier-II maintenance cap. Later in April 2017, a new judge replaced the original judge who oversaw the 2017 judgment. Following this replacement, in August 2017, the district court amended portions of the 2017 judgment but did not alter the spousal-maintenance award.

In October 2018, husband filed a motion to modify and reduce his spousal-maintenance obligation to wife per Minn. Stat. § 518A.39, subd. 2, based on wife no longer having mortgage payments. In February 2019, the district court denied husband's motion, determining that, even though wife's monthly expenses decreased because she no longer had mortgage payments, husband had not demonstrated the unreasonableness or unfairness of the outstanding spousal-maintenance award. Later in February 2019, husband requested to file a motion for the district court to reconsider its denial of his October 2018 motion per Minn. R. Gen. Prac. 115.11, which the district court granted. In March 2019, husband filed the motion for reconsideration, requesting the district court to modify and reduce his tier-II spousal maintenance per Minn. Stat. § 518A.39, subd. 2. In April 2019, husband filed a notice of appeal with this court, which he then sought to stay, pending the district court's resolution of his motion for modification. We initially granted his request to stay the appeal, but, in light of later developments in the district court, we dismissed the appeal without prejudice to allow husband to file a new appeal to obtain review of the district

court's February 2019 spousal-maintenance order. *Amdal v. Moheban*, No. A19-0600, (Minn. App. June 21, 2019) (order).

In May 2019, the district court granted husband's motion to modify spousal maintenance in part, by reducing husband's tier-II spousal-maintenance obligation by $14,400, based on wife no longer having monthly mortgage payments. The district court also determined that the plain language of the 2017 judgment set no limit on wife's tier-II spousal maintenance after 2018 and determined that, going forward, wife would receive 50% of *all* of husband's year-end distributions, without a cap. Husband responded by filing a motion to vacate and amend the district court's May 2019 order per Minn. R. Civ. App. P. 108.01, subd. 2, Minn. R. Civ. P. 52.02, arguing that the district court incorrectly interpreted the 2017 judgment to not include a post-2018 tier-II spousal-maintenance cap. In October 2019, the district court denied husband's request to vacate and amend the May 2019 order and ordered husband to pay conduct-based attorney fees. Assuming that the 2017 judgment excluded a tier-II spousal-maintenance cap post-2018, the district court also determined that res judicata prevented husband from arguing that the 2017 judgment included a tier-II spousal-maintenance cap post-2018 because he had not raised this argument in his April 2017 motion to change the tier-II maintenance cap or at any other point in 2017. Nevertheless, the district court determined that husband had recourse because Minn. Stat. § 518A.39, subd. 2, provides an exception to res judicata in spousal-maintenance cases, allowing him to request modification of the award based on a substantial change of circumstances rendering the maintenance obligation unreasonable and unfair.

Husband filed a notice of appeal regarding the district court's February, May, and October 2019 orders. In December 2019, the parties requested clarification from the district court regarding its May 2019 modification of the tier-II spousal-maintenance payments. The district court deferred the parties' request pending our decision in this appeal.

D E C I S I O N

Husband raises five issues on appeal, including (1) res judicata; (2) our standard for reviewing the district court's interpretation of the 2017 judgment; (3) the propriety of the district court's interpretation of the 2017 judgment; (4) the spousal-maintenance reduction; and (5) attorney fees. Because res judicata is a potentially dispositive issue, we address it first.

I. Res judicata does not bar husband's challenge to the district court's interpretation of the 2017 judgment.

Husband argues that res judicata cannot bar him from challenging the district court's May 2019 interpretation of the 2017 judgment as having no tier-II cap post-2018. We agree.

We review whether res judicata can apply de novo. *Erickson v. Comm'r of Dep't of Human Servs.*, 494 N.W.2d 58, 61 (Minn. App. 1992). If res judicata applies, we review the district court's decision of whether to apply it for an abuse of discretion. *Id.* Res judicata bars a subsequent claim when (1) the prior claim involves the same set of factual circumstances; (2) the prior claim involves the same parties or their privies; (3) the prior claim received a final judgment on the merits; and (4) "the estopped party had a full and

fair opportunity to litigate the matter." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).[1] "Res judicata not only applies to all claims actually litigated, but to all claims that could have been litigated in the earlier action." *Id.*

The district court determined that res judicata precluded husband from arguing the existence of the tier-II cap post-2018 because it determined that the 2017 judgment unambiguously excluded a tier-II cap post-2018. *See Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) (stating that "[e]ven though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired."); *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006), (citing this aspect of *Dieseth* in family law appeal), *review denied* (Minn. May 16, 2006).

