

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0765**

In re the Marriage of:

Brian John Cristofono, petitioner,
Appellant,

vs.

Renee Michelle Cristofono,
Respondent.

**Filed December 27, 2022
Affirmed; motion denied
Cochran, Judge**

Carver County District Court
File No. 10-FA-16-189

Brian J. Cristofono, St. Louis Park, Minnesota (pro se appellant)

Renee Cristofono, Chanhassen, Minnesota (pro se respondent)

Considered and decided by Bjorkman, Presiding Judge; Reilly, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this child-support dispute, appellant-father challenges a district court order modifying in part his child-support obligation and denying his request for repayment of an “overpayment” of child support. Father argues that the district court (1) should not have imputed income to father in calculating his modified child-support obligation and (2) failed

to make sufficient factual findings to support its decision to deny his request for repayment of an “overpayment” of child support. We affirm. We also deny father’s motion to strike respondent-mother’s brief and certain exhibits included in her addendum.

FACTS

The parties to this case have a lengthy history of proceedings before the district court involving issues related to child support. The relevant facts are summarized below.

Appellant Brian Cristofono (father) married respondent Renee Cristofono (mother) in 2004. They had two children together. Father filed a petition to dissolve the parties’ marriage in 2016. After more than two years of pretrial litigation, the matter proceeded to a bench trial in late 2018 and early 2019. On July 1, 2019, the district court issued findings of fact, conclusions of law, an order for judgment, and a judgment and decree dissolving the parties’ marriage. The district court’s order also addressed child custody, child support, and parenting time and divided the parties’ property.

As is relevant to the current child-support dispute, the district court made the following findings in the dissolution judgment related to father’s work history and his ability to work: father started working as a firefighter in 2006 or 2007; father stopped working as a firefighter and started receiving duty-related disability benefits in 2017; father had been suffering from PTSD, depression, and anxiety for several years and his symptoms worsened in the time leading up to the parties’ separation in 2016; father was still suffering from PTSD and related conditions at the time of trial; although disabled as a firefighter, father is able to work full-time in a position outside of being a firefighter; in 2017 and

2018, while receiving disability benefits, father worked as a public speaker and a model; and father was pursuing a degree in nursing at the time of trial.

The district court granted the parties joint legal custody of the children, granted mother sole physical custody of the children, and established a parenting-time schedule. According to the parenting-time schedule, father had 106 overnights per year and mother had 259 overnights per year. The district court ordered father to pay mother a net child-support obligation of \$651 per month for the period from June 1, 2016 to June 30, 2020. The district court set this amount based on father's actual income from his disability payments. The district court decided to refrain from including any imputed income in the calculation of father's income for this time period because father was working towards completing his nursing degree. But the district court ordered a recalculation of child support to occur on July 1, 2020. In the order, the district court provided a framework for that recalculation that used father's actual disability income *and* imputed income, resulting in a net child-support obligation for father of \$1,159 per month.

At the end of July 2019, father filed a motion for amended findings seeking extensive changes to the district court's order, including adjustments that would significantly reduce father's net monthly child-support obligation. In August 2019, father filed a separate motion to modify child support, asserting that the health insurance and childcare costs used in the existing child-support order were "outdated and inaccurate."

In January 2020, after a motion hearing, the district court filed an order denying father's motion for amended findings *except* with respect to his request to modify child support. But the district court found that the information the parties had provided in

connection with father's motion to modify support was not by sworn affidavit, lacked supporting documentation, and often contradicted the evidence they had previously submitted. The district court therefore asked the parties to submit sworn affidavits with supporting documentation as a basis for a new child-support calculation. The parties subsequently filed supplemental documentation.

However, further proceedings were delayed in part because the parties were in a dispute over father's unpaid child support. The parties allegedly had a side agreement to address the unpaid child support through a deduction from the property equalizer payment that the dissolution judgment required mother to pay father. Mother had already paid father the property equalizer, including a deduction that the parties had agreed upon for child-support arrears owed from before the divorce and the first 23 months of father's support obligation after the divorce. But mother asserted that father owed more pursuant to the original order that finalized the parties' divorce.

