STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1237

In the Marriage of:

Roberta Jo Nickel, petitioner,
Appellant,

vs.

Joshua Peter Nickel,
Respondent,

County of Cottonwood,
Respondent.

Filed June 30, 2025
Affirmed
Larson, Judge

Cottonwood County District Court
File No. 17-FA-18-318

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Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota; and

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Considered and decided by Larkin, Presiding Judge; Larson, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Roberta Jo Nickel (wife) appeals the district court's order modifying spousal maintenance. Wife challenges the district court's use of the parties' gross incomes when determining whether a substantial change in circumstances had occurred, its conclusion that the existing spousal-maintenance order had been rendered unreasonable and unfair, and its findings as to her reasonable monthly expenses.[1] We affirm.

FACTS

Wife and respondent Joshua Peter Nickel (husband) were married in 2006 and have two joint minor children. Wife petitioned for dissolution of marriage in 2018. On October 1, 2018, the district court entered its judgment and decree (J&D) consistent with the parties' marital-termination agreement. In relevant part, the J&D provided that husband would pay $667 per month in temporary spousal maintenance to allow wife to homeschool the children. Spousal maintenance would terminate after 144 months or if neither child was being homeschooled, wife remarried, or wife died. The J&D also required husband to pay $1,500 per month in child support.

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

[1] Wife also asserted that she received ineffective assistance of trial counsel, but subsequently withdrew this argument.

On October 24, 2023, husband filed a motion to modify child support and terminate spousal maintenance because wife had enrolled the children in public school and obtained full-time employment as a teacher at the school.[2] Wife responded and requested that the district court deny husband's motion in its entirety. As part of the motion practice, wife filed an affidavit wherein she confirmed that she accepted a full-time teaching position but averred that the children were dual enrolled in public school and homeschool. Wife indicated that her gross monthly income from this role was $3,592 and her net monthly income was $2,870, and included a direct-deposit notice supporting these amounts. Wife also stated that her expenses had increased from $2,000 per month at the time of the dissolution to $4,859 per month and requested that husband continue to pay spousal maintenance on this basis.

The district court heard arguments from both parties at a January 10, 2024 hearing. Husband argued that, under the J&D, spousal maintenance should be terminated because wife had enrolled the children in public school and accepted a full-time job. Husband also noted that wife had not provided an itemization of her monthly expenses to support her alleged increase in expenses. In response, wife admitted the children were "taking some public-school classes," but argued the J&D did not allow for termination of spousal maintenance because the children were still partially homeschooled. Wife explained that the children are at public school for the entire day but are homeschooled during "breaks"

[2] When he filed this motion, husband's child-support obligation was $1,689 per month and his spousal-maintenance obligation was $750 per month, as a result of cost-of-living adjustments.

and "in the evening." Wife contended that, due to increased monthly expenses and general cost increases caused by the COVID-19 pandemic, she still required spousal maintenance despite her increased income. Wife offered to provide documentation verifying her monthly expenses "for an in camera review."

The district court left the record open for one week to allow wife to either provide an itemized list of her monthly expenses or make a written argument to explain why she did not need to disclose her monthly expenses. Wife thereafter submitted into the record 14 cancelled checks ranging in dates from August 2023 through December 2023. Some of these checks indicated monthly expenses, including two $785 checks for rent; a $28.47 check, a $58.98 check, and a $96.40 check to "MN Energy"; and a $138.11 check, a $159.27 check, and a $147.42 check to "Mtn Lake Municipal Utilities." Other checks were for one-time miscellaneous purchases, such as a t-shirt and cough drops.

On March 12, 2024, the district court signed an order terminating husband's spousal-maintenance obligation as of March 31, 2024. The district court reasoned that a substantial change in circumstances had occurred that rendered the existing maintenance obligation unreasonable and unfair. The district court cited three bases for this conclusion: (1) wife's unavailability to homeschool the children; (2) wife's increased income; and (3) wife's lack of need. The district court also reduced husband's child-support obligation to $670 per month. Wife, thereafter, filed a motion to reopen the record. After wife failed to appear at the scheduled hearing, the district court denied the motion to reopen the record. Wife then asked the district court to reschedule the hearing, which the district court denied on the basis that wife failed to show good cause.

Wife appeals.

