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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2284**

In re the Marriage of:
Barry H. Nash, petitioner,
Appellant,

vs.

Cheryl L. Nash,
Respondent.

**Filed November 18, 2008
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-FA-000281167

Gregory R. Solum, Suite 550, 3300 Edinborough Way, Edina, Minnesota 55435; and

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appellant)

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

UNPUBLISHED OPINION

HUDSON, Judge

Appellant argues that the district court abused its discretion by increasing his
monthly spousal-maintenance obligation and by awarding respondent need-based

attorney fees. We affirm the increase in appellant's maintenance obligation because the record supports the district court's findings of fact and because the district court did not otherwise abuse its discretion in addressing maintenance. Because appellant's objection to the attorney-fee award was not adequately raised in district court, we decline to address that question.

FACTS

Appellant Barry H. Nash and respondent Cheryl L. Nash married in 1986 and had a child in 1989. In October 2003, a stipulated judgment dissolved their marriage. At that time, respondent's monthly earnings and expenses were about \$1,711 and \$3,216, respectively, while appellant's monthly earnings and expenses were \$3,157 and \$2,520, respectively. The stipulated judgment awarded the parties joint physical custody of their child, stated that appellant would pay respondent \$750 in monthly child support and that this amount was an upward deviation from the amount that would have been set under the *Hortis/Valento* formula,¹ and awarded respondent \$250 in monthly spousal maintenance from September 2003 through the child's expected emancipation in June 2007.

In May 2007, respondent moved the district court to increase and make permanent her maintenance award and for need-based attorney fees. At that time, respondent was earning about \$1,667 per month and had monthly expenses of \$2,242, meaning that after

¹ Under the *Hortis/Valento* formula, "separate support obligations are set for each parent, but only for the periods of time that the other parent has physical custody of the children, and a single net payment is determined by offsetting the two obligations against each other." *Bender v. Bender*, 671 N.W.2d 602, 608 (Minn. App. 2003) (citing *Schlichting v. Paulus*, 632 N.W.2d 790, 792 (Minn. App. 2001)). How the \$750 figure was arrived at in this case was not identified.

taxes, respondent had a monthly deficit even with her then-existing support and maintenance awards. Her motion papers alleged that she would not be able to become self-supporting because of health problems that interfered with her ability to work.

The district court found that at the time of the initial award, the parties expected respondent to become self-sufficient by the time that the temporary maintenance award expired. The district court held that respondent's inability to become self sufficient was a frustration of the expectations underlying the judgment that constituted a substantial change in circumstances rendering respondent's existing maintenance award unreasonable and unfair, and warranting modification of the award. The district court then increased respondent's monthly maintenance award to \$1,000 and made it permanent. The court also ordered appellant to pay \$4,240.11 in costs and need-based attorney fees. This appeal follows.

D E C I S I O N

I

Appellant challenges the modification of his maintenance obligation. A district court has broad discretion in deciding whether to modify maintenance. *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004). This court will not disturb the district court's decision concerning maintenance absent an abuse of that discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). "A district court abuses its discretion when its decision is against logic and the facts on record." *Kielley*, 674 N.W.2d at 775. A district court addressing a motion to modify a stipulated maintenance award should view the stipulated award as "important"

because the stipulation “represents the parties’ voluntary acquiescence in an equitable settlement” and, for this reason, should exercise its discretion “carefully and only reluctantly alter the terms of a stipulation governing maintenance.” *Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981). That a maintenance award is stipulated, however,

does not operate as a bar to later consideration of whether a change in circumstances warrants a modification. Instead, [the stipulated award’s] relevance in a modification context is in the identification of the baseline circumstances against which claims of substantial change are evaluated. [On appeal, an appellate court reviews] the trial court’s analysis of the claims of substantial change to determine whether it carefully exercised its discretion in modifying the terms of the original judgment and decree which incorporated the parties’ stipulation.

Hecker v. Hecker, 568 N.W.2d 705, 709 (Minn. 1997) (citation omitted).

A. Modification of Award

A party seeking a modification of maintenance must show a substantial change in circumstances and that the change renders the existing award unreasonable and unfair. *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). A substantial change in circumstances can exist if there is a substantial increase or decrease in gross income or in the needs of a party. Minn. Stat. § 518A.39, subd. 2(a) (2006). Where, as here, parties stipulate to an award of temporary maintenance, a substantial change in circumstances warranting modification can also exist if there is a “frustration of the parties’ expectations [that the maintenance recipient will become] self-sufficien[t].” *Hecker*, 568 N.W.2d at 709–10.

