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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1308**

In re the Matter of: Roxanne Marie Staupe, petitioner,
Appellant,

vs.

Paul Thomas Staupe,
Respondent.

**Filed May 3, 2011
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge**

Ramsey County District Court
File No. 62F504000696

Roxanne M. Staupe, St. Paul, Minnesota (pro se appellant)

Paul Staupe, St. Paul, Minnesota (pro se respondent)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant wife challenges the district court's grant of respondent husband's motion to reduce his maintenance obligation and denial of her motions to increase maintenance and hold husband in contempt of court for failing to make maintenance and child-support payments. We affirm in part, reverse in part, and remand.

FACTS

The 25-year marriage of appellant Roxanne Marie Staupe (wife) and respondent Paul Thomas Staupe (husband) was, after a lengthy separation, dissolved by a dissolution decree entered in March 2007. When the decree was entered, the youngest of the parties' five children was fifteen years old, and the only minor child.

The parties were awarded joint legal custody, and wife, who had home-schooled all of the children, was awarded sole physical custody of the minor child, subject to husband's therapeutically supervised visitation. The decree contained a finding that husband was "not . . . forthcoming about his financial circumstances" and the district court imputed gross-annual income to husband of \$97,000, based on his earning history. The decree required husband to pay \$849 per month in child support and \$2,000 per month in maintenance.¹

By order entered in December 2007, husband was found in civil contempt of court for failing to comply with provisions in the decree ordering husband to obtain life insurance to secure his child-support and maintenance obligations and ordering him to reimburse wife for a portion of the child's medical and dental expenses. Husband was sentenced to 30 days in the workhouse, stayed on condition of payments as set out in the order.

¹ Husband appealed, challenging, among other things, the imputation of income and the calculation of maintenance. This court affirmed the decree in all respects. *Staupe v. Staupe*, No. A07-900 (Minn. App. June 10, 2008).

In October 2008, a child support magistrate (CSM) granted husband's motion to modify child support to \$481 per month, guideline support based on the CSM's findings that, for purposes of calculating child support, wife then had gross-monthly income of \$3,706 and husband had gross-monthly income of \$4,250. The district court affirmed the CSM's order.

Husband's commitment to the workhouse continued to be stayed, despite husband's failure to make the ordered payments, accumulating child-support arrearages, and subsequent orders to obtain insurance and make the medical payments required by the decree and additional court orders. As of February 18, 2009, husband had made one of the ordered payments, but had not paid the medical expenses or obtained insurance as required by the decree. Husband was again found in contempt of court for failure to disclose income, and he was ordered to pay \$6,295 toward arrearages by March 3, 2009, or turn himself in to the workhouse on March 4, 2009. Husband was also ordered to pay \$1,500 per month toward child support beginning on April 10, 2009.

Husband failed to make the required payments, and a warrant of commitment was issued on April 15, 2009. Husband paid \$1,500 to the child-support center. Husband informed the district court that he was unable to make further payments, and the district court quashed the warrant of commitment. The district court's written order from the February 18, 2009 hearing on wife's motion to have husband held in contempt was issued on May 5, 2009. The district court found that "there has been a pattern of deceit on the part of [husband]." The district court ordered husband to provide financial documents to the county attorney's office and the district court before a hearing scheduled for May 26,

2009, to determine whether the stay of execution of the 30-day sentence imposed in December 2007 should be revoked. By separate order, husband's child-support obligation was continued until the child completed high school, which the parties anticipated would occur in June 2010.

On May 26, 2009, the district court heard seven pending motions, including wife's motions for an order holding husband in contempt for failing to obtain ordered life insurance and for immediate payment of various funds and husband's motion for a reduction in maintenance.

In a written order filed on August 18, 2009, the district court recited, in detail, the history of post-dissolution litigation and what occurred at the May 26 hearing, at which husband conceded that he had never paid attorney fees ordered in the decree, presented evidence that he had made some of the other disputed payments and had made some effort to obtain life insurance. The district court concluded that, although husband had shown a substantial change in circumstances regarding his income, it would be unreasonable and unfair to reduce husband's maintenance obligation because the maintenance award was considered income to wife in the child-support-reduction proceeding. The district court denied husband's motion to modify maintenance and ordered maintenance to continue at \$2,000 per month plus 20% of arrears owed until all arrears are satisfied.

