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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1252**

In re the Marriage of:

Kelly Leslie Fedt, petitioner,
Respondent,

vs.

Steven Nels Fedt,
Appellant.

**Filed April 26, 2011
Affirmed
Lansing, Judge**

Ramsey County District Court
File No. 62-F8-02-001062

John H. Daniels Jr., Willeke & Daniels, Minneapolis, Minnesota (for respondent)

Ben M. Henschel, Moss & Barnett, Minneapolis, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Wright, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this consolidated appeal from two post-decree orders, Steven Fedt challenges the denial of his motion for spousal-maintenance modification and the district court's order for need and conduct-based attorneys' fees. Because the record supports the district court's conclusion that Steven Fedt failed to establish a substantial change in income or expenses, we affirm the modification denial. We also affirm the order for attorneys' fees.

FACTS

Steven and Kelly Fedt were married from October 1984 until June 2004. During their marriage, Steven Fedt worked as a dentist and owned a dental practice, and Kelly Fedt intermittently worked part-time. At the dissolution hearing, the Fedts stipulated to permanent spousal maintenance, but disagreed on the amount. Steven Fedt testified that he intended to retire in 2005 at the age of fifty-five and sell his dental practice. He requested that the court order an interim amount of permanent maintenance and schedule a review hearing to modify the amount at the time of his retirement.

The district court denied Steven Fedt's request to set an interim amount, and instead set permanent spousal maintenance at \$5,100 a month. This amount was based on the district court's findings that Kelly Fedt's reasonable monthly living expenses were \$7,071, her monthly net income was \$3,787, and a fair amount for annual imputed income was \$22,500. The maintenance amount was also based on the district court's findings that a reasonable estimate of Steve Fedt's annual income was \$300,000 and his reasonable monthly living expenses were approximately \$7,000. The district court

further found that even if Steven Fedt's income were to significantly decrease in the future, he would still be able to pay the ordered amount of maintenance.

As planned, Steven Fedt retired in 2005. In April 2007 he filed a motion to terminate spousal-maintenance based on changed circumstances. The district court denied the termination motion and granted Kelly Fedt's request for attorneys' fees, but the order did not specify an amount. After a hearing on Kelly Fedt's requested amount, the district court granted \$26,280.38 for attorneys' fees.

Steven Fedt appealed the denial of the motion to modify maintenance and the grant of attorneys' fees. *Fedt v. Fedt*, Nos. A07-1965, A08-0434, 2008 WL 4007424 (Minn. App. 2008). We reversed and remanded the denial of the maintenance modification because the district court's findings were inconsistent and did not address current income and expenses. *Id.* at *4. The opinion recognized, however, that Steven Fedt's information on current income and expenses was not clear. *Id.* at *3-*4. We also reversed and remanded the order for attorneys' fees because the findings were insufficient to determine the allocation between need-based and conduct-based fees. *Id.* at *5.

On remand, the Fedts agreed to informal discovery to supplement the previously submitted financial information. The district court then accepted supplementary submissions and conducted a hearing. Following the hearing, the district court issued an order with extensive findings of fact. In addition, the district court stated that, "[a]fter an extensive review of the record," including the supplementary submissions, it was "uncomfortable with the state of the record and the lack of thorough financial

information.” Specifically, the district court stated that the “total amount of [Steven Fedt’s] income available from other sources for the purposes of contributing to total income for a spousal maintenance obligation is unclear.” In an attempt to resolve the lack of clarity, the district court ordered a continuance to allow formal discovery and ordered each of the Fedts to submit tax returns through 2008 and current documentation of net worth.

After completion of discovery in 2009 and receipt of new motions with supplemental documentation in 2010, the district court held an additional hearing. Following the hearing, the district court issued an order that incorporated all findings from the preceding order with extensive additional findings that relied on the 2010 documentation. The district court denied Steven Fedt’s motion for maintenance modification, concluding that he had not satisfied his burden of proof to show a substantial change in his or Kelly Fedt’s income or expenses. The district court granted, in part, Kelly Fedt’s motion for need-based and conduct-based attorneys’ fees. Steven Fedt now appeals from both post-remand decisions, challenging the district court’s findings and application of the law.

D E C I S I O N

I

Modification of spousal maintenance is appropriate if a change in circumstances makes the original amount unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2010). Changed circumstances can be established by showing a substantial increase or decrease in the gross income or expenses of either the obligee or the obligor. *Id.* On a

motion for modification, the district “court shall apply, in addition to all other relevant factors, the factors” for determination of maintenance under section 518.552. *Id.*, subd. 2(d) (2010).

