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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0993**

In re the Marriage of:

Sheri Marie Peterson, petitioner,
Respondent,

vs.

Duane Edward Peterson,
Appellant.

**Filed March 3, 2014
Affirmed; motion denied
Kalitowski, Judge**

Ramsey County District Court
File No. 62-FA-09-1791

Ben M. Henschel, Henschel Moberg Goff, P.A., Minneapolis, Minnesota (for respondent)

Michael J. Froelich, Froelich Law Office, Ltd., St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Duane Peterson argues that the district court abused its discretion by modifying his permanent spousal maintenance payments to respondent Sheri Peterson to \$4,917 per month. We affirm.

DECISION

An appellate court reviews a district court's decision regarding whether to modify an existing maintenance award for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

In his motion for modification of spousal maintenance payments, appellant requested that the district court impute \$40,000 of income to respondent. Appellant's request was based on the amended findings of fact, conclusions of law, order for judgment, and judgment and decree, which found respondent capable of reemployment at an annual gross income of \$40,000 and concluded that the spousal maintenance award would be subject to modification to reflect this income as of January 1, 2013, the date on which respondent would be deemed capable of employment. The district court granted appellant's request by imputing \$40,000 of income to respondent and reducing appellant's monthly spousal maintenance payments accordingly. Thus, we conclude that the district court did not abuse its discretion.

On appeal, appellant claims the district court erred by ordering permanent, rather than temporary, spousal maintenance payments. But appellant did not properly present this issue to the district court. We will generally not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We decline to do so here.

Finally, shortly before oral argument, respondent moved to dismiss appellant's claim, arguing that it constituted an untimely appeal of the underlying judgment and decree and requested attorney fees incurred in responding to a defective appeal. Because we affirm the district court, we deny respondent's motion to dismiss. And because respondent's motion does not establish a substantive basis for appellate fees, we deny the request for fees. This denial does not preclude a timely motion for fees, with supporting documentation under Minn. R. Civ. App. P. 139.06, if respondent can establish a contractual or statutory basis for awarding fees.

Affirmed; motion denied.