However, as discussed below, because the district court erroneously interpreted the 2017 judgment, which never intended to exclude a tier-II cap post-2018, the district court's erroneous interpretation of the 2017 judgment cannot be retroactively read into the judgment and used as a basis for invoking res judicata to preclude husband from challenging its interpretation.

Res judicata would preclude husband from attacking the 2017 judgment for the first time in 2019. But that is not what he is doing. The 2017 judgment did not explicitly

[1] *See Loo v. Loo*, 520 N.W.2d 740, 743-44 (Minn. 1994) (noting that, "[i]n a technical sense," res judicata does not apply in spousal-maintenance dispute because there is no final judgment in another suit, but acknowledging that "the underlying principle that an adjudication on the merits of an issue is conclusive, and should not be relitigated, [however,] clearly applies."); *see id.* at 743-44 & n.1 (discussing applicability of law of the case, res judicata, and collateral estoppel).

address the amount of a tier-II maintenance cap post-2018, though it did make findings of fact that unambiguously convey the dissolution court's intent to extend the existence of a cap post-2018 at the amount of wife's expenses, as explained below. Instead, it allowed the parties to request an administrative review to file a motion to modify the amount of the tier-II cap per Minn. Stat. § 518A.39, subd. 2, no earlier than November 2018. In May 2019, for the first time, the district court interpreted the 2017 judgment to include no cap post-2018. Because the district court articulated its interpretation of there being no cap post-2018 for the first time in May 2019, husband did not have a full and fair opportunity to litigate the matter until after May 2019. *See id.*

Moreover, "[r]es judicata has limited application to family law matters," and if two motions to modify maintenance address different aspects of maintenance, res judicata cannot preclude litigation of the second motion. *See Maschoff v. Leiding*, 696 N.W.2d 834, 835 (Minn. App. 2005) (examining child-support orders). Husband's October 2018 and March 2019 motions to reduce the amount of his tier-II spousal-maintenance obligation did not address the issue of the tier-II spousal-maintenance cap. After the district court interpreted the 2017 judgment in May 2019 not to have a tier-II cap post-2018, husband moved to vacate and amend the district court's order and addressed the issue of a tier-II cap post-2018. The motions husband submitted before and after the district court's May 2019 interpretation of the 2017 judgment addressed different aspects of maintenance, and res judicata cannot preclude husband's argument that the cap continues post-2018. *See id.* Because we conclude that res judicata did not preclude husband from arguing that the

district court erroneously interpreted the 2017 judgment, we now turn to the district court's interpretation.

II. Appellate courts review a district court's interpretation of an unambiguous dissolution judgment de novo.

Whether a provision in a dissolution judgment is ambiguous is a question of law that we review de novo. *See Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014). "[A] dissolution provision is unambiguous if its meaning can be determined without any guide other than knowledge of the facts on which the language depends for meaning." *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985) (quotation omitted). We review a district court's interpretation of an unambiguous dissolution provision de novo. *See Vanderleest v. Vanderleest*, 352 N.W.2d 54, 56 (Minn. App. 1984). If a dissolution provision is unambiguous, then we apply its plain meaning. *See Starr v. Starr*, 251 N.W.2d 341, 342 (Minn. 1977) (examining stipulated dissolution and decree provision).

III. The district court erred by finding that husband's tier-II spousal-maintenance obligation did not have an amount cap after 2018.

Husband argues that the district court erred in its interpretation of the 2017 judgment by failing to take into account its provisions that acknowledged the importance of awarding maintenance based on need and that anticipated an administrative review after November 2018 to modify the allocation of tier-II spousal maintenance based on wife no longer having mortgage payments. We agree.

Here, the district court determined that the 2017 judgment tier-II cap provision unambiguously included no cap beginning in 2019. We agree that the 2017 judgment is unambiguous, but we disagree with the district court's determination that it expressed no

tier-II cap post-2018. Interpreting the 2017 judgment not to include a cap post-2018 is inconsistent with the plain language of the 2017 judgment and how relevant caselaw and statutes outline the purpose of maintenance and acceptable maintenance awards.

The dissolution court meticulously outlined wife's average monthly expenses during the marriage, calculated them to be $9,617 per month, and awarded spousal maintenance, including the tier-II cap, to meet this calculated budget. Its 2017 judgment described tier-II spousal maintenance in the findings as "subject to a cap when Wife's established reasonable needs are met," and as maintenance that "would only be paid to Wife if, as, and when Husband receives the income, up to a cap at which Wife has received the amount needed to meet her budget."

