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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0325**

In re the Marriage of:
Linda Ann Johnson, petitioner,
Respondent,

vs.

Richard Daniel Johnson,
Appellant.

**Filed January 27, 2009
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-F1-97-000156

Timothy W.J. Dunn, 1150 US Bank Center, 101 East 5th Street, St. Paul, MN 55101 (for respondent)

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Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Crippen, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges an order correcting what the district court characterized as a clerical error in a prior order addressing spousal maintenance. Appellant argues that (1) because any error was not clerical, an alteration of the prior ruling was a modification of maintenance and required a motion to modify and findings to support any modification; and (2) the district court abused its discretion by making maintenance retroactive. Because the district court properly characterized its action as correcting a clerical error and did not abuse its discretion by making maintenance retroactive, we affirm.

FACTS

A 2003 judgment and decree dissolved the marriage of appellant Richard Daniel Johnson and respondent Linda Ann Johnson, and both parties appealed. *Johnson v. Johnson*, No. A04-1953, 2005 WL 1272561 (Minn. App. May 31, 2005). The current dispute involves appellant's spousal-maintenance obligation. After reviewing respondent's need for maintenance and appellant's earnings history and ability to pay, the dissolution judgment stated that respondent was entitled to maintenance, but reserved the amount and duration of that award based on findings that while appellant did not "*presently* have income in excess of his reasonable expenses," he had previously had sufficient income to pay maintenance, and that there was a high "likelihood" that he would, in the future, "again obtain employment" allowing him to pay maintenance.

In 2005, respondent moved for maintenance, and the district court's resulting June 16, 2006 order found respondent's net monthly income and reasonable monthly expenses were \$2,150.32 and \$3,849.90, respectively, that appellant's net monthly income and reasonable monthly expenses were \$6,262.62 and \$4,382.77 (including his child-support obligation), respectively, and hence that there had been a substantial change in circumstances rendering the existing reservation of appellant's maintenance obligation unreasonable and unfair. As a result, the June 16, 2006 order awarded respondent permanent monthly maintenance of \$1,699.58, retroactive to July 20, 2005, the date she served her motion.

Appellant sought reconsideration of the June 16, 2006 order, arguing that the district court should reconsider its findings regarding the parties' financial circumstances, and that respondent had sufficient assets to purchase an annuity to increase her monthly cash flow. On October 24, 2006, the district court denied appellant's request for reconsideration of the parties' financial circumstances, but instructed the parties to submit a list of the assets distributed to respondent, when she received them, the amount of each distribution, and supporting documentation.

The parties submitted the requested information and the district court issued a February 22, 2007 order, finding that respondent was improperly forced to liquidate and/or invade certain assets to meet ongoing expenses because of appellant's failure to pay child support. The order also stated that the award of maintenance was "justified given the circumstances at the time of the award" because respondent did not receive a substantial part of her share of the property distribution until after June 16, 2006, but that

continuation of the maintenance award beyond that date “is not appropriate” and therefore “that obligation is discontinued.”

On March 29, 2007, appellant moved the district court for various types of relief, including reconsideration of the maintenance awarded to respondent for July 20, 2005 through June 16, 2006. Respondent counter-moved for particularized findings regarding the changed circumstances supporting the conclusions of law in the February 22, 2007 order, for amendment of those conclusions to reinstate maintenance, and for an award of maintenance that was not paid for that period.

In a July 11, 2007 order, the district court noted that it was required to make sufficient findings regarding a change in respondent’s needs and income that could be balanced against appellant’s ability to pay maintenance. While it did not explicitly state so, the district court seemed to imply that it failed to make the necessary findings in its February 22, 2007 order to modify the spousal-maintenance award. As a result, the district court denied appellant’s request to vacate his maintenance obligation for July 2005 through June 2006, granted respondent \$20,394.96 in maintenance arrears for July 2005 to June 2006, and vacated the termination of respondent’s post-July 16, 2006 maintenance award. The district court also stated that the judgment and decree, which reserved the amount and duration of respondent’s maintenance award, continued in full force and effect.

In December 2007, respondent moved to correct certain clerical errors in the July 11, 2007 order, suggesting that the district court use the following language:

7. [Respondent] seeks an order of the Court to vacate this Court's termination of her spousal maintenance rights as contained in this Court's Order dated June 16th, 2006. [Respondent's] request is granted. The terms of the Order of this Court dated June 16, 2006 remains in full force and effect.

