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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2027**

In re the Marriage of:
Anne Elizabeth Thommes, petitioner,
Appellant,

vs.

Michael Anthony Thommes,
Respondent.

**Filed September 24, 2012
Affirmed
Halbrooks, Judge**

Wright County District Court
File No. 86-F3-05-004534

Anne E. Thommes, Delano, Minnesota (pro se appellant)

Charles M. Goldstein, Goldstein Law Office, P.A., Golden Valley, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Pro se appellant Anne Elizabeth Thommes challenges the district court's decision to reduce respondent Michael Anthony Thommes's monthly spousal-maintenance obligation from \$3,000 to \$1,000. Appellant claims that the district court erred by

ordering this reduction when the issue had already been determined by this court. Appellant also argues that the reduction was unwarranted on three separate grounds and contends that respondent approached the proceeding with unclean hands. We affirm.

FACTS

The parties were married in 1988 and divorced in 2007. At the time of the dissolution, the district court determined that appellant was entitled to permanent spousal maintenance in the amount of \$3,000 per month. This determination was based on appellant's monthly expenses of \$12,693 and an imputed gross monthly income of \$2,652. Respondent's monthly income at the time of dissolution was \$12,333 and his reasonable monthly expenses were found to be \$3,500. Respondent was also ordered to pay \$2,059 per month in child support. After child-support and maintenance payments, appellant had a monthly deficit of \$4,982, and respondent had a monthly surplus of \$3,774.

In January 2009, respondent moved to have his maintenance obligation terminated or modified retroactive to the date of dissolution. In September 2009, the district court issued an amended judgment and decree, which reduced respondent's maintenance obligation to \$1,750 per month. This modification was based on findings that appellant's monthly income had increased to \$3,669.82 and her reasonable monthly expenses had decreased to \$5,895. The district court also found that respondent's gross monthly income had decreased to \$9,100 and that his expenses had decreased to \$2,518. Based on these figures, the district court found that there had been a substantial change in circumstances and that the reduction in maintenance was warranted. The district court

also reduced respondent's child-support obligation to \$1,343 per month. After child-support and maintenance payments, appellant had a monthly surplus of \$867.82 and respondent had a monthly surplus of \$3,489.

Both parties appealed the 2009 order, and this court remanded. In its order after remand, the district court recalculated the parties' income and expenses. Respondent's gross monthly income was recalculated to be \$11,262.50—a figure between respondent's 2007 gross monthly income of \$12,333 and his 2009 gross monthly income of \$9,100. Appellant's income was recalculated to be \$3,969.82—a relatively large increase since 2007 but only \$300 more than the district court found in 2009. Based on these recalculations, the district court concluded that there was no longer a substantial change in circumstances between the 2007 decree and the 2009 modification motion, and restored appellant's \$3,000 per month maintenance award. After child-support¹ and maintenance payments, appellant had a monthly surplus of \$2,750.82 and respondent had a monthly surplus of \$4,068.50.

After receiving permission from the district court, both parties moved for reconsideration. Appellant requested language changes to clarify the district court's ruling; respondent requested that the district court reconsider its determination that there had not been a substantial change in circumstances, based on appellant's increased income from \$2,652 to \$3,969.82 per month and her decreased expenses from \$12,693 to \$5,895 per month. Upon reconsideration, the district court amended respondent's

¹ The district court did not address child support in its initial remand order. To calculate the monthly surpluses, we used the child-support obligation calculated by the district court after reconsideration—\$1,676 per month.

maintenance obligation to \$1,000 per month. The district court also recalculated respondent's child-support obligation to be \$1,676 per month. After child-support and maintenance payments, appellant now has a monthly surplus of \$750.82 and respondent has a monthly surplus of \$6,068.50. This appeal follows.

DECISION

I.

Appellant argues that the district court's reconsideration of her maintenance award is barred by collateral estoppel. "Collateral estoppel, or issue preclusion, prevents a party from relitigating issues actually litigated and necessarily determined in a prior lawsuit." *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994). "Whether collateral estoppel is available presents a mixed question of law and fact that we review de novo." *Heine v. Simon*, 702 N.W.2d 752, 761 (Minn. 2005). To apply the doctrine of collateral estoppel, all four of the following prongs must be met:

- (1) the issue must be identical to one in a prior adjudication;
- (2) there was a final judgment on the merits;
- (3) the estopped party was a party or was in privity with a party to the prior adjudication; and
- (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt v. Beckingham, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted).