The district court granted wife's motion for immediate payment by husband of \$10,000 toward the judgment that wife's attorney had obtained against wife for attorney fees in the dissolution. The district court provided a schedule for payment. The district

court granted in part and denied in part wife's motion to have husband held in contempt for failing to provide the life insurance required by the decree. The district court ordered husband to have a \$100,000 life-insurance policy in place by October 1, 2009, or set up a trust account in that amount with wife named as sole beneficiary. The order does not address the issue of whether the stay of sentence imposed in December 2007 should be revoked.

In October 2009, wife again moved to have husband held in contempt for violation of the decree and the December 2007 order. In December 2009, husband moved to terminate child support based on emancipation of the child and for a reduction in maintenance. In response, wife agreed to termination of husband's child-support obligation without waiving the right to collect support arrearages.

After a hearing in January 2010, the district court continued the contempt matter and appointed counsel for husband. The district court granted wife judgment in the amount of \$54,215.56 for child-support and maintenance arrearages, and judgment in the amount of \$20,000 for unpaid attorney fees awarded to wife in the decree. The district court denied husband's motion to modify maintenance, terminated the child-support obligation, but ordered husband's employers to continue to withhold child-support arrearages in the amount of \$481 per month until child-support arrearages are paid in full.

In February 2010, husband again moved for a reduction in maintenance, asserting that wife was now employed full time, constituting a change in circumstances that justified modification. Wife responded with a motion filed on February 25, 2010, to hold husband in contempt and for other relief for husband's failure to comply with numerous

orders of the district court. By order dated March 12, 2010, the district court dismissed wife's October 2009 motion to hold husband in contempt in its entirety, based on numerous mistakes in the motion and supporting documents and the district court's prior warning to both parties in August 2009 that a party would, in the future, be sanctioned for making mistakes in filed documents. Wife then moved for an increase in maintenance.

The motions regarding maintenance and wife's February 2010 contempt motions were heard on April 5, 2010, and the district court issued written findings of fact, conclusions of law, and order on June 25, 2010. Many of the "findings of fact" are actually a recitation of the history of the litigation and a description of evidence and arguments presented.² The district court found that "[t]his case is an absolute mess and will continue to be because both parties refuse to comply with Court Orders." The district court found that wife continues to prolong and delay the case by flooding the district court with unnecessary, duplicate, forbidden, and error-filled documents, and attempting to relitigate decided issues and making unsupported allegations, and that husband continues to be deceitful and not forthcoming about his financial circumstances and ignores court orders by refusing to make any attempt to pay support and maintenance arrearages.

The district court concluded that documents submitted by husband showed that his income had decreased by 20%, but stated that it was not clear whether the decrease in husband's income was by choice. Nonetheless, the district court (1) granted husband's

² See *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (stating that statements merely reciting parties' claims and arguments are not true findings).

motion for a reduction in maintenance to \$1,000 per month, retroactive to March 1, 2010; (2) denied wife's motion for increased maintenance; and (3) denied wife's motions to hold husband in contempt of court. Wife appeals, challenging the decrease in maintenance, denial of her motion to increase maintenance, and denial of her motion to hold husband in contempt of court.

D E C I S I O N

I. Modification of maintenance

Wife challenges the district court's denial of her motion to increase maintenance and grant of husband's motion to reduce maintenance. "Modification of maintenance is reviewed for an abuse of discretion. . . . 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. 9, 2009), *appeal dismissed* (Minn. June 1, 2010). We uphold findings of fact concerning spousal maintenance unless they are clearly erroneous. *Id.* "Findings of fact are clearly erroneous when they are 'manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.'" *Id.* (quoting *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985)). "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." *Id.* at 716–17 (quoting *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003)). The moving party must also demonstrate that the change renders the original award

unreasonable and unfair. *Id.* Changed circumstances include substantially increased or decreased income or expenses of either party. Minn. Stat. § 518A.39, subd. 2(a) (2010).

A maintenance order is to be modified “only upon clear proof of facts showing a substantial change of circumstances from those existing at the time of the dissolution.”

Wiese v. Wiese, 295 N.W.2d 371, 372 (Minn. 1980).

