STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1779
A23-1981

In re the Marriage of:

Brent Lee Florine, petitioner,
Respondent,

vs.

Lauren Marie Florine,
Appellant.

Filed January 13, 2025
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-FA-14-6543

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

Christopher Zewiske, Ormond & Zewiske, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In these consolidated appeals from an order denying cross-motions to modify permanent spousal maintenance and a money judgment entered against appellant, both parties seek review. In A23-1779, appellant argues that the district court abused its

discretion by (1) awarding respondent $475,000 as "equitable compensation" after determining that appellant's conduct caused a decrease in the marital home's value before it was sold, (2) denying an increase in spousal maintenance, and (3) denying attorney fees. Respondent argues, also in A23-1779, that the district court erred by denying his motion to reduce or terminate spousal maintenance. This court then dismissed part of A23-1779 as premature. Appellant later filed A23-1981, and this court consolidated appellant's two appeals. Because the district court enforced the 2016 dissolution judgment and decree by awarding respondent $475,000 and did not abuse its discretion by denying appellant's request for attorney fees, we affirm in part. But because the district court erred in its analysis and findings related to appellant's ability to meet her own needs, we conclude that the district court abused its discretion in denying both parties' motions for modification of spousal maintenance. Thus, we reverse in part and remand both appellant's and respondent's motions to modify spousal maintenance. The district court may, in its discretion, reopen the record to address the remanded motions.

FACTS

Appellant Lauren Florine (Lauren) and respondent Brent Florine (Brent)[1] were married in 1994 and divorced by a stipulated judgment and decree entered on December 18, 2015 (2015 stipulated decree). The 2015 stipulated decree reserved several issues, which the district court decided in an amended judgment and decree dated February 19, 2016

[1] For simplicity and clarity, this opinion will use the parties' first names because they share the same last name.

(2016 decree). The 2016 decree included determinations about the marital homestead and spousal maintenance, both of which are involved in this appeal.

In the 2016 decree, the district court directed that the marital home located in Minneapolis be sold and that the "net proceeds shall be split equally after each party is reimbursed for sale preparation, repair costs and reduction of [mortgage] principal." The district court also stated that the marital home had a tax-assessed value of $3,175,000. The district court appointed a listing agent and a special master to resolve any disagreements about the sale and gave Lauren "temporary exclusive possession and occupancy of the homestead pending its sale."

The district court also determined that permanent spousal maintenance was appropriate and described the marital standard of living as "very high . . . throughout the marriage while simultaneously building a significant marital estate without accruing any significant debt." The district court determined, in support of its maintenance decision, that Lauren's "income is substantially lower than" Brent's income, "she lack[s] sufficient property, including marital property apportioned to her, to provide for her reasonable needs considering the standard of living established during the marriage," and "both parties would be able to meet their reasonable budgets" if Brent paid Lauren spousal maintenance.

Other factual findings relevant to this appeal included that Brent earned an average of $816,158 annually as an oral and maxillofacial surgeon and $115,197 annually from a rental property and that his reasonable monthly budget was $22,755. Lauren earned an average of $168,900 annually as a self-employed agent/broker for health insurers and "could reasonably expect to earn $30,000 per year" in interest payments from

non-retirement cash and securities, and her reasonable monthly budget was $25,000. The district court ordered that Brent pay Lauren $15,000 per month in permanent spousal maintenance.

Brent appealed the 2016 decree, and Lauren filed a notice of related appeal. *Florine v. Florine*, No. A16-1519, 2017 WL 4767090, at *1 (Minn. App. Oct. 23, 2017), *rev. denied* (Minn. Jan. 16, 2018). Brent challenged the district court's property-division and spousal-maintenance decisions, among other things. *Id.* Lauren challenged the amount set for spousal maintenance as well as the district court's decision that she "pay all of the homestead costs pending sale of the homestead." *Id.* This court affirmed in part, reversed in part, and remanded. *Id.* We determined that the district court did not abuse its discretion in dividing the marital property and awarding permanent spousal maintenance in the amount set. *Id.* at *3-5. But we also concluded that the district court abused its discretion by ordering Lauren to pay all homestead expenses pending the sale of the marital home; we remanded for the district court to "assign a portion" of these expenses to Brent. *Id.* at *5.

Following the first appeal, the parties filed several motions relating to the sale of the marital home and spousal maintenance. The procedural history and the district court's relevant findings are set out below in our analysis of the issues on appeal.

By overview: the marital home remained on the market from June 2018 to March 2022, when it sold for $2,000,000. Brent moved for an order directing that Lauren pay him "$475,000 as equitable compensation for one-half of the lost value of the marital homestead, which resulted from [Lauren's] failure to properly maintain that marital asset

after being granted sole possession of the homestead pending its sale" and Lauren's obstruction of the home's sale. The district court granted Brent's motion by order in August 2022, amended that order in November 2022 (November 2022 order), and later directed entry of judgment.

Both parties also separately moved to modify permanent spousal maintenance and sought attorney fees, and the district court conducted an evidentiary hearing. By order in October 2023, the district court denied both motions, determining that there was no substantial change in circumstances related to Lauren's income or reasonable needs (October 2023 order). The October 2023 order also denied both parties' motions and requests for attorney fees.