Wife argues that the dissolution court's conclusion of law plainly articulates a cap only for 2017 and 2018 and controls over its inconsistent findings of fact. *See Dailey*, 709 N.W.2d at 631-32.

But "[w]e must interpret the terms of a divorce decree to be reasonable, effective, and conclusive so it harmonizes both the law and the facts of the case . . . [and] the judgment should be considered as a whole by a court interpreting any clause or sentence therein." *Stewart v. Stewart*, 400 N.W.2d 157, 159 (Minn. App. 1987). Interpreting the tier-II spousal-maintenance cap to terminate in 2018 would ignore the fact that the dissolution court calculated wife's budget to determine her need and capped spousal maintenance to reflect "the amount needed to meet her budget." The 2017 judgment did not determine the amount of tier-II spousal maintenance after 2018 because it anticipated a substantial change of circumstances based on wife no longer having mortgage payments.

See id. In response to husband's request to reduce the tier-II spousal-maintenance cap because of the mortgage-payment reduction, the dissolution court noted, "Because this addresses a possible future scenario, the Court will not address this request at this time, but provides the parties with the opportunity to request an administrative review to be scheduled, upon motion of a party, no earlier than November 2018." Finally, we note that the 2017 judgment does not contain an express statement that there will be no cap post-2018. To the contrary, the dissolution court's mention of modifying tier-II spousal-maintenance in the future coupled with its clear and repeated references to awarding spousal maintenance based on need compel our conclusion that the district court erroneously interpreted the 2017 judgment not to include a post-2018 tier-II cap.

Moreover, statute and caselaw support our interpretation of the 2017 judgment. *See id.* (encouraging courts to interpret terms in judgment in light of whole judgment and relevant law). As the dissolution court noted in the 2017 judgment, "[t]he purpose of alimony is to care for the wife's needs after divorce, not to provide her with a lifetime profit-sharing plan." *Kaiser v. Kaiser*, 186 N.W.2d 678, 685 (Minn. 1971). The award of spousal maintenance and the demonstration of need are inextricably linked. *See Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) ("Implicit in Minn. Stat. § 518.552 is that the spouse seeking maintenance must demonstrate the need [for it] . . . ."); *Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating "maintenance depends on a showing of need"); *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (articulating purpose of spousal maintenance as allowing "the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the

circumstances," and recognizing circumstances to include determination of recipient's need). In fact, section 518.552 requires that the spouse seeking maintenance must lack sufficient means "to provide for reasonable needs of the spouse considering the standard of living established during the marriage." Minn. Stat. § 518.552, subd. 1(a) (2018).

The dissolution court calculated wife's need in light of her standard of living during the marriage, determined her demonstrated annual need to be $115,404, and set a cap to meet that calculated need. Uncapping a spousal-maintenance award when the cap aligns with wife's demonstrated need runs contrary to caselaw by allowing spousal maintenance to exceed need. In fact, the dissolution court anticipated this outcome and noted that husband could seek a future modification of spousal maintenance based on a substantial change of circumstances rendering the award unreasonable and unfair.

Wife relies on this future resolution and argues that uncapped percentage-based spousal-maintenance awards are permissible so long as a fixed amount of spousal maintenance is coupled with a percentage-based award. Although we have determined that such an arrangement is permissible, we have also clarified that this arrangement is disfavored and that percentage-based awards must be modified when they no longer match the needs of the spouse receiving maintenance. *See, e.g.*, *Schreck v. Schreck*, 445 N.W.2d 861, 862-63 (Minn. App. 1989) (affirming spousal maintenance award of $2,200 per month and 40 % of annual bonus but noting need for cap if "actual bonus share will exceed respondent's needs"), *review denied* (Minn. Nov. 15, 1989); *Doherty v. Doherty*, 388 N.W.2d 1, 1-2 & n.1 (Minn. App. 1986) (concluding district court did not abuse its discretion by awarding fixed-amount monthly maintenance plus fixed percentage of

income in excess of certain amount, but characterizing such award as disfavored and noting award may need to be capped if no longer responsive to parties' circumstances). Here, neither the 2017 judgment nor the district court in its interpretation of the judgment articulated a rationale for why wife should receive a potential windfall in excess of her demonstrated, calculated need. *See Lyon*, 439 N.W.2d at 22.

