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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0905**

In re the Marriage of: Kelly Suzanne Thomas, petitioner,  
Respondent,

vs.

Michael Ray Thomas,  
Appellant.

**Filed March 3, 2014  
Affirmed  
Stauber, Judge**

Lyon County District Court  
File No. 42F405000120

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respondent)

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Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

In this maintenance-modification dispute, appellant-husband argues that the district  
court (1) abused its discretion by denying his motion to modify his spousal-maintenance  
obligation because the record does not support the conclusion that appellant failed to show a

substantial change in circumstances rendering his existing obligation unreasonable and unfair and (2) should have granted his request for a vocational assessment of respondent-wife. We affirm.

## **FACTS**

The 20-year marriage between appellant Michael Thomas and respondent Kelly Thomas was dissolved in February 2005. At the time of the dissolution, appellant was self-employed as a dentist and respondent was not employed outside of the home. Pursuant to the parties' marital termination agreement, which was incorporated into the judgment and decree, respondent was awarded sole physical custody of the parties' three minor children, and appellant would pay child support in the amount of \$2,440 per month. The agreement further provided that appellant would pay permanent spousal maintenance of \$7,400 per month, which would be reduced to \$5,200 per month upon the emancipation of the parties' youngest child. Respondent would also receive the parties' marital homestead.

In June 2012, the parties' youngest child was emancipated. Thereafter, respondent sold her home and bought a condominium in Florida. Appellant subsequently moved to eliminate his spousal maintenance obligation or, alternatively, reduce or reserve his maintenance obligation. Appellant alleged in relevant part that a decrease in respondent's housing expenses constituted a substantial change in circumstances that rendered the existing maintenance obligation unreasonable and unfair. Appellant also moved for an order requiring respondent to participate in a vocational evaluation.

The district court found that there had not been a substantial change in the parties' circumstances that rendered the "current maintenance award unfair or unreasonable," and thus, denied appellant's motion without an evidentiary hearing. This appeal followed.

## DECISION

### I.

Appellant challenges the district court's denial of his motion to modify his spousal-maintenance obligation. This court reviews a district court's maintenance-modification decision for an abuse of discretion. *Rubenstein v. Rubenstein*, 295 Minn. 29, 32, 202 N.W.2d 662, 663-64 (1972). A district court abuses that discretion if it makes a clearly erroneous conclusion that is against logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). The reviewing court defers to a district court's findings of fact and will uphold them unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted).

Modification of spousal maintenance is appropriate if a change in circumstances makes the original award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2012). Changed circumstances can be established by showing a substantial increase or decrease in the gross income or need of either the obligee or the obligor. *Id.* The movant bears the burden of demonstrating a substantial change in circumstances and that the change renders the current maintenance amount unreasonable and unfair. *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). When the party seeking modification fails

“to present clear proof of a substantial change in circumstances,” the district court is not required to consider other statutory factors. *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987).

In 2005, the parties entered into a negotiated marital settlement agreement. “When a stipulation fixing the respective rights and obligations of the parties is central to the original judgment and decree, the district court considering the modification motion must appreciate that the stipulation represents the parties’ voluntary acquiescence in an equitable settlement.” *Beck*, 566 N.W.2d at 726. The Minnesota Supreme Court has “cautioned the district court to exercise its considerable discretion carefully and only reluctantly when it is faced with a request to alter the terms of an agreement which was negotiated by the parties.” *Id.* Here, the judgment and decree contains language that the maintenance “obligation shall continue until the death of either party,” and appellant admits that he has the ability to pay the maintenance ordered.<sup>1</sup>

In denying appellant’s motion, the district court found that respondent’s “housing expenses have decreased, but according to [respondent’s] affidavit, her total expenses have changed only slightly.” The court also found that “[e]ven looking at the change in housing alone, the change is not a substantial decrease such that it makes the current maintenance award unfair or unreasonable.”

Appellant argues that many of respondent’s expenses, which are referred to in the district court’s order, constitute “voluntary discretionary expenses” which “were not part

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<sup>1</sup> The record indicates that appellant had a gross monthly income of \$27,000 at the time of the dissolution.

of the marital standard of living.” Appellant asserts that these expenses include such items as debt repayment, vacations, car payment, and legal fees. Appellant contends that in light of these “voluntary discretionary expenses,” the district court “did not properly make a determination of which items on respondent’s current purported budget are necessary, ongoing living expenses and which items were not part of the marital standard of living.” Appellant argues further that respondent’s substantial reduction in expenses and subsequent increase in “voluntary discretionary expenses” renders the existing spousal-maintenance obligation unfair because it forces appellant to subsidize for respondent a lifestyle “above the marital standard of living.”