Lauren appeals, and Brent files a notice of related appeal.[2]

DECISION

I. The district court did not abuse its discretion by ordering Lauren to pay Brent $475,000 from the marital home's sale proceeds.

Lauren argues in her brief to this court that the district court abused its discretion by entering judgment against her for $475,000 as "equitable compensation for one-half of the lost value of the marital homestead" based on its conclusion that Lauren's actions "caused the home to be sold for only $2,000,000 six years after the home was put on the market, resulting in a $1,000,000 loss." Brent urges this court to affirm the district court's decision.

[2] As briefly noted above, Lauren filed A23-1779 and this court questioned jurisdiction over part of the appeal. Brent filed a notice of related appeal in A23-1779. After briefing, this court dismissed part of A23-1779 as premature. Lauren later filed A23-1981, and this court consolidated Lauren's two appeals. Thus, Lauren filed both appeals, and Brent filed a notice of related appeal in A23-1779.

A. Relevant Factual Findings and the District Court's Analysis

The following summarizes the district court's relevant factual findings related to this issue as laid out in the November 2022 order. As mentioned above, the 2016 decree found that the marital home's tax-assessed value was $3,175,000, directed the sale of the home, appointed a special master, and ordered that the "net proceeds shall be split equally after each party is reimbursed for sale preparation, repair costs and reduction of [mortgage] principal." After the first appeal resulted in a remand, in June 2018, the parties listed the marital home for $3,250,000; the district court later ordered that the sale price be lowered to $3,000,000. The special master ordered the parties to ensure that the home was in "show condition," which included directions to Lauren to provide access for roof repairs and take protective measures to address the odor of cat urine.

The house did not sell, and in November 2018, the district court filed an order finding that "there is at least some evidence supporting [Brent's] position that [Lauren's] conduct has hindered the sale." In June 2019, the district court ordered that the parties list the marital home at $2,281,333.

In May 2021, the parties received an offer of $2,000,000 for the home, but the potential buyers withdrew the offer after they inspected the home. In June 2021, the district court granted Brent's motion to find Lauren in contempt, ordered Lauren to vacate the marital home, and directed Brent to maintain the home pending its sale. The contempt order included factual findings that, in 2016 and 2017, Lauren, among other things, delayed selling the home, failed to remedy "water damage and wet floors," neglected home maintenance, refused to use a full-size "For Sale" sign, refused to provide a house key to

the listing agent for showings, and allowed her cats to urinate in the home, which left an odor.

In March 2022, the home sold for $2,000,000.

In June 2022, Brent moved, under Minn. Stat. § 518.58, subd. 1a (2022), for an order directing that Lauren pay him "$475,000 as equitable compensation for one-half of the lost value of the marital homestead, which resulted from [Lauren's] failure to properly maintain that marital asset after being granted sole possession of the homestead pending its sale" and Lauren's obstruction of the home's sale. Lauren opposed the motion.

In a November 2022 order, the district court granted Brent's motion. The district court's order first found that the parties' marital home "should be valued at $3,000,000" at the time of sale, based on a 2018 appraisal. Citing the sale price of $2,000,000, the district court found that "the lost value of the parties' homestead is $1,000,000." The district court next addressed Brent's motion and stated that Brent had the burden to prove that Lauren was responsible for the home's lost value, citing Minn. Stat. § 518.18, subd. 1a. The district court observed that Minnesota law imposes a fiduciary duty on parties handling marital assets and stated that Minn. Stat. § 518.58, subd. 1a, generally prohibits parties from "transferring, encumbering, concealing, or disposing" of any marital asset pending dissolution. The district court also described Brent's motion as a "dissipation" claim, adding that "the statute no longer uses that term."

The district court found, based on the record,[3] that Lauren was responsible for maintaining the marital home pending sale, yet failed to (1) keep "in working order" faucets, showers, toilets, and the radiator; (2) maintain the plumbing; (3) maintain the electrical system; (4) address home repairs; and (5) supervise or clean up after pets and instead "allowed her cats to leave urine and feces around the homestead to the point that it created a 'putrid' smell."[4] The district court also determined that Lauren "obstructed the sale process" by being "unresponsive when asked to set up house showings" and "continually" insisting "on increasing the sale price of the home," even though the listing agent advised against it.

Relying on these findings, the district court concluded that Lauren's "actions caused the home to be sold for only $2,000,000 six years after the home was put on the market, resulting in a $1,000,000 loss." Noting that the 2016 decree directed the sale of the marital home and an even distribution of the proceeds, the district court determined that "both

[3] In making these findings, the district court relied on earlier findings by a consensual special magistrate (CSM), stating that the findings were based on "extensive evidence on the condition" of the home and commenting that the CSM's findings were "credible" and given "great weight." As noted above, the 2016 decree appointed a special master. In November 2018, the district court replaced the special master, appointing a CSM with authority under Minn. R. Gen. Prac. 114.02(a)(2). We observe that a special master's decision is reviewed by the district court de novo, while a CSM's decision is appealable to this court. *Compare* Minn. R. Civ. P. 53.07 (special master), *with* Minn. R. Gen. Prac. 114.02(a)(2) (consensual special magistrate).