Even when the doctrine is available, the decision to apply it is left to the discretion of the district court. *In re Estate of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011), *review denied* (Minn. June 28, 2011).

But collateral estoppel has limited application in family-law matters. *Maschoff v. Leiding*, 696 N.W.2d 834, 838 (Minn. App. 2005). Maintenance rulings are not the

traditional “final judgments” that the doctrine of collateral estoppel protects. *Id.* Absent an enforceable waiver, district courts have “continuing jurisdiction over dissolution proceedings” and can modify custody, visitation, and maintenance. *Loo v. Loo*, 520 N.W.2d 740, 743 (Minn. 1994). The district court should not relitigate issues decided on the merits. *Id.* at 744. But a district court may modify a spousal-maintenance award if the spouse seeking the modification establishes a substantial change in circumstances that makes the terms of the existing order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2010). Because respondent’s motion to terminate or modify maintenance was based on a change of circumstances, the district court was not barred from hearing that motion.

Further, appellant’s assertion that this court affirmed the district court’s denial of respondent’s request for modification is not an accurate interpretation of the proceedings. We affirmed the denial of respondent’s request to *retroactively* reduce maintenance to the date of the dissolution as a sanction for fraud. *In re Marriage of Thommes*, No. A10-1059, 2011 WL 1466377, at *6 (Minn. App. Apr. 19, 2011).

Respondent also challenges the denial of his motion to have spousal maintenance retroactively reduced or terminated as a sanction for appellant’s alleged fraud in not disclosing HMI’s records. While we reverse the denial of respondent’s motion to compel discovery, we do not find that appellant’s objection to the discovery was fraudulent, and we affirm the denial of respondent’s motion to sanction appellant for fraud.

Id. at *5 n.5. This court did not affirm or deny the modification of maintenance. We remanded several factual findings related to the income and expenses of appellant and respondent. *Id.* at *2-5. These findings were relevant to determine whether a

modification was warranted, and if so, at what amount the modified award should be set. There would be no need to remand these findings if this court affirmed a denial of the modification request.

II.

Appellant claims that the district court erred or abused its discretion by modifying the 2007 maintenance award. Appellant makes three different assertions of error: (1) the 2012 reconsideration order is inconsistent with the 2011 remand order; (2) the district court failed to consider respondent's expenses when modifying maintenance; and (3) the modification is against logic and the facts on record.

Appellant asserts that the district court was precluded from modifying maintenance on reconsideration because the modification is inconsistent with the district court's order after remand. In its remand order, the district court concluded that there had *not* been a substantial change in the parties' financial circumstances warranting a modification. But upon reconsideration, the district court concluded that respondent's decrease in income and the slight increase in appellant's income, "coupled with the substantial decrease in [appellant]'s expenses, demonstrate a change in circumstances making the current spousal maintenance and child support obligation unreasonable and unfair." Appellant appears to be challenging the district court's authority to modify a legal conclusion on a motion for reconsideration.

Minn. R. Gen. Pract. 115.11 states that "[m]otions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances." The parties received permission to bring motions for

reconsideration, but the rule does not define the parameters of the district court's authority to modify a prior order. But there would be no purpose to the rule if, after granting permission for one or both parties to move for reconsideration, the district court were prohibited from modifying the order under reconsideration. We therefore agree with respondent that the district court had the authority to reconsider its legal conclusion once it permitted the parties to move for reconsideration.

Appellant also argues that the district court erred by failing to consider respondent's monthly expenses. In its 2009 amended judgment and decree, the district court found that respondent's expenses had decreased from \$3,500 at the time of dissolution to \$2,518. This finding was not appealed. It is true that the district court's 2011 remand order and 2012 reconsideration order discuss appellant's income and expenses but make no mention of respondent's expenses. Based on the failure to include respondent's expenses in either of these subsequent orders, it is possible that the district court failed to consider respondent's 28% decrease in expenses. But we do not presume error on appeal; nor will we reverse a district court for what is ultimately a harmless error. Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that appellate courts cannot assume district court error).

Respondent has consistently had a large surplus in his monthly budget. As a result, it is impossible to determine whether the district court actually considered respondent's reduction in expenses when modifying maintenance or whether, even if it did, the slightly larger surplus that resulted would have impacted the district court's

maintenance award. Appellant has therefore failed to show that the district court committed reversible error by not explicitly referencing respondent's expenses in its order on reconsideration. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal a party must show error and resulting prejudice).