We acknowledge that there is some merit to appellant’s claim. It is well settled that a maintenance decision generally concerns the recipient’s need balanced against the obligor’s financial condition. *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982); *see also Maeder v. Maeder*, 480 N.W.2d 677, 679 (Minn. App. 1992) (noting both that a maintenance decision generally balances the incomes and needs of the parties and that the central determination in the balancing process is the available resources of each party), *review denied* (Minn. Mar. 19, 1992). The balance between a recipient’s need for maintenance and an obligor’s ability to pay maintenance “can only be struck when the [recipient’s] needs are, in fact determined.” *Bliss v. Bliss*, 493 N.W.2d 583, 587 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993); *see also Kemp v. Kemp*, 608 N.W.2d 916, 922 (Minn. App. 2000) (applying *Bliss*). Thus, because a finding of a maintenance recipient’s reasonable monthly expenses is critical to a maintenance award, the lack of such a finding has prompted, in whole or in part, remands of maintenance awards. *See*,

*e.g., Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989); *Kemp*, 608 N.W.2d at 922; *Bliss*, 493 N.W.2d at 587.

Here, the district court's analysis of the maintenance-modification issue was sparse. Nonetheless, although the district court did not make explicit findings regarding respondent's need in light of the parties' standard of living during the marriage, the district court made implicit findings regarding the same. In support of his motion to modify his spousal-maintenance obligation, appellant provided charts depicting what he asserted were respondent's expenses. Respondent does not dispute the accuracy of these charts. Instead, she contends that her expenses reflect the standard of living during the parties' marriage. By concluding that respondent's "expenses have changed only slightly," the district court implicitly concluded that respondent's expenses as depicted by appellant were accurate and that respondent's expenses reasonably reflected her need in light of the standard of living established during the parties' marriage.

Because there does not appear to be a dispute as to respondent's expenses, the question before us is whether the district court clearly erred by finding that respondent's expenses accurately reflect the parties' standard of living during the marriage. The record reflects that as a dentist, appellant had a substantial income during the parties' marriage. In light of this income, the parties drove nice cars, took vacations, made frequent purchases, and generally lived a very comfortable lifestyle during the marriage. Respondent's claimed expenses, although now somewhat different, are fairly consistent with this standard of living. Thus, appellant's claim that respondent's purported expenses do not reflect the standard of living during the marriage lacks merit.

Moreover, the parties specifically stipulated to appellant's permanent spousal-maintenance obligation, and this court has stated that when courts consider a maintenance modification, the parties' stipulation carries great weight. *Cisek v. Cisek*, 409 N.W.2d 233, 236-37 (Minn. App. 1987) (district court should only reluctantly alter terms of stipulation governing maintenance), *review denied* (Minn. Sept. 18, 1987). The stipulation represents an agreement negotiated by the parties that specifically contemplated respondent's needs in light of the marital standard of living. And, appellant receives a tax benefit on account of his maintenance obligation. Thus, appellant has not demonstrated that the district court clearly erred by finding that there has not been a substantial change in circumstances rendering the existing spousal-maintenance obligation unreasonable and unfair.

Finally, we note that there is some expectancy that respondent, at her young age, and without dependent children, would strive to become self-supporting. It is troubling that she works only a few hours a week for marginal pay and expects to live off her substantial maintenance award while she is still relatively young. Even more troubling is that respondent is in a serious, long-term relationship with her significant other, including cohabitation. But we conclude that under the current state of the law, and on this record, the district court did not abuse its discretion by denying appellant's motion to modify spousal-maintenance obligation at this time.

## II.

Appellant next argues that the district court abused its discretion by denying his motion requesting the vocational testing of respondent to determine her ability to become

self-supporting. But appellant concedes that the issue need only be considered “once the showing has been made that there has been a substantial change of circumstances rendering the current order unreasonable and unfair.” As we discussed above, appellant has not shown that the district court abused its discretion by denying appellant’s motion to modify his maintenance obligation. Appellant’s claim that respondent should be required to submit to a vocational evaluation is moot. *See Decker v. Nw. Env’tl. Defense Ctr.*, 133 S. Ct. 1326, 1335 (2013) (stating that an issue becomes “moot when it is impossible for a court to grant any effectual relief whatever to the prevailing party”). We therefore decline to further address the issue.

**Affirmed.**