[4] The district court also found that Lauren was responsible for paying utilities but failed to do so or to "cure her late payments." The district court observed that the CSM also found that Lauren failed to pay her portion of the homeowner's insurance for the marital home, failed to pay property taxes, and did not pay the outstanding amounts owed for insurance and taxes before she moved out or sold the home.

parties would be put in the same position by ordering [Lauren] to pay [Brent] $475,000 as equitable compensation for one-half of the lost value of the marital home" and that this amount should "come from [Lauren's] share of the sale proceeds held in escrow." The district court also determined that it is "just and equitable that the parties should split the remaining funds equally because [the home] is a marital asset."

B. The district court did not abuse its discretion by ordering $475,000 as equitable compensation to Brent because doing so enforced the 2016 decree.

Appellate courts "will not disturb an appropriate order to clarify, implement, or enforce terms of a decree, absent an abuse of discretion." *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011). An abuse of discretion occurs when a district court makes "findings of fact that are unsupported by the evidence, misappl[ies] the law, or deliver[s] a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Lauren argues in briefing and during oral argument that the district court abused its discretion by determining that "dissipation took place in this matter," urging us to conclude that Minn. Stat. § 518.58, subd. 1a, states that it applies "[d]uring the pendency of a marriage dissolution" or "in contemplation" of dissolution, but the parties' marriage was dissolved in 2015, so subdivision 1a no longer applies. Lauren also contends that the district court erred by determining that the home, a marital asset, was "transferred, encumbered, concealed, or disposed of." The sale was ordered in the 2016 decree, which also directed that the sale proceeds be "equally divided." Lauren emphasizes that she did not receive "any benefit from a lower sale price on the homestead" and that the November

2022 order does not "equally divide[]" the sale proceeds. Brent contends that the district court did not abuse its discretion and that the dissolution was pending in November 2022 because the sale proceeds from the marital home needed to be distributed.

In dissolution proceedings, a district court must make a "just and equitable" division of the parties' marital property "after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2022). The same statute, in subdivision 1a, discusses the transfer of marital assets pending dissolution and imposes a fiduciary duty on the parties. Subdivision 1a provides that

> *[d]uring the pendency of a marriage dissolution* . . . or in contemplation of commencing a marriage dissolution, . . . each party owes a fiduciary duty to the other for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets.

Id., subd. 1a (emphasis added). Subdivision 1a also provides that, if the district court finds that a party to a marriage, "without consent of the other party" and "during the pendency of" or in contemplation of dissolution, has "transferred, encumbered concealed, or disposed of marital assets," except for circumstances not relevant here, "the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred." *Id.*

The parties disagree about whether subdivision 1a applies only to pending dissolutions and whether their dissolution was pending at the time of the November 2022 order. We need not determine whether Minn. Stat. § 518.58, subd. 1a, applies here. While the district court relied on subdivision 1a, it also relied on the terms of the 2016 decree and its authority under Minn. Stat. § 518.58, subd. 1, to make a "just and equitable" division of

the parties' marital property "after making findings regarding the division of the property."[5] We have previously held that a "district court has discretion to enforce marriage-dissolution judgments." *Nelson*, 806 N.W.2d at 870. We explained that, "[w]hile a [district] court may not modify a final property division, it may issue orders to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties' substantive rights." *Id.* at 871.

To be clear, the November 2022 order is fully supported by the record and the district court's factual findings and as an exercise of the district court's discretion to enforce the property division of the marital home as stated in the 2016 decree. If the district court had not awarded Brent compensation for his share of the decrease in the marital home's value, it would have enforced the judgment in a manner that would have altered Brent's substantive rights (unless a $475,000 loss is somehow de minimis).[6]

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[5] We decline to adopt Brent's reasoning that the district court's decision should be affirmed under the portion of Minn. Stat. § 518.58, subd. 1, stating that, "[i]f there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution." Although district courts may adjust the value of marital property between the date of valuation and final distribution and the district court determined that the marital home's value was $3,000,000 at the time of sale, Lauren is not challenging that aspect of the district court's decision.

[6] *Risk ex rel. Estate of Miller v. Stark* offers a different but analogous example of a district court's exercise of discretion. 787 N.W.2d 690 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). Shortly before the appellant in that case began dissolution proceedings, the appellant transferred funds from a money-market account that was the respondent's nonmarital property, even though the appellant did not have the respondent's consent to do so. *Id.* at 694. The district court determined that the appellant had "dissipated, hidden, secreted, or otherwise disposed of" funds in the money-market account and considered the dissipation in making its equitable property division. *Id.* at 698. The appellant sought review of the property division, and this court commented that Minn. Stat. § 518.58,

We conclude that the district court did not err in offsetting Lauren's portion of the sale proceeds by awarding $475,000 to Brent based on Lauren's responsibility for the marital home's loss in value. The 2016 decree stated that the "net proceeds" from the sale of the marital homestead "shall be split equally after each party is reimbursed for sale preparation, repair costs, and reduction of [mortgage] principal." The 2016 decree also stated that the "2014 tax assessed value" of the home was "approximately $3,175,000." In 2018, based on updated market evaluations, the district court ordered that the property be sold for $3,000,000.

