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**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A08-2254**

**A09-494**

**A09-1664**

In re the Marriage of:  
Jean-Marie Baudhuin, petitioner,  
Appellant,

vs.

David J. Baudhuin,  
Respondent.

**Filed May 11, 2010**  
**Affirmed in part, reversed in part, and remanded**  
**Halbrooks, Judge**

Dakota County District Court  
File No. 19-F2-00-008274

Jean-Marie Baudhuin, Lakeville, Minnesota (pro se appellant)

Merlyn L. Meinerts, Burnsville, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and  
Johnson, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Pro se appellant Jean-Marie Baudhuin brings this consolidated appeal challenging three district court orders related to her ongoing marriage-dissolution proceedings with respondent David J. Baudhuin. Because appellant's arguments with respect to two of the

district court orders are without merit, we affirm the orders from October 20, 2008, and January 14, 2009. But because we conclude that the district court erred by permitting respondent to recover the total amount that he requested for unreimbursed medical and dental expenses without sufficient documentation, we reverse the August 10, 2009 order in part and remand.

### FACTS

Appellant and respondent were married in 1983, and their marriage was dissolved in July 2001.<sup>1</sup> The parties were awarded joint custody of the couple's three then-minor children. The judgment required respondent to pay child support to appellant, and as part of his child-support obligation, respondent was further ordered to provide insurance for the children. The judgment specifically provides that

[d]uring the time that a child of the parties is a minor, [r]espondent shall provide medical, dental, ocular, mental health insurance coverage available through his employment for the benefit of the minor children. Each party shall be responsible for one-half (1/2) of the deductible and non-insured medical, dental, orthodontic, ocular, mental health expenses of the minor children. . . . Respondent shall provide [appellant] with all documentation including cards, policy numbers, and forms, necessary to submit insurance claims or utilize the coverage provided. This provision shall remain in effect as long as any of the children are eligible for child support.

Since the entry of judgment, this case has been the subject of numerous motions, hearings, and orders in the district court, as well as two prior appeals to this court.

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<sup>1</sup> An amended judgment was entered in August 2001, but the amended judgment did not address the portions of the judgment relevant to this appeal.

In November 2006, the district court issued an order following this court's remand in *Baudhuin v. Baudhuin*, No. C7-01-1564 (Minn. App. July 2, 2002), *review denied* (Minn. Sept. 25, 2002). Appellant challenged this order in a second appeal, and we remanded the case again in March 2008 on three grounds. *Baudhuin v. Baudhuin*, No. A07-0156, 2008 WL 667935, at \*9 (Minn. App. Mar. 11, 2008). Specifically, we asked the district court to resolve any pending issues with respect to spousal maintenance, to calculate interest on a nonmarital gift owed to appellant by respondent, and to address appellant's motion to require respondent to make a final installment payment on a judgment award. *Id.* We affirmed the district court in all other respects. *Id.*

Following our remand but before the district court addressed the remanded issues, appellant claims to have requested removal of the presiding judge. But the district court's record does not contain a written motion to remove, nor does it appear that appellant ever made an oral motion. The district court proceeded with the case, and on October 20, 2008, the district court issued an order addressing the three remanded issues. The order specifically resolved all spousal-maintenance issues, stating that respondent's obligation to pay maintenance would terminate according to the terms of the November 2006 order. The order also calculated interest that respondent owed appellant on the nonmarital gift and ordered respondent to pay the final installment of the judgment award plus accrued interest. No other issues related to the merits of the parties' case were addressed in this order.

But the district court judge stated in the October 20, 2008 order: "Since the last court hearing . . . [appellant] has, in writing and otherwise, made some very serious, yet

totally fabricated and unfounded, allegations regarding the undersigned's conduct, impartiality, and self-interest in this matter." Because of appellant's allegations, the judge found it "necessary to recuse himself from all further proceedings in this case." In an attached memorandum, the district court judge further stated that "while I still feel that if necessary I would be able to preside over this case impartially, there is now no question that after the allegations made against me by [appellant], my impartiality might reasonably be questioned."

On October 21, 2008, the day following the order addressing the remanded issues, the district court held a hearing at which appellant argued that the newly assigned district court judge should initiate an investigation into the first judge's "financials." The district court orally denied appellant's request. In an order dated January 14, 2009, the district court adopted the recommendations of the guardian ad litem and granted respondent sole legal and physical custody of J.B., the couple's only minor child at the time. We note that appellant initially challenged the district court's custody award in this appeal but subsequently conceded the issue in her reply brief.