A. Reduction in maintenance

1. Wife’s income

The district court based reduction of maintenance, in part, on its findings that wife’s income has substantially increased since the decree was entered and that emancipation of the youngest child, making wife available for full-time employment, removed one of the considerations on which the original maintenance award was based. Wife does not dispute the district court’s finding that, at the time of the modification motion, she was employed full time with a net monthly income of \$2,000 per month. But wife asserts that because the original maintenance award contemplated that she would have to increase her hours of employment to meet her needs, the subsequent increase does not constitute a substantial change in circumstances. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (affirming the district court’s conclusion that wife’s employment did not constitute a change in circumstances when the amount of maintenance originally awarded clearly indicates that it was presumed, at the time of the award, that the recipient would have a source of income in addition to maintenance). We agree.

At the time of the decree, the district court found that wife was capable of covering the gap between income from maintenance and child support and her expenses through employment, finding that, “[g]iven time [wife] shall be a very marketable person once the last child leaves home.” Husband argues that, to the extent *Tuthill* stands for the proposition that circumstances foreseen at the time of the decree cannot later be cast as “changed circumstances,” the proposition is confined to stipulated settlements and does not apply in contested cases. But nothing in *Tuthill* limits its application to stipulated decrees.

At the time of the decree, wife’s net-monthly income from part-time employment was \$808, and she received \$849 in child support. Child support was reduced to \$481 in October 2008. Currently, wife earns net-monthly income of \$2,000, but she no longer receives child support. Although she no longer has a minor child to support, the budget wife submitted to the district court at the hearing on maintenance modification stated monthly expenses of \$3,359. At the time of the decree, monthly expenses for wife and the minor child were found to be \$3,847, and her “net” income was found to be \$3,657.³

Although the district court did not make specific findings about wife’s current reasonable expenses or current *net* income including maintenance, the evidence in the record does not support a finding that wife has experienced a substantial increase in income not contemplated at the time of the decree.

[R]ecipients of permanent maintenance . . . are not automatically penalized by loss of their permanent

³ We note that $\$808 + \$849 + \$2000 = \$3,657$. The finding in the decree failed to take into consideration the fact that wife had to pay taxes on the maintenance award.

maintenance if, following a dissolution in which they were employed at that time, their earnings increase through the years. Permanent maintenance is compensatory in nature.

Borchert v. Borchert, 391 N.W.2d 74, 76 (Minn. App. 1986). Given the minimal change in wife's financial situation since the decree, the contemplation of wife's increase in earnings at the time of the decree, and the compensatory aspect of a permanent-maintenance award, we conclude that the record does not support the district court's finding that there has been a substantial change in wife's income that would make the original award of maintenance unreasonable and unfair and thereby trigger a modification of maintenance.

2. Wife's need

The district court made the conclusory statement that "it is . . . clear that there has been a substantial decrease in [wife's need] as all of the parties' children have emancipated and [wife] has been able to obtain full time employment at a higher wage." The effect of wife's wages are discussed above. The evidence in the record is that wife's monthly expenses have decreased \$488 since the decree, due, in part, to emancipation of the youngest child, and her monthly income increased by approximately \$519 (\$1,000 increased earnings – \$481 child support). We conclude that the record does not support a finding of a substantial decrease in need due to emancipation of one child who was a minor at the time of the decree.

3. Husband's income

Although the district court found that "according to the paperwork that has been submitted by [husband], there has been a substantial decrease in [husband's] gross

income.” The district court also found that it was “not clear whether [the decrease] has been through no fault or choice of his own.” Husband stated that he was having difficulty finding work and submitted 2009 tax returns showing adjusted-gross income of \$2,087. Husband told the court that his employment was to have paid \$75,000 annually, but due to the economic downturn, he was being paid in “promissory note[s]” at the rate of approximately \$2,000 per month. Husband failed to provide the district court with an affidavit supporting this allegation; he provided only a non-notarized letter that he stated came from his employer, explaining that, in 2009, husband was paid \$2,087 and “loaned” \$26,253. The district court found husband’s description of his income and work situation “disingenuous,” and “hard . . . to believe,” and found that husband “continues to be deceitful and not forthcoming about his financial circumstances.”

Because the district court specifically discredited husband’s proffered evidence of decreased earnings, we conclude that the record does not support the district court’s findings of substantially decreased earnings. The original maintenance obligation was based on income imputed to husband, who was found not to have been forthcoming about his financial circumstances at the time of the decree. On this record, husband has not met his burden of proving a substantial change in circumstances since the decree or that any change in his financial circumstances renders the existing order unfair and unreasonable, and the district court’s finding to the contrary is clearly erroneous. Because husband failed to meet his burden of proving that modification of maintenance was warranted due to a change in his circumstances and because the record does not support that modification was warranted due to a substantial change in wife’s circumstances, we

reverse the reduction of husband's maintenance obligation as an abuse of discretion and remand for reinstatement of husband's maintenance of \$2,000 per month.