In the November 2022 order, the district court determined that the marital home's market value was $3,000,000 at the time it was sold for $2,000,000. The district court accordingly determined that the marital home lost $1,000,000 in value. The district court found that Lauren failed to maintain the home properly and obstructed the sale process and that her "actions caused" the "$1,000,000 loss." Lauren's brief to this court does not challenge the district court's factual findings about her role in causing the lost value of the marital home.

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subd. 1a (2008), "does not expressly contemplate such a situation. But the district court has broad discretion in dividing property, and this court will not find an abuse of discretion unless there is 'a clearly erroneous conclusion that is against logic and the facts on record.'" *Id.* at 698-99 (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)). Accordingly, we affirmed "the district court's decision to offset appellant's marital [property] award by the extent to which he dissipated the money market funds" and held that the decision "was not an abuse of the court's discretion." *Id.*

The circumstances here differ from the circumstances in *Stark*, an appeal from the district court's division of marital property. *Florine* affirmed the district court's 2016 decree dividing the marital property, 2017 WL 4767090, at *2-3, and Lauren now appeals the district court's enforcement of the 2016 decree. Still, we apply reasoning analogous to the reasoning in *Stark* in our review of the district court's enforcement decision.

Thus, the 2016 decree contemplated equally dividing the net proceeds from the sale of a home valued at about $3,000,000, but the district court later determined that the value of the home decreased by $1,000,000 because of Lauren's failure to maintain it and her conduct obstructing the sale. Based on the loss in value, the district court ordered that Lauren pay Brent "$475,000 as equitable compensation for one-half of the lost value of the marital home" and then split the remaining proceeds equally because doing so was "just and equitable."

Because the district court has discretion to enforce the 2016 decree, we conclude that the district court did not abuse its discretion in offsetting Lauren's portion of the sale proceeds by ordering that Lauren pay Brent $475,000 as equitable compensation for the lost value of the marital home.

II. The district court abused its discretion in denying both parties' motions to modify permanent spousal maintenance.

Brent and Lauren argue in their briefs to this court that the district court abused its discretion in denying modification of permanent spousal maintenance and in making its spousal-maintenance determinations in the October 2023 order. Lauren argues that the district court clearly erred by finding that her ability to meet her financial needs had not substantially changed, and Brent argues that the district court clearly erred in its findings of Lauren's income and her ability to meet her own needs.

We first discuss the relevant previous orders on post-dissolution modification of the amount of permanent spousal maintenance, then we consider the district court's factual

findings after the August 2023 evidentiary hearing, and finally, we evaluate the parties' arguments about their motions.

A. Relevant Procedural History, Factual Findings, and the District Court's Analysis

As mentioned above, the 2016 decree awarded Lauren $15,000 per month in permanent spousal maintenance based on the marital standard of living, Lauren's ability to meet her own reasonable needs, and Brent's ability to pay maintenance while meeting his own needs.

On June 22, 2020, the district court granted Brent's motion to temporarily modify spousal maintenance (June 2020 order). The district court found that, "[d]ue to the pandemic, [Brent] ha[d] been forced to postpone all elective treatment" at his oral-surgery practice, which "account[ed] for 95% of [his] income," and thus that Brent showed a "substantial change" in his income. The district court also found that "the parties' expenses [were] equal," Lauren's monthly income was $4,464, and Brent's monthly income was $5,590. The June 2020 order set maintenance at the amount of $563 per month for April through June 2020 and at $7,787 per month for July through September 2020. The district court scheduled a review hearing in October 2020.

Before the review hearing, Brent again moved to temporarily modify spousal maintenance, arguing that his obligation should be suspended for six months because of the effect of the COVID-19 pandemic on his income and requesting that the district court schedule a review hearing in April 2021. Brent asked, in the alternative, that the district

court suspend or reduce his spousal-maintenance obligation "as the [c]ourt deems fair and equitable."

Lauren opposed Brent's motion and moved the district court to reinstate the maintenance obligation under the 2016 decree. Each party submitted an income analysis by an accountant to support their respective position. Lauren's expert considered her 2020 income in his calculations. Lauren also submitted her own affidavit, attesting to her income and a reasonable budget for her needs. Lauren averred that her income had decreased because she lost clients during the pandemic and that her reasonable monthly budget was $27,427.

On December 4, 2020, the district court filed an order modifying spousal maintenance (December 2020 order). The district court found that Brent's income had "declined significantly . . . as a result of the COVID-19 pandemic" and that he made an average of $32,000 per month the first nine months of 2020, made "little or no money" in April and May 2020, saw "some improvement" in June and July, and then made "only $19,311" in August 2020. Based on these findings, the district court determined that Brent had shown a "substantial change in his income, and the scope of that change" rendered the existing maintenance obligation "unreasonable and unfair."

