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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2188**

In re the Marriage of:
Margaret Rose Chopp, petitioner,
Respondent,

vs.

William Donald Chopp,
Appellant.

**Filed December 12, 2011
Reversed and remanded
Ross, Judge**

Scott County District Court
File No. 70-FA-07-378

Jennifer Lee Novelli, Binder Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Timothy D. Lees, Hennek, Klaenhammer & Lees, P.A., Roseville, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Hudson, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

When the district court resolved Margaret and William Chopp's marriage dissolution, it awarded Margaret Chopp permanent spousal maintenance set to reduce

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

periodically on a step-down basis. The first step down would occur after the sale of the couple's marital home, but the home failed to sell before the second step down was scheduled to occur. The district court granted Margaret Chopp's motion to modify the maintenance award to continue the original amount until the marital home was sold. Because the district court abused its discretion by failing to make findings regarding Margaret Chopp's income and expenses before determining that the failure of the home to sell rendered the original award unfair and unreasonable, we reverse and remand for the necessary findings.

FACTS

Margaret and William Chopp were married nineteen years and had two children before divorcing in February 2008. At the time of the dissolution, William Chopp was the vice-president of a business partnership and Margaret Chopp was a stay-at-home mother. Margaret was also attending school to obtain a certificate in event and meeting planning as well as a degree in hospitality management. A neutral vocational evaluator opined that once Margaret completed her education, she could become employed with a starting salary of \$36,400. The parties agreed that, absent unusual circumstances, Margaret could complete her education and be available for employment by 2011.

The district court adopted the parties' stipulated settlement in its judgment and decree. In it, the parties agreed that Margaret's monthly living expenses for herself and the two children were approximately \$14,617. They anticipated that her monthly expenses would decrease once the marital home sold and she moved into a smaller residence. They also agreed to list the marital home for sale immediately after it was

refinanced and that William would pay Margaret a \$329,996 cash settlement after the sale. The decree structured William's permanent monthly spousal maintenance as follows: \$11,360 until the sale of the home; \$10,805 from the date of the sale until August 15, 2010; \$7,910 from September 1, 2010, until August 15, 2012; and \$7,500 after September 1, 2012.

The first step down's nonoccurrence is at the heart of this dispute. In August 2010, a month before the scheduled second step down, the first step down had not yet occurred because the home had not sold. Instead of a step down, William's monthly payments of \$13,568 in spousal maintenance and child support had increased in April 2010 by \$431 to account for cost-of-living adjustments, while child support reduced by \$299 when the parties' oldest child was emancipated. So William was paying \$13,700 in monthly maintenance and support. Margaret moved the district court to modify the spousal-maintenance order to continue the obligation with no steps down until the home sold and also to order William to pay the cash settlement of \$329,996 by September 30, 2010, regardless of whether the sale occurred. Margaret argued that because the home had not sold, she could not meet her monthly expenses of \$14,617 at the step-down maintenance amount and that the steps downward were contingent on the sale. She explained that although she had obtained her certificate and degree from her schooling, she had been unable to find full-time employment. She had taken a part-time job in an unrelated field making \$14,211 "to make ends meet."

William opposed Margaret's motion. He maintained that the second step down scheduled for September 1, 2010, was not contingent on the home sale. He also argued

that it was not necessary to continue the first-tier maintenance amount for three reasons: Margaret's expenses had been reduced by at least \$3,742 to \$10,875 after her original 2008 budget; her monthly employment income had increased from zero to \$1,996; and she receives monthly interest income of \$418.

The district court granted Margaret's motion. It recognized that the judgment and decree unambiguously established the step-down schedule. But it concluded that a substantial change in circumstances arose and that spousal maintenance should be modified because the decree had assumed that the marital home would sell before the second step down. It also reasoned that the reductions in maintenance depended on the payment of the cash settlement, which was to occur only after the home sold. The district court modified the spousal-maintenance order by requiring William to continue paying maintenance at the original first-tier amount of \$11,791.68 until the home sold, and it directed the parties to reduce the sale price.

William Chopp appeals.

DECISION

William challenges the district court's decision to modify the original spousal maintenance award. We review a district court's decision to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709–10 (Minn. 1997). A district court abuses its discretion if it modifies a maintenance award without findings of fact supported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). We rely on the district court's

findings of fact unless they are clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); Minn. R. Civ. P. 52.01.

William contends that the district court abused its discretion because it modified the maintenance award without assessing Margaret's decreased monthly living expenses and increased income. We are persuaded by the argument. The district court should carefully exercise its discretion when modifying a maintenance order and "only reluctantly alter the terms of a stipulation governing maintenance" because a stipulation "represents the parties' voluntary acquiescence in an equitable settlement." *Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981). A party seeking to modify a maintenance order must prove that there has been a substantial change in circumstances since the time of the extant order. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003); *see also* Minn. Stat. § 518A.39, subd. 2(a) (2010). A change in circumstances includes a substantial increase or decrease in the needs of one party. Minn. Stat. § 518A.39, subd. 2(a). To determine need, the district court must consider the party's income and expenses. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). A party seeking modification must also prove that the change in circumstances makes the challenged maintenance obligation unreasonable and unfair. *Hecker*, 568 N.W.2d at 709.

The district court's order here failed to address all the relevant modification elements. It did address whether there had been a substantial change in circumstances, deeming the failure of the home sale to be critical. But it did not make any findings of Margaret's current expenses or income. As a result, it also did not (and could not) discuss

why this change in circumstances renders the step down in maintenance unreasonable and unfair.

We are unable to effectively review the district court's exercise of discretion. If the district court has not made sufficient findings of fact, we cannot assess whether it addressed the statutory factors and we should remand for further findings. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). The district court failed to address William's factual claims that Margaret's monthly expenses have decreased by at least \$3,705 since the 2008 decree and her monthly income has increased by \$2,414. If William's assertions are true, Margaret's increased income and decreased expenses may cover the gap between the first-tier spousal maintenance amount of \$11,791 and the step-down amount of \$7,910. Whether the scheduled step down is unfair and unreasonable depends in part on the extent of Margaret's actual increased or decreased need, and her need is unknown to us without findings of her expenses and income. Because the district court did not make fact findings of Margaret's need as one factor in analyzing whether the original step-down provision was unreasonable and unfair, we cannot determine whether it properly applied section 518A.39, subdivision 2(a). We therefore remand for the necessary findings and analysis by the district court, which may, at its discretion, reopen the record to accomplish this objective.

Reversed and remanded.