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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1221**

In re the Marriage of: Mark S. Steinmetz, petitioner,
Respondent,

vs.

Darlene D. Steinmetz,
Appellant.

**Filed May 16, 2011
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27FA000261958

J. Peter Wolf, Shelly D. Rohr, Wolf, Rohr & McKenzie, PA, St. Paul, Minnesota (for
respondent)

Richard S. Eskola, Columbia Heights, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and
Randall, Judge.*

UNPUBLISHED OPINION

STAUBER, Judge

On appeal after remand in this spousal maintenance dispute, appellant-wife argues
that the district court erred by understating the amount of unpaid maintenance she was

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

due from respondent-husband, declining to prospectively increase wife's maintenance award, and failing to follow this court's remand instructions. We affirm.

FACTS

Appellant Darlene Steinmetz and respondent Mark Steinmetz were married in 1977. In 2002, the Hennepin County District Court granted a dissolution of their marriage.

At the time of trial, respondent earned a gross annual income of \$200,000. Appellant was not employed outside the home. The parties agreed that appellant was entitled to spousal maintenance, but the amount and duration of maintenance was disputed.

Following trial, the district court found appellant's and respondent's reasonable monthly expenses to be \$8,507 and \$11,112, respectively. Based on the parties' stipulated agreement for division of marital assets, appellant received approximately \$1.2 million in stocks and bonds and approximately \$595,000 in liquid retirement accounts. Relying on expert testimony, the district court found that appellant's share of marital assets could be expected to generate at least \$7,000 per month in income for her. Taking this investment income into account, the court found that \$3,000 per month in spousal maintenance was appropriate to meet her monthly needs.

The district court also awarded the parties' unencumbered homestead to appellant, subject to a judgment lien in favor of respondent for his equal share of the proceeds from the sale of the home. The district court ordered that the homestead be placed on the market for sale after the parties' minor child became emancipated. Appellant appealed

the district court's spousal-maintenance award, claiming that the district court's projected rate of return on her investments was unreasonable. This court affirmed. *Steinmetz v. Steinmetz*, No. C2-02-1286 (Minn. App. Apr. 1, 2003) (*Steinmetz I*).

In August 2005, appellant moved the district court to increase her spousal-maintenance award, arguing that her expenses had substantially increased while her investment income had been less than expected, whereas respondent had experienced a substantial increase in his earnings. In a November 8, 2005 order, the court recognized that respondent's gross income had increased to \$300,000 per year, but found that appellant's smaller-than-expected investment income was "entirely her own doing," and that there was no substantial change in appellant's needs. Nonetheless, the district court temporarily increased the award of spousal maintenance to \$3,400 per month "until such time as the former homestead has been sold and [appellant] has procured new housing."

In 2006, the district court granted respondent's motion to suspend his maintenance obligation after he lost his job. Around this time, the parties also reached an agreement on the sale of the home. Rather than sell the home as the district court had ordered, appellant paid respondent \$370,000 for his interest in the home.

In 2008, appellant moved to reinstate respondent's spousal-maintenance obligation on the grounds that respondent had obtained a new job. In addition to reinstating maintenance, she sought an increased award to \$8,000 per month, arguing that an increase was necessary because she incurred a monthly mortgage payment when she financed the purchase of respondent's interest in the homestead. Appellant also sought an award of maintenance for the period during which appellant had been employed but

his maintenance obligation was still in suspension. The district court granted appellant's motion to reinstate spousal maintenance and also awarded spousal maintenance for the years 2007 and 2008.

The district court found that respondent was employed, earning a salary of \$150,000 per year, which would increase to \$200,000 per year in 2009. The court reestablished maintenance but at the lower rate of \$2,550 per month, increasing to \$3,400 beginning in 2009. In determining that \$3,400 per month in maintenance was appropriate, the district court did not discuss appellant's needs or expenses, but noted only that \$3,400 was the prior amount set by the court and that this amount was based on respondent's annual income of \$200,000.