The district court found that Lauren's reasonable monthly budget was $14,359 and that her monthly income was $9,768. The district court ordered that Brent's "motion to *temporarily* modify spousal maintenance *is granted in part*" and that Brent pay $4,591 per month in spousal maintenance starting September 1, 2020. (Emphasis added.) The district court also noted that the parties "may schedule a hearing to review the calculation of

spousal maintenance after April 15, 2021[,] so that the parties' 2020 tax returns may be considered."

Lauren moved for amended findings, which the district court denied in a written order (June 2021 order). The district court found that the December 2020 order granted Brent's motion and "temporarily" modified his monthly spousal-maintenance obligation. The district court also described the December 2020 order, stating that

> [u]ltimately, *this is not a final, permanent order on maintenance. It is a temporary order resulting from unprecedented circumstances—namely, a global pandemic that drastically [a]ffected [h]usband's business and income.* The [December] 2020 order specifically contemplates that the parties would return to [c]ourt once they have completed their 2020 taxes. Whether maintenance should be permanently modified or returned to its prior level is something that will need to be determined at a future date.

(Emphasis added.)

The case was then assigned to a different district court judge. Lauren moved to modify maintenance in December 2021 and June 2022. Brent moved to modify maintenance in June 2022 and April 2023; each time, Brent's motion requested that the district court either reduce or terminate his maintenance obligation.

On July 25, 2023, the district court filed an order addressing issues not raised on appeal. Yet the district court stated that the December 2020 order "*permanently* granted" Brent's motion to modify maintenance. Lauren moved to correct this finding, arguing that the district court erred by determining that the December 2020 order permanently modified maintenance because the December 2020 order stated that the modification was temporary.

The district court held an evidentiary hearing on spousal maintenance in August 2023. In its October 2023 order, the district court first stated that the December 2020 order was a "final determination of all pending issues" and thus the modification was not temporary. The district court reasoned that the "use of the word 'temporary' in the [December 2020 o]rder was meant to reflect that the decision was based in-part on [the] circumstances of the pandemic."

Second, the district court denied Brent's motion to modify or terminate maintenance because he "failed to establish that there has been a substantial change in [Lauren's] income or need." The district court found that Lauren's monthly income was $9,914.69 based on her average net self-employment income and potential annual investment income and that this was not a substantial change in Lauren's income. The district court also found that there was not a substantial change in Lauren's financial need, noting that Lauren's proposed budget was "not supportable or reasonable" and that it was "appropriate to maintain [Lauren's] imputed budget at $14,359 per month," which was the same budget set in the December 2020 order.

Third, the district court denied Lauren's motion to modify spousal maintenance, noting that the motion was "moot" because Lauren "withdrew her motion for permanent modification" by requesting a temporary order pending further discovery in her June 2022 motion. Alternatively, the district court denied Lauren's motion on the merits because the parties' incomes and reasonable needs did not render the December 2020 order unreasonable or unfair.

B. The district court failed to consider the marital standard of living and declined to address Brent's objections to Lauren's evidence of income.

A district court may grant a motion to modify spousal maintenance if either party has "substantially increased or decreased gross income" or "substantially increased or decreased need" that makes the existing maintenance order "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a) (2022). The moving party has the burden to prove the statutory criteria for modification. *Woolsey*, 975 N.W.2d at 505. If modification is appropriate, the district court must determine the amount and duration of the modified maintenance award by applying all relevant factors, including the statutory factors that apply to an initial award as they "exist at the time of the [modification] motion." Minn. Stat. § 518A.39, subd. 2(e) (2022). Appellate courts review a district court's decision on whether to modify an existing spousal-maintenance award for abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey*, 975 N.W.2d at 506 (quotation omitted).

When "a modification decision depends on findings of fact, we apply a clear error standard of review to those findings of fact." *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019) (citing *Bissell v. Bissell*, 191 N.W.2d 425, 427 (Minn. 1971)). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). When reviewing factual findings

for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not make factual findings, (3) do not reweigh the evidence, and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Accordingly, "an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court." *Id.* at 222 (quotation omitted). Given that a "factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all of the circumstances . . . an appellate court's duty is fully performed" when it "fairly consider[s] all the evidence and [determines] that the evidence reasonably supports the decision." *Id.* (quotation omitted).

1. Lauren's Motion to Modify Permanent Spousal Maintenance

Lauren argues that the district court abused its discretion by denying her motion to modify spousal maintenance because her income has decreased and the district court (1) improperly characterized the December 2020 order as a permanent modification of maintenance and (2) incorrectly determined her reasonable monthly budget. We address these arguments in turn.

Lauren first argues that the December 2020 order was a temporary modification of her permanent spousal-maintenance award. Lauren contends that the district court erred by resolving the pending maintenance motion and using the December 2020 order as a baseline; Lauren urges that the 2016 decree provides the appropriate baseline to determine whether a substantial change in circumstances occurred.

