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Minn. Stat. § 480A.08, subd. 3 (2002).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A03-734**

In re Lois Josephine Wielinski, petitioner,
Respondent,

vs.

John Francis Wielinski,
Appellant.

**Filed February 3, 2004
Affirmed
Toussaint, Chief Judge**

Anoka County District Court
File No. F4-89-3359

Michael J. McNamara, Suite 385, 6200 Shingle Creek Parkway, Brooklyn Center, MN 55430 (for respondent)

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Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

On appeal in this maintenance-modification dispute, appellant argues that the district court abused its discretion by (1) over-emphasizing the stipulated nature of his original maintenance obligation: (2) considering his pension benefits as income for maintenance purposes: and (3) denying his motion to reduce spousal maintenance, and instead increasing his maintenance obligation *sua sponte*. Because the district court (1) properly considered the spousal maintenance factors delineated in Minn. Stat. §. 518.552, subd. 2 (2002): (2) did not disturb appellant's initial pension award: and (3) merely reinstated appellant's original maintenance obligation after the expiration of a temporary maintenance reduction, we affirm.

FACTS

Appellant John Wielinski and respondent Lois Wielinski divorced in 1990 after 26 years of marriage. Appellant, at the time of divorce, was employed as a supervisor at Metal-Matic, Inc. and had a net month, income of \$2.320. Respondent did minimal work outside the home and had

negligible income.

The 1990 dissolution judgment and decree, based on a stipulated agreement, provided that appellant pay respondent \$1,200 per month in permanent spousal maintenance. This amount had increased, because of adjustments, to \$1,416 per month by 2001. Additionally, the original decree divided appellant's profit-sharing trust, awarding \$22,000 to respondent and the remaining \$62,500 to appellant. It specifically provided that respondent "shall have no rights in the portion of [appellant's] accrued benefit not assigned to [her] and shall have no rights in any contributions to or earnings on [appellant's] portion of the [trust] after the date of the entry of the Judgment and Decree herein."

In August 2001, appellant was discharged by Metal-Matic after 34 years of service. Thereafter, he brought a motion in November 2001, requesting a reduction of his spousal-maintenance obligation because he was no longer employed and was collecting unemployment benefits. The district court granted his motion, and temporarily reduced his spousal-maintenance obligation from \$1,416 per month to \$897 per month.

In April 2002, appellant's unemployment compensation expired. Claiming his lack of education and age made re-employment virtually impossible, he chose to retire. He again brought a motion to reduce his spousal-maintenance obligation. Though the district court recognized a change in circumstances due to appellant's retirement, it held that he had failed to show entitlement to either reduction or elimination of his maintenance obligation. It determined appellant's decision to retire was purely voluntary, and the skills he had developed over 34 years at Metal-Matic made him employable in the work force. It further noted respondent's deteriorating health (she suffers from both "extreme contact dermatitis" and breast cancer) rendered her unable to work.

Finally, the district court examined appellant's profit-sharing trust and noted its increased value from \$62,500 at the time of the decree to \$316,107.20. It noted that appellant had transferred \$200,000 of the trust to a cash annuity, thereby leaving \$116,107.20. It held this transferred \$200,000 exceeded the value of the pension interest awarded in the dissolution judgment. It determined that the value of the original property distribution had not actually been disturbed, and that appellant would not need to use any of the retirement assets that he received in the dissolution to pay the maintenance obligation.

The district court then found appellant was capable of continuing to pay his permanent

spousal-maintenance obligation. Based upon its findings, the court reinstated appellant's original \$1,416-per-month maintenance obligation. He now appeals.

DECISION

On appeal from a district court's decision addressing a modification motion, this court reviews the district court's decision for an abuse of discretion. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). An abuse of discretion occurs when the district court resolves the matter in a manner that is "against logic and the facts on [the] record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984) (citation omitted).

I.

"Undue Weight"

Appellant first argues that the district court abused its discretion by placing "undue weight" on the original maintenance award being based on a stipulated agreement. He argues that the district court's interpretation of the agreement (that the parties intended the maintenance to continue post-retirement) essentially subjects him "to virtual indentured servitude of perpetual employment in order to pay his spousal maintenance obligation." Reading the order as a whole, however, the district court's determinations are not so simply drawn, nor are they so condemning.

On a motion for modification of maintenance the district court must apply, in addition to all other relevant factors, the factors listed in Minn. Stat. § 518.552, subd. 2 (2002), that exist at the time of the motion. A decision to modify maintenance is discretionary with the district court and requires the moving party to show both substantially changed circumstances and that the change makes the existing award unreasonable and unfair. *Id.*, subd. 2(a) (2002). The court retains its discretion to modify maintenance even when a stipulation is central to the original award. *Dougherty v. Dougherty*, 443 N.W.2d 193, 194 (Minn. App. 1989).

Here, in determining appellant's maintenance obligation, the district court made several findings about the conditions of the two parties. The court found that respondent's health was continuing to deteriorate and that because of her health she is unable to work. It also noted that appellant's retirement was voluntary and that his previous experience and skill made him re-employable. Further, the court

observed that appellant was not receiving his annuity by choice, and that payments could commence at his will. Because of these findings, the court held that appellant "failed to show entitlement to either a reduction or elimination of his spousal maintenance obligation ... due to [his voluntary retirement]."

