STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0219

In re the Marriage of: David Paul Andresen, petitioner,
Respondent,

vs.

Leslie Ann Andresen,
Appellant

Filed March 7, 2022
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-FA-08-8160

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Laura K. Fretland, Dove Fretland P.L.L.P., Minneapolis, Minnesota (for respondent)

Andrew R. Lewis, Guardian Law Group, Northfield, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Gaitas, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this post-dissolution action, appellant argues that the district court abused its discretion in terminating respondent's spousal maintenance obligation and in finding the amount of respondent's 401(k) plan to which appellant was entitled under the dissolution judgment. Because we see no abuse of discretion in either of these decisions, we affirm.

FACTS

The marriage of appellant Leslie Andresen and respondent David Andresen occurred in 1980 and was dissolved in 2009. Three of their six children were then minors; the youngest turned 18 in 2014.

Respondent, a network technician with Qwest, was then earning $57,409 annually, plus overtime, and had monthly living expenses of $2,655. He was awarded the parties' lake property.

Appellant was self-employed as a barber, earning about $10,000 annually; her monthly living expenses were about $3,416, which included monthly payments of $1,905 for the mortgages, taxes, and insurance of the parties' $208,000 homestead, which she was awarded. She was also awarded monthly child support of $818 and monthly spousal maintenance of $700 monthly for one year, $600 for the next four years, and $500 thereafter; the dissolution decree stated that appellant was able to earn a gross annual income of $25,000.

The marital portion of respondent's 401(k) plan, then valued at $39,000, was also awarded to appellant, who was in a lower tax bracket than respondent. Appellant was to withhold 20.35% for taxes and use the remainder to pay off the parties' $23,174 credit card debt, of which $9,204 was her share and $13,970 respondent's share. However, appellant did not use the 401(k) funds to pay off the parties' credit card debt. Instead, she borrowed money from her mother to pay off her share, and respondent borrowed funds in 2010 from the nonmarital part of the 401(k) to pay off his share, then repaid the funds borrowed with nonmarital earnings.

In 2012, Qwest's 401(k) plan was merged with CenturyLink's plan. Respondent calculated appellant's share to be $33,836.83 and segregated that amount into a separate fund. Appellant's counsel was informed of this and did not object. Appellant's share of the 401(k) is now over $60,000.

In 2019, respondent was 62, the age at which he had planned to retire, and he was given an opportunity to retire in exchange for a $27,000 severance benefit. His post-retirement monthly income dropped to $3,000, or 37% less than he had been earning in 2009; his monthly expenses were about $3,356, not including income taxes. Appellant, acting pro se, moved for an increase in her spousal-maintenance award and for $40,675 to pay her credit card debt, $15,000 to repay her mother for the amount she had borrowed in 2009, six months of child support, and 50% of any funds remaining. Respondent moved to terminate spousal maintenance as of September 1, 2019.

Following a hearing on the motions, the district court in September 2019 found that respondent's retirement was a substantial change in his circumstances, terminated spousal maintenance, directed the parties to retain T.H. to draft a qualified domestic relations order (QDRO) dividing the 401(k), and denied all other motions. Both parties moved for amending findings, and following another hearing, the district court in March 2020 awarded appellant $60,402.65 as her marital portion of the 401(k) and affirmed the termination of spousal maintenance. Appellant challenges the termination of spousal maintenance and the amount awarded as part of the 401(k).

DECISION

1. Termination of spousal maintenance

> A district court abuses its discretion in making such a decision [to modify an award of spousal maintenance] if 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. To the extent that 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) (citation omitted).

The district court found that the record did not support appellant's contention that respondent's retirement was in bad faith and that, after retirement, he would have a monthly shortfall of $356. It also found that the record did not support a finding that appellant is incapable of earning at least $25,000 annually and that she does earn about $1,250 monthly (roughly $750 from working as a cashier 15 hours per week at $11.63 per hour)[1] and imputed to her a monthly income of $2,083. It further found that, with the $892 appellant receives monthly from respondent's pension plan, she can pay her monthly living expenses of $2,870, and it terminated her spousal maintenance award on the ground that there had been a substantial change in the parties' circumstances.

A substantial change in circumstances may be a basis for modifying spousal maintenance if that change makes the existing award unreasonable or unfair. Minn. Stat. § 518A.39, subd. 2(a) (2020). The substantially decreased gross income of an obligor is such a change. *Id.* A change of 20% or more is presumed to be substantial. Minn. Stat.

[1] 15 x $11.63 = $174.45 weekly; $174.45 x 3 = $750.13 monthly.

§ 518A.39, subd. 2(b)(5) (2020). The district court did not abuse its discretion by terminating respondent's spousal-maintenance obligation on the basis of substantially changed circumstances.

2. Division of the 401(k)

This court reviews a district court's order enforcing, implementing, or clarifying the terms of a dissolution decree for an abuse of discretion. *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011).

The QDRO drafted by T.H. provided that appellant would use the funds from the 401(k) plan to pay off the parties' credit card debt: if the amount was insufficient, the unpaid credit card debt would be divided in proportion to the parties' shares of the debt, and if it was more than sufficient, the amount remaining would be divided equally between them. The $33,836.83 segregated in 2012 as appellant's share of the 401(k) had grown to about $60,000 by 2019, and the district court awarded her $60,402.65, finding that appellant was thus "awarded her marital portion which is consistent with Minn. Stat. § 518.003, subd. 3b (2018)".

Appellant moved for this award to be amended to $139,689.98 on the ground that she was entitled to the growth that would have occurred in the amount respondent borrowed and repaid from the 401(k). Respondent argues that his borrowing from his share of the 401(k) and repaying his share of the 401(k) did not impact appellant's share, and that appellant's calculation did not consider the credit card debt respondent had to pay with the amount he borrowed. Appellant does not refute these arguments.

Although appellant argues in her principal brief that, because the outside counsel retained to draft the QDRO, and not the district court, had jurisdiction over the QDRO, the district court "committed reversible error when it unlawfully modified a final property settlement by interpreting and clarifying an unambiguous provision in the Original Decree," she withdraws this argument in her reply brief.[2]

The district court did not abuse its discretion either in terminating the spousal maintenance award or in its division of the marital portion of respondent's 401(k).

Affirmed.

[2]Appellant makes further arguments in her reply brief, challenging the district court's finding that respondent's loan did not impact appellant's interest in the 401(k) and in relying on respondent's calculations. But these arguments are not made in appellant's principal brief, and a reply brief "must be confined to new matter raised in the brief of the respondent." Minn. R. Civ. App. P. 128.02, subd. 3. Thus, these arguments are not properly before us.