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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0520**

In re the Marriage of:

Peter A. Markoe, petitioner,  
Appellant,

vs.

Susan K. Markoe,  
Respondent.

**Filed April 15, 2008  
Affirmed  
Kalitowski, Judge**

Washington County District Court  
File No. F1-03-488

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Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Appellant Peter A. Markoe argues that the district court abused its discretion in denying his motion to modify spousal maintenance, clearly erred by failing to find there

was a substantial change in circumstances that made his maintenance obligation unreasonable and unfair, and should not have relied on unsupported allegations not in the record. We affirm.

## D E C I S I O N

Whether to modify maintenance is discretionary with the district court. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). Maintenance-related findings of fact are upheld unless clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

Spousal maintenance may be modified when “substantially increased or decreased earnings of a party” have caused the terms of maintenance to become unreasonable and unfair. Minn. Stat. § 518.64, subd. 2(a) (2006). In deciding whether modification is appropriate, the district court must also consider factors set forth in Minn. Stat. § 518.552 (2006). Minn. Stat. § 518.64, subd. 2(c) (2006). Factors relevant here include “the financial resources of the party seeking maintenance . . . and . . . the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance.” Minn. Stat. § 518.552, subd. 2. To modify maintenance obligations, a district court must make particularized findings showing that the relevant statutory factors have been considered. *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987). But the district court is not required to make specific findings for every statutory factor. *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004).

Following a three-day hearing, the district court issued an amended order in September of 2005 that included the following findings:

- (1) appellant's business, American Home Health Services, Inc. (AHHS) was worth \$551,423.76;
- (2) AHHS had "outstanding tax liabilities and may have had a decrease in revenue" of some unknown amount;
- (3) appellant's testimony that his salary from AHHS had decreased was not credible;
- (4) considering appellant's lifestyle, and based on his earning capacity and earnings history, appellant had the ability to earn approximately \$180,000 per year and to pay temporary maintenance;
- (5) appellant's monthly expenses were \$4,695;
- (6) respondent's monthly expenses for herself and her (then) minor child were \$8,103.09, including \$1,060 for the child's school tuition;
- (7) neither party could continue to live at the same standard of living that they were accustomed to during the marriage.

In June 2006, appellant moved for modification of his spousal-maintenance obligation, arguing that his financial circumstances had changed and that he could no longer afford to pay the amount awarded. In denying appellant's motion, the district court's findings largely reflected those of the amended order, with the following changes:

- (1) appellant's monthly expenses were \$3,986;
- (2) respondent's net monthly income was \$1,900;
- (3) after the emancipation of the minor child, respondent's monthly expenses decreased to \$5,505;

- (4) although appellant argued that he was only able to earn \$48,000 per year, the court did not disturb the previous court's findings of appellant's ability to earn \$180,000 annually.

Appellant contends that the record supports his claim that there was a substantial change in circumstances and challenges the district court's finding that, notwithstanding his alleged current income of \$48,000, he has an earning capacity of \$180,000. But we defer to the credibility determinations of the district court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And where, as here, the moving party "fail[s] to present a complete picture of his assets and debts," a district court may be justified in refusing to modify the decree. *Tuthill*, 399 N.W.2d at 232.

Here, the district court did not disturb the prior court's findings regarding appellant's income because the prior court considered the value of appellant's business, his income history, and his tax liabilities in setting his income at \$180,000. Although appellant argues that his business dissolved and has no value, he presented no evidence of its dissolution aside from a letter from the state indicating its *intent* to take away the business's operating license. And our review of the record supports the district court's determination that the record lacks other evidence establishing "a complete picture of [appellant's] assets and debts." *Id.* We conclude that, on this record, the district court properly determined that appellant failed to meet his burden of showing a substantial change in circumstances that made his maintenance obligation unreasonable or unfair.

Appellant asserts that "it is clear from the arguments made by counsel, that the trial court relied, in large part, on fact allegations not contained in the record." We

disagree. None of the allegations appellant lists were referenced by the district court. Accordingly, this argument does not indicate that the district court's decision should be reversed.

Appellant also challenges the district court's finding that the original court valued petitioner's business, AHHS, at \$551,432.76. But this finding is accurate, and the district court's order denying modification incorporates most of the language of the amended order. Moreover, both the district court's order and the amended order recognize that "AHHS does have outstanding tax liabilities and may have a decrease in revenue," that "the Court will take this into account when it sets [appellant's] income . . . ." Thus, appellant's ultimate claim that his circumstances changed between the amended order and the district court's most recent order fails.

We conclude that the district court did not abuse its discretion in denying appellant's motion to reduce or terminate his spousal maintenance obligation.

**Affirmed.**