The district court also found that appellant was entitled to maintenance in the amount of \$15,504 for 2007 and \$24,225 for 2008, based on respondent's annual income of \$75,879.36 and \$150,000 for those years as compared to his income of \$200,000 when his maintenance obligation was originally established. The district court calculated the amount of maintenance for these years pro rata by decreasing respondent's maintenance obligation by the same percentage that his income had decreased.

On appeal, appellant argued, *inter alia*, that the district court understated the amount of spousal maintenance owed for the years 2007 and 2008, and abused its discretion by refusing to increase respondent's prospective spousal-maintenance obligation. On April 29, 2009, after the appeal was filed but before this court issued its opinion, respondent moved the district court to decrease his monthly maintenance obligation based on the fact that his expected salary of \$200,000 for 2009 had been cut to

\$150,000. The district court granted respondent's motion and reduced the monthly maintenance obligation to \$2,550.

In July 2009, this court issued its opinion affirming in part, reversing in part, and remanding. *Steinmetz v. Steinmetz*, No. A08-2278, 2009 WL 2226756 (Minn. App. July 28, 2009) (*Steinmetz II*). Regarding maintenance for the years 2007 and 2008, this court concluded that the district court abused its discretion by calculating the maintenance based solely on respondent's ability to pay, without taking into account appellant's continuing needs. *Id.* at *2. This court therefore remanded "for calculation of retroactive maintenance based on appellant's need and respondent's ability to pay." *Id.*¹

Regarding the amount of ongoing monthly maintenance, this court concluded that the district court failed to address the impact of appellant's changed circumstances on the existing maintenance award. *Id.* at *3. This court then remanded "for a determination of whether appellant's decision to incur a mortgage payment has rendered the existing maintenance award unreasonable and unfair." *Id.* This court gave specific instructions for the district court to consider on remand, "the nature of the home appellant decided to purchase, in light of the facts that the parties' children are emancipated and appellant is currently living in the marital home alone." *Id.*

On remand, the district court held an evidentiary hearing where both parties provided testimony. The district court also heard testimony from Debra Daberkow-

¹ Unrelated to the issues here, this court affirmed the district court's determination of interest awarded to respondent as a result of the lien on the homestead, and affirmed the district court's order for respondent to pay one-half of capital improvements made to the homestead. *Steinmetz*, 2009 WL 2226756, at *4-5.

Wright, an accountant who was involved in appellant's purchase and operation of Finish Tech, an auto detailing and body shop. She testified that appellant invested over \$200,000 in the business and had not realized any return. The district court issued an order on May 18, 2010, confirming the amounts of spousal maintenance payable to appellant and denying an increase in ongoing spousal maintenance.

As to the maintenance owed for the years 2007 and 2008, the district court found that appellant was entitled to \$15,504 for the year 2007 and \$24,225 for the year 2008—the same amounts it had awarded in its earlier order. Adhering to this court's remand instruction to determine the amount of maintenance based on both appellant's need and respondent's ability to pay, the district court first considered appellant's need. The district court stated that “[t]his Court previously made a determination of the need of [appellant] during 2007 and 2008 which lead [sic] to an award of \$3,400 per month. This serves as [appellant's] need for the years in question.” The district court then considered respondent's ability to pay. The district court found that respondent's income for 2007 and 2008 was \$75,000 and \$150,000, respectively, which the court found to be “a significant reduction in income.” The district court concluded that “[g]iven the income of [respondent], which though diminished was still significant, and [appellant's] need, this Court finds that the previous awards of retroactive spousal maintenance granted to [appellant] were fair and reasonable.”

With regards to appellant's request for an increase in ongoing monthly maintenance due to changed circumstances, the district court on remand considered whether appellant's decision to remain in the marital homestead by taking on a mortgage

payment to buy out respondent's lien was a change in circumstances that rendered the original maintenance award unfair and unreasonable. The district court found that it was anticipated by the court and both parties during the divorce proceedings that appellant would not be able to afford to remain in the homestead. The district court also found that even though it was expected that appellant would sell the home, she could have afforded to remain in the home with a more manageable mortgage had she not invested in Finish Tech. The district court therefore concluded that appellant had not met her burden of showing that changed circumstances rendered the original award unreasonable, stating that "[t]his court will not require [respondent] to subsidize the purchase of his share of the family home by increasing the amount of spousal support due to [appellant]."

