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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1114**

In re the Marriage of:
Theresa Lee Thill, petitioner,
Respondent,

vs.

Jeffrey Scott Thill,
Appellant,

County of Dakota,
Intervenor Below.

**Filed March 11, 2013
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

Dakota County District Court
File No. 19AV-FA-10-959

John F. Wagner, McDonough, Wagner & Ho, L.L.P., Apple Valley, Minnesota (for
respondent)

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the order establishing child support, arguing the district court erred by (1) imputing potential income to him, (2) failing to allow him reasonable accommodations as a pro se litigant, and (3) determining he has between 10% and 45% of the parenting time for child-support purposes. We affirm the imputation of potential income to appellant and conclude there was no failure to allow appellant reasonable accommodations; but because the district court clearly erred with respect to its parenting-time findings, we reverse in part and remand to recalculate child support.

FACTS

On October 4, 2010, the 14-year marriage between appellant Jeffrey Thill (father) and respondent Theresa Thill (mother) was dissolved. The stipulated dissolution judgment grants the parties joint legal and joint physical custody of their children, A.T. and S.T., reserves the issue of basic child support, and provides that each party has between 45% and 50% of the parenting time. The judgment includes a parenting-time schedule under which father had parenting time every other Friday evening to Monday morning and two times per week with each child, including at least one overnight with A.T. and Tuesday and Thursday mornings with S.T. but no overnights until he turned four. On February 10, 2012, the district court issued an order amending the dissolution judgment to give father at least one overnight per week with S.T. and noting that the judgment “provides that each parent has between 45% to 50% parenting time for child support calculation purposes.” On February 23, the district court amended its February

10 order, granting father one overnight per week with S.T. on Thursdays and authorizing additional overnights upon agreement of the parties.

At the time of the dissolution, father worked as a service manager, earning \$1,910 per month plus commissions for an estimated gross monthly income of \$3,000. Six months later, he lost his job. Father has a degree in building-inspection technology but has been unable to find full-time employment in that field. Consequently, he accepted a part-time position as a code-enforcement officer with a monthly income of \$1,172 and enrolled in school to obtain a computer-related degree.

On March 27, 2012, father filed a pro se motion in the district court, requesting that mother pay him child support and that his Tuesday parenting time with S.T. be moved from mornings to evenings. A hearing was scheduled for April 20. Father also filed a motion to modify child support to be heard by a child-support magistrate (CSM) on April 26. Mother filed a responsive motion, asking the district court to amend portions of the judgment and require father to pay her child support.

The parties argued their respective motions to the district court on April 20. At the conclusion of the hearing, the district court struck the April 26 hearing before the CSM. On May 4, the district court granted father's motion to reschedule his parenting time, ordered father to pay child support, and denied mother's request to otherwise amend the dissolution judgment. In setting father's child-support obligation at \$700, the district court found that father is voluntarily employed on less than a full-time basis, imputed \$1,178 of monthly income to him based on his ability to work an additional 25 hours per week at 150% of the current federal minimum wage, and applied a parenting-expense

adjustment that corresponds with father having 10% to 45% of the parenting time. Father asked the district court to review its child-support order, but the court did not rule on father's request. This appeal follows.

DECISION

The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The district court abuses its discretion by misapplying the law or setting support against logic and the facts on record. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999); *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 1998), *review denied* (Minn. Sept. 28, 2005). We review a district court's findings of fact for clear error. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002).

I. The district court did not err by imputing potential income to father.

There is a rebuttable presumption that "a parent can be gainfully employed on a full-time basis." Minn. Stat. § 518A.32, subd. 1 (2012). When a parent is voluntarily unemployed, underemployed, or employed on less than a full-time basis, child support must be calculated based on the parent's potential income. *Id.* A parent is not voluntarily employed on less than a full-time basis if the parent can demonstrate that his or her employment status (1) is temporary and will lead to an increase in income, (2) represents a bona fide career change that outweighs the adverse effect of the parent's diminished income on the children, or (3) is caused by the parent's physical or mental incapacitation. *Id.*, subd. 3 (2012). Whether a parent is voluntarily employed on less than a full-time basis is a question of fact. *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

