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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1876**

In re the Marriage of:

Matthew James Ulness, petitioner,
Appellant,

vs.

Jill Marie Ulness, n/k/a Jill-Marie Stefano,
Respondent.

**Filed November 9, 2020
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-FA-16-7365

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

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Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Matthew James Ulness challenges the district court's denial of his motion to modify his spousal-maintenance obligation to his former wife, respondent Jill-Marie Stefano. Ulness argues that the district court abused its discretion by not finding that his

income had substantially decreased or that Stefano had failed in an obligation to become self-supporting. We affirm.

FACTS

In 2017, Ulness and Stefano entered into a stipulated judgment and decree (the J&D) dissolving their marriage. For purposes of determining spousal-maintenance, the parties stipulated that Ulness's gross monthly income, from his employment as a sales manager for a medical device company, was \$13,978 (\$7,579 in salary and \$6,399 in commissions and incentives). They also stipulated that Stefano's gross monthly income, based on her work as a hair stylist and on imputed income, was \$1,495. Based on these agreed-upon amounts, Ulness was ordered to pay Stefano spousal maintenance of \$5,000 per month for 60 months. A hearing to review the issue of spousal maintenance was scheduled toward the end of the 60-month period.

In July 2019, two years after the J&D and three years before the scheduled review hearing, Ulness moved to modify the maintenance obligation by terminating or reducing his obligation. The basis for Ulness's motion was two-fold: (1) his income had decreased for reasons beyond his control, and (2) Stefano had an obligation to become self-sustaining. As to the first basis, Ulness argued that a recent and ongoing Federal Drug Administration investigation into the drug-eluting stents that he sells has adversely impacted his sales. Ulness believed that, because of the anticipated impact this investigation would have on his sales, he would not receive a bonus for his 2019 sales, and he urged the district court to exclude any potential bonus from his monthly gross income. As to the second basis, Ulness

argued that Stefano's need for spousal maintenance should be reconsidered in light of her failure to take sufficient efforts to become self-supporting.

The district court denied Ulness's motion in August 2019. It found that Ulness's income had not substantially decreased for two reasons. First, the district court calculated Ulness's monthly gross income for the first six months of 2019 as \$12,183. The \$12,183 monthly figure included all of Ulness's 2018 sale bonus, which was paid to Ulness in January 2019. While the \$12,183 figure was a decrease to Ulness's monthly gross income, the district court found that the decrease was too small to be statutorily considered a substantial change in circumstances. Second, the district court reasoned that it was premature to conclude that Ulness would not receive a bonus for his 2019 sales. Ulness brought the motion in July 2019, and the district court determined that, while Ulness may fear additional decreases to his monthly gross income, those decreases had not yet materialized. The district court also found that Stefano did not have an obligation under the J&D to become self-supporting.

Ulness appeals.

D E C I S I O N

We review the decision to modify a spousal-maintenance obligation for an abuse of discretion. *See Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (quoting *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). We review factual

findings for clear error but consider questions of law de novo. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009).

Modification of spousal maintenance is governed by Minn. Stat. § 518A.39 (2018). A party seeking to modify spousal maintenance bears “a dual burden.” *Hecker*, 568 N.W.2d at 709 (discussing Minn. Stat. § 518.64 (1996), since renumbered to Minn. Stat. § 518A.39 and amended in ways not relevant here). First, the moving party must establish “a substantial change in one or more of the circumstances identified in the statute.” *Id.* An obligor’s substantially decreased gross income is a statutorily identified circumstance. Minn. Stat. § 518A.39, subd. 2(a)(1). Second, the moving party must establish that the substantial change makes the initial obligation “unreasonable and unfair.” *Hecker*, 568 N.W.2d at 709. Because the district court denied Ulness’s motion on the ground that there was no substantial change in Ulness’s circumstances, we do not need to address whether the change, if there was one, makes the initial obligation unreasonable and unfair. We therefore consider only the issue of Ulness’s asserted substantial change in circumstances.

We do not presume that the district court has erred; the party asserting error has the burden of showing it. *Horodenski v. Lyndale Green Townhome Ass’n*, 804 N.W.2d 366, 372 (Minn. App. 2011) (citing *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 237 N.W.2d 76, 78 (Minn. 1975)). Thus, we will not reverse unless Ulness can affirmatively establish the asserted errors. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944). Ulness asserts three errors, which we turn to now.

Bonus income

First, Ulness argues that the district court abused its discretion by concluding that it was premature to assume that he would not receive a bonus for his 2019 sales. Bonuses may be part of a party's income, even if they are "not guaranteed and uncertain as to amount," provided that they are "a dependable form of periodic payment." *Desrosier v. Desrosier*, 551 N.W.2d 507, 509 (Minn. App. 1996). Here, at the time of his spousal-maintenance-modification request, Ulness had not yet completed his 2019 sales year. Because of this, the district court found that Ulness's assumption that he would not receive a 2019 bonus was premature and speculative. The district court reasoned that "[b]onuses are, by their very nature, dependent on multiple factors and [are] therefore to some degree unpredictable." The district court concluded that Ulness had not met his burden of establishing that he would not receive a 2019 bonus.

The district court's finding is not clearly erroneous. The record reflects that, although Ulness's sales might have declined, his commissions had not substantially declined at the time of his motion. Moreover, at the time that Ulness brought his motion, it was too soon to know whether the decline in the sales of one product that his team markets would continue long-term or how it would affect his 2019 bonus, if at all. Ulness argues that his decline in sales suggests he will not meet the criteria that would be necessary to trigger his bonus. But the district court did not clearly err by determining that it was too soon to know what Ulness's 2019 bonus would be when half of the year still remained.

Ulness maintains that his bonus should not be included because it is not a dependable source of income that is expected to continue. He relies on our decision in

Haasken v. Haasken, in which we affirmed the district court’s decision to exclude any bonuses from the husband’s income. 396 N.W.2d 253, 261 (Minn. App. 1986). But *Haasken* does not compel the conclusion that the district court clearly erred here. In *Haasken*, the husband received a bonus depending on the profitability of the store that he managed and his past bonuses ranged from \$0 to \$9,000. *Id.* Here, in contrast, Ulness has not shown that he ever failed to receive a bonus or that his bonuses varied so dramatically in amount as to make them not dependable.

Instead, this case is more like *Desrosier*, where we reversed a district court’s exclusion of bonus income because the bonuses had been a dependable form of payment. 551 N.W.2d at 508-09. In that case, the district court expected the bonuses to continue, although they were not guaranteed and the amount was uncertain. *Id.* Here, the record includes evidence that, although the amount of each bonus may be uncertain from year to year, the bonuses have remained an integral and significant part of Ulness’s income and he has always received one. The record thus supports the finding that Ulness did not establish that his bonus income had become not dependable.

Ulness argues that the district court clearly erred in evaluating whether his bonus was a dependable source of income because the district court observed that Ulness had not shown that there was “zero possibility” that he would receive a 2019 bonus. But the district court also explained, “Mr. Ulness has failed to meet his burden of showing a substantial decrease in his gross income. His gross income was higher than expected in 2018 and is not substantially below expectations for 2019. While he may fear additional decreases as a result of changes in the drug-elu[t]ing stent market, those decreases have not yet

materialized.” This finding is supported by the record, and Ulness has not shown that the district court clearly erred by declining to assume that he would not receive a bonus.

Prorating of the 2018 bonus in Ulness’s gross monthly income

Second, Ulness argues that the district court miscalculated his monthly gross income by prorating the 2018 bonus he received in January 2019 over the first six months of 2019 rather than over all 12 months. He then argues that, if the district court had correctly calculated his monthly gross income, his monthly gross income would have decreased by more than 20%, which is statutorily considered to be a substantial change in circumstances. Minn. Stat. § 518A.39, subd. 2(b)(5).

The district court’s calculation of income for spousal-maintenance purposes is a factual finding that we will not reverse unless it is clearly erroneous. *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004). But even if, on appeal, a complaining party shows that the district court committed an error, we will not reverse unless the error is prejudicial. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of Minn. R. Civ. P. 61); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that “[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal”).

Ulness may indeed be correct that the more appropriate calculation of his gross monthly income would prorate his 2018 bonus over all 12 months of 2019 rather than over only the six months that had passed at the time of the motion to modify. But any error is harmless. Minn. Stat. § 518A.39, subd. 2(b)(5), creates a rebuttable presumption that a substantial change has occurred if the gross income of an obligor, through no fault of the

obligor, has decreased by at least 20%. Even if the district court had prorated the 2018 sales bonus over 12 months, Ulness's monthly gross income still does not constitute a statutorily substantial change because it does not represent a decrease of at least 20%. For that reason, any error is harmless.

Stefano's self-supporting efforts

Finally, Ulness argues that the district court erred by determining that his spousal-maintenance obligation should be reduced because Stefano has made insufficient efforts to become self-supporting. The district court concluded that there was no basis to impose such an obligation on Stefano since Ulness agreed to the J&D just two years earlier, the J&D already imputed income to Stefano, and the J&D contemplated no obligation on Stefano to increase her income during the 60-month spousal-maintenance period.

Ulness relies on *Hecker* to argue that, where parties have negotiated an agreement for temporary maintenance, there is a presumption that the obligee will make reasonable efforts to reach self-sufficiency. 568 N.W.2d at 709-10. In *Hecker*, shortly before her maintenance award expired, the maintenance recipient sought to increase and extend her award. *Id.* at 707. Here, Stefano (the recipient) did not seek to increase or extend her maintenance award; rather, Ulness sought to decrease his maintenance obligation and did so only 24 months into the 60-month obligation to which he had stipulated. While Stefano has an obligation to try to become self-sufficient, *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987); *see Hecker*, 568 N.W.2d at 710 n.4, it was well within the ambit of the district court's discretion to decline to penalize Stefano for failing to become self-sufficient less than half-way through the maintenance period.

On this record, we hold that the district court did not abuse its discretion by denying Ulness's motion to modify spousal maintenance.

Affirmed.