This appeal followed.

D E C I S I O N

I. Maintenance for 2007 and 2008

The only issue on appeal with respect to maintenance for the years 2007 and 2008 is the amount appellant is owed. Respondent, admirably, has not contested that he has an obligation for those years. Appellant argues that the district court failed to follow this court's remand instructions because it made insufficient findings to support the amount of maintenance she is owed for the years 2007 and 2008. Appellant also challenges several of the district court's factual findings, arguing that the district court understated the amount of maintenance she was due. Appellant contends that she should have received maintenance in the original amount of \$3,400 per month during these years.

This court reviews a district court's decision to award retroactive spousal maintenance for an abuse of discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). An abuse of discretion occurs if the district court resolves the matter in a manner that is "against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

A district court has broad discretion to determine how to proceed on remand, and it may proceed "in any way not inconsistent with the remand instructions provided." *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). But when the appellate court provides specific remand instructions, the district court must execute the mandate of the remand order strictly according to its terms. *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009).

In *Steinmetz II*, this court reversed the district court's maintenance award for the years 2007 and 2008 because the district court calculated arrearages based solely on respondent's income during those years, without taking into account appellant's reasonable needs. 2009 WL 2226756, at *2. This court remanded for "a calculation of retroactive maintenance based on appellant's need and respondent's ability to pay." *Id.* On remand, the district court addressed appellant's needs, but did so by adopting the court's November 8, 2005 order in which the district court denied appellant's request to substantially increase her monthly spousal maintenance and set maintenance at \$3,400 per month. The district court stated on remand that its findings in this 2005 order "serve[] as [appellant's] need for the years in question." In that 2005 order, the district court made detailed findings regarding appellant's needs, examining appellant's monthly

expenses at the time of dissolution and addressing appellant's argument that her expenses had substantially increased, ultimately concluding that they had not. Neither party directly appealed from this order.

Although the November 8, 2005 order could not address appellant's reasonable monthly expenses during the years 2007 and 2008, the district court could appropriately adopt the findings from that earlier order because appellant conceded at the remand hearing that her expenses had not changed. Appellant testified on direct examination that, with the exception of the mortgage payment, she had experienced no substantial change in her expenses:

Q: So the only significant change you've had in your expenses over the last four years, say, has been the mortgage payment?

A: Yes.

Q: Do you believe that your expenses that you have at this point other than the mortgage payment are similar to what you incurred during marriage?

A: Yes.

We conclude that the district court followed this court's remand instructions to calculate maintenance for the years 2007 and 2008 based on appellant's need and respondent's ability to pay.

Appellant also challenges several of the district court's factual findings with respect to the maintenance obligation for these years. "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). Appellant argues that respondent had approximately \$150,000 in income in 2007, rather than \$75,000 as found by the district

court. Appellant argues that all of the income from The Steinmetz Group, a radio consulting company that respondent formed with his current wife as equal partners, should be attributed to respondent, rather than just half. Appellant supports this claim with assertions that respondent “is a giant in the field [of radio]” and that his current wife “was merely his secretary” when they first met. Appellant contends that respondent’s current wife is not actually an equal partner in the business, and therefore all the business income should be attributable to him. Appellant further argues that \$32,963.71 in investment income earned in 2007 should be attributable to respondent, rather than just half of it.