The modification of a dissolution judgment’s provision for spousal maintenance “is within the sound judicial discretion of the [district] court, and the [district] court’s decision will not be reversed except for abuse of such discretion.” *Rubenstein v. Rubenstein*, 295 Minn. 29, 32, 202 N.W.2d 662, 663-64 (1972). An abuse of discretion occurs if the district court reaches a decision that is clearly erroneous, contrary to law, or unsupported by logic and the facts of record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Unless clearly erroneous, factual findings will be sustained. *Kottke v. Kottke*, 353 N.W.2d 633, 635 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1984). The decision to modify a maintenance order must be made “with great caution and only [on] clear proof of facts showing that the circumstances of the parties are markedly different” from the circumstances at the time the decree was entered. *Rubenstein*, 295 Minn. at 32, 202 N.W.2d at 664. The movant who seeks modification bears the burden of proof. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997).

The district court concluded that Steven Fedt did not satisfy his burden to prove that his income had substantially decreased. The district court found that Steven Fedt did not identify an amount of current income in his most recent submissions, and that his evidence “failed to establish with any degree of specificity his true income.” The district court found that in Steven Fedt’s most recent affidavit, submitted on January 11, 2010, he represented that his income had been “substantially reduced from the \$331,000” that was

determined in the dissolution judgment. He acknowledged that his nontaxable disability income had increased to an annual amount of \$109,433, but the affidavit contained no statement of his total amount of income. The court also considered an earlier affidavit dated February 4, 2009, in which Steven Fedt indicated an annual income of \$133,190, but rejected this amount as inaccurate because it did not include the increase of approximately \$20,000 in his nontaxable disability payments and included no revenue for his substantial real-estate holdings or proceeds from the sale of his Minnesota property. The district court also found that the affidavit submitted by Steven Fedt's accountant, dated January 11, 2010, reported only Steven Fedt's 2008 income and, again, failed to take into account the extensive real-estate portfolio.

Steven Fedt asserts that the district court's finding that he failed to establish his true income is clearly erroneous because his most recent submissions included his 2007 and 2008 tax returns, bank statements, disability-insurance statements, investment-account information, and his accountant's summary of his income. This assertion is unconvincing because nowhere in these documents did he provide a clear and accurate statement of his current income from all of his income sources. Steven Fedt "had a duty to supply information in a proper way and to make a full and accurate disclosure of his assets and liabilities." *Solon v. Solon*, 255 N.W.2d 395, 396 (Minn. 1977). The record supports the district court's determination that he failed to provide this information.

As an extension to his argument, Steven Fedt contends that the district court improperly imputed income to him by extrapolating it from his claimed expenses. We disagree with this characterization because the district court did not impute income to

him. Instead, the district court expressly declined to make a finding on income because Steven Fedt failed to satisfy his burden of proof by providing clear and concrete evidence of his current income. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (stating that appellant cannot successfully challenge district court's refusal to modify support provisions of decree after failing to provide adequate documentation to enable court to rule in his favor).

Steven Fedt next challenges the district court's findings that relate to real-estate ownership. The record indicates that Steven Fedt bought a Florida condominium valued at \$1.2 million as an investment property and a home in South Dakota, while continuing to own a home in Minnesota. He asserts that the properties are not revenue producing and cannot be sold to generate investment income because they are in a negative equity position. He points to his accountant's affidavit and exhibits, which indicate that the Florida and South Dakota properties are in a negative equity position. In his most recent affidavit Steven Fedt claimed that he currently resides in his Florida property but offered no supporting documentation, and his 2008 tax return identifies his South Dakota property as his home address. The district court discredited Steven Fedt's affidavit testimony and found that his voluntary choice to continue to retain the real estate relates to a purposeful reduction of income. We defer to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). In light of the extensive record, the extended proceedings, and Steven Fedt's failure to present a clear picture of his financial situation, the district court was justified in drawing an adverse conclusion on credibility. *See General v. General*, 409 N.W.2d 511, 514 (Minn. App.

1987) (determining that district court properly drew adverse conclusion when party failed to provide full and accurate financial information).

In addressing expenses, the district court concluded that Steven Fedt's "needs are best left at the level of need found by the [dissolution] court, approximately \$7,000 per month." This conclusion is based on the finding that Steven Fedt "created an appearance of increased need and inability to pay spousal maintenance" that is unjustified. The 2004 dissolution judgment determined that Steven Fedt's monthly expenses were approximately \$7,000. In June 2009 he claimed that his monthly needs were \$15,738.66. A more recent affidavit submitted by his accountant in January 2010 estimated his expenses at \$12,433. In rejecting this claimed increase in needs, the district court found that Steven Fedt did not "ratify or accept" this recalculation. The district court found that the accountant's decreased estimate eliminated a car payment and reduced the Florida home expenses, but failed to acknowledge or attribute expenses related to Steven Fedt's boat acquired in 2009 for approximately \$100,000. The district court further found that the "principal reason" Steven Fedt claims a doubling of his monthly expenses is that he chose to acquire and retain "a good deal of costly investment real estate."