On July 15, 2009, respondent moved to establish child support and obtain a judgment for the amount of appellant's share of the unreimbursed medical and dental expenses that had accrued since 2001. Respondent's supporting affidavit also requested that the district court impute income to appellant based on Minn. Stat. § 518A.32 (2008). Respondent requested judgment in the amount of \$15,555.38, which purportedly represents appellant's share of unreimbursed expenses from 2001 through 2007. In support of this request, respondent submitted a handwritten, itemized list of expenses that

he incurred during this time frame; this list includes \$18,350.40 for the cost of his insurance premiums from January 2002 through April 2012. Respondent also itemized a list of anticipated “future expenses” totaling \$4,400. Appellant moved the district court to deny respondent’s child-support request because the issue of custody was before this court, arguing that respondent’s supporting documentation for his judgment request was fraudulent and not credible.

Respondent made an additional request for judgment in the amount of \$1,554.04, which purportedly represents appellant’s share of unpaid expenses for the period of January through June 2008. In support, respondent attached receipts, health-care benefits forms, and copies of e-mails that he had sent to appellant, informing her of the incurred expenses. The amounts from the attached receipts and benefits forms total \$830.<sup>2</sup>

In an August 10, 2009 order, the district court granted respondent’s motion to modify child support and entered judgment against appellant for her share of unreimbursed medical and dental expenses. The district court found that appellant failed to provide the district court with any information regarding her income or any evidence that she is physically or mentally incapable of working. Thus, the district court imputed income to appellant at 150% of the federal minimum wage and set her child-support obligation at \$304 per month. This amount includes \$11 as appellant’s pro rata share of medical and dental insurance premiums paid by respondent. The district court also found respondent’s itemization of the unreimbursed expenses to be credible and entered

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<sup>2</sup> In addition, it appears that respondent submitted both the receipt and the benefits form for at least one expense; but he can only recover once for any given expense.

judgment against appellant in the amount of \$17,109.42. This consolidated appeal follows.

## DECISION

### I.

Appellant challenges the October 20, 2008 order, arguing that the district court erred in its resolution of the remanded issues and by simultaneously recusing itself from further proceedings. It is true that once a party removes a judge from a case, the judge may not enter any further orders relating to the merits. *Vacura v. Haar's Equip. Inc.*, 364 N.W.2d 387, 393 (Minn. 1985). But our supreme court has also recognized that a judge's disqualification from a case does not prevent that judge from performing certain duties related to that case. *Minn. State Bar Ass'n v. Divorce Educ. Assocs.*, 300 Minn. 323, 325, 219 N.W.2d 920, 921-22 (1974).

[T]he disqualification of a judge to hear and determine a cause does not prevent him from making orders that are purely formal in character, or from performing merely ministerial duties in no way connected with the trial[.] . . . He may . . . carry out the provisions of an order of remand from a higher tribunal.

*Id.* (quotation omitted).

The substance of the October 2008 order deals solely with the three issues remanded by this court and does not address any new matters. Indeed, the order could be characterized as “ministerial” in nature because the order simply resolves the issue of maintenance according to the terms of a previous order and calculates interest on two outstanding payments. Although the preferred course of action would be for a district

court judge to recuse without simultaneously addressing the merits of any portion of a case, we conclude that the district court did not err by implementing this court's remand instructions and then recusing from further proceedings. We therefore affirm the district court's October 2008 order clarifying spousal maintenance and calculating post-judgment interest.

## **II.**

Because appellant concedes the issue of custody, the only remaining issue to be addressed with respect to the district court's January 2009 order is whether the district court erred by not granting appellant's apparent oral request for an investigation into the prior judge's financial information.<sup>3</sup> During the October 21, 2008 hearing, appellant argued that the second district court judge should initiate an investigation into the first judge's financial information based on her claims against him. The second district court judge orally denied appellant's request at the hearing and therefore did not address that argument in its subsequent order. Because appellant's accusations against the first district court judge are completely unsupported, the second district court judge did not err by denying appellant's request for an investigation.

## **III.**

Appellant raises three issues concerning the district court's August 10, 2009 order: (1) it was an abuse of discretion to impute income to appellant; (2) the district court erred

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<sup>3</sup> Appellant also appears to argue that the district court erred by not addressing her motion to remove the judge. Because there is no motion to remove in the district court file and because the judge had recused by that point, we conclude that appellant's argument on this point is moot.

by including a pro rata share of insurance premiums in appellant's child-support obligation; and (3) the district court erred by granting respondent a judgment with respect to certain unreimbursed medical and dental expenses.

**A. Income Imputation**

Appellant contends that the district court erred by imputing income to her for purposes of calculating child support. When a district court imputes income, it enjoys broad discretion, and we review that imputation only for an abuse of discretion. *See Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008) (reviewing a challenge to a district court's decision regarding income imputation under an abuse-of-discretion standard). A district court must base child support on "potential income" if a parent is "voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income." Minn. Stat. § 518A.32, subd. 1. The statute "implicitly requires the court to presume that a party who has not provided the court with sufficient income information is voluntarily unemployed or underemployed and to attribute income to that party." *Butt*, 747 N.W.2d at 576.