In March 2021, after another motion hearing, the district court filed an order upholding the parties' side agreement to deduct child support owed by father from mother's property equalizer payment. The district court enforced the agreement over mother's objection, noting that father had not yet completed his nursing degree and was in a "dire financial position" at the time.

In May 2021, father filed a motion to modify parenting time and child support—one of the motions that is the subject of this appeal. In a supporting affidavit, he stated that a substantial change in circumstances had occurred since the district court issued the prior support order: namely, he was not able to complete his nursing degree "due to significant

worsening of [his] chronic mental health issues.” He requested a downward deviation in child support based on his financial circumstances and the income disparity between himself and mother. Along with his own affidavit, father included letters from his therapist and his doctor stating that he had “no projected recovery date” and that he was currently “unable to maintain gainful employment.” In July 2021, father filed another affidavit requesting further changes to the parenting-time schedule and asserting that he had overpaid child support between September 2019 and August 2021. Mother opposed father’s motion and disputed his assertion that he had overpaid child support.

In September 2021, father filed a motion asking the district court to allow him to “temporarily rescind” his May 2021 motion to modify parenting time and child support. He also asked the district court to reduce his parenting time to 21 days per year and adjust his child-support obligation downward accordingly. In an affidavit filed with this motion, father stated that these requests stemmed from his plan to move to Los Angeles “to take the next steps in [his] career development as an actor and model.” Father noted: “I have enjoyed increasing success in the Twin Cities area and have done commercials for Winnebago and appeared as an actor in a TV series.”

In the September 2021 motion, father also formally requested that the district court order mother to reimburse him for “overpayment” of child support. Father alleged that he had overpaid child support because, among other reasons, the district court used incorrect childcare costs to calculate his original child-support obligation.

In October 2021, after father’s plans to move to California did not materialize, father filed an amended motion and supporting affidavit reasserting the requests for relief that he

made in his previous motions. This filing included two additional letters from doctors. The first doctor's letter stated that father was unable to work due to chronic back pain related to injuries that he sustained in his career as a firefighter. The second doctor's letter stated that father continues "to try to engage in sporadic employment as he is able to, such as through acting and/or modeling," but also that father needed daily treatment for the next six weeks to address his mental health. In December 2021, father filed another affidavit including, among other things, a new estimate of his overpayment of child support and additional letters from his therapist and doctor. Mother continued to oppose father's motion. The district court held a hearing on father's motion to modify child support and other pending motions on January 5, 2022.

In April 2022, the district court filed an order granting in part father's motion to modify child support and denying father's motion for reimbursement for overpayment of child support.¹ The district court found that certain circumstances had substantially changed and warranted a new calculation of support. Namely, mother's income had increased, and the parties' childcare and health insurance expenses had changed. But the district court found that father's earning potential had *not* substantially changed, and the same income level used to calculate his existing support obligation should therefore be used in the recalculation of his support obligation. After recalculating father's support obligation to account for the substantial changes to mother's income and other expenses,

¹ The district court also denied a number of other motions that are not at issue in this appeal, including, among others, father's motion to find mother in contempt of court, both parties' requests for attorneys' fees, and mother's motion relating to the children's activity costs.

the district court set father's net support obligation at \$739 per month, retroactive to July 1, 2021. This adjustment constituted a downward modification of father's existing net support obligation of \$1,159 per month.

Father appeals. Father also moved this court to strike mother's responsive brief and exhibits included in its accompanying addendum.

DECISION

Father challenges the district court order modifying in part his child-support obligation and denying his request for reimbursement of "overpaid" child support. We review a district court order modifying child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Father raises two issues on appeal. First, he argues that the district court abused its discretion by calculating his modified child-support obligation based on imputed income that overstated his earning ability. Second, he argues that the district court abused its discretion by denying his request for reimbursement of child support, which he asserts he previously "overpaid." While this appeal was pending, father also filed a motion to strike mother's brief and certain exhibits included in its addendum. We address each argument in turn and then consider father's motion to strike.

