

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF BLUE EARTH

FIFTH JUDICIAL DISTRICT

FAMILY COURT DIVISION

Case Type: Dissolution with Children

Court File No. 07-FA-17-3863

In Re the Marriage of:

Andrew Lowe Billett,

Petitioner,

**PETITIONER'S MEMORANDUM OF LAW IN  
SUPPORT OF TERMINATING OR  
MODIFYING RESPONDENT'S SPOUSAL  
MAINTENANCE**

and

Ruth Anne Billett,  
n/k/a RuthAnne Maihan Billett

Respondent.

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**INTRODUCTION**

On March 6, 2019, Petitioner and Respondent came before the Honorable Gregory J. Anderson for a court trial on the dissolution of their marriage. Before trial the parties stipulated to issues regarding custody and parenting time. Judge Anderson held a court trial on all remaining issues, including spousal maintenance.

On July 8, 2019, Judge Anderson executed findings of fact, conclusions of law, and an order for judgment and judgment decree judgment dissolving Petitioner and Respondent's marriage. The judgment decree ordered Petitioner to pay permanent spousal maintenance in the amount of \$2,250 per month with the option for later modification under Minnesota Statutes §518.39, subd. 3. This amount has increased to \$2,315 with cost-of-living increases. With the uncertainty surrounding Respondent's ability to become self-supporting, the Court

retained jurisdiction for modifying or terminating spousal maintenance when it ordered that spousal maintenance “continue thereafter until modification or termination of maintenance is ordered by the Court or by agreement of the parties through mediation or other means.” (FOF order, ¶20-21).

Respondent subsequently moved for amended findings of fact or a new trial. In an order dated October 25, 2019, the district court denied her motion in its entirety. On December 13, 2019, Respondent appealed the earlier decisions. Petitioner cross-appealed on the issue of attorney’s fees and spousal maintenance. On December 21, 2020, the Court of Appeals affirmed the trial court on all issues.

Based on the various changes in Respondent’s income and living situation, Petitioner moves to terminate or reduce the spousal maintenance order.

### **ARGUMENT**

Respondent’s permanent spousal maintenance should be terminated or reduced. Continuing such an award under substantially changed circumstances for both parties is both unreasonable and unfair. First, as a threshold matter, there has been a substantial change under Minnesota Statutes in Respondent’s income. Second, Respondent’s post-divorce needs and activities justify terminating or reducing spousal support when balanced against Petitioner’s expenses and ability to pay. Finally, the Court should apply the factors under Minnesota Statutes section 518.552, subdivision 2 to the parties’ current circumstances to determine the amount of the new award.

- I. Substantially changed circumstances in Respondent’s income makes the current award of spousal maintenance unreasonable and unfair.**

Respondent is self-supporting at the present time. Respondent has a new job and extra income to move across the country and is not in need of the current spousal maintenance award. Modification of spousal maintenance is set forth in Minnesota Statutes section 518A.39. The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable or unfair: (1) substantially increased or decreased gross income of the obligor or obligee; (2) substantially increased or decreased need of an obligor or obligee or the child or children that are subject of these proceedings; (3) receipt of assistance under the AFDC program [ . . . ]; (4) a change in the cost of living for either party as measured by the federal Bureau of Labor Statistics; (5) extraordinary medical expenses of the not provided for under section 518A.411; (6) a change in the availability of work-related or education-related child care expenses; or (8) upon the emancipation of the child. Minn. Stat. § 518A.39, subd.2(a). The person requesting modification has the burden of showing the standard to modify has been met. Pursuant to statute, both the amount and duration of spousal maintenance may be modified. §518A.39, subds. 1 & 2.

### **Respondent's Job**

Here, there is a substantial change in circumstances necessitating a modification of the spousal maintenance award because it is unfair and unreasonable under Minn. Stat. § 518A.39, subd.2(a). Respondent has increased her gross income and there is a substantially decreased need of the child subject to these proceedings. When the Court issued the spousal maintenance award, Respondent was unemployed. The Court received testimony from Mark Raderstorf, a

vocational expert, who estimated that Respondent could obtain a job in the IT field earning approximately \$40,000 per year within one to three months in the Twin Cities metro area. (FOF order, ¶ 29i). A salary at that level would gross \$3,333 per month. Respondent's current salary is believed to be almost double what the Mark Raderstorf testified to.

From her submitted paystubs, Respondent works or recently-worked at a well-paying job in Arizona at the Department of Revenue. From Govsalaries.com, in 2021 she was employed as a Programmer Analyst earning \$75,000 per year.<sup>1</sup> According to the Arizona Department of Administration Human Resources Website, the salary range for a Programmer Analyst with the Department of Revenue starts at \$49,028 and increases to maximum of \$99,940.<sup>2</sup> On human resources Website ZipRecruiter.com, the average salary in Arizona is \$52,774.<sup>3</sup> Respondent's salary of \$75,000 is higher than the average salary in Arizona of \$52,774. More importantly, Respondent's salary is higher than the testimony the Court heard when it entered a permanent spousal maintenance award in 2019.

