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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1485**

In re the Marriage of:
James Herbert Boehmler, III, petitioner,
Respondent,

vs.

Sharon Lynn Stillo,
Appellant.

**Filed June 13, 2011
Affirmed
Bjorkman, Judge**

Washington County District Court
File No. 82-F1-04-005992

Janet L. Goehle, St. Paul, Minnesota (for respondent)

Sharon Lynn Stillo, White Bear Lake, Minnesota (pro se appellant)

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of her motion to modify spousal maintenance. Because the district court did not abuse its discretion by denying appellant's modification motion, we affirm.

FACTS

The marriage of appellant Sharon Stillo and respondent James Boehmler, III was dissolved by judgment and decree entered on April 21, 2006. The judgment awards Stillo temporary spousal maintenance based on findings that each party had reasonable monthly expenses of \$5,000, but Stillo lacked sufficient income to support herself. To afford Stillo an opportunity for retraining and time to attain the job experience necessary to become self-supporting, the judgment provides for gradually decreasing maintenance: \$4,000 per month until May 1, 2006, \$3,000 per month thereafter until May 1, 2008, and \$2,000 per month until May 1, 2014, at which time maintenance is scheduled to terminate. Neither party appealed the dissolution judgment.

In mid-2009, Stillo filed a series of motions seeking numerous forms of relief, including modification of her spousal-maintenance award. Stillo requested that the district court increase the award to \$5,518.53 per month and make the award permanent. The district court denied Stillo's maintenance-modification motion. This appeal follows.¹

DECISION

A party seeking to modify spousal maintenance must show that substantially changed circumstances render the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2010). Whether to modify spousal maintenance is discretionary with the district court, and its decision will not be reversed absent an abuse of that

¹ The district court also denied Stillo's request for relief from the dissolution judgment and subsequent orders. A special-term panel of this court concluded that those portions of the district court's order are not appealable. Accordingly, we address only the district court's denial of maintenance modification.

discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). A district court abuses its discretion when it makes findings that are unsupported by the record, misapplies the law, or resolves the question in a manner contrary to logic and the facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997). Findings of fact will not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992). 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.” *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006) (quotation omitted).

As a preliminary matter, we note that Stillo’s brief does not present argument or cite legal authority regarding the maintenance-modification issue. Accordingly, she arguably has waived that challenge. *See State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (holding that assertions not supported by argument or authority are waived unless prejudicial error is obvious). But because Stillo’s factual assertions include claims that changed circumstances warrant modification, and Boehmler has briefed this issue, we review the district court’s maintenance-modification decision in the interests of justice. *See* Minn. R. Civ. App. P. 103.04.

Stillo asked the district court to increase her spousal-maintenance award and make it permanent based on her medical expenses and inability to find work. We address each claimed basis for modification in turn.

Stillo first contends that the extent of her medical expenses constitutes a substantial change in circumstances. We disagree. Stillo did not provide the district court with billing statements or other evidence of an actual increase in medical expenses. Her claimed monthly expenses of \$9,970 include \$1,000 for “unexpected” medical expenses and substantial amounts for other expenses Stillo anticipates but does not actually incur—\$2,000 as savings for a mortgage payment, \$1,400 as savings for replacement furnishings, and \$700 as savings for a replacement car. When these anticipated expenses are deducted from Stillo’s claimed budget, the remaining amount, which still includes \$1,000 per month for medical expenses, is less than the \$5,000 that the district court found to be Stillo’s reasonable monthly expenses at the time of the dissolution. The evidence reasonably supports the district court’s findings of fact, and we discern no abuse of discretion in the district court’s determination that Stillo’s claimed medical expenses do not establish a substantial change in circumstances.

Stillo next asserts that her circumstances have substantially changed because she is unable to find work. At the time of the dissolution, Stillo was working part-time earning a net monthly income of \$525. The district court found that she has a bachelor’s degree in accounting but that she had not used her degree in many years and had not worked full-time since May 2000. The district court based its decreasing-maintenance award on the expectation that Stillo would be able to earn \$40,000 per year after two years of retraining and job experience. Stillo claims that she has no independent income because she cannot find work. But as the district court observed in its order denying maintenance modification, Stillo offered no evidence as to why she is not earning “at least the amount

she was earning” at the time of the dissolution judgment and failed to “provide[] any information as to the extent of her job search.” Given Stillo’s failure to present evidence, and based on our careful review of the record, we discern no clear error in the district court’s factual determinations. We conclude that the district court did not abuse its discretion by rejecting Stillo’s unsubstantiated claim that her failure to obtain employment as anticipated amounts to a substantial change in circumstances.

Finally, the district court held that Stillo’s request to make her maintenance permanent is premature because temporary maintenance is not scheduled to end until 2014. We agree. An award of temporary maintenance is “based on the assumption that the party receiving the award not only should strive to obtain suitable employment and become self-supporting but that he or she will attain that goal.” *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987). Stillo cannot demonstrate that temporary maintenance has been unsuccessful before temporary maintenance has run its course, particularly on a record practically devoid of evidence as to her efforts toward self-support. Accordingly, we conclude that the district court did not abuse its discretion by denying Stillo’s request to make the maintenance award permanent at this time.

Because Stillo did not demonstrate that a change in circumstances since the time of the dissolution judgment makes the maintenance award unfair and unreasonable, the district court did not abuse its discretion by denying Stillo’s motion to increase her spousal-maintenance award and make it permanent.

Affirmed.