A district court may determine a party's potential income by using one of three methods: (1) the parent's likely earnings level based on "employment potential, recent work history, and occupational qualifications"; (2) the actual amount of unemployment compensation or workers' compensation benefit received; or (3) the amount of income the parent could earn by working full time at 150% of the higher of the federal or state minimum wage. Minn. Stat. § 518A.32, subd. 2. A parent is not considered to be voluntarily unemployed, underemployed, or employed on less than full-time basis if,

among other circumstances, the parent shows that the circumstance is “temporary and will ultimately lead to an increase in income” or “a bona fide career change that outweighs the adverse effect of that parent’s diminished income on the child.” *Id.*, subd. 3.

The district court found that appellant (1) failed to provide any information regarding her income with an exception of a statement that she is a part-time server, (2) failed to provide any evidence that she is physically or mentally incapable of working, and (3) has the educational background to obtain employment that would provide more income than that earned as a part-time server. On those grounds, the district court concluded that it was appropriate to impute income to appellant at 150% of the federal<sup>4</sup> minimum wage. Because the statute provides that the district court may calculate support based on the minimum wage calculation when a party does not provide sufficient information to determine actual or imputed income, the district court’s imputation of income to appellant was not an abuse of discretion.

#### **B. Insurance Premiums/Judgment Award**

Appellant asserts that the district court erred by granting judgment against her in the amount of \$17,109.42, which purportedly represents her share of unreimbursed medical and dental expenses beginning in 2001. Respondent’s request for this amount was based on his own affidavit and an attached exhibit that included copies of receipts,

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<sup>4</sup> While the district court did not make a specific finding as to which minimum wage it was using, we note that the state minimum wage at the time was \$6.15, and the federal minimum wage was \$7.25. Based on its calculation, we conclude that the district court properly used the federal minimum wage in calculating appellant’s income.

insurance-benefits forms, e-mails, and a handwritten, itemized list of unreimbursed expenses. The district court granted respondent's request *in toto*.

Respondent's itemization and the resulting judgment amount includes one-half of the cost of respondent's health-insurance premiums beginning in 2002 and ending in 2012. But the parties' dissolution judgment requires respondent to provide insurance for the minor children as part of his child-support obligation; each party is required to pay one-half of the deductible and uninsured medical expenses. The provision is to remain in effect so long as any of the children remain eligible for child support. Because respondent never moved to modify that provision of the judgment, he remains obligated to cover the cost of the children's insurance premiums. Therefore, we conclude that the district court erred by granting respondent's request for a judgment that included the cost of the children's insurance premiums from 2002 until the present and by granting respondent's request to recover future premiums from appellant.

Appellant asserts that the district court erred by granting respondent's request for judgment despite the fact that respondent's affidavit does not include documentation to support all of the claimed amounts. We agree.

Minn. Stat. § 518A.41, subd. 17(e) (2008), specifically requires that an affidavit of health-care expenses "itemize and document the joint child's unreimbursed or uninsured medical expenses *and* include copies of all bills, receipts, and insurance company explanations of benefits." (Emphasis added.) With respect to the 2008 amounts, the documentation submitted by respondent supports \$830 in total expenses, or \$415 for appellant's share. The e-mails submitted by respondent do not constitute sufficient

documentation under section 518A.41, subdivision 17(e). With respect to the itemized list of unreimbursed expenses, respondent included no receipts, bills, or other supporting documents. Although the district court found respondent's itemization to be credible, such a finding does not compensate for respondent's failure to comply with section 518A.41, subdivision 17(e). We therefore conclude that the district court erred by granting respondent's request for judgment that included unreimbursed expenses for which he did not provide adequate documentation.

Finally, respondent sought \$4,400 in "future expenses," and the district court awarded judgment against appellant for one-half of the future expenses. The statute does not permit a party to recover in advance for anticipated future expenses. Therefore, the district court erred by permitting respondent to recover unrealized expenses from appellant.

In a related argument, appellant contends that the district court abused its discretion by requiring her to pay a pro rata share of the medical and dental insurance premiums for J.B. as part of her child-support obligation. As discussed, the parties' judgment required respondent to provide medical, dental, ocular, and mental-health insurance coverage, and the district court made no findings or conclusions indicating that it was modifying the original child-support provisions. While modification of child support is discretionary with the district court, *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002), the district court did not make the appropriate findings to support a modification of the original judgment. *See* Minn. Stat. § 518A.39, subd. 2(a) (2008) (stating that a child-support order may be modified only upon a showing of a substantial change in

circumstances rendering the current order unreasonable and unfair); Minn. Stat. § 518A.37, subd. 3 (2008) (noting the required findings for all support orders). Because the record is insufficient for us to determine whether the district court appropriately considered the relevant factors before modifying the original judgment, we remand the child-support award.

In summary, we affirm the October 2008 order and the January 2009 order. We further affirm the August 2009 order in part. But we reverse and remand the portions of the order that enter judgment against appellant for unreimbursed medical and dental expenses and require her to pay a portion of the insurance premiums.

**Affirmed in part, reversed in part, and remanded.**