We reject Steven Fedt's claims that the district court abused its discretion by failing to make a specific finding on current expenses. *See* Minn. Stat. § 518A.39, subd. 2(d) (stating that on motion for maintenance modification, court must apply all relevant factors that exist at time of motion). The district court determined that it had insufficient credible evidence on which to find that the reasonable expenses had increased beyond the 2004 determination of \$7,000. We defer to the district court's determinations of

credibility. *Sefkow*, 427 N.W.2d at 210. Failure to provide credible evidence of increased expenses defeats the obligation to show a substantial change in circumstances. *See Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003) (stating moving party must show changed circumstances), *review denied* (Minn. Aug. 5, 2003); *Tuthill*, 399 N.W.2d at 232 (denying modification motion because party failed to show substantial change in circumstances despite claims of financial adversity).

Turning to the issue of Kelly Fedt's financial circumstances, the district court concluded that Steven Fedt failed to show that Kelly Fedt's income or needs had substantially changed. Relying on an affidavit submitted by her accountant, Steven Fedt argues that Kelly Fedt's monthly expenses have decreased from \$7,000 to \$5,327. In rejecting this argument, the district court observed that budgeting shifts and deferments were attributable to Kelly Fedt's attempt to fund a business activity that was aimed at generating future income. This finding has support in the record. Steven Fedt did not satisfy his burden of showing that Kelly Fedt's expenses had substantially changed from the time of the decree.

The district court further found that Steven Fedt had not offered any new evidence related to Kelly Fedt's income. Steven Fedt claims that the district court abused its discretion by failing to make a finding on what Kelly Fedt's current income would be if she had remunerative employment. In light of Kelly Fedt's employment history and the findings and stipulations in the initial dissolution proceedings, the district court did not abuse its discretion by concluding that the 2004 amount of imputed income would continue and that Steven Fedt had failed to present any new evidence to satisfy his

burden of showing a substantial change in Kelly Fedt's income or expenses. *See Youker*, 661 N.W.2d at 269 (moving party bears burden to show substantial change since maintenance was set).

The district court's findings on Steven Fedt's and Kelly Fedt's income and expenses are not clearly erroneous. The district court cannot be faulted for failing to make specific findings when the movant submits only incomplete and inconsistent evidence. The district court did not abuse its discretion by denying Steven Fedt's motion to modify his spousal-maintenance obligation.

II

In a dissolution proceeding, the district court has the authority to order payment of attorneys' fees. Minn. Stat. § 518.14, subd. 1 (2010). We review a determination on attorneys' fees under an abuse-of-discretion standard. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). Need-based attorneys' fees are justified if the district court finds that (1) the fees are necessary for the good-faith assertion of rights and will not contribute to unnecessary delay; (2) the party ordered to pay has the means to pay; and (3) the party receiving fees lacks the means to pay. Minn. Stat. § 518.14, subd. 1.

After making findings on each of the relevant statutory factors, the district court ordered Steven Fedt to pay Kelly Fedt \$15,000 in need-based attorneys' fees. The district court determined that Steven Fedt had the means to pay despite his unwillingness to provide accurate and clear financial information for the 2007 hearing, during discovery on remand, or after an order continuing consideration on the motion because of lack of clear financial information from Steven Fedt. The district court also found that, although

Kelly Fedt had reduced her monthly budget to meet expenses incurred during the litigation, her net worth had decreased and she did not have the means to completely pay all of her attorneys' fees. These findings are supported by the record. The district court did not abuse its discretion by ordering Steven Fedt to pay Kelly Fedt need-based attorneys' fees.

A district court may allocate, "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. The movant bears the burden of showing that the other party's conduct warrants attorneys' fees. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). The district court granted Kelly Fedt \$15,000 in conduct-based attorneys' fees. The court found that this was warranted because of Steven Fedt's reluctance to provide discovery, his failure to provide specific information on his income, and "[m]ost significantly," that he did "not provide a clear, reliable and timely accounting of his true income." The district court further found that Steven Fedt's "failure to produce reliable information on his income appears to have been the primary contributor to the length and expense of this proceeding." These findings are amply supported by the record. The district court did not abuse its discretion by ordering Steven Fedt to pay conduct-based attorneys' fees to Kelly Fedt.

Affirmed.