STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1801

Thomas J. Studeman, petitioner,
Respondent,

vs.

Elizabeth J. Vadnais,
Appellant.

Filed September 10, 2012
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-F8-07-050278

Thomas J. Studeman, West St. Paul, Minnesota (pro se respondent)

Elizabeth J. Vadnais, White Bear Lake, Minnesota (pro se appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

In this child-support dispute, appellant Elizabeth Vadnais challenges the district court's modification of respondent Thomas Studeman's child-support obligation, arguing that the court's finding on respondent's gross monthly income is clearly erroneous and

that the court abused its discretion in modifying basic support and retroactively modifying child-care support. We affirm.

D E C I S I O N

When a child support magistrate's (CSM) decision is affirmed by the district court on a motion for review, the decision is treated as that of the district court. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). We review the district court's determination of a request for child-support modification for an abuse of discretion. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). "Its decision will be upheld unless it committed clear error and its decision is against logic and the facts of record." *Id.*

"A district court may modify a child-support obligation when the moving party demonstrates substantially changed circumstances that render the existing child-support obligation unreasonable and unfair." *Cnty. of Grant v. Koser*, 809 N.W.2d 237, 241 (Minn. App. 2012). Specifically, a district court may modify the terms of a child-support order upon a showing of, among other circumstances, "substantially increased or decreased gross income of an obligor or obligee," or "a substantial increase or decrease in existing work-related or education-related child care expenses." Minn. Stat. § 518A.39, subds. 1, 2(a) (2010). A showing of one or more of these circumstances "makes the terms [of the existing order] unreasonable and unfair." *Id.*, subd. 2(a). The moving party bears the burden of establishing a substantial change in circumstances. *Gorz v. Gorz*, 552 N.W.2d 566, 569 (Minn. App. 1996).

I.

Vadnais challenges the district court finding on Studeman's gross monthly income. For child-support purposes, gross income is "any form of periodic payment" to a party. Minn. Stat. § 518A.29(a) (2010). "A determination of the amount of an obligor's income for purposes of child support is a finding of fact and will not be altered on appeal unless clearly erroneous." *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005).

The district court found that Studeman's gross monthly income is $4,125. This finding is supported by the record. Studeman submitted an earnings statement from the pay period ending February 27, 2011, reflecting an hourly wage of $23.80. Using this hourly wage, multiplying it by 40 hours to arrive at a weekly income, then multiplying that amount by 52 weeks in the year for an annual gross income, and dividing that amount by 12 months to arrive at a monthly income, results in a calculated gross monthly income of $4,125. Thus, although the court's finding on Studeman's hourly wage indicates $23.85, rather than $23.80, remand is not required because this error does not affect the result. *See* Minn. R. Civ. P. 61 (requiring harmless error be ignored); *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (refusing to remand where doing so would not alter the result). Accordingly, the court's finding on Studeman's gross monthly income is not clearly erroneous.

Vadnais also argues that based on Studeman's earnings statement, an accurate figure for his gross monthly income is $4,598. But Vadnