STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0117

In re the Marriage of: James Patrick Pnewski, petitioner,
Respondent,

vs.

Joan Susanne Pnewski,
Appellant.

Filed December 28, 2020
Affirmed
Hooten, Judge

Washington County District Court
File No. 82-FA-15-344

Bradley J. Haddy, Mendota Heights, Minnesota (for appellant)

James P. Pnewski, Cottage Grove, Minnesota (pro se respondent)

Considered and decided by Hooten, Presiding Judge; Frisch, Judge; and Kalitowski, Judge.*

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

HOOTEN, Judge

In this appeal from the district court's denial of her post-dissolution motions, appellant mother argues that the district court (1) abused its discretion by denying her

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

motion to reduce respondent father's spousal maintenance award, (2) abused its discretion by denying her motion to reduce her child support obligation, (3) erred by failing to adequately address her motions related to legal custody decision-making, and (4) abused its discretion by denying her motion for amended findings. We affirm.

FACTS

Appellant Joan Susanne Frederiksen[1] and respondent James Patrick Pnewski were married in 1997. In 2000, the parties' first child was born. The parties have two more children, born in 2002 and 2007, respectively.

On January 27, 2015, respondent petitioned for a dissolution of marriage, joint legal and physical custody of the children, temporary and permanent spousal maintenance, child support, sale and division of the marital homestead, and attorney fees. Appellant counter-petitioned for sole legal and physical custody of the children and child support.

Following a bench trial, the district court issued its findings, order, judgment and decree of dissolution on August 1, 2017. The district court awarded the parties joint legal and physical custody of, and equal parenting time with, their children. Finding that she had unjustifiably self-limited her income, the district court imputed income to appellant. The district court ordered appellant to pay child support and permanent spousal maintenance to respondent. Finally, the district court ordered the parties to engage in mediation of all future disputes.

[1] Appellant was granted a change of her last name from Pnewski to Frederiksen by the district court in an order issued April 8, 2019.

On appeal from the district court's judgment and decree, appellant argued that the district court erred in (1) concluding that she had unjustifiably self-limited her income, (2) calculating respondent's monthly mortgage expense, and (3) including costs related to the children in respondent's personal monthly budget. On June 4, 2018, we issued an order affirming in part, reversing in part, and remanding for further proceedings. *Pnewski v. Pnewski*, A17-1521, 2018 WL 2470362 (Minn. App. June 4, 2018). We determined that while the district court had not erred in finding that appellant had unjustifiably self-limited her income or in calculating respondent's monthly expenses, the district court had erred in including child-related expenses in respondent's personal budget. *Id.* at *3–5. On remand, the district court issued an amended order correcting the amounts of both spousal maintenance and child support.

On January 7, 2019, appellant filed a motion for emergency relief, seeking a court order compelling respondent to "cooperate in the investigative process for educational opportunities" for one of the parties' children and to pay one-half of the cost of a study-abroad trip for another of the parties' children. That same day, appellant filed a separate motion for a reduction of child support, a reduction of spousal maintenance, and other relief. Respondent subsequently moved for an increase in spousal support. The district court issued an order on June 19, 2019 denying both parties' motions to modify spousal maintenance. The June 19 order did, however, reduce appellant's child support obligation in light of the emancipation of the parties' eldest child.

Appellant subsequently moved for amendments to the district court's most recent findings of fact, conclusions of law, order, and child support worksheet. The district court

issued an order on November 26, 2019, dismissing appellant's motion as untimely and denying it on the merits. Appellant now appeals from the district court's orders of June 19 and November 26, 2019.

D E C I S I O N

Appellant's brief appears to present four issues for our consideration: (1) whether the district court abused its discretion by denying her motion to reduce spousal maintenance, (2) whether the district court abused its discretion by denying her motion to reduce child support, (3) whether the district court erred in concluding that there was no legal basis for providing the additional relief she requested in her post-dissolution motion, and (4) whether the district court abused its discretion by denying her motion for amended findings. For the reasons that follow, appellant has failed to demonstrate that the district court committed any error in issuing its orders of June 19 and November 26, 2019.

I. The district court did not abuse its discretion by denying appellant's motion to reduce respondent's award of spousal maintenance.

An award of spousal maintenance may be modified if the terms of the award have become unreasonable or unfair. Minn. Stat. § 518A.39, subd. 2(a) (2018). We review the district court's decision not to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). "A district court abuses its discretion in making such a decision 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).

Appellant argues that the district court abused its discretion in three ways in denying her motion for a reduction of spousal support. First, she argues that the district court erroneously included projected mortgage and utility payments in respondent's monthly budget. Second, she argues that the district court incorrectly calculated respondent's monthly income. Third, she argues that the district court erred in concluding that her income remains intentionally self-limited. For the reasons that follow, all of appellant's arguments fail.

A. Respondent's Budget

First, appellant argues that the district court "abused its discretion by awarding permanent spousal maintenance based upon a budget that included a speculative mortgage and utilities expenses." In essence, she is arguing that it was clearly erroneous for the district court, in its consideration of respondent's need for maintenance, to include $1,750 for a mortgage payment and $230 for a utility payment in respondent's monthly budget when he was currently paying $1,075 for rent and, presumably, less than $230 for utilities.

In its original judgment and decree, the district court awarded respondent spousal maintenance on the basis of a modified version of the monthly budget that he submitted to the court. Included in the modified budget used by the district court were a $1,750 mortgage payment and a $230 gas and electricity payment. This modified budget, and the amounts for mortgage and utility payments that it included, were based on the standard of living established by the parties during their 20-year marriage. On appeal, we held that the district court's decision to award spousal maintenance on the basis of this budget was not an abuse of discretion. *Pnewski*, 2018 WL 2470362, at *4.

Appellant subsequently moved for a reduction in spousal maintenance, in part on the basis of respondent's budget. The district court denied appellant's motion, concluding that she had failed to prove that the maintenance award was rendered unreasonable or unfair by changes in respondent's budget.

The district court's continued inclusion of a $1,750 mortgage payment and a $230 utility payment in respondent's monthly budget was not an abuse of discretion. The standard of living established during the parties' marriage had not changed, and could not have changed, between the time of the original judgment and decree on August 1, 2017, and that of appellant's motion for modification.

Appellant argues that this court's decision in *Rask v. Rask*, 445 N.W.2d 849 (Minn. App. 1989), makes the continued inclusion of the $1,750 mortgage payment in respondent's budget improper because respondent is not currently making such a payment. Appellant's reliance on *Rask* is misplaced. In *Rask*, the maintenance obligee had originally been awarded $2,000 in permanent monthly maintenance based in part on her statement that she intended—at some indefinite point in the future—to purchase a house secured by a mortgage that would require monthly payments of approximately $610. *Id.* at 851, 854. That mortgage payment was not tied to an amount that the former spouses had previously paid towards the mortgage on a marital home. *See id.* at 854. Here—unlike in *Rask*—the $1,750 mortgage payment that was included in respondent's monthly budget was based on the monthly mortgage payment the parties had made on the former marital home. Accordingly, *Rask* is inapposite, and the conclusion there—that the district court abused

its discretion by awarding spousal maintenance based on a budget that included a mortgage payment that was not currently being made—does not require the same conclusion here.

B. Respondent's Income

Second, appellant argues that the district court abused its discretion by awarding respondent permanent spousal maintenance "in excess of his real need by miscalculating his actual income and not factoring in lost income." Appellant appears to argue that the district court miscalculated respondent's monthly income at the time of the original judgment and decree by using respondent's W-2 income rather than his gross income, and that it further erred by declining to impute income to respondent on the basis of his alleged voluntary underemployment.

In its original judgment and decree, the district court did in fact base the amount of respondent's spousal maintenance award on his gross income. The district court also declined to impute income to respondent because it found that he was not voluntarily underemployed in bad faith. Appellant did not argue that respondent's income was miscalculated in her original appeal. *See Pnewski*, 2018 WL 2470362, at *2-5.

Following her first appeal, appellant moved for a reduction in spousal maintenance in part on the basis of respondent's income. The district court denied appellant's motion, concluding that the maintenance award was not rendered unreasonable or unfair by changes in respondent's income.

That conclusion was not an abuse of discretion. At the time of appellant's motion for a reduction of maintenance, respondent remained employed by the same employer, and in the same position, as he had been at the time of the original judgment and decree. The

district court's finding that respondent's earning capacity was largely unchanged is supported by his affidavit setting forth his gross bi-weekly pay. The district court's finding is also supported by respondent's original trial testimony that he is unable to increase his earnings by working additional overtime, picking up additional shifts, or finding a new, higher-paying position in his field of employment.

Appellant offered to the district court no reason why respondent's earning capacity would have increased since the time of the original judgment and decree. Instead, appellant focused on an involuntary two-hour-per-week reduction in respondent's work schedule—and an attendant decrease in bi-weekly pay—and claimed that these changes were evidence of respondent's underemployment. But an involuntary reduction in work hours, and an involuntary decrease in pay, do not support appellant's argument that respondent is voluntarily underemployed.

C. Appellant's Income

Third, appellant argues that the district court abused its discretion by awarding spousal maintenance to respondent because it failed to accept and consider new and ongoing evidence that appellant did not intentionally self-limit her income. Appellant contends that her efforts to find higher-paid employment demonstrate that she is no longer voluntarily underemployed and that the district court thus erred by denying her motion for a reduction in spousal maintenance.

Appellant's voluntary underemployment has been an issue throughout the litigation between these parties. Appellant was a financial analyst with Woodbury Financial Services, earning roughly $100,000 per year, during the majority of the parties' marriage.

Her position was terminated in February 2014, and she was unemployed for roughly 14 months. In April of 2015, during the original dissolution proceedings, she took a job as a financial analyst with Thomson Reuters. This position began with a salary of $80,000. She left her position with Thomson Reuters after a week upon being told that she would sometimes be expected to work in excess of 40 hours per week.

Following her resignation from Thomson Reuters, appellant took a job in July of 2015 as a project manager with Craftsman Home Improvements. This position initially paid roughly $39,000 per year. Appellant's income has since increased to roughly $60,000 per year. She was employed with Craftsman at the time of both the trial and her post-dissolution motions.

In its original judgment and decree, the district court found that appellant had unjustifiably self-limited her income. This was based in part on the district court's finding that appellant refused to work more than 40 hours per week on a regular basis—as is apparently often required of salaried financial analysts—and the fact that this refusal limited her ability to find employment compensated at a rate commensurate with her earning history. After finding that appellant was voluntarily underemployed, the district court imputed income to her in the amount of $86,000—the amount of her base salary with Woodbury Financial Services. We upheld this imputation of income on appeal. *Pnewski*, 2018 WL 2470362, at *4.

Following her original appeal, appellant moved for a reduction in spousal maintenance, in part on the ground that she was no longer voluntarily underemployed. The district court denied her motion, concluding that the maintenance award was not rendered

unreasonable or unfair by changes in circumstance. This conclusion was based in part on the district court's finding that appellant remained voluntarily underemployed.

This finding is not clearly erroneous. Although appellant offered evidence of her ongoing job search when filing her motion for a reduction in spousal maintenance, she indicated in an affidavit filed at that time that she remained unwilling to work overtime on a regular basis. The record is also devoid of any evidence that she was attempting to acquire and maintain the skills necessary for ongoing employment as a financial analyst. Based upon this record, the district court's finding that appellant remained voluntarily underemployed is not clearly erroneous.

II. The district court did not abuse its discretion by denying appellant's motion to modify her child support obligation.

Appellant argues that the district court abused its discretion by denying her motion to modify child support in light of the parties' respective incomes. In the portion of her brief appearing under this heading, appellant claims that the district court erred in several respects in ordering her to pay child support to respondent following the 2017 trial. But appellant is challenging the district court's orders of June 19 and November 26, 2019, not the original judgment and decree. The appropriate question here is whether the district court erred in denying her motion to reduce her child-support obligation.

A child-support obligation may be modified if its terms have become unreasonable or unfair. Minn. Stat. § 518A.39, subd. 2(a). We review the district court's decision not to modify an existing child support obligation for abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017).

Appellant argues that the district court abused its discretion in denying her motion to reduce child support for two reasons. First, she contends that the district court used the wrong income figure in determining respondent's income for purposes of establishing appellant's child support obligation because it used respondent's W-2 income and not his gross income. Second, she argues, again, that her income is not intentionally self-limited.

While appellant is correct that the district court's original child support calculation was based on incorrect income information for respondent, that issue was resolved when the district court amended appellant's child support obligation to reflect respondent's correct income amount, which it did in its June 19, 2019 order. As to appellant's income, the district court's finding that she remains voluntarily underemployed is not clearly erroneous, as is discussed above. Accordingly, it was not an abuse of discretion for the district court to deny appellant's motion to reduce her child-support obligation.

III. The district court did not err as a matter of law in concluding that there was no legal basis for providing the additional relief appellant requested.

Appellant argues that the district court abused its discretion by failing to address ancillary issues related to the parties' joint legal custody of their minor children. She argues that the district court should have issued orders regarding (1) outstanding expense reimbursements owing between the parties, (2) the allocation of dependent tax exemptions, (3) division of the parties' personal property, (4) a study-abroad trip for one of the parties' minor children, and (5) educational opportunities for another of the parties' minor children. Appellant further argues that the district court constructively awarded respondent sole legal

custody of the parties' minor children by declining to issue such orders in the face of respondent's alleged refusal to cooperate in making legal custody decisions.

Appellant filed a motion for emergency relief on January 7, 2019, seeking a court order compelling respondent to "cooperate in the investigative process for educational opportunities" for one of the parties' minor children and to pay one-half of the cost of a study-abroad trip for another of the parties' minor children. Her motion also sought clarification of the division of dependent tax exemptions. That same day, appellant filed her motion for a reduction in child support and spousal maintenance. That motion also included a request for a determination of reimbursement amounts owing between the parties. Finally, appellant indicated in the affidavit filed with her motion that there were items of personal property that the parties had not yet divided and requested that the district court officially recognize an agreement regarding those items that the parties had reached of their own volition.

In its June 19, 2019 order, the district court concluded as a matter of law that appellant had not "provided a sufficient legal basis to grant relief requested on the ancillary issues in [her] motions," and accordingly denied all of her motions related to legal custody decision-making, expense reimbursements, dependent tax exemptions, and personal property. This court reviews such legal conclusions de novo. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

The district court did not err as a matter of law by concluding that appellant had failed to provide a legal basis on which her requested relief could be granted. All of the issues identified above were dealt with in the district court's original judgment and

decree—the district court ordered the parties to reimburse each other for outstanding expenses; it set a schedule for the allocation of dependent tax exemptions; it provided for the division of personal property; and most importantly, it awarded the parties joint legal custody of their minor children, with the division of decision-making responsibility that goes along with such an arrangement. *See* Minn. Stat. § 518.003, subd. 3(b) (2018). That original judgment and decree remains controlling.

Ultimately, the legal custody issues appellant references in her brief are matters on which parents—even those who are former spouses—must reach agreement. It is not the district court's role to act as legal custodian of the parties' children or to make decisions regarding their travel or education. In the face of the parties' disagreements over such issues, the district court could only do precisely what it did: remind the parties that the original judgment and decree remains in effect and order them to follow it, including by making legal custody decisions jointly.

If a dispute arises between the parties to this case, the original judgment and decree requires the parties to engage in mediation of that dispute. And if either party refuses to comply with the original judgment and decree—or any subsequent court order—the proper response is to bring a motion to hold that party in contempt, as the district court pointed out. *See* Minn. R. Gen. Prac. 309.01; *see also* Minn. Stat. § 588.01, subd. 3 (2018). Without the filing of a contempt motion, the district court was without grounds to force either party to comply with its original judgment and decree—or more precisely, to punish them for not doing so. *See* Minn. R. Gen. Prac. 309.01(a).

IV. The district court did not abuse its discretion by denying appellant's motion for amended findings.

Finally, by arguing that the district court committed several errors in its June 19, 2019 order, and by appealing from the district court's November 26, 2019 order denying her motion to amend the June 19 order, appellant's brief implicitly raises the issue of whether the district court erred in denying her motion to amend the June 19 order. Appellant does not explicitly argue that the district court erred in denying her motion to amend. However, because she appeals from both the June 19 and November 26, 2019 orders, we consider the question here.

We review the district court's denial of a motion for amended findings for an abuse of discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). In denying appellant's motion for amended findings, the district court concluded that the motion failed for two reasons: first, because it was untimely, and second, because it was, in reality, an improper motion for reconsideration and not a motion for amended findings. We review such legal conclusions de novo. *Modrow*, 656 N.W.2d at 393.

As to timeliness, a motion for amended findings must be served and heard no later than the time allowed for a motion for a new trial under rule 59.03 of the Minnesota Rules of Civil Procedure. Minn. R. Civ. P. 52.02. Rule 59.03 requires a motion for a new trial to be served within 30 days, and heard within 60 days, of the date when notice of the filing of the decision or order is given. Minn. R. Civ. P. 59.03. Here, notice of the filing of the June 19, 2019 order was given on June 19. Appellant was required to file a motion for

amended findings by July 19, 2019, and a hearing on the motion had to be held by August 18, 2019. Minn. R. Civ. P. 52.02, 59.03. Because August 18, 2019 was a Sunday, the deadline for a hearing extended to August 19. *See* Minn. R. Civ. P. 6.01(a)(1)(C).

Appellant timely filed her motion for amended findings on July 19, 2019. The hearing on that motion, however, was not held until August 30, 2019. There is no indication that appellant sought permission to extend the 60-day deadline. Under these circumstances, the hearing was untimely, and the district court's conclusion to that effect was not in error. *See* Minn. R. Civ. P. 6.01(a)(1)(C), 52.02, 59.03.

As to the nature of appellant's motion, "a proper motion for amended findings must both identify the alleged defect in the challenged findings and explain why the challenged findings are defective." *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 178 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). A motion for amended findings that merely reargues a prior motion is really a motion to reconsider. *Lewis v. Lewis*, 572 N.W.2d 313, 315 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998).[2] Importantly, "[m]otions to reconsider are prohibited except by express permission of the court." Minn. R. Gen. Prac. 115.11.

In her motion for amended findings, appellant advanced no legal arguments other than those previously made in her motion for reductions of child support and spousal maintenance. In fact, appellant's counsel admitted that the motion for amended findings

[2] *Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168 (Minn. 2000), overruled *Lewis* in part, but *Lewis* remains good law on the necessary components of a motion for amended findings. *Fort Snelling*, 673 N.W.2d at 178 n.1.

contained no new legal arguments at the motion hearing. Therefore, appellant's motion to amend is properly viewed as a motion for reconsideration. *See Lewis*, 572 N.W.2d at 315. Because there is no indication that appellant or her counsel sought permission to file a motion for reconsideration, consideration of appellant's motion was prohibited under the General Rules of Practice for the District Courts, and the district court's conclusion to that effect was not erroneous. *See* Minn. R. Gen. Prac. 115.11.

In sum, the district court did not abuse its discretion by denying appellant's motions to reduce her spousal maintenance and child support obligations. The district court also did not abuse its discretion by denying appellant's motion for amended findings when such motion was untimely and was, in reality, an improper motion for reconsideration. *See* Minn. R. Civ. P. 6.01(a)(1)(C), 52.02, 59.03; *see also* Minn. R. Gen. Prac. 115.11; *Lewis*, 572 N.W.2d at 315. Finally, the district court did not err by refusing to rule on appellant's ancillary issues related to the parties' joint legal custody of the minor children, where those issues were controlled by the original judgment and decree, appellant gave no legal basis for her motion, and the parties, contrary to the requirement of the judgment and decree, had failed to mediate their dispute.

Affirmed.