Brent counters that "the [December 2020 o]rder was not a 'temporary order'" because it "constituted the district court's final disposition of [Brent's] motion to temporarily modify spousal maintenance." Brent concedes in his brief to this court that,

> as of the time of his 2022 motion, his own income had recovered from its pandemic-related low in 2020, and [his motion to the district court] affirmed he was not claiming an inability to pay spousal maintenance either at the amount originally established at the time of the [2016] decree or at the amount in effect after the 2020 reduction.

We begin by noting that the 2016 decree awarded Lauren permanent spousal maintenance and that the subsequent maintenance orders modified the amount of Brent's permanent maintenance obligation.[7] To support her argument that the December 2020 order was a temporary modification of the permanent maintenance award, Lauren points to Minn. Stat. § 518.131, subd. 1(b) (2022), which states that,

> [i]n a proceeding brought for custody, dissolution, or legal separation, or for disposition of property, maintenance, or child support following the dissolution of a marriage, either party may, by motion, request from the court and the court may grant *a temporary order pending the final disposition of the proceeding* to or for . . . [t]emporary maintenance of either spouse.

(Emphasis added.)

We conclude that the December 2020 order was not a temporary order modifying permanent spousal maintenance for four reasons. First, the district court did not cite Minn.

[7] The word "temporary" has multiple meanings in the spousal-maintenance context. Under Minn. Stat. § 518.552, subd. 2 (2022), a district court can order "either temporary or permanent" spousal maintenance. Neither party asserts that the December 2020 order awards temporary maintenance under Minn. Stat. § 518.552, subd. 2.

Stat. § 518.131 (2022). Second, the December 2020 order does not use the language of section 518.131 or suggest that it is a "temporary order pending the final disposition" of the pending motions. Minn. Stat. § 518.131, subd. 1. In the December 2020 order, the district court made thorough findings about the parties' incomes and budgets and found that a substantial change in circumstances had occurred before it modified maintenance, which suggests that the December 2020 order modified the amount of permanent maintenance based on the record evidence. Minn. Stat. § 518A.39, subd. 2(a).

Third, the district court acknowledged in the December 2020 order that future modifications of maintenance, if any, would be initiated by the parties, stating that "[e]ither party may schedule a hearing to review the calculation of spousal maintenance after April 15, 2021[,] so that the parties' 2020 tax returns may be considered."

Fourth, as the district court itself determined in October 2023, the district court's use of "temporary" to describe the maintenance amount in the December 2020 and June 2021 orders refers to the pandemic as a temporary cause of a substantial change in circumstances. In the October 2023 order on appeal, the district court stated that "the use of the word 'temporary' in the [December 2020 o]rder was meant to reflect that the decision was based in-part on [the] circumstances of the pandemic," noting that the December 2020 order "specifically contemplates that the parties would return" to district court "once they have completed their 2020 taxes." We give "great weight" to the district court's interpretation of its own orders. *Palmi v. Palmi*, 140 N.W.2d 77, 82 (Minn. 1966) ("Construction of its own decree by the trial court must be given great weight in determining the intent of the trial court."). Accordingly, the December 2020 order modified

the amount of permanent spousal maintenance due to a substantial change in circumstances with a temporary cause, even though the district court anticipated that future changes were likely.

Still, Lauren points out that the district court's determination of the amount of maintenance in the December 2020 order was based on the effect of the pandemic on both parties' budgets and incomes. Lauren therefore contends that the district court abused its discretion by using the December 2020 order as a baseline when determining Lauren's income and budget in its October 2023 order and by not considering the marital standard of living as the district court did in the 2016 decree.

Lauren's argument is persuasive. The marital standard of living is important to a district court's decision to set or modify maintenance. This court held in *Peterka v. Peterka* that "a maintenance obligor has a duty, to the extent equitable under the circumstances, to support the maintenance recipient at the marital standard of living." 675 N.W.2d 353, 358-59 (Minn. App. 2004). In *Peterka*, the district court ordered the respondent to pay permanent spousal maintenance that did not provide for the marital standard of living because of shared hardship at the time of dissolution. *Id.* at 355. The appellant, the maintenance obligee, moved to modify the amount of permanent maintenance and appealed after the district court denied her motion. *Id.* at 355-57.

Our analysis in *Peterka* noted that the "statutory framework for the setting and modification of maintenance awards implicitly acknowledges that a sub-marital-standard-of-living maintenance award may be initially equitable, but it also recognizes that circumstances can change to render such an award unreasonable and

unfair." *Id.* at 359. When a subsequent change in circumstances renders a sub-marital-standard-of-living award to be unreasonable and unfair, the district court may "justify imposition on the obligor of all or part of the remainder of the obligor's duty to support the recipient at the marital standard of living." *Id.* Accordingly, this court determined that, absent "extraordinary circumstances"—which the district court did not find—the district court abused its discretion by denying modification of the maintenance amount based on its finding that the respondent's ability to pay included "expenses associated with his new family." *Id.* This court reversed and remanded "for recalculation of respondent's ability to pay maintenance" without considering expenses related to his new family unless the district court also found extraordinary circumstances. *Id.*

Peterka establishes that the marital standard of living is important to deciding maintenance-modification motions, even when the existing award of permanent maintenance is set below the marital standard of living based on shared hardship. The December 2020 order modified the amount of permanent spousal maintenance based on shared hardship—the pandemic and its impact on Brent's income. Leading up to the October 2023 order, Lauren sought modification based on a post-pandemic decrease in her own income. Similarly, the appellant in *Peterka* sought maintenance modification based, in part, on a post-dissolution decrease in her anticipated income. *Id.* at 355-56. In considering the district court's denial of the appellant's motion in *Peterka*, we highlighted that a maintenance obligor "has a duty, to the extent equitable under the circumstances," to provide for the obligee "at the marital standard of living" and remanded for the district court to reconsider its decision under the marital standard of living. *Id.* at 358-59.

