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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1948**

In re the Marriage (now dissolved) of:
James Herbert Merwin, Jr., petitioner,
Appellant,

vs.

Lucia Mehringer Merwin,
n/k/a Lucia Barron de Mehringer,
Respondent.

**Filed July 1, 2008
Affirmed in part and remanded in part; motion remanded
Wright, Judge**

Cottonwood County District Court
File No. 17-F9-05-000111

Carol M. Grant, Kurzman Grant Law Office, 219 Southeast Main Street, Suite 403,
Minneapolis, MN 55414 (for appellant)

Michael P. Kircher, Sunde, Olson, Kircher & Zender, 108 Armstrong Boulevard South,
St. James, MN 56081 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this appeal from the district court's denial of his motion for modification of his permanent spousal-maintenance obligation, appellant-husband argues that the district court abused its discretion by (1) denying his motion to reduce or terminate his spousal-maintenance obligation; (2) denying his motion to compel respondent-wife to undergo a vocational evaluation; and (3) awarding wife need-based attorney fees. Wife seeks attorney fees and costs on appeal. We affirm in part and remand in part. We also remand wife's motion for appellate attorney fees.

FACTS

The ten-year marriage of appellant-husband James Merwin and respondent-wife Lucia Barron de Mehringer was dissolved by a judgment entered April 12, 2005. At the time of the dissolution, husband's monthly gross income was approximately \$6,104 and wife's was zero. The judgment, which incorporated the parties' agreement regarding property distribution and spousal maintenance, assigns all of the marital debt to husband and distributes the parties' assets with approximately \$2,000 in husband's favor. The judgment also awarded wife permanent monthly spousal maintenance of \$1,200 because wife's degrees from a foreign university are not valued by employers in the United States and her absence from the work force has made her education, skills, and experience outmoded. Finally, the judgment awarded wife medical coverage through husband's insurance for the duration of the applicable COBRA plan "or until [wife] receives coverage through employment."

In December 2005, husband moved the district court for modification of his spousal-maintenance obligation. With regard to modification, husband argued that his need had increased because the marital debt, which he had agreed to assume, was greater than the amount indicated in the judgment. The district court denied husband's motions and concluded that the "change in adjusted marital debt . . . is not, in fact, an increase in need but rather the documentation of debts known to both parties at the time of the agreement." Husband did not appeal the district court's decision.

In early 2007, husband again sought modification of his spousal-maintenance obligation. In response, wife moved the district court for various forms of relief and need-based attorney fees. When wife declined to submit to a vocational evaluation, husband requested an order from the district court requiring wife to do so.

At the hearing on the parties' motions, husband argued that (1) his needs have substantially increased because he has remarried and his new wife has a disability that requires expensive medical care; (2) his needs also have substantially increased because he has substantial debt that he is unable to service; and (3) wife's needs have substantially decreased because her annual gross income was approximately \$11,000 in 2006, compared to having no income when the marriage was dissolved. Husband also argued that permanent monthly spousal maintenance of \$1,200 is inappropriate because wife has significant language skills that she could use as an interpreter.

The district court denied husband's motions, granted wife's motions, and awarded wife \$2,000 in attorney fees and costs. Thereafter, husband moved the district court for

relief from the order or amended findings. The district court denied husband's motion and awarded wife \$235 in additional attorney fees and costs. This appeal followed.

DECISION

I.

Husband challenges the district court's denial of his motion for modification of his spousal-maintenance obligation. A district court has broad discretion in deciding whether to modify a party's spousal-maintenance obligation. *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004), *review denied* (Minn. Sept. 28, 2005). We will not disturb the district court's decision absent an abuse of that discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 22 (Minn. App. 2005). Such an abuse of discretion occurs when the district court's decision "is against logic and the facts on record." *Kielley*, 674 N.W.2d at 775 (quotation omitted).

Before the district court can modify a spousal-maintenance award, the moving party must provide clear proof that a "substantial change of circumstances" has occurred since the spousal-maintenance obligation was established that renders the award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2006); *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). Such circumstances include a substantial increase or decrease in a party's income or needs. Minn. Stat. § 518A.39, subd. 2(a). The circumstances that existed when the stipulated judgment was entered serve as "the baseline circumstances against which claims of substantial change are evaluated." *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997).

A.