DECISION

Wife challenges the district court's decision to modify spousal maintenance.[3] We review a district court's decision to modify an existing spousal-maintenance order for an abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709-10 (Minn. 1997). A district court abuses its discretion when it "makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record." *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019). We review legal questions de novo. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). "To the extent that a modification decision depends on findings of fact, we apply a clear-error standard of review . . . ." *Madden*, 923 N.W.2d at 696. In doing so, we (1) view the evidence in the light most favorable to the findings; (2) do not find our own facts; (3) do not reweigh the evidence; and (4) do not reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see also Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a family law appeal), *rev. denied* (Minn. Feb. 28, 2024). Thus, we

[3] Wife's statement of the issues indicates that she is also challenging the district court's decision to modify child support. But wife makes no substantive arguments on this issue. Inadequately briefed issues are not properly before this court and, accordingly, we do not address the district court's decision to modify child support. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). We also note that wife does not challenge the amount by which the district court reduced husband's spousal-maintenance obligation. We, accordingly, do not address this issue. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [T]he burden of showing error rests upon the one who relies upon it.").

> need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, [our] duty is fully performed after [we have] fairly considered all the evidence and [have] determined that the evidence reasonably supports the decision.

Kenney, 963 N.W.2d at 222 (quotations and citation omitted); *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 472, 474 (Minn. App. 2000) (discussing the clear-error standard in a similar fashion).

A district court may modify a spousal-maintenance award if the moving party meets their burden to show "[(1)] a substantial change in circumstances that [(2)] makes the existing award unreasonable and unfair." *Madden*, 923 N.W.2d at 696 (quotation omitted). A substantial change in circumstances includes: "(1) substantially increased or decreased gross income of an obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee; or (3) substantial changes in the federal or state tax laws that affect spousal maintenance." Minn. Stat. § 518.552, subd. 5b(b) (2024).[4] "If the moving party

[4] The district court signed its order terminating husband's spousal-maintenance obligation on March 12, 2024. Accordingly, it applied Minn. Stat. § 518A.39, subd. 2 (2022), to reach its decision. The aspects of Minn. Stat. § 518A.39, subd. 2, that pertain to modification of maintenance have now been removed from that statute and are recodified at Minn. Stat. § 518.552, subd. 5b (2024). *See* 2024 Minn. Laws ch. 101, art. 2, §§ 5, at 871; 10, at 873. And while there are some substantive differences between Minn. Stat. § 518A.39, subd. 2, and Minn. Stat. § 518.552, subd. 5b, these differences do not affect the parties' vested rights because the district court based its decision on aspects of Minn. Stat. § 518A.39, subd. 2, that also appear in Minn. Stat. § 518.552, subd. 5b. Therefore, we apply Minn. Stat. § 518.552, subd. 5b. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

makes such a showing, the district court may modify the maintenance award . . . by applying the same statutory factors that are relevant to an initial award of spousal maintenance, as those factors exist at the time of the modification motion." *Backman v. Backman*, 990 N.W.2d 478, 485 (Minn. App. 2023) (quotation omitted); *see also* Minn. Stat. § 518.552, subd. 5b(c).

Wife makes three arguments to challenge the district court's decision to modify spousal maintenance: (1) the district court erroneously relied on the parties' gross incomes rather than net incomes; (2) the district court abused its discretion when it concluded the existing order was unreasonable and unfair; and (3) the district court made inadequate findings regarding wife's reasonable expenses. We address each argument in turn.

A.

Wife first argues the district court legally erred when it relied on the parties' gross incomes rather than net incomes when deciding whether a substantial change in circumstances had occurred. To support this argument, wife cites two prior decisions from our court: *Kostelnik v. Kostelnik*, 367 N.W.2d 665 (Minn. App. 1985), *rev. denied* (Minn. July 26, 1985), and *Schmidt v. Schmidt*, 964 N.W.2d 221 (Minn. App. 2021). We conclude that both cases are distinguishable.

Kostelnik addressed the type of income a district court must evaluate when deciding whether an obligor has the ability to pay spousal maintenance in the first instance. 367 N.W.2d at 670. Thus, while we decided the district court must use the obligor's net income, we did so while applying the subdivision related to the *amount of maintenance initially awarded*, not the subdivision related to *modification*. *See id.*; *see also* Minn. Stat.

§ 518.552, subd. 2 (titled "Amount of maintenance"), subd. 5b (titled "Modification") (2024).[5] Like *Kostelnik*, *Schmidt* also interpreted a different subdivision in the statute—the subdivision related to an obligee's "showing of need." 964 N.W.2d at 226 (quoting *Curtis v. Curtis*, 887 N.W.2d 249, 252 (Minn. 2016)); *see also* Minn. Stat. § 518.552, subd. 1 (titled "Grounds") (2024). We observed that the *showing of need* subdivision did not specify whether the district court should consider gross or net income. *Schmidt*, 964 N.W.2d at 227. And, given the facts in the case, we concluded the district court abused its discretion when it did not consider the obligee's income-tax obligation because the obligee's income-tax obligation "may be determinative" of the obligee's ability to support herself. *Id.* at 224, 229.