I. The district court did not clearly err by calculating father’s child-support obligation based on imputed income.

Father first challenges the district court’s decision to include imputed income in the calculation of his child-support obligation. He argues that the district court erred by including imputed income because his medical and mental-health conditions prevent him from working. Because the district court did not clearly err when it found that there had been no substantial change in father’s earning potential, we discern no abuse of discretion in the district court’s decision.

While we review the ultimate decision to modify child support for an abuse of discretion, a parent’s income and earning capacity is a factual determination that we review for clear error. *Haefele*, 837 N.W.2d at 708; *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009); see Minn. Stat. § 518A.29(a) (2022) (noting that “gross income” includes “potential income,” if any). Whether a parent is voluntarily unemployed is also a question of fact that we review for clear error. *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). When applying the clear-error standard of review, we view the evidence in the light most favorable to the district court’s findings and do not reweigh the evidence or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); see *Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in a family law appeal). “We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *Kenney*, 963 N.W.2d at 221 (quotation omitted). And “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that

the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted).

In determining a parent’s monthly income for purposes of establishing a parent’s presumptive child-support obligation, a district court first must determine a parent’s gross income. Minn. Stat. § 518A.34(a)-(b)(1) (2022). Gross income includes both actual and potential income. Minn. Stat. §§ 518A.29(a), .32 (2022). Generally, potential income must be included if the parent is voluntarily unemployed, underemployed, or employed part time. Minn. Stat. § 518A.32, subd. 1. A district court may determine a parent’s potential income according to one of three methods, including “the parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community.” *Id.*, subd. 2(1). However, a parent is not considered voluntarily unemployed, underemployed, or employed part time if the parent can show that physical or mental incapacity prevents them from working full time. *Id.*, subd. 3(3).

A district court may modify an existing child-support order if the moving party shows that a substantial change in circumstances has occurred that makes the terms of an existing order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2022). Changes that can qualify an existing support order for modification include a substantial change in the income of the obligor or obligee and a substantial change in childcare expenses. *Id.*, subd. 2(a)(1), (7). The moving party has the burden of proving both that there has been a substantial change in circumstances, and that the change makes the existing order unreasonable and unfair. *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009).

Here, the district court determined that substantial changes in circumstances had occurred that warranted a recalculation of support. These included changes in mother's income, the parties' childcare expenses, and medical insurance costs. But the district court determined that there was no substantial change to father's potential income, because father's decision to leave his nursing program and pursue a career as an actor did not justify a change to the district court's original findings regarding father's earning capacity. The district court therefore recalculated father's support obligation using new numbers for the variables that had changed but imputing the same potential income to father. This recalculation resulted in a new net child-support obligation of \$739 per month—a reduction of father's existing obligation of \$1,159 per month.

In recalculating father's support obligation, the district court used the gross income level that it calculated in the dissolution judgment: father's monthly disability income of \$3,257 per month plus his potential income of \$2,271 per month. In the dissolution order, the district court imputed the additional \$2,271 per month to father based on its finding that, even though father was no longer able to perform firefighter duties, he could still work in a different job. The district court estimated father's potential income based on his experience as a "lube technician" before becoming a firefighter and his earnings from public speaking and modeling during 2017 and 2018. *See* Minn. Stat. § 518A.32, subd. 2(1) (establishing that a parent's potential income may be calculated based on "the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community").

Father argues that the district court clearly erred by finding that father's earning potential had not changed substantially. He points to the letters from his medical providers to support his argument.² On this basis, he contends that the district court abused its discretion by including potential income in its finding of his gross income for purposes of calculating his modified child-support obligation. He also asserts that the district court abused its discretion by failing to make sufficient findings of fact and conclusions of law to support its decision. We are not persuaded.

First, the district court did not clearly err when it found that father's earning potential has not changed substantially. While father's affidavit and the letters from his medical providers *might* support a finding that father's physical and/or mental incapacity preclude him from working, the record also contains evidence that father has been able to work as an actor and model. And the record further reflects that, during the proceedings before the district court, father took steps towards relocating to California to pursue an acting career there. "When the record reasonably supports the findings at issue on appeal,

² Father also argues that the district court's calculation of his potential income violated Minn. Stat. § 518A.32 because it was based on an hourly wage higher than the current state minimum wage. This argument refers to only one of three different methods that a district court may use to determine potential income. *See* Minn. Stat. § 518A.32, subd. 2. Here, the district court simply used a different method: determining "the parent's probable earnings level based on employment potential." *Id.*, subd. 2(1). Father's argument is therefore unavailing.