Appellant offers nothing more than theories and suspicions to support her argument that the district court’s findings are clearly erroneous. Although appellant makes many statements of fact regarding respondent’s income throughout her brief, she fails to cite to the record or otherwise provide any support for these assertions. *See* Minn. R. Civ. App. P. 128.02, subd. 1(c) (stating that “[e]ach statement of a material fact shall be accompanied by a reference to the record”); *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996) (stating “material assertions of fact in a brief properly are to be supported by a cite to the record” and stating such cites are “particularly important” when “the record is extensive”), *aff’d*, 568 N.W.2d 705 (Minn. 1997). Further, the district court was well aware of the allegations made by appellant and apparently did not believe them. We must defer to the district court’s credibility determinations. *See Haefelev. Haefelev.*, 621 N.W.2d 758, 763 (Minn. App. 2001) (stating that the district court is in the best position to weigh the evidence, and appellate courts defer to its credibility

determinations), *review denied* (Minn. Feb. 21, 2001). On this record, we cannot conclude that the district court's findings are clearly erroneous.

II. Modification of ongoing maintenance

Modification of maintenance is reviewed for an abuse of discretion. *Hecker*, 568 N.W.2d at 710. A district court abuses its discretion when it makes findings unsupported by the evidence or when it improperly applies the law. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009) and *appeal dismissed* (Minn. Feb. 1, 2010). "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner*, 487 N.W.2d at 923.

"A party moving to modify an award of maintenance bears the burden of showing a substantial change of circumstances since the last time maintenance was modified, or, if maintenance has not been modified, since it was originally set." *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). After showing changed circumstances, the moving party must demonstrate that the changed circumstances render the original award unreasonable and unfair. *Id.*

Minn. Stat. § 518A.39 provides that a spousal maintenance obligation "may be modified" if, among other things, the obligee's needs substantially increase. Minn. Stat. § 518A.39, subd. 2 (2010) (emphasis added). The statute further directs the court to consider the statutory factors that are relevant to an initial award of spousal maintenance. *Id.* subd. 2(d). These facts include the financial resources of the parties, the duration of the marriage, the standard of living established during the marriage, and the ability of the

obligor to meet needs while providing maintenance to the obligee. Minn. Stat. § 518.552, subd. 2 (2010).

Appellant argues that by declining to modify the spousal maintenance obligation, the district court failed to follow this court's remand instructions. In *Steinmetz II*, this court determined that the district court had failed to adequately consider whether appellant's mortgage payment constituted a change in circumstances rendering the existing maintenance award unreasonable and unfair. 2009 WL 2226756, at *3. This court therefore remanded with instructions for the district court to consider this issue. *Id.*

The district court determined on remand that appellant's decision to incur a substantial mortgage payment in order to buy out respondent's interest in the marital homestead was not a change in circumstances that made the original award unreasonable and unfair. Based on the record and the testimony of the parties, the court found that it was expected at the time of dissolution that appellant would sell the family homestead upon emancipation of their youngest child. And even though it was anticipated that appellant would need to sell the house, the district court found that appellant still would have been able to afford to remain in the house with a more manageable mortgage had she more wisely invested the assets she acquired in the divorce. The district court concluded that modifying spousal maintenance as requested by appellant would effectively require respondent to pay for the buyout of his own interest in the marital homestead.

The district court reasonably followed this court's remand instructions, and it made sufficient findings that are supported by the record. The district court's

determination was not an abuse of discretion. Although appellant argues that the district court made insufficient statutory findings, particularly with regard to respondent's income and ability to pay, a district court need not make further findings on the statutory factors when it denies a motion for modification of spousal maintenance based on the party's failure to show a substantial change in circumstances. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (concluding that "it is not necessary for the [district] court to make findings regarding any other factors addressed in the statute" where the party seeking modification "fail[ed] to present clear proof of a substantial change in circumstances").

Appellant had the burden of showing that a significant change in circumstances rendered the current maintenance amount unfair and unreasonable. This issue centered on whether appellant's mortgage payment constituted such a change. The district court concluded that it did not, and declined to increase the maintenance obligation. Although another court may have decided the issue differently, an abuse of discretion is not shown simply because the record could support a different result or because this court might have reached a different result on the same record. *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000).

Affirmed.