As Respondent is now employed, there is no "considerable uncertainty" remaining as to whether she could find gainful employment. Uncertainty, to the extent it is realistic uncertainty, warrants a permanent spousal maintenance award. *Reif v. Reif*, 426 N.W.2d 227 (Minn. Ct. App. 1988); *Reinke v. Reinke*, 464 N.W.2d 513 (Minn. Ct. App. 1990). This is significant because the Court used the uncertainty of her ability to re-enter the workforce as a

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<sup>1</sup> <https://govsalaries.com/billett-ruthanne-134994715>

<sup>2</sup> <https://docs.google.com/spreadsheets/d/1f6oYoE45caH-PEPTIRnozdh2QjwzcqcK4ZKHUX9FpWQ/edit#gid=1568204614>

<sup>3</sup> <https://www.ziprecruiter.com/Salaries/-in-Arizona>

factor in awarding her spousal maintenance. Her current employment proves that her previous job experience, skills, and education she had following graduation from undergraduate training have not since become outmoded to the workforce. At the Department of Revenue in Arizona, her income may rise to as much as \$99,940. Further, Respondent's current income is believed to be at least \$6,250 per month, which far exceeds the \$3,333 per month amount that Mark Raderstorf testified that he believed she could make in the months soon after the divorce.

### **Respondent's Move**

Respondent recently moved to Arizona. North Carolina and Arizona are near opposite coasts of the United States. These states are roughly 2000 miles away. According to several Internet searches, the cost of such a move could range between \$3,460 to \$11,220 depending on movers, possessions, and fuel costs. This demonstrates that Respondent can support herself in a move across the country.

### **Joint child Grayson**

Finally, Respondent does not have to support the joint child Grayson in the household because he is now enrolled in college. This shows a substantially decreased need of the child subject to these proceedings.

The amount of spousal support currently at \$2,315 is unreasonable considering Respondent's ability to support herself. Respondent found gainful employment and her salary is far beyond the average salary in Arizona. Consequently, spousal maintenance is unreasonable and unfair for Petitioner to continue paying.

Therefore, finding that the standard to modify has been met by the parties' current circumstances, the Court should terminate or re-calculate the award of spousal maintenance.

**II. Since modification or termination of the permanent spousal maintenance award is appropriate, the factors under Minnesota Statutes section 518.552, subdivision 2 must be applied to the parties' current circumstances to determine the amount of the new award.**

Respondent's increased income decreases her need of the current spousal maintenance award. Pursuant to Minnesota Statutes §518.552, the court must consider *all* relevant factors, including but not limited to: the financial resources of the requesting party; the time necessary for the requesting party to acquire sufficient training and education to find appropriate employment and the likelihood the requesting party will become self-supporting; the standard of living during the marriage; the duration of the marriage; the length of time the requesting party was absent from employment and the degree of which his or her skills became outmoded; loss of earning potential and opportunities forgone; the requesting party's age and health; each spouses contribution to the marital estate, "as well as the contribution of a spouse as a homemaker in furtherance of the other party's [career]." Minn. Stat. § 518.552, subd. 2(a)-(h).

In determining the appropriate amount and duration of spousal maintenance, no single factor is dispositive. See Broms v. Broms, 353 N.W.2d 135, 138 (Minn. 1984) The purpose of these factors is to guide the court in balancing the needs of the recipient spouse against the ability of the other spouse to pay. See Prahl v. Prahl, 627 N.W.2d 698, 702 (Minn. Ct. App. 2001).

Here, both the amount and duration of spousal maintenance requested is not supported by all relevant factors. Respondent is no longer a stay-at-home parent. Respondent is self-supporting with a well-paying job at a salary that far exceeds the estimate provided by testimony from the vocational expert.

Further, Respondent submitted expenses that total \$8,630 per month. Respondent's reasonable expenses the Court found when it entered the spousal maintenance order were \$4,812.23. (FOF order, ¶ 30q). The current monthly expense number far exceeds the standard of living expenses that were established during the marriage of \$4,812.23. This is a difference of \$3,817.77 per month. Even with adding in the current spousal maintenance award, Respondent is spending more than she is taking in every month. Respondent's current expenses total \$103,560 per year and she currently takes in \$102,000. Respondent's expenses are not reasonable as they outstrip her income and are almost double the amount they were during the marriage.

Finally, Respondent's current level of spousal maintenance request of \$2,315 per month is an unreasonable amount. As previously stated, Respondent's income is \$6,250 per month. Respondent's expenses when it entered the spousal maintenance order were \$4,812.23. This amount of money leaves room for emergency expenses and discretionary spending, as evidenced by her cross-country move. More importantly, Petitioner cannot easily afford to make these payments. Petitioner has changed jobs several times and relocated to different states to make ends meet. Consequently, Petitioner should not continue to pay spousal maintenance at the level previously awarded to Respondent.

### **CONCLUSION**

In conclusion, Respondent's new job and country move necessitate terminating or reducing Respondent's spousal maintenance award. Over three years have passed since Respondent was awarded spousal maintenance and both parties find themselves in very different circumstances. Therefore, Petitioner respectfully requests that the Court order Respondent's spousal maintenance award to be terminated or reduced.

Dated: 3/21/23

**KOHLMEYER & HAGEN**  
**Law Office, Chtd.**

By: /s/ Scott J. Jones

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