Father also argues that the district court should have ordered a deviation downwards from his presumptive support obligation because of the significant disparity in his and mother's incomes. But while a district court "*may* deviate from the presumptive child support obligation" where such a disparity exists, that decision is within the district court's "broad discretion" and does not warrant reversal here. Minn. Stat. § 518A.43, subd. 1a (2022) (emphasis added); *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017).

it is immaterial that the record *might* also provide a reasonable basis for inferences and findings to the contrary.” *Kenney*, 963 N.W.2d at 223 (emphasis added) (quotation omitted). Here, the record reasonably supports the district court’s finding that recent events, including father’s decision to leave his nursing program and pursue a career as an actor, did not justify a change to the district court’s original findings regarding father’s earning capacity.

Further, in determining that the record evidence did not support a finding that father’s earning potential had changed, the district court implicitly found that father’s assertions regarding his medical limitations were not credible. And, as a result, the district court declined to give much weight to the letters from father’s medical providers supporting those assertions. We defer to the district court’s credibility determinations. *Id.* at 221. And we therefore conclude that the district court did not clearly err in finding that father remains voluntarily unemployed or underemployed, imputing potential income to him, and calculating his child-support obligation accordingly.

We are not persuaded otherwise by father’s argument that the district court abused its discretion by failing to make sufficient findings of fact to support its decision. Under the child-support guidelines, a district court order modifying child support must include written findings stating “(1) each parent’s gross income; (2) each parent’s PICS;³ and (3) any other significant evidentiary factors affecting the child support determination.” Minn. Stat. § 518A.37, subd. 1 (2022). Here, while the district court did not include

³ The acronym PICS refers to “parental income for determining child support.” Minn. Stat. § 518A.34(b)(2) (2022).

extensive findings in its April 2022 order modifying child support, the district court incorporated by reference the findings in the July 2019 dissolution judgment that originally set father's child-support obligation, and the district court enumerated the variables that had changed to explain its recalculation of father's child-support obligation. We therefore conclude that the district court made sufficient findings to support its decision and did not abuse its discretion in modifying father's child-support obligation.

II. The district court did not abuse its discretion by denying father's request for reimbursement of "overpaid" child support.

Father also challenges the district court's denial of his request for reimbursement of child support that he contends he overpaid. In his motion and related filings, father argued that he overpaid child support from 2019 to 2021 because the support obligation established in 2019 was based on incorrect childcare costs and because those costs have further changed since 2019. He also contends that he paid mother twice for child support for February and March of 2021. On appeal, father argues that the district court abused its discretion by failing to issue complete findings of fact and conclusions of law to support its decision denying that motion, in violation of Minn. R. Civ. P. 52.01.

Assuming without deciding that rule 52.01 applies, we conclude that father's argument does not warrant reversal in this case. Based on our review of the record, we are satisfied that the district court's findings and conclusions, along with the record evidence as a whole, support the district court's denial of father's motion for reimbursement. While father is correct that the district court did not make findings expressly related to father's request for reimbursement of what he alleges was "overpaid" child support, the district

court's order constitutes a global resolution of all pending motions raised by father related to child support. The order further reflects the district court's determination that a prior order had already resolved the parties' disputes regarding father's child-support obligations up through July 1, 2021. In the prior decision, the district court upheld the parties' agreement to deduct child-support arrears from before the divorce and the first 23 months of child support that father owed after the parties' divorce from the property equalizer payment that mother made to father after their divorce. Under that decision, father's child-support payments were considered paid up through July 1, 2021.

