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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1273**

In re the Marriage of:
Margaret Rose Chopp, petitioner,
Appellant,

vs.

William Donald Chopp,
Respondent.

**Filed March 18, 2013
Affirmed as modified
Cleary, Judge**

Scott County District Court
File No. 70-FA-07-378

J. Lee Novelli, Binder Law Offices, P.A., Minneapolis, Minnesota (for appellant)

Timothy D. Lees, Hennek Klaenhammer & Lees, P.A., Roseville, Minnesota (for
respondent)

Considered and decided by Hooten, Presiding Judge; Cleary, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Following a reversal and remand by this court, the district court issued an order
and judgment that modified spousal maintenance for an eight-month period between
September 1, 2010 and May 1, 2011, and required appellant to repay to respondent

\$24,016 in overpaid spousal maintenance. Appellant challenges that order and judgment, arguing that the district court abused its discretion when modifying spousal maintenance. We affirm, but modify the amount of the judgment to \$15,768 to correct a clearly erroneous finding of fact.

FACTS

The marriage of the parties was dissolved by a stipulated decree filed in February 2008. The parties were the joint owners of a homestead at the time of the dissolution. The decree provided that, after the dissolution, appellant Margaret Chopp and the parties' two children would temporarily continue to live in the homestead, and appellant would be responsible for the mortgage payments and the usual costs of maintaining the homestead. At the time of the dissolution, respondent William Chopp represented that the mortgage on the homestead would be immediately refinanced, reducing the monthly mortgage payment from \$2,631 to approximately \$1,600. Following this refinancing, the homestead was to be immediately listed for sale and sold to the first qualified buyer for its fair market value. Appellant would then use part of the proceeds from the sale to move herself and the children to a smaller residence.

At the time of the dissolution, appellant was unemployed and attending college. The decree stated, “[Appellant’s] reasonable and necessary monthly living expenses for herself and the minor children are approximately \$14,617 in the current home. It is anticipated [that appellant] and the minor children’s monthly expenses will reduce when the current home is sold and [appellant] moves into a smaller residence.” This amount

for monthly living expenses included the amount of the mortgage payment before the refinancing of the homestead's mortgage.

The decree contained the following provision regarding spousal maintenance:

Commencing on February 15, 2008, as and for permanent spousal maintenance, [r]espondent shall pay to [appellant] the sum of \$11,360 per month, payable in equal payments on the first and fifteenth days of each month until [appellant's] current homestead sells. Commencing upon the sale of the marital homestead, [r]espondent shall pay to [appellant], as permanent spousal maintenance, the sum of \$10,805 through the payment due August 15, 2010. Commencing September 1, 2010 through the payment due August 15, 2012 [r]espondent shall pay to [appellant], as permanent spousal maintenance, the sum of \$7,910 per month. Commencing September 1, 2012, [r]espondent shall pay to [appellant], as permanent spousal maintenance, the sum of \$7,500 per month.

The decree stated that the amount of spousal maintenance being paid to appellant until the homestead was sold was determined based on respondent's representation that the homestead's mortgage would be refinanced to reduce appellant's monthly mortgage payment to approximately \$1,600.

The mortgage on the homestead was refinanced following the dissolution, lowering appellant's monthly mortgage payment to \$1,386, and the homestead was subsequently listed for sale. However, the homestead did not sell as quickly as the parties had anticipated when they stipulated to the decree; in fact, the homestead did not sell until the end of April 2011.

In August 2010, with spousal maintenance on the verge of being reduced to \$7,910 per month pursuant to the decree, appellant filed a motion requesting that

respondent be ordered to continue to pay spousal maintenance in the amount of \$11,791.68 per month until the homestead sold.¹ Respondent opposed the motion, arguing that the parties had stipulated to a date-certain step-down in the amount of spousal maintenance to \$7,910 per month on September 1, 2010, independent of whether the homestead had sold. Respondent also argued that appellant's income had increased and her living expenses had decreased since the dissolution, decreasing her need for the higher level of spousal maintenance. But respondent conceded that he had the ability to pay the higher level of spousal maintenance.

In October 2010, the district court issued an order requiring respondent to continue to pay spousal maintenance at the level of \$11,791.68 per month. The court stated that it was modifying the decree's spousal-maintenance award due to a substantial change in circumstances because the homestead had not sold as soon as the parties had anticipated.