Respondent also sought judgment for maintenance arrears in the amount of \$32,292.02 for the period of June 1, 2006, to December 1, 2007, and attorney fees and costs.

In an order dated January 8, 2008, the district court adopted respondent's proposed language for paragraph 7. The district court also stated:

8. The nature of the core of the present controversy between the parties comes from that portion of the July 11, 2007 Order that reads: "The terms of the Judgment and Decree continues in full force and effect...", what was intended by the Court in "vacating" the termination of the spousal maintenance, and if the June 16, 2006 award of spousal maintenance continue.

9. There is no question that this Court in its July 11, 2007 Order "vacated" the order (February 22, 2007) terminating [respondent's] spousal maintenance from and after June 16, 2006. By doing so this Court intended and meant to reinstate the award of spousal maintenance and to continue the same as contained in the June 16, 2006 Order as if such an Order had never had been disturbed. The reasons for this vacation of the termination order was because this Court could not particularize facts that was necessary under case law or statute to terminate the award as contained in the June 16, 2006 Order.

The district court also awarded respondent \$32,292.02 for spousal-maintenance arrears for the period of June 1, 2006 to December 1, 2007. This appeal follows.

DECISION

I.

Appellant challenges the January 8, 2008 order, arguing that what the district court characterized as corrections of clerical errors in the July 11, 2007 order were actually substantive changes, requiring a motion to modify or establish a maintenance obligation and findings to support any such order. District courts exercise broad discretion when addressing maintenance, and their decisions will not be altered on appeal absent an abuse of that discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). Maintenance-related findings of fact are upheld unless clearly erroneous. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see* Minn. R. Civ. P. 52.01.

A. Scope of review

Respondent argues that this court cannot review the factual and legal bases for any order other than the January 8, 2008 order because appellant did not appeal those orders and the time to appeal them has now expired. Where a judgment has been modified, then the propriety of the modification can be appealed. *E.C.I. Corp. v. G.G.C. Co.*, 306 Minn. 433, 435, 237 N.W.2d 627, 629 (1976). Moreover, appellate courts “may review any order affecting the order from which [an] appeal is taken,” and “may review any other matter as the interest of justice may require.” Minn. R. Civ. App. P. 103.04. Here, the January 8, 2008 order altered the July 11, 2007 order by reinstating the spousal-maintenance obligation imposed by the June 16, 2006 order. Thus, the January 8, 2008 order affects both the July 11, 2007 order it vacated and the June 16, 2006 order it reinstated. Accordingly, the relevant aspects of all three orders can be reviewed.

B. Clerical Error

Minn. R. Civ. P. 60.01 allows correction of “[c]lerical mistakes” in existing rulings. In *Egge v. Egge*, this court distinguished clerical errors from other mistakes, noting that a clerical error is “an error of form made by the court itself,” while a “mistake” is more substantial and includes mistakes of parties. 361 N.W.2d 485, 488 (Minn. App. 1985). Here, appellant argues that there were no clerical errors in the July 11, 2007 order because restoring the terms of the original judgment functionally re-reserved maintenance, a re-reservation of maintenance was one of the alternative forms of relief that appellant had requested, and the findings of fact in the July 11, 2007 order support the re-reservation. Appellant also argues that while the district court had the authority to reinstate spousal maintenance, it needed a motion to do so, which this record lacks. Respondent claims that appellant’s reference to the district court’s desire to re-reserve maintenance is baseless because the judgment and decree did not reserve the issue of maintenance; it awarded maintenance, but reserved the amount and duration of that award. Respondent also asserts that the intent of the July 11, 2007 order was to reinstate the June 16, 2006 ruling because the July 11, 2007 order vacated the February 22, 2007 order, and by doing so vacated the termination of spousal maintenance, which effectively reinstated spousal maintenance that had been established by the June 16, 2006 order.