The October 2023 order denying Lauren's motion to modify maintenance did not consider the marital standard of living when setting Lauren's budget.[8] Given that Brent does not contest his ability to pay and does not claim that the pandemic continues to affect his income, the December 2020 order may not be the correct baseline to resolve a post-pandemic motion to modify maintenance because it reduced the amount of maintenance based on shared hardship from the pandemic. Thus, in resolving the pending modification motions in October 2023, the district court abused its discretion by failing to consider the marital standard of living and pre-pandemic income and need determinations in the 2016 decree. To the extent that the district court may have concluded that the December 2020 income and need determinations are relevant to the marital standard of living, the October 2023 order does not articulate this conclusion.

Therefore, we reverse the district court's order denying Lauren's motion to modify spousal maintenance and remand for the district court to determine whether there has been a substantial change in circumstances; this determination must consider the marital standard of living and the parties' income and need determinations from the 2016 decree. If the district court determines that it is appropriate to also refer to the December 2020 income and need determinations, it must provide additional findings and analysis about why it is appropriate to do so. The district court has discretion to reopen the record to address the issues on remand.

[8] The October 2023 order briefly mentioned that the 2016 decree found Lauren's reasonable monthly budget of $25,000 "likely approximate[s]" the marital standard of living.

2. Brent's Motion to Modify Permanent Spousal Maintenance

In his appeal, Brent contends that the district court abused its discretion by denying his modification motion and identifies three errors in the district court's determination of Lauren's income.[9] First, Brent argues that the "district court abused its discretion in accepting [Lauren's] reported self-employment income without considering [Brent's] challenges to [Lauren's] claimed business expense deductions." Second, Brent argues that Lauren's income from 2020 and 2021 was lower than her income from previous years because she did not "intend[] to continue operating her business." Brent urges that Lauren "should be considered voluntarily underemployed" and that the district court "should have determined her earning capacity based on her actual demonstrated ability to earn income" in 2019 and earlier. Third, he argues that Lauren agreed that the district court "should attribute annual business income of $168,900 to her in determining her current need for spousal maintenance" based on her expert's report and the hearing testimony. We review a district court's income determination for clear error, as we do other factual findings. *Peterka*, 675 N.W.2d at 357; *see also Kenney*, 963 N.W.2d at 221-22. We address each of

[9] Brent also contended during district court proceedings that record evidence established a substantial change in circumstances due to "substantial changes in [Lauren's] need resulting from the sale of the marital homestead and the emancipation of the parties' minor children." The district court rejected Brent's argument about the emancipation of minor children because previous maintenance awards had not considered costs related to the minor children when setting Lauren's reasonable budget. As for the sale of the marital home, the district court agreed with Brent and determined that it "must consider what size and style home is reasonable for [Lauren] alone." For the reasons already explained, this determination is remanded for further consideration in light of the marital standard of living.

Brent's claimed errors in turn and note that Lauren's brief to this court does not address Brent's specific claims.

First, we agree with Brent that he challenged Lauren's business-expense deductions from her income and that the district court erred by failing to address the issue. The 2016 decree found Lauren to be self-employed with an average annual earned income of $168,900 as an agent/broker for health insurers, along with added investment income. Under Minn. Stat. § 518A.30 (2022), "income from self-employment or operation of a business . . . is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." "The person seeking to deduct an expense . . . has the burden of proving, if challenged, that the expense is ordinary and necessary." Minn. Stat. § 518A.30.

As he did in district court, Brent argues that Lauren deducted several business expenses as summarized in her expert report and that these expenses are neither ordinary nor necessary. Indeed, in Brent's affidavit dated June 8, 2022, he averred that, "to the extent that [Lauren's financial expert] has made adjustments to [Lauren's] business expense deductions between 2016 to 2020," he was "affirmatively challenging those expenses, particularly since [Lauren] ha[d] not adequately responded to [his] discovery requests concerning those expenses." Lauren's financial expert report adjusted Lauren's income for depreciation, interest expenses, a settlement payment, professional fees, and payments on a rental-car lease. At the evidentiary hearing, Brent's expert testified that Lauren's expert adjusted for these expenses; Brent's expert added that he did not

investigate whether these were reasonable and necessary business expenses. Brent's counsel challenged Lauren's business-expense deductions at the hearing.