Husband first argues that the additional expenses he has incurred because of his new wife's medical needs constitute a substantial change in his circumstances and the district court erred by declining to consider those expenses. Although the district court may modify a spousal-maintenance obligation based on substantially increased needs of an obligor, Minn. Stat. § 518A.39, subd. 2(a)(2), an obligor's expenses associated with a new family are not among the statutory factors warranting modification, *id.*, subd. 2(a). Nor are they among the statutory factors for determining an obligor's ability to pay. Minn. Stat. § 518.552, subd. 2 (2006); *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004); *see also* Minn. Stat. § 518A.39, subd. 2(d) (requiring evaluation of factors in section 518.552, subdivision 2, on motion to modify spousal maintenance). Moreover, as the district court advised husband at the time of the dissolution, such expenses are secondary to the spousal-maintenance obligation, which arises from the judgment. Minn. Stat. § 518.68 (2006); *Peterka*, 675 N.W.2d at 359.¹

Consequently, expenses incurred because of a new family generally are not relevant to the change-of-circumstances analysis. *See Peterka*, 675 N.W.2d at 358-59 (stating that spousal-maintenance obligor's duty to support recipient at marital standard of living persists after obligor's remarriage); *Halvorson v. Halvorson*, 402 N.W.2d 168, 172 (Minn. App. 1987) (stating that "[obligor's] remarriage is an insufficient change of

¹ In accordance with the terms of section 518.68, the district court advised husband at the time of the dissolution that "[t]he payment of . . . spousal maintenance takes priority over payment of debts and other obligations" and that "[a] party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding."

circumstances to support a termination of maintenance”). Although we have recognized that “extraordinary circumstances” may justify consideration of an obligor’s new-family expenses when evaluating a modification motion, *Peterka*, 675 N.W.2d at 359, an obligor’s voluntary assumption of postdecree obligations is unlikely to constitute extraordinary circumstances. See Minn. Stat. § 518.68, subd. 2 (requiring notice to obligor of priority of maintenance obligation); *Beck*, 566 N.W.2d at 726 (requiring party seeking modification to demonstrate both change in circumstances and resulting unfairness of original award).

The district court acknowledged the unfortunate nature of husband’s situation but found that he had voluntarily incurred the additional expenses and could not now claim them as changed circumstances under section 518A.39, subdivision 2. Because husband was aware of his pre-existing maintenance obligation and his new wife’s medical condition before he married his new wife, the additional expenses husband incurred because of his new wife’s medical needs do not constitute extraordinary circumstances. The district court, therefore, did not abuse its discretion by declining to consider them as grounds for modifying husband’s spousal-maintenance obligation.

B.

Husband also argues that the district court’s findings are insufficient because there are no findings regarding his ability to pay spousal maintenance. When considering a motion to modify spousal maintenance, the district court must make findings that are sufficient to permit appellate review to determine whether the relevant statutory factors were applied correctly. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). When a district

court denies the modification of spousal maintenance, the findings are sufficient if they support the district court's determination that a party seeking the modification failed to show a substantial change in circumstances, as required by statute. *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987).

The district court did not make findings specifically addressing husband's ability to pay spousal maintenance. But the district court found that husband had failed to demonstrate a change in circumstances and addressed, either explicitly or implicitly, each of husband's asserted reasons for modification.

First, as discussed above, the district court amply addressed husband's claim that his needs had increased substantially due to expenses he incurred because of his new wife's medical needs. Second, the district court implicitly rejected husband's arguments that wife's needs had decreased substantially by (1) finding that wife "drives a car she purchased for \$10"; (2) noting the language of the stipulated judgment, which indicates the parties' intent that wife would be employed while receiving spousal maintenance; and (3) distinguishing wife's financial situation from that of the maintenance obligee in *Lyon v. Lyon*, 439 N.W.2d 18 (Minn. 1989).² And the district court's finding that husband failed to demonstrate a substantial change in circumstances implicitly rejected husband's argument that the substantial debt he bears warrants modification. Moreover, husband's debt argument is virtually identical to the argument he presented in his first modification

² In *Lyon*, the Minnesota Supreme Court reversed an award of spousal maintenance despite husband's substantial income when the district court failed to consider wife's financial resources, which were one-half the parties' \$7.2 million marital estate. 439 N.W.2d at 22-23.

motion, which the district court specifically rejected. Consequently, the district court did not need to revisit the issue. *Cf. Phillips v. Phillips*, 472 N.W.2d 677, 680 (Minn. App. 1991) (stating in context of child-support-modification motion that “[a] question of changed circumstances, once litigated, may not be retried”).