Father argues that the district court erred by imputing income to him without addressing whether his school enrollment precludes him from being considered voluntarily employed on less than a full-time basis. We disagree. When a party fails to meet his or her burden to produce evidence on an issue, a district court is not required to make findings on that issue. *Farrar v. Farrar*, 383 N.W.2d 436, 440 (Minn. App. 1986), *review denied* (Minn. May 22, 1986); *see also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (“On appeal, a party cannot complain about a district court’s failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.”), *review denied* (Minn. Nov. 25, 2003). Although father asserted that he only works part-time because he is pursuing computer-related education, he did not produce evidence that his return to school will lead to increased income or represents a bona fide career change that outweighs the adverse effects of his diminished income on his children. Moreover, father’s response to mother’s motion to establish child support indicates that he does not expect to complete the educational program due to its cost. On this record, the district court did not err by declining to address whether father’s enrollment in school overcomes the presumption that he can work on a full-time basis.

II. The district court did not fail to accommodate father’s pro se status.

The district court has a duty to ensure fairness to a pro se litigant by allowing reasonable accommodations so long as there is no prejudice to the adverse party. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). But while pro se

litigants may receive some latitude, they cannot bend all rules and requirements or disrupt trial schedules. *Liptak v. State ex rel. City of New Hope*, 340 N.W.2d 366, 367 (Minn. App. 1983). Pro se litigants are held to the same standards as attorneys, *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001), and have the burden to adequately communicate to the court the relief they seek, *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987).

Father asserts that the district court failed to provide him reasonable accommodations as a pro se litigant by not clarifying that child support would be addressed at the April 20 hearing and by pressuring him to present his case quickly. We are not persuaded. Father addressed the issue of child support in the materials he submitted to the district court before the hearing. And while the hearing may not have been as lengthy as father preferred, our review of the record shows father received an opportunity to, and did, present his arguments to the court. The district court conducted a careful review of the entire record before ruling on the motions. We discern no failure by the district court to allow father reasonable accommodations as a pro se litigant.

III. The district court clearly erred by finding father has 10% to 45% of the parenting time.

When setting a child-support obligation, the district court must consider the expenses each parent incurs in caring for the children as measured by the extent of their parenting time. *See* Minn. Stat. §§ 518A.34(b)(6), .36, subd. 1(a) (2012); *see also Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). If a parent has between 10% and 45% of the parenting time, the district court applies a parenting-expense adjustment of 12% to

determine the parent's basic-support obligation. Minn. Stat. § 518A.36, subd. 2(1) (2012). But if the obligor has between 45.1% and 50% of the parenting time, the court performs a different calculation. *Id.*, subds. 2(1), 3(b) (2012). The percentage of parenting time is defined as "the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order." *Id.*, subd. 1(a). This percentage is reflected in the last permanent and final order setting parenting time. *See Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009) (concluding that the dissolution judgment, rather than a subsequent temporary order, established parties' baseline parenting-time schedule).

Father contends that the district court's determination that he has between 10% and 45% of the parenting time is clearly erroneous. We agree. The parties' parenting-time schedule is established by the dissolution judgment and the February 10 and February 23 orders, which amended certain aspects of the schedule. The judgment incorporates the parties' stipulation that both parents have between 45% and 50% parenting time for child-support purposes. The February 10 order, which increased father's scheduled parenting time, reaffirmed that the judgment provides each party 45% to 50% of the parenting time. Accordingly, the orders setting the baseline parenting-time schedule establish that each parent has 45% to 50% of the parenting time.

Mother points out that the stated parenting-time schedule is not wholly consistent with the time the parties actually spend with the children. We agree, but this inconsistency is not determinative. First, the parenting-time schedule is not precise enough to support a finding that father has between 10% and 45% of the parenting time.

In addition to alternating weekends, the schedule gives father parenting time two times per week with each child, including *at least* one overnight per week with A.T., one overnight per week with S.T., and *additional* overnight parenting time with S.T. upon agreement by the parties. Under this imprecise arrangement, if father spends one overnight per week with each child, his parenting time would be 35.7% based on the number of overnights. But if father spends two overnights per week with both A.T. and S.T., his parenting time would be 50%. Second, the parties stipulated that their parenting time is between 45% and 50% for child-support purposes, and the district court adopted this stipulation in the dissolution judgment and affirmed it in the February 10 order. On this record, the district court clearly erred by finding that father has between 10% and 45% of the parenting time and calculating his support obligation on that basis. Accordingly, we reverse and remand to the district court to recalculate father's child-support obligation based on him having 45.1% to 50% of the parenting time.

Affirmed in part, reversed in part, and remanded.