In denying Brent's maintenance-modification motion, the district court, as part of its earned-income determination for Lauren, added back the challenged depreciation deduction and then subtracted Lauren's retirement contributions and health-insurance costs. The district court did not consider Brent's challenges to the four business-expense deductions from Lauren's earned income that her expert identified. Because Brent challenged these business-expense deductions, Lauren had the burden to show that they were ordinary and necessary business expenses. Minn. Stat. § 518A.30. During district court proceedings, Lauren offered no response to the four challenged expense deductions and the district court did not make any findings about them.

We addressed a similar issue in a child-support case and reversed a district court's income determination when it "made no findings regarding mother's business expenses beyond deductions for medical and dental insurance, taxes, and social security." *Davis v. Davis*, 631 N.W.2d 822, 827-28 (Minn. App. 2001). In *Davis*, we determined that there was "no evidence in the record to support the district court's finding of mother's net monthly income" and that, therefore, "the decision ha[d] no reasonable basis in fact." *Id.* at 828. Without further findings on Lauren's claimed expense deductions from her earned income, we cannot affirm.

Second, we reject Brent's argument that the district court erred by considering Lauren's earned income in 2020 and 2021 as reported in tax returns. The district court noted that both parties provided expert opinions about the relevance of Lauren's taxable

income from 2020 and 2021. Brent's expert "did not consider [Lauren's] income for [the] years 2020 and beyond because many of [Lauren's] expenses had been drastically reduced, suggesting that [Lauren's] business was in the process of winding down." As a result, Brent's expert determined that earlier years "more accurately reflect the earning capacity of the business." On appeal, Brent contends that Lauren is voluntarily underemployed and that the district court erred by not relying on her earned income from 2019 and earlier.

The district court found, however, based on Lauren's testimony, that Lauren "is not winding down her business and it is appropriate to consider her 2020 and 2021 tax returns in calculating her average income." The district court's finding is reasonably supported by the evidence. *See Kenney*, 963 N.W.2d at 221. We do not reweigh evidence on appeal. *Id.* at 221-22. The record otherwise supports the district court's decision to rely on Lauren's tax returns and to decline to rely on either party's expert report.

Third, we conclude that the district court did not err by declining to attribute to Lauren an annual business income of $168,900, as Brent claims is stated in Lauren's expert report. Even if we assume that Lauren's expert report stated that her business income was $168,900,[10] the district court need not adopt either the expert report or the parties' view of that report. *Cf. Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000) ("[W]hile parties to a dissolution stipulation are precluded from disavowing that stipulation . . . the district court decides whether to accept that stipulation . . . .").

[10]Lauren's expert report noted that the 2016 decree found that Lauren's average annual income for 2009 to 2013 was $168,900. Lauren testified that she instructed her expert to use $168,900 for some calculations because it was the amount used in the 2016 decree.

Accordingly, we reverse the district court's order denying Brent's motion to modify maintenance and remand for the district court to make additional findings about Lauren's deduction of business expenses from her earned income. The district court has discretion to reopen the record to address the issues on remand.

III. The district court did not abuse its discretion by denying Lauren's request for attorney fees.

Lauren asks us to reverse the district court's denial of need- and conduct-based attorney fees. Brent argues that the district court did not abuse its discretion by denying Lauren's request because Lauren did not formally move for attorney fees, "the court found that there was no evidence that any conduct by [Brent] was improper, and [Lauren] failed to establish that she did not have the means to pay her own attorney fees." Generally, the "standard of review for an appellate court examining an award of attorney fees is whether the district court abused its discretion." *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999) (reviewing a need-based fee award).

A district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding," and "nothing in [the applicable statute] . . . precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2022). Notably, Minn. Stat. § 518.14, subd. 1, states that the district court "shall" award need-based attorney fees if statutory requirements are met, and under Minn. Stat. § 645.44, subd. 16 (2022), "shall" is mandatory. *Mize v. Kendall*, 621 N.W.2d 804, 807 (Minn. App. 2001) (stating that Minn.

Stat. § 518.14, subd. 1, "*mandates* the court to award attorney fees" if it makes the required statutory findings (emphasis added)), *rev. denied* (Minn. Mar. 27, 2001). Conduct-based fee awards "are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

In its October 2023 order, the district court noted that Lauren had "no active motions regarding attorney fees" but "addressed attorney fees in her proposed order," in which she claimed that she was entitled to need- and conduct-based attorney fees. The district court determined that there was "no evidence that there was any conduct by [Brent] that was improper" and that Lauren "failed to establish that she does not have the means to pay her own attorney fees."

The district court did not abuse its discretion by denying Lauren's request, for two reasons. First, Lauren did not separately move for attorney fees, even though a separate motion is required. Minn. R. Gen. Prac. 119.01 ("In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of $1,000.00 for the action or more, application for award or approval of fees shall be made by motion."). Second, the district court's findings supporting its decision are supported by the record. As for need-based attorney fees, the district court found that Lauren "failed to establish that she does not have the means to pay her own attorney fees." As for conduct-based attorney fees, the district court found that "there is no evidence that there was any conduct by [Brent] that was improper." The record supports both findings.

Thus, the district court did not abuse its discretion by denying Lauren 's request for attorney fees.

Affirmed in part, reversed in part, and remanded.