Respondent appealed, and this court subsequently issued an opinion that reversed and remanded. *See Chopp v. Chopp*, No. A10-2188, 2011 WL 6141601 (Minn. App. Dec. 12, 2011). This court stated that the district court had failed to address all of the factors that are relevant when modifying spousal maintenance, such as appellant's current expenses and income, and had not discussed why the decrease in spousal maintenance provided for in the decree was unreasonable and unfair. *Id.* at *3. This court explained that it was therefore "unable to effectively review the district court's exercise of

¹ The monthly spousal maintenance of \$11,360 that the decree initially awarded had increased to \$11,791.68 due to cost-of-living adjustments. Because the homestead did not sell before September 1, 2010, respondent never paid spousal maintenance of \$10,805 per month.

discretion,” and remanded for the necessary findings and analysis on appellant’s need for spousal maintenance. *Id.*

The district court held a one-day evidentiary hearing on remand, during which appellant testified regarding her income and living expenses, and issued an order and judgment in June 2012. The court found that, between September 1, 2010 (when the amount of spousal maintenance was supposed to decrease to \$7,910 per month under the decree) and May 1, 2011 (when the first spousal-maintenance payment was due after the sale of the homestead), appellant’s monthly living expenses had been \$13,336, which was “\$1,281 less than expected in the decree.” The court also found that, during the same eight-month period, appellant had been employed and earned a monthly salary of \$1,721. The court concluded that appellant thus had a reduced need for spousal maintenance in the amount of \$3,002 per month during the eight-month period and that respondent had overpaid spousal maintenance by \$24,016. The court ordered appellant to repay to respondent the sum of \$24,016. This appeal followed.

D E C I S I O N

An appellate court reviews a district court’s decision regarding modification of spousal maintenance for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709–10 (Minn. 1997). A district court abuses its discretion if it makes findings of fact that are unsupported by the evidence or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). “Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous.” *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1982). Findings are clearly erroneous if “the reviewing

court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

Appellant does not challenge the district court’s finding that she had monthly living expenses of \$13,336 between September 1, 2010 and May 1, 2011, or the finding that she earned a monthly salary of \$1,721 during that period. Appellant does challenge the finding that her \$13,336 in monthly living expenses is “\$1,281 less than expected in the decree.” Appellant argues that, in making this finding, the district court failed to account for the fact that the parties stipulated to the amount of spousal maintenance based on the representation that the mortgage on the homestead would be refinanced, thus already reducing appellant’s monthly living expenses from the \$14,617 mentioned in the decree.

This argument has merit. The decree listed appellant’s monthly living expenses at \$14,617, but this amount included the mortgage payment before the mortgage was refinanced. The decree stated that “the amount of spousal maintenance being paid to [appellant] until the home is sold was determined” based on respondent’s representation that the mortgage would be refinanced and that appellant’s monthly mortgage payment would be lowered to approximately \$1,600. The monthly mortgage payment was \$2,631 before the refinancing. Thus, when setting the amount of spousal maintenance, the parties already anticipated that appellant’s monthly living expenses would be around \$1,031 lower than the \$14,617 listed in the decree, or approximately \$13,586. The district court clearly erred by finding that appellant’s monthly living expenses of \$13,336

between September 1, 2010 and May 1, 2011, were “\$1,281 less than expected in the decree.” Rather, those expenses were only \$250 less than the parties presumably anticipated when they stipulated to the spousal-maintenance award in the decree. This decrease in living expenses, plus appellant’s monthly salary of \$1,721, amounted to a reduced need for spousal maintenance in the amount of \$1,971 per month for the eight-month period. Respondent is therefore entitled to a judgment in the amount of \$15,768 for overpayment of spousal maintenance.

Appellant argues that the district court abused its discretion by reducing monthly spousal maintenance from \$11,791.68 for the eight-month period *at all* because, even with this higher level of maintenance, she did not have enough funds to cover her monthly living expenses after figuring in income taxes. Appellant cites no authority for the proposition that the district court *must* have awarded spousal maintenance in an amount sufficient to enable her to meet all of her monthly living expenses. Determination of an amount for modified spousal maintenance requires consideration of a number of factors. *See* Minn. Stat. § 518.552, subd. 2 (2012); Minn. Stat. § 518A.39, subd. 2(d) (2012).

We note that, while appellant is being ordered to reimburse respondent for overpaid spousal maintenance, this order still results in an upward modification of spousal maintenance from the \$7,910 stipulated to in the decree for the period at issue. Respondent has not filed a related appeal or submitted a brief arguing that any upward modification is in error. Given that the homestead took much longer to sell than the parties anticipated when they stipulated to the decree, this upward modification of

spousal maintenance appears to be a fair and equitable result. We thus affirm the district court, but modify the amount of the judgment to \$15,768.

Affirmed as modified.