STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1578

In re the Marriage of:
Timothy Lee Trondson, petitioner,
Appellant,

vs.

Mickie LouEtta Trondson,
Respondent.

Filed May 16, 2011
Affirmed in part, reversed in part, and remanded
Crippen, Judge[*]

Isanti County District Court
File No. 30-F9-01-000703

Nathan M. Hansen, North St. Paul, Minnesota (for appellant)

Daniel P. Dewan, North Branch, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

Appellant challenges a district court order entering a $38,250 judgment for spousal maintenance arrearages. Because his contentions lack legal support, we affirm the

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

judgment. But because the district court failed to articulate a factual basis for conduct- or need-based attorney fees, we reverse its $1,500 attorney fee award. We also remand for the district court to make findings on appellant's request for prospective modification of spousal maintenance.

FACTS

The 22-year marriage of appellant Timothy Trondson and respondent Mickie Trondson was dissolved by a stipulated judgment dated November 6, 2001. The judgment provided: "PETITIONER (appellant) shall pay RESPONDENT $750.00 per month."

Appellant made monthly spousal maintenance payments from 2001 through 2005. But at the end of 2005, appellant stopped the payments; despite making payments for four years, he stopped them on his belief that the obligation had ended two years after the dissolution judgment. In March 2010, nine years after the judgment, appellant moved to eliminate any claims for past or future spousal maintenance.

In response, respondent requested that appellant's motion be dismissed, that she be awarded a judgment against appellant for past-due spousal maintenance, and that appellant be required to pay attorney fees and costs associated with the post-dissolution proceeding. The district court denied appellant's motion, entered judgment in respondent's favor for the spousal maintenance arrearages, and awarded respondent attorney fees.

D E C I S I O N

1. Spousal Maintenance Arrearage

Appellant contends that the district court's decision on arrearages is unjust, based on appellant's beliefs of the intention of the parties in 2001. But neither the district court nor this court is permitted to reexamine language of a judgment that is unambiguous. *See Erickson v. Erickson*, 452 N.W.2d 253, 255-56 (Minn. App. 1990) (reversing district court's order enforcing provision of dissolution decree requiring sale of marital property to the extent order included provision for interest, which was not included in decree).

A stipulated judgment of dissolution is treated as a binding contract. *Angier v. Angier*, 415 N.W.2d 53, 56 (Minn. App. 1987). It is construed using the ordinary rules of contract interpretation. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). Whether a stipulated judgment is ambiguous is a question of law that is reviewed de novo. *In re Estate of Rock*, 612 N.W.2d 891, 894 (Minn. App. 2000). If no ambiguity exists, the district court's interpretation of the contract is also reviewed de novo. *Blonigen*, 621 N.W.2d at 281.

The spousal maintenance provision in the stipulated judgment is unambiguous and even more so when read in conjunction with the governing statute. Minn. Stat. § 518A.39, subd. 3 (2010) provides that "[u]nless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance." Absent the statement of another termination date in the judgment, the statutory term governs the issue. *See id.*

Appellant also argues that the district court erred in refusing to set aside the arrearages under Minn. Stat. § 518.145, subd. 2 (2010), which governs motions to reopen or vacate dissolution judgments, or Minn. Stat. § 518A.39, subd. 2 (2010), which governs motions to modify awards of spousal maintenance. This court reviews for an abuse of discretion a district court's decision whether to reopen or vacate a dissolution judgment or whether to modify a provision for spousal maintenance. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996) (motions to reopen or vacate); *Maeder v. Maeder*, 480 N.W.2d 677, 679 (Minn. App. 1992) (motions to modify), *review denied* (Minn. Mar. 19, 1992). Neither of the relevant statutory provisions permits the retroactive modification of a spousal maintenance obligation in the absence of a pending motion to modify spousal maintenance, even if appellant has presented equitable reasons for doing so. *See* Minn. Stat. § 518.145, subd. 2(5) (permitting judgment to be reopened or vacated if "it is no longer equitable that [it] should have prospective application"); 518A.39, subd. 2(a), (e) (permitting retroactive modification of spousal maintenance obligation which is "unreasonable and unfair" only for period "during which the petitioning party has pending a motion for modification"). Appellant's motion was filed several years after the accumulation of arrearages established by the judgment. The district court did not err by denying appellant's motion to eliminate his spousal maintenance arrearages.[1]