It does not therefore appear the district court placed "undue weight" on the original stipulation. Instead, it weighed the proper equitable factors of section 518.552 and determined that termination or modification of the permanent spousal-maintenance obligation was inappropriate under the circumstances. Because the district court does not treat the original stipulation as a bar to modification, as appellant asserts, this argument is without merit.

II.

Consideration of Retirement Funds

Appellant's second argument is that the district court erred in considering funds from his profit-sharing trust, awarded to him as property in the original judgment and decree, as "income" for spousal-maintenance purposes. Specifically, he points to the language in the decree that respondent "shall have no rights in any contributions to or earnings on [appellant's] portion of the plan." He asserts that this language forbids the district court to consider any of these funds "income" when his retirement was in good faith.

Appellant claims *Kruschel v. Kruschel*, 419 N.W.2d 119 (Minn. App. 1988), is dispositive here. In *Kruschel*, the obligor, a good-faith retiree, appealed the district court's ruling that his pension could be considered for spousal-maintenance purposes after he was awarded that same pension as part of the property distribution at the time of divorce. *Id.* at 121. This court held that a "pension should be viewed as property or income, but not both." *Id.* at 122. It therefore reversed the district court's ruling, finding that forcing the obligor to continue paying the original spousal-maintenance award would require him to deplete his own property award. *Id.* It found, under the circumstances, that modification of the original award was proper. *Id.*

Appellant asserts that, like *Kruschel*, the district court abused its discretion by "invading" his profit-sharing trust as a potential source for him to continue paying maintenance. What appellant fails to note, however, is that the pension-as-property dispute in *Kruschel*, by its own language, is limited to "an amount equivalent to its value as determined in the original property distribution." *Id.* at 123.

Once the obligor has received that amount, a court may properly consider his subsequent pension benefits as "income" for maintenance purposes, even if the retirement is in good faith. *Id.*; *Walker v. Walker*, 553 N.W.2d 90, 94 (Minn. App. 1996).

Here, the district court noted that appellant was originally awarded \$62,500 of his profit-sharing trust. The court found the \$116,107.20 remaining in the account after the annuity transfer was "an amount equivalent to the value of the pension at the time of entry of the Judgment and Decree" that need not be disturbed to fulfill appellant's maintenance obligations. The transferred \$200,000, the court held, was a "lump sum ... that exceeds the value of the pension interest awarded in the dissolution judgment." This "lump sum," it determined, could be considered in determining appellant's maintenance obligation.

In light of the circumstances, the district court did not abuse its discretion. The remaining sum in the trust after the transfer, when compared with respondent's portion of the trust after 13 years of accumulated interest, essentially reflects an amount equivalent to the value of the original pension award. Although appellant contributed an additional \$200,000 to the trust, those funds were removed to create the disputed annuity before he moved to modify his maintenance obligation. The \$200,000 was therefore properly considered independent from and beyond the awarded pension, and may not be labeled as a pension benefit simply because the funds were first "filtered" through the trust. As such, the district court's determination that the annuity could be included as "income" shall not be disturbed.

III.

Reinstatement of Original Maintenance Obligation

Appellant's final argument is that the district court abused its discretion by reinstating his original monthly maintenance obligation when the issue was not raised in the parties' motion papers and was therefore not properly before the court. He argues that in so acting, the court has "essentially denied [him] of his due process rights" because he was not given an opportunity to respond or make arguments on the issue.

This court has held that a district court does not generally have the authority, to modify a support obligation *sua sponte* under Minn. Stat. § 518.64. See *Rogers v. Rogers*, 606 N.W.2d 724, 728 (Minn. App. 2000) (holding that the district court does not have the authority to modify child support on its own initiative under Minn. Stat. § 518.64), *aff'd in part and rev 'd in part*. 622 N.W.2d 813 (Minn. 2001). An exception to this rule exists, however, in "unique circumstances." *Rogers v. Rogers*, 622 N.W.2d 813, 822 (Minn. 2001) (allowing a *sua sponte* modification when increase was incident to the correction of a clerical

error).

We find that the circumstances here support the district court's action. The court did not impose a theretofore unknown maintenance obligation, but instead merely reinstated a previously suspended obligation after the condition for the suspension (receipt of unemployment compensation) terminated. Appellant was fully aware that the 2001 maintenance modification was temporary and *that* it "coincide[d] with the time period that [he] was temporarily unemployed." Further, the presiding judge in the 2003 modification hearing was the same judge who presided over the 1990 dissolution proceedings and the 2001 maintenance-modification hearing, and was intimately familiar with the circumstances surrounding the case. All of these factors, when considered together, show the district court acted within its discretion by reinstating the original maintenance award.

We are not persuaded that respondent was denied any due-process rights by the district court's action. The 2001 modification order specifically states that the reduction was temporary and was to correspond with the period of time in which he was temporarily unemployed. Once more, the district court told appellant at the 2001 modification hearing that maintenance would need to be re-addressed when his unemployment compensation expired. Considering appellant's full awareness that the 2001 modification was temporary, we cannot conclude that the district court's reinstatement of the original maintenance obligation deprived him of any due-process rights.

Since the district court merely reinstated appellant's original maintenance obligation after the expiration of a temporary maintenance reduction, and since appellant's due-process rights were not violated because he was aware the reduction was temporary, the district court's reinstatement of appellant's original permanent maintenance award was proper.

Affirmed.