The January 8, 2008 order states that the July 11, 2007 order’s reinstatement of the judgment rather than the June 16, 2006 order was an error, and treated the error as a clerical error. As explained below, we conclude that the error was, in fact, clerical. The

January 8, 2008 order's statement that the July 11, 2007 order was "intended and meant to reinstate the award of spousal maintenance and to continue the same as contained in the June 16, 2006 Order as if such an Order had never been disturbed," is not just consistent with, but required by, several aspects of the July 11, 2007 order. The July 11, 2007 order vacated the termination of spousal maintenance. By vacating this termination, the district court in effect reset the maintenance award to what it was before the award was terminated, thereby functionally reinstating the maintenance award set forth in the June 16, 2006 order. And the July 11, 2007 order's statement that the judgment was to be reinstated, cannot be read to merely reinstate the award while reserving the amount and duration of the award because the July 11, 2007 order made appellant liable for maintenance for the period of July 2005 to June 2006. Thus, some award *must* have been in place. And, arithmetically, the amount of appellant's obligation awarded by the district court for that period is consistent with the obligation set in the June 16, 2006 order. Therefore, we conclude that the district court's reference in the July 11, 2007 order to reinstating the judgment rather than the June 16, 2006 order is a misidentification of the ruling to be reinstated; *i.e.*, an error of form by the court and therefore correctable under Minn. R. Civ. P. 60.01. *See Egge*, 361 N.W.2d at 488.

Our conclusion is consistent with caselaw. In *Schmidt v. Schmidt*, a stipulated dissolution judgment awarded spousal maintenance. 275 Minn. 268, 269, 146 N.W.2d 185, 186 (1966). More than two years later, the obligor moved the district court to eliminate his spousal-maintenance obligation. *Id.* For some unknown reason, the district court did not rule on this motion, and the obligor stopped making his spousal-

maintenance payments. *Id.* Following a motion for contempt by the obligee, the obligor again moved the district court to eliminate or reduce his spousal-maintenance obligation and to forgive the resulting arrearages. *Id.* at 269–70, 146 N.W.2d at 186. The district court granted the motion to reduce maintenance, but did not mention the arrears. *Id.* at 270, 146 N.W.2d at 186. One month later, the district court issued an amended order forgiving the maintenance in arrears. *Id.* The obligee challenged the amended order, but the supreme court rejected the challenge, ruling that Minn. R. Civ. P. 60.01 allowed correction as a clerical error. *Id.* at 270–71, 146 N.W.2d at 187. Because the characterization of the error in the July 11, 2007 order as clerical is consistent with both the terms of the July 11, 2007 order and with caselaw, we conclude that the district court did not err in treating the error as clerical and in correcting it.

Appellant asserts that there are insufficient findings of fact in the January 8, 2008 order to allow a reinstatement of spousal maintenance. But appellant’s argument is based on a misreading of the January 8, 2008 order as a modification of maintenance requiring findings on the factors in Minn. Stat. §§ 518.552, 518A.39 (2008). The January 8, 2008 order was a correction of a clerical error under Minn. R. Civ. P. 60.01. And a correction of a clerical error does not require findings under the maintenance statutes. Further, the original dissolution judgment and the June 16, 2006 order reinstated by the January 8, 2008 order contained sufficient findings under the statutes to support the setting of a maintenance award. Based on these findings, the district court’s imposition of spousal maintenance is valid under Minn. Stat. §§ 518.552, 518A.39, and the district court did not abuse its discretion when it reinstated the maintenance award.

II.

Appellant argues that the district court erred in awarding spousal maintenance retroactive to June 1, 2006, because that date was prior to the motion prompting the January 8, 2008 order, and there was no showing of anything that could have prevented respondent from filing an earlier motion. We review a district court's decision to award retroactive spousal maintenance for abuse of discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000). Generally, a modification of spousal maintenance can be made retroactive from the date that the petitioning party gave notice to the responding party of intent to seek the modification. Minn. Stat. § 518A.39, subd. 2(e).

Here, appellant misconstrues the July 11, 2007, and January 8, 2008 orders as modifications of the spousal-maintenance obligation. Instead, these two orders vacate the February 22, 2007 award and put in place the June 16, 2006 award. The only motion to modify was the motion filed by respondent, which led to the June 16, 2006 award. Respondent filed this motion on July 20, 2005. The district court in its July 11, 2007 order had already ordered spousal maintenance from July 2005 to June 2006, and appellant has not challenged this order. Therefore, the district court did not abuse its discretion when it entered judgment on behalf of respondent for all spousal-maintenance arrearages accruing from June 1, 2006.

Affirmed.