In sum, both the dissolution court's budgetary calculations, representing wife's marital standard of living, and its articulation of spousal maintenance in relation to demonstrated need, representing the statutory requirement, remain unchanged before and after 2018. Because removing the cap post-2018 and allowing wife to potentially receive a windfall of spousal maintenance in excess of her need is contrary to the plain meaning of the 2017 judgment when read in context, we conclude that the district court erred in its interpretation of the 2017 judgment and remand for proceedings consistent with this opinion.

IV. The district court did not abuse its discretion by reducing wife's maintenance award by $14,400 when wife's budget decreased by $23,556.

Husband argues that the district court abused its discretion by reducing his maintenance obligation by only $14,400 per year when wife's budget decreased by $23,556 per year. Husband also contends that the district court incorrectly articulated its $14,400 reduction by stating that only the first $14,400 of husband's year-end distributions are not subject to maintenance, resulting in only half of the intended maintenance reduction, and that in order to reduce what he owes from his year-end distributions by $14,400, the district

court should have exempted the first $28,800 of his year-end distributions from maintenance obligations. We disagree.

We review a district court's modification of spousal maintenance for an abuse of discretion. *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

The district court noted the uncertainty inherent in husband's year-end distributions, that his income varies substantially, and the risk that wife's needs would not be met if husband received less or no yearly distributions. Taking this risk into account, the district court decreased husband's tier-II spousal-maintenance obligation by $14,400 as opposed to $23,556, resulting in wife receiving maintenance that exceeded her budget by $763 per month. The district court did not abuse its discretion by considering and distributing the risk that husband might receive insufficient year-end payments to allow wife to meet her reasonable needs.[2]

The district court determined that "it is reasonable to decrease Husband's Tier II maintenance obligation by the total sum of $14,400.00 per year." The district court then articulated, "Wife shall not receive Tier II spousal maintenance from Husband unless and until Husband's yearly distributions exceed $14,400.00 per year." Contrary to husband's contention, the district court's order does not address the amount of husband's year-end distributions that would be "exempted." Instead, the order provides for a $14,400

[2] *See Olson v. Olson*, No. A04-1148, 2005 WL 894709, at *5 (Minn. App. Apr. 19, 2005) (remanding for district court to determine spousal-maintenance payment allocating risk to both parties). Although not precedential, we find *Olson*'s reasoning to be persuasive. *See State v. Roy*, 761 N.W.2d 883, 888 (Minn. App. 2009) (adopting reasoning from unpublished case).

"decrease" in his tier-II spousal-maintenance obligation, which implies a $28,800 maintenance-obligation exemption to result in a $14,400 maintenance-obligation reduction given that husband shares 50% of his year-end distributions with wife. As stated, the district court's order achieves its goal of reducing husband's tier-II spousal-maintenance obligation by $14,400.

V. The district court abused its discretion by issuing conduct-based attorney fees against husband.

Husband contends that he engaged in reasonable conduct by bringing motions for amended findings, for reconsideration, and for modification. We agree.

We review the district court's award of conduct-based attorney fees for an abuse of discretion. *See Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001), *review denied* (Minn. Aug. 20, 2002). "[A] district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (internal quotation and citations omitted).

The district court may award, "in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2018). "[B]ad faith . . . is not required for an award of conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1." *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). The party moving for conduct-based attorney fees has the burden to show unreasonable conduct. *Id.*

Here, the district court noted that husband had the opportunity to argue the unreasonableness of an uncapped tier-II spousal-maintenance award beginning in 2017 but did not do so until May 2019. The district court characterized this as "procedural maneuverings" that unreasonably increased the length and expense of litigation. But the district court did not advance an interpretation of the 2017 decree as not including a tier-II cap post-2018 until May 2019. Later that month, husband submitted a motion challenging this erroneous interpretation. Husband appropriately responded to the district court's interpretation of the 2017 judgment. We therefore conclude that the district court abused its discretion by awarding conduct-based attorney fees.

VI. Wife's motion to strike portions of husband's brief is moot.

Wife argues that husband's brief contains information that the district court did not consider when it issued its orders that husband is appealing, including the December 31, 2019 order deferring clarification of spousal maintenance as well as an agreement between husband and wife that husband would pay wife 50% of his year-end distribution and that wife would refund that amount if husband prevailed on this appeal. We deny as moot wife's motion to strike.

If a court does not consider material that a party seeks to strike, the motion to strike is moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007). Here, because we neither consider nor need to consider the portions of husband's brief that wife claims are not properly included in the record, we deny as moot wife's motion to strike.

On remand, the district court may decide whether to reopen the record.

Affirmed in part, reversed in part, and remanded; motion denied.