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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0388**

Jennifer Gwen Loveland,  
Respondent,

vs.

Francis Joseph Brosnan,  
Appellant.

**Filed April 8, 2008  
Affirmed  
Connolly, Judge**

Scott County District Court  
File No. 70-C-02-01797

Jennifer Loveland, 709 17th Street South, Fargo, ND 58103 (pro se respondent)

Mark A. Olson, 2605 E. Cliff Road, Suite 100, Burnsville, MN 55337 (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and  
Connolly, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

Appellant challenges the district court's order denying his motion for modification or elimination of his child-support obligation. Because the district court did not abuse its discretion in denying the motion, we affirm.

## FACTS

N.E.B. was born to respondent Jennifer Loveland in February 2001. Appellant Francis Brosnan admitted paternity and signed a recognition of parentage. Pursuant to a mediated settlement and corresponding court order dated June 3, 2003, the parties were awarded joint legal custody of N.E.B. Respondent was granted sole physical custody, subject to appellant's parenting time. Appellant was ordered to pay respondent \$1,570 per month in child support and to maintain medical and dental insurance for N.E.B. The district court, in an order dated May 11, 2004, increased appellant's child-support obligation to \$1,687.50.

In January 2005, appellant, a pilot with Northwest Airlines (NWA), was placed on unpaid medical leave after getting into a disagreement with another airline employee. Appellant maintains that his income from NWA was reduced from \$168,675 to zero. On May 19, 2006, appellant filed a motion with a child support magistrate (CSM) to reduce or eliminate his child-support obligation. In his accompanying affidavit, appellant claimed that he had been without income since January 2005. In this same affidavit, appellant listed monthly living expenses of \$6,089.34, and assets including a home with \$93,791 in equity, vehicles valued at \$36,370, household goods valued at \$35,000, and stocks/bonds valued at \$3,000. At the hearing before the CSM, at which both appellant and respondent appeared pro se, appellant advised the court that he had found work as an insurance salesman for Altig International Minnesota, with an expected first year salary of about \$35,000. Appellant claimed he was current on his child support and had been supporting himself through the use of savings, credit cards, and loans secured by his

401K plan. Respondent testified she had just become employed full time as a nurse practitioner in 2005 after finishing a graduate degree in nursing in 2004. She anticipated earning \$54,000 in income in 2006. At the time of the hearing, respondent stated that her net monthly income was \$2,911 and her monthly expenses were \$3,733. Respondent also testified that she had agreed to a waiver of appellant's child-support payments for a period of six months in 2005 after appellant lost his job at NWA.

The CSM denied appellant's motion, concluding he had "not met his burden of proving a substantial change in circumstances which makes the current support amount unreasonable and unfair." Specifically, the CSM found that appellant had failed to provide sufficient or reliable information regarding his income. On August 4, 2006, appellant moved the district court for reconsideration of the CSM's order. The district court denied that motion, finding that appellant "has submitted insufficient evidence to prove by a preponderance of the evidence that his current child support obligation is unreasonable and unfair because of his substantially decreased earnings and/or [respondent's] substantially decreased need." This appeal follows.

### **D E C I S I O N**

This court reviews a district court's decision confirming a CSM's order under an abuse of discretion standard. *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). An abuse of discretion exists if the district court resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A modification of child support may be based upon a showing of a substantial change in circumstances that renders the current order unreasonable and unfair. Minn.

Stat. § 518.64, subd. 2. (2004). When determining whether this showing has been made, a court must consider the needs of the child, the standard of living the child would have enjoyed had the child's parents remained together in a single household, and the obligor's resources, including real and personal property. Minn. Stat. § 518.551, subd. 5(c)(1-3) (2004).

Appellant contends that the district court erred because it “employed an incorrect standard and analysis by relying solely on [appellant's] ability to meet his obligations since January 2005, solely on the basis of liquidating his assets.” Appellant also argues that the district court held “that the child's standard of living should not suffer” and that the district court “could have required [appellant] to produce additional documentation to avoid the carte blanche requirement that he pay support from his assets.”

Appellant's arguments are misplaced. The district court concluded that the appellant did not show a substantial decrease in his income, that he failed to show that respondent had substantially decreased need, and hence, that he failed to prove by a preponderance of the evidence that his child-support obligation was unreasonable and unfair. That decision is not an abuse of discretion because it is supported by the facts in the record.

Regarding appellant's failure to prove his substantially decreased earnings, the district court held that it was “unable to find that his earning capacity has been substantially reduced, that his financial situation has deteriorated in any substantial way, or that he has made a good faith effort to seek reinstatement or re-employment . . . .”

This decision was based on several facts. First, the district court found that appellant's

ability to maintain a lifestyle in which he incurred over \$6,000 in monthly expenses while remaining on unpaid medical leave for more than a year and a half cut against his claim that substantially reduced earnings prevented him from making child-support payments. Second, the district court found that appellant had submitted no information regarding his future employment prospects with NWA. The district court found that this lack of information left open the possibility that appellant could return to work at his previous salary. *Cf. Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to a district court's credibility determinations). Finally, the district court concluded that the documents regarding his new employment were "unauthenticated and of questionable origin." This called into question what appellant is actually earning and made it difficult for the district court to compare his present salary with his past salary. Based on these factual findings, it was not an abuse of discretion for the district court to conclude that appellant failed to establish that his child-support obligation was unreasonable and unfair due to substantially decreased earnings.

Regarding the appellant's failure to prove respondent's substantially decreased need, the district court found that respondent had monthly living expenses of \$3,733<sup>1</sup> and a net monthly income of approximately \$2,911. That finding, combined with respondent's \$22,000 in student loans, her assumption of the costs associated with the child's health and dental insurance, and the desire to provide the child with a consistent standard of living, convinced the district court that respondent's need for the child-

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<sup>1</sup> At the time of the district court's June 3, 2003 order, respondent had monthly living expenses of \$4,146.

support payments had not been substantially reduced. Based on the record, this conclusion was not an abuse of discretion.

**Affirmed.**