Unlike *Kostelnik* and *Schmidt*, the subdivision applicable in this case directs that a spousal-maintenance order may be modified upon a showing of "substantially increased or decreased *gross income* of an . . . obligee" that renders the existing order "unreasonable and unfair." Minn. Stat. § 518.552, subd. 5b(b)(1) (emphasis added). Further, central to the *Schmidt* court's reasoning was evidence in the record that the obligee's income-tax obligations "may be determinative" of whether the obligee had the ability to cover her monthly expenses. 964 N.W.2d at 224, 227-28. The same is not true here, based on the limited evidence wife submitted. Even taking as true that wife correctly described her net

[5] Even if *Kostelnik* had interpreted and applied the *modification* subdivision, that decision predates statutory amendments that require the district court to consider gross income when determining whether to modify a spousal-maintenance obligation. *See* 2005 Minn. Laws ch. 164, § 10, at 1893; Minn. Stat. § 518.552, subd. 5b(b)(1).

income, the canceled checks wife submitted reflect that wife's net income amply covers her monthly expenses.

Therefore, we conclude the district court did not err when it used the parties' gross incomes to assess whether a substantial change in circumstances had occurred.

B.

Wife argues second that the district court abused its discretion when it concluded the existing spousal-maintenance order was unreasonable and unfair. The district court found three independent bases for this conclusion: (1) wife was no longer homeschooling the children; (2) wife had a significant increase in gross income; and (3) wife had a significant decrease in need. The district court only needed to find one substantial change in circumstances to determine the existing spousal-maintenance award was unreasonable and unfair. *See* Minn. Stat. § 518.552, subd. 5b(b).[6]

Here, the district court's finding that wife had a significant increase in gross income is well supported by the record. Since the parties dissolved their marriage, wife accepted a full-time teaching position. In her affidavit, wife indicated that her gross monthly income from that position was $3,592 and her net monthly income was $2,870. This is a significant increase from wife's lack of any gross monthly income at the time of dissolution. *See*

[6] Wife argues that the district court's decision is inconsistent with the parties' marital-termination agreement as reflected in the J&D. But the district court was free to modify maintenance based on a substantial change in circumstances notwithstanding the provisions set forth in the J&D. *See Hecker*, 568 N.W.2d at 709 ("While that stipulation represents the parties' voluntary acquiescence in an equitable settlement . . . once it has been merged into the judgment and decree, it does not operate as a bar to later consideration of whether a change in circumstances warrants a modification.").

Kossack v. Kossack, No. A22-0636, 2023 WL 4417381, at *3 (Minn. App. July 10, 2023) (determining that district court did not abuse its discretion in reducing obligor's spousal-maintenance obligation where obligee obtained a full-time job and doubled her income since dissolution); *Orstad v. Orstad*, No. C3-97-2284, 1998 WL 279212, at *2 (Minn. App. June 2, 1998) (determining that district court did not abuse its discretion in reducing obligor's spousal-maintenance obligation where obligee's net monthly income increased from $660 to $2,111 since dissolution).[7] Further, the record supports the district court's determination that the existing spousal-maintenance award was unreasonable and unfair because wife now earned more from her current employment than the combined total of her spousal maintenance and child support. In fact, the record shows that wife's gross and net monthly income are now both greater than the $2,439 per month wife received in combined monthly spousal-maintenance and child-support payments when husband filed the motion for modification.

Accordingly, we conclude the district court did not abuse its discretion when it determined that wife's significant increase in gross income rendered the existing spousal-maintenance award unreasonable and unfair.

C.

Finally, wife asserts that the district court made inadequate findings regarding the parties' reasonable expenses. But, reviewing the record, wife caused any inadequacy in the findings. Despite the district court giving wife numerous opportunities to submit an

[7] These cases are nonprecedential and, therefore, not binding. We cite nonprecedential cases as persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

itemized list of her monthly expenses, wife only submitted 14 cancelled checks, some of which reflected one-time miscellaneous purchases. Based on the checks showing recurring expenses, the district court found that wife established monthly expenses totaling $994. Wife cannot now challenge the inadequacy of the findings when the findings are based purely on the evidence she submitted into the record. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (acknowledging that the district court's findings lacked detail but reasoning that the husband "ha[d] failed to present a complete picture of his assets and debts making such findings impossible"); *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *rev. denied* (Minn. Nov. 25, 2003).

For all the foregoing reasons, we conclude the district court did not abuse its discretion when it granted husband's motion to modify spousal maintenance.

Affirmed.