Here, the district court’s detailed discussion of the parties’ stipulated judgment, and its rejection of several of respondent’s asserted bases for modifying that judgment, show that its decision to modify maintenance was made despite giving the stipulated judgment a significant amount of weight. Ultimately, the district court quoted the portion of appellant’s affidavit stating that, in 2003, he understood that respondent “would be able to support herself at this point when she no longer had any financial responsibilities for [the parties’ minor child],” and applied a *Hecker* frustration-of-expectations analysis to justify modifying maintenance. Appellant’s affidavit and the district court’s ruling are both consistent with an affidavit from respondent stating that the stipulated judgment lacked a *Karon* waiver “because it was unclear whether I would be self-supporting when the maintenance was scheduled to terminate.” Thus, the parties assumed either that respondent would become self-sufficient by the end of the temporary award of maintenance or that she would be able to seek to modify her award. Therefore, the district court correctly invoked *Hecker* as a basis to modify maintenance, and we affirm that decision.

B. Amount of Modified Award

Appellant also challenges the increase of his monthly maintenance obligation to \$1,000. In setting the amount of a modified maintenance award, the district court is to apply all relevant factors, including those listed in Minn. Stat. § 518.552 that exist at the time of the motion. Minn. Stat. § 518A.39, subd. 2(d) (2006); *see* Minn. Stat. § 518.552, subd. 2 (2006) (listing maintenance considerations). The basic issue is to balance the payor’s ability to pay maintenance against the recipient’s need for maintenance.

Erlandson v. Erlandson, 318 N.W.2d 36, 39–40 (Minn. 1982); *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

Here, the district court found that respondent currently has annual expenses of \$26,904 with annual income from employment of only \$20,000. Based on current tax tables, the district court estimated that respondent, as an S-1 tax filer, would have to receive at least \$35,000 per year to meet her expenses. Even with an increased maintenance award of \$1,000 per month, respondent will have \$3,000 less each year than she needs to meet her expenses. Thus, respondent has a need for more maintenance than was awarded by the district court. For reasons that are unclear, appellant's current income and expenses were not addressed by the court. *Cf. Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (stating that sufficient findings are required for appellate review); *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (noting, in the context of a stipulated judgment, the necessity of complete findings where future modifications will occur). The district court did, however, find that appellant's ability to contribute to respondent's expenses increased when his support obligation terminated and that appellant's income had increased to an unspecified degree. The district court also noted both that appellant will derive preferential income-tax treatment from his maintenance obligation that was not available for his support obligation and that, despite the increase in the maintenance award, appellant's total contribution to respondent has not been altered. Accordingly, because the district court conducted the required analysis and because its findings are supported by the record, we cannot say that it abused its discretion by increasing appellant's monthly maintenance obligation to \$1,000.

C. Duration of Award

“Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.” Minn. Stat. § 518.552, subd. 3 (2006). Thus, doubts about the duration of a maintenance award are to be resolved in favor of a permanent award. *Nardini v. Nardini*, 414 N.W.2d 184, 196 (Minn. 1987). This record overwhelmingly supports the district court’s award of permanent maintenance.

II

Appellant challenges the district court’s award of need-based attorney fees to respondent. A district court “shall” award need-based attorney fees if it finds that the fees are necessary for a good-faith assertion of the recipient’s rights and will not unnecessarily contribute to the proceeding’s length and expense, that the payor can pay the fees, and that the recipient cannot. Minn. Stat. § 518.14, subd. 1 (2006).

We reject appellant’s argument that the combined effect of the attorney-fee and spousal maintenance awards is “devastating” for him. The district court found that appellant can pay both awards if the fees are paid in monthly installments. Because the record does not show this finding to be unsupported, we cannot say that the fee award was an abuse of the district court’s discretion. Appellant also argues that the award was inappropriate because respondent’s brother is an attorney in the firm that represents respondent and that respondent never paid any attorney fees and never incurred an obligation to do so. But this claim was not adequately presented to or considered by the district court, and we decline to consider it now. *See Thiele v. Stich*, 425 N.W.2d 580,

582 (Minn. 1988) (limiting appellate review to issues presented to and considered by district court).

Affirmed.