The findings and conclusions in the modification order that father now appeals demonstrate that the district court considered child support settled for the first two years following the parties' divorce—up through July 1, 2021. The district court made its modification of child support retroactive to that date, and it concluded that “[t]here are no child support arrears prior to July 1, 2021.” In other words, the district court implicitly determined that father's request for reimbursement of overpaid child support was precluded by the parties' agreement, upheld in a prior order, to deduct the first 23 months of child support that father owed after the parties' divorce from mother's property equalizer payment to father.

We therefore conclude that the district court did not abuse its discretion by failing to make sufficient findings or conclusions to support its denial of father's request for reimbursement of allegedly “overpaid” child support. Further, any such error by the district court would not warrant reversal in this case. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1987) (declining to remand for missing findings when “on remand the [district]

court would undoubtedly make findings that comport with the statutory language” and reach the same result); Minn. R. Civ. P. 61 (requiring that harmless error be ignored). The district court issued its decision after handling this case for many years and based its decision on its thorough understanding of the facts in this case and its substantial experience in this area of law. We defer to the district court’s weighing of the record evidence and conclude that the district court did not abuse its discretion in denying father’s request for reimbursement of child support that he allegedly overpaid.

III. Father’s motion to strike is denied.

Father filed a motion to strike mother’s brief “in its entirety” along with exhibits included in her addendum. He argues that mother’s brief does not comply with the rule governing formal briefs and “does not contain any substantiated facts, and no exhibits or referenced statutes, written findings, or case law.” Father also asserts that mother’s brief “contains allegations or assertions that are irrelevant to the matter at hand and/or salacious in nature.” And he argues that mother’s addendum contains documents that are not part of the record on appeal.

The appellate record is limited to “documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any.” Minn. R. Civ. App. P. 110.01. Generally, an appellate court may not base its decision on matters outside the record on appeal and may not consider matters not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). An appellate court may grant a motion to strike when a brief references facts that are outside the record or when “the brief is used as a vehicle for disrespect, insult, and slanderous accusations.” *State v. Duncan*,

608 N.W.2d 551, 559 (Minn. App. 2000) (quotation omitted), *rev. denied* (Minn. May 16, 2000).

Here, mother filed an informal respondent’s brief asking us to affirm the district court’s order requiring father to pay child support based on imputed income and denying father’s request for reimbursement of “overpaid” child support. Mother also filed an accompanying addendum that includes five additional documents: the July 2019 order that finalized the parties’ divorce, the April 2022 order being appealed, an affidavit from a third party, a document entitled “Minnesota Job Opportunities,” and screenshots of father’s “Modeling/Acting Profiles.”

Father’s arguments in support of his motion to strike mother’s brief are not persuasive for several reasons. First, his argument that mother’s brief should be stricken because it does not conform to the rule for a *formal* brief, Minn. R. Civ. App. P. 128.02, is unconvincing because mother filed only an *informal* brief. Next, father’s objections to mother’s brief are general and he fails to identify any specific portions that should be stricken—he simply requests that the court “strike the respondent’s brief in its entirety.” *See Stephens v. Bd. of Regents of Univ. of Minn.*, 614 N.W.2d 764, 770 (Minn. App. 2000) (stating that the court was “unwilling to grant a request to strike where the requesting party fail[ed] to identify specifically the materials it want[ed] stricken”). Third, while mother’s brief could be viewed as disparaging of father, her arguments have support in the record, do not refer to matters entirely outside the record, and are clearly intended to support her position with regard to child support and not solely to disparage father. *See Duncan*, 608 N.W.2d at 559. Finally, mother made most of the assertions in her brief in filings

before the district court, and she references the district court's findings and Minnesota's child-support guidelines. For these reasons, we deny father's motion to strike mother's brief "in its entirety."

With regard to father's request to strike certain exhibits included in mother's addendum because they are outside the record, we note that three of the five documents in the addendum are, in fact, in the appellate record. To the extent that the remaining documents are not in the appellate record, we need not and do not rely on those submissions in resolving this appeal. *See* Minn. R. Civ. App. P. 110.01 (noting that the appellate record is limited to "documents filed in the trial court, the exhibits, and the transcript of the proceedings"). Accordingly, we deny father's motion to strike in its entirety.

Affirmed; motion denied.