B. Denial of motion to increase maintenance

Wife claimed that her increased need supported her motion for an increase in maintenance, citing the facts that (1) her entire income is now taxable and (2) she has home and vehicle maintenance, dental needs, and legal fees that were not part of her budget at the time of the decree. She asserts that much of her current need is caused by husband's continuous failure to provide the support that was ordered. But wife's argument about need was also premised on her speculation that when her temporary full-time employment ended, she would be unable to find comparable employment.

An increased need for maintenance that has made the current award unreasonable and unfair is a basis for modification of maintenance under Minn. Stat. § 518A.39, subd. 2(a)(2). But the district court cannot modify a maintenance award on the basis of anticipated changes in circumstances. Minn. Stat. § 518.39, subd. 2(d) (2010) (stating that the district court shall examine relevant factors "that exist at the time of the [modification] motion"). And wife's argument that her status as a former homemaker decreased her earning capacity is not a changed circumstance from the time of the decree; the effect of her homemaker status was one basis for the original award of maintenance.

Review of this issue would have been greatly aided by actual findings about wife's current reasonable expenses and current net income. Nonetheless, our analysis above, rejecting as unsupported by the record the finding that wife had substantially decreased need, leads us to conclude that wife did not meet her burden of proving substantially

increased need. Wife has been awarded judgments for husband's substantial arrearages, and it is not clear how an award of increased, but unpaid, maintenance would be more useful in meeting wife's needs than enforcement of the judgments for support arrearages, which wife has not pursued. Given this record, we conclude that the district court did not abuse its discretion by denying wife's motion for increased maintenance.

II. Denial of contempt motions

The district court's decision to invoke its contempt powers is subject to reversal only if the appellate court finds an abuse of discretion. *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). Contempt proceedings in the context of enforcing maintenance decrees are civil in nature. *Hopp v. Hopp*, 279 Minn. 170, 173, 156 N.W.2d 212, 216 (1968). Before exercising its civil-contempt powers, the district court must determine "whether there was a failure to comply with the order and, if so, whether conditional confinement is reasonably likely to produce compliance fully or in part." *Hopp*, 279 Minn. at 175, 156 N.W.2d at 217. Civil contempt is not punitive; it is designed to compel future compliance with a court order. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828, 114 S. Ct. 2552, 2557 (1994).

The district court's order described each of wife's eight grounds for requesting that the district court hold husband in contempt of court. The district court found that (1) wife's claim that husband failed to comply with the requirement in the decree that he pay for 50% of the minor child's activity expenses was not supported by evidence; (2) regarding husband's failure to obtain required insurance, the parties had not attempted to set up the alternative trust account provided for in the district court's order of August

18, 2009; (3) regarding husband's continuous failure to pay support, wife had not yet filed judgments entered for arrearages on past support and claims for support after husband moved to reduce support were not ripe; (4) regarding husband's failure to pay ordered attorney fees, the district court had awarded judgment to wife for the unpaid fees and wife had not filed the judgment; and (5) regarding failure to pay a portion of unreimbursed medical and dental expenses for the child, husband had filed a copy of a check satisfying payment.

The district court stated at the hearing that it would not grant wife's contempt motion because holding him in contempt was unlikely to result in compliance and because the motion was rooted in wife's desire to see husband punished, rather than to obtain compliance. The district court provided no further analysis in its written order, but implicitly, through its findings, expressed that wife had not established noncompliance with some orders and had not explored more effective means of collection of arrears by seeking enforcement of judgments.

On appeal, wife argues, and the record reflects, that civil-contempt orders have resulted in husband's partial compliance with purge conditions in prior contempt orders. But wife did not make this argument to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will generally not consider matters not argued to and considered by the district court). The district court's colloquy with the parties reflects the district court's lengthy experience with the parties and evident frustration with the behavior of both parties. Given the district court's superior knowledge of the parties and their situation, we cannot conclude that the district court

abused its broad discretion by declining to invoke its contempt powers at this time. The district court is fully aware that it has the discretion to invoke those powers, if appropriate, in what appears destined to be continuing court involvement with these parties.

Affirmed in part, reversed in part, and remanded.