Appellant also argues that the district court's modification of maintenance was against logic and the facts on record. This court reviews a district court's decision to modify a maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). The district court abuses its discretion if it modifies a maintenance award without findings of fact that are supported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Appellant does not dispute any findings of fact, but appears to argue that the district court misapplied the law.

As previously noted, the district court may modify a spousal maintenance award if the spouse seeking the modification establishes that there has been a substantial change in circumstances since the most recent modification. Minn. Stat. § 518A.39, subd. 2(a) (2010). To establish that there has been a substantial change in circumstances, the spouse seeking the modification must show that one spouse has had a significant increase or decrease in gross income or a significant increase or decrease in need, and must further demonstrate that the change renders the current maintenance award "unreasonable and unfair." *Id.*; *Hecker*, 568 N.W.2d at 709.

Here, the district court found that appellant's reasonable monthly expenses had decreased by more than one-half, from \$12,693 to \$5,895. On this record, we cannot conclude that the district court abused its discretion by finding that this significant decrease in need rendered the maintenance award then in place unreasonable and unfair.

Once a district court determines that there has been a substantial change in circumstances warranting a modification, as the district court did here, it must apply the factors under Minn. Stat. § 518.552, subd. 2 (2010), to determine the amount of the maintenance award. Minn. Stat. § 518A.39, subd. 2(d) (2010). The most important factors when considering a request for spousal maintenance are “the financial need of the party receiving maintenance and his or her ability to meet that need balanced against the financial condition of the spouse who will be providing the maintenance.” *Gatfield v. Gatfield*, 682 N.W.2d 632, 638 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). The district court must make “sufficiently detailed findings of fact to demonstrate its consideration of all factors relevant to an award of permanent spousal maintenance.” *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989).

The district court made sufficiently detailed findings to show that it considered the factors relevant to awarding maintenance and to support its determination that appellant is still able to meet her monthly budget, even after the significant reduction in her maintenance award. The district court noted appellant's somewhat dire financial circumstances (e.g., she is receiving assistance with medical expenses and living off credit cards), but these circumstances stem more from respondent's failure to stay current with either his child-support or maintenance obligations than they do from the amount of

her maintenance award. In addition, the district court noted that respondent's reasonable monthly expenses do not include any "funds for clothing, a car payment or retirement contribution, or savings to purchase a home." We therefore conclude that the district court considered the relevant factors and did not abuse its discretion when it modified spousal maintenance.

III.

Appellant argues that the district court should not have modified maintenance because respondent had "unclean hands." Appellant argues that her budget was reduced because of respondent's failure to pay child support and maintenance. The doctrine of unclean hands restricts the availability of equitable remedies when a party's conduct is unconscionable by reason of a bad motive or because the result brought about by the conduct would be unconscionable. *RES Inv. Co. v. Cnty. of Dakota*, 494 N.W.2d 64, 67 (Minn. App. 1992), *review denied* (Minn. Feb. 25, 1993); *see also Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). This court reviews the district court's application of the doctrine for a clear abuse of discretion. *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 450 (Minn. App. 2001). Respondent argues that appellant waived her right to assert this defense because she failed to argue it to the district court. Generally, issues not raised to the district court are waived on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Even if appellant had properly preserved this issue, we find it inapplicable to this situation. It is possible that respondent had "unclean hands." Respondent has never been current in either his child-support or monthly maintenance payments. The district court

found that up until April 2009, respondent was \$37,222.24 in arrears, but that he made a payment of \$20,458 toward these arrears on April 23, 2009. It is not clear, however, that respondent has made any further payments to significantly reduce his arrears since that time.

But ultimately, we must conclude that the district court did not modify appellant's budget based on any change in her spending that might have resulted from respondent's failure to pay her. Rather, in reducing appellant's budget, the district court noted that the budget included \$2,700 per month in attorney fees, "which is not considered an ordinary budget item" and \$1,100 in credit-card repayment that was duplicated elsewhere in her budget. The district court also found that a monthly food expense of \$1,200 was not reasonable and reduced it to \$600. Because the district court did not reward respondent for creating appellant's circumstances, we decline to apply the doctrine of unclean hands to this situation.

Affirmed.