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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1893**

In re the Marriage of:
Shelly Elaine Emblom
n/k/a Shelly Elaine Green, petitioner,
Appellant,

vs.

John William Emblom,
Respondent.

**Filed July 22, 2008
Affirmed in part, reversed in part, and remanded
Klaphake, Judge**

Wright County District Court
File No. F8-97-1310

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(for respondent)

Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Shelly Elaine Emblom, n/k/a Shelly Elaine Green, challenges the district court's denial of her motions to convert her award of 10 years of temporary maintenance to permanent maintenance, to increase the monthly maintenance amount, and for an award of conduct-based attorney fees. Because appellant failed to sustain her burden of proving that she had not rehabilitated to the marital standard of living, we affirm the district court's denial of permanent maintenance, but because the district court's findings are so cursory as to prevent meaningful appellate review, we reverse and remand the district court's order denying appellant an increase in her temporary maintenance. We further conclude that the district court did not abuse its discretion by declining to award appellant conduct-based attorney fees.

DECISION

Modification of Duration of Maintenance

An award of maintenance may be modified if there has been a substantial change in the parties' circumstances, including a significant increase or decrease in a party's earnings or needs, which makes the terms of the current award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2006). The district court's decision modifying or refusing to modify maintenance is reviewed for an abuse of discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). The moving party has the burden of proving that there has been a change in circumstances and that this change renders the original award unreasonable and unfair. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997).

When parties stipulate to a period of temporary maintenance, the obligee has an implied duty to make reasonable efforts to rehabilitate. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). Failure to rehabilitate can represent a substantial change in circumstances permitting modification of maintenance from temporary to permanent. *Id.* “The stipulation identifies the baseline circumstances against which claims of substantial change are evaluated.” *Kemp*, 608 N.W.2d at 921.

Here, appellant asserts that she has failed to rehabilitate, despite the fact that during the term of temporary maintenance, she finished her undergraduate degree and a master’s degree in social work and became certified as a drug and alcohol counselor; in 2007, she was employed by the Hazelden Clinic at a gross annual salary of \$65,400. Appellant argues, however, that she has not rehabilitated to the marital standard of living and thus has demonstrated a substantial change in circumstances by her failure to achieve this standard of living.

Although the district court’s findings are cursory, it is clear from the record that appellant has failed to sustain her burden of proving a substantial change in circumstances based on the prior marital standard of living. Using the parties’ marital termination stipulation as a baseline, at the time of the dissolution appellant was a licensed practical nurse earning a net monthly income of \$1,200. Respondent was employed as a chemistry lab technician with a net monthly income of \$1,350; although respondent was and is a physician, his license was suspended at that time. The stipulation contemplated respondent’s return to the practice of medicine at an estimated

net monthly salary of \$10,000. In support of her motion to convert the temporary maintenance to permanent, appellant provided information about her current income and needs and respondent's current income, but she has failed to produce more than general evidence of the marital standard of living. Without this evidence, we are unable to determine if appellant's current circumstances fall short of the marital standard of living. Appellant also has not demonstrated that the increase in respondent's income was not anticipated when the parties entered into the stipulation; rather, it was expected. Nothing in this record supports finding a substantial change in circumstances based on the marital standard of living that renders the bargained-for cessation of temporary maintenance unfair. We therefore conclude that the district court did not abuse its discretion by refusing to convert respondent's maintenance obligation from temporary to permanent.

Modification of Temporary Maintenance Amount

When considering a motion for modification of maintenance, the district court must make sufficiently detailed findings to permit appellate review of its decisions. *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987). If the findings are so insufficient that it is impossible to determine whether the district court has considered the various statutory factors in its modification decision, we must remand the matter for further proceedings. *Id.*

In support of her motion to increase the monthly amount of her temporary maintenance award, appellant provided the district court with evidence of her income and needs and respondent's income and his statement of needs; this evidence shows a gap between appellant's income and expenses. The district court made no findings, merely

offering its conclusion that “[appellant] has not established that the prior Order regarding the amount and duration [of] spousal maintenance is no longer equitable.” Without findings, we are unable to discern whether the district court found that appellant’s evidence was not credible, or that her expenses were inflated, or that the parties’ circumstances were such that an increase in maintenance was not supported. We are, in short, unable to conduct a meaningful appellate review of the court’s decision and therefore remand the question of an increase in appellant’s temporary maintenance for further findings.

Attorney Fees

Appellant argues that the district court abused its discretion by refusing to award her conduct-based attorney fees. She asserts that respondent unreasonably contributed to the length of the proceeding by asking for a protective order and summary dismissal of her motion for modification of maintenance.

The district court may award conduct-based attorney fees when a party “unreasonably contributes to the length or expense of a proceeding.” Minn. Stat. § 518.14, subd. 1 (2006). The party asking for an award of conduct-based fees has the burden of showing that the other party’s conduct increased the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). We review the district court’s decision for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

The district court granted respondent's motion to deny modification of maintenance, which suggests that the court did not consider his motion to be frivolous. *See Walker v. Walker*, 553 N.W.2d 90, 97 (Minn. App. 1996) (affirming denial of attorney fees and denying appellate attorney fees when party's argument was not frivolous or made in bad faith). Based on this record, the district court did not abuse its discretion by refusing to award conduct-based attorney fees.

Affirmed in part, reversed in part, and remanded.