Because the district court’s findings establish that the district court thoroughly considered the relevant statutory factor—whether a substantial change in circumstances had occurred—the district court’s findings are sufficient. *Tuthill*, 399 N.W.2d at 232.

II.

Husband next argues that the district court erred by denying his motion to require wife to submit to a vocational evaluation. The district court has broad discretion regarding discovery motions. *Kielley*, 674 N.W.2d at 780. We review the district court’s decision not to require a party to submit to a vocational evaluation for an abuse of discretion. *See id.* (applying abuse-of-discretion standard of review to discovery decisions); *cf.* Minn. R. Civ. P. 35.01 (providing that district court “may” order mental or physical examination of a party).

Husband’s apparent intent in requesting a vocational evaluation was to challenge the fairness of the original judgment. But a party seeking modification must demonstrate a “substantial change in circumstances.” Minn. Stat. § 518A.39, subd. 2; *Beck*, 566 N.W.2d at 726. Thus, in the context of a modification motion, absent proof that a substantial change in circumstances has occurred, husband presented no legal basis for the district court to question the fairness of the stipulated judgment. *See Hecker*, 568 N.W.2d at 709 (requiring that party seeking modification first establish substantial

change from “baseline circumstances” agreed to as equitable in stipulated judgment). Because husband failed to demonstrate that a substantial change in circumstances had occurred, the district court did not abuse its discretion by denying husband’s motion for an order requiring wife to submit to a vocational evaluation.

III.

Husband also challenges the district court’s award of attorney fees and costs to wife, arguing that the district court’s findings were inadequate and unsupported by the record. “An award of attorney fees rests almost entirely within the discretion of the [district] court and will not be disturbed absent a clear abuse of discretion.” *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999).

Generally, a party may not recover attorney fees without specific authorization. *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001). In a dissolution case, Minn. Stat. § 518.14, subd. 1 (2006), supplies a legal basis to award attorney fees on a motion to modify the judgment. A district court “shall” award need-based attorney fees if it finds that (1) the attorney fees are necessary to a party’s good-faith claim; (2) the party from whom attorney fees are sought has the means to pay them; and (3) the party who seeks attorney fees does not have the means to pay them. Minn. Stat. § 518.14, subd. 1. “But there is neither a mandate nor discretion to award such fees without those findings and the evidence to sustain them.” *Mize v. Kendall*, 621 N.W.2d 804, 810 (Minn. App. 2001), *review denied* (Minn. Mar. 27, 2001). Conclusory findings on the statutory factors are inadequate to support an attorney-fee award. *Geske*, 624 N.W.2d at

817. A lack of specific findings on the statutory factors for a need-based attorney-fee award under section 518.14, subdivision 1, requires remand unless “review of the order ‘reasonably implies’ that the district court considered the relevant factors.” *Id.* at 817-18 (quoting *Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999)).

In both orders awarding wife attorney fees and costs, the district court found that the three statutory factors for awarding need-based attorney fees were satisfied. But the district court did not make findings specifically addressing wife’s income or expenses or husband’s income or expenses. Although the district court’s conclusory findings indicate that it was aware of the statutory factors, nothing in its order suggests that it thoroughly considered the statutory factors in light of the facts of this case, particularly the substantial debt that husband claims. Because the district court’s findings are inadequate to permit appellate review, we remand for findings specifically addressing the statutory factors.

IV.

Wife seeks need-based attorney fees on appeal. We have discretion to award such fees based on the same statutory factors as the district court. Minn. Stat. § 518.14; *LaChapelle v. Mitten*, 607 N.W.2d 151, 167 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). Because we remand for findings regarding attorney fees for the district court proceedings, and because those findings would impact any award of appellate attorney fees on remand, the district court also shall address wife’s request for attorney fees incurred in this appeal. *See Richards v. Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991) (stating that “[a]n award of attorney fees on remand may include fees incurred on

the original motion, and fees incurred on appeal”); *see also* Minn. R. Civ. App. P. 139.06 1998 advisory comm. cmt. (stating that appellate court may remand question of attorney fees for appeal).

Affirmed in part and remanded in part; motions remanded.