[1] Appellant also claims injustice because the parties were unrepresented when the stipulated judgment was entered, and the district court did not inquire into whether the stipulated judgment reflected the parties' true intentions. *See Manore v. Manore*, 408 N.W.2d 883, 888 (Minn. App. 1987) ("When the trial court was presented with vague and inadequate proposed findings of fact and conclusions of law, it had a duty to make appropriate inquiries to insure compliance with statutory requirements and to modify the

2. Motion to Modify Spousal Maintenance Obligation

Appellant also contends that the district court erred by failing to grant his motion to modify spousal maintenance to prospectively eliminate his spousal maintenance obligation. An award of spousal maintenance may be modified upon a showing of a substantial change in the gross income of an obligor or obligee, or a substantial change in the needs of an obligor or obligee, either of which makes the terms of the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a)(1)-(2). No single factor is dispositive in a decision relating to maintenance, and each case must be reviewed on its own facts. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39 (Minn. 1982). A decision regarding the modification of spousal maintenance is within the district court's discretion and will not be disturbed absent an abuse of that discretion. *Maeder*, 480 N.W.2d at 679.

When evaluating a claim of changed circumstances, the district court must compare the parties' financial circumstances at the time of dissolution against the circumstances present at the time modification is requested. *Neubauer v. Neubauer*, 433 N.W.2d 456, 459-60 (Minn. App. 1988), *review denied* (Minn. Mar. 17, 1989). Here, there is no indication that the district court conducted such a comparison, even though appellant has produced evidence of a change in his circumstances. The parties' stipulated judgment states that at the time of dissolution: (1) appellant was employed six or seven months per year during which he earned $9,100 in gross income and $6,700 in net

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proposed findings and conclusions to reflect consideration of the statutory factors"). But this argument improperly challenges the merits of a judgment that became final many years before the current motion proceedings.

income; (2) he received unemployment benefits of $427 per week for five or six months per year; and (3) he expected to receive $1,000 per month in retirement benefits from Enron. And in support of his motion for modification, appellant submitted an affidavit in which he states: (1) he earned approximately $36,000 during the previous year; (2) he is uncertain whether he will be able to continue work as a welder because of his age and health; (3) he lost most of his Enron retirement when that company collapsed; (4) he is currently unemployed and receives $425 per week in unemployment benefits and $426 per month from an annuity distribution; and (5) he expects his annuity distribution to shrink shortly. Appellant does not claim that respondent no longer needs spousal maintenance, but he has asserted facts that the district court was required to consider in adjudicating appellant's motion for modification. The district court's order states no findings to demonstrate that it considered appellant's claim that his ability to pay spousal maintenance has substantially changed.[2] The absence of supporting findings establishes an abuse of the district court's discretion, and we remand for the court to determine appellant's entitlement to a prospective modification of his obligation.

3. Motion for Attorney Fees

"Generally, attorney fees are not recoverable absent specific authority allowing a recovery." *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001). There are multiple bases for an attorney-fee award, including, Minn. Stat. § 549.211 (2010), which

[2] The district court's findings state that appellant's dispute with the term of maintenance should at least have occurred in 2005, when he terminated payments, which the court also noted was "when [appellant] began to have difficulties making the payments." This single reference to appellant's current circumstances conflicts with the court's order denying prospective relief.

authorizes attorney fees as a sanction for frivolous claims or defenses, and Minn. Stat. § 518.14 (2010), which authorizes attorney fees either as a sanction or based on a party's financial need—the incurring of fees in good faith assertion of rights, along with limited means of the party incurring the fees and the means of the other party to pay them. Neither respondent nor the district court specified the basis for an award of attorney fees against appellant. The district court explained that the award was appropriate because respondent "had to incur additional expenses"; this is an element of fee awards under either section 549.21 or section 518.14, but it establishes entitlement under neither statute.

"An award of attorney fees rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999). Although "[c]onclusory findings on the statutory factors do not adequately support a fee award," a lack of specific findings is not fatal where the order "reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case and had access to the parties' financial records." *Geske*, 624 N.W.2d at 817 (quotation omitted).

There is nothing in this record to indicate that the district court considered sanctions as appropriate in this case or examined any of these determinants of a need-based award: (1) whether the fees were necessary for respondent to assert her rights; (2) whether appellant had the means to pay; or (3) whether respondent lacked the means to pay. Nor has appellant produced evidence from which the district court could make

such findings. Because the district court's findings are inadequate, its award of fees is reversed.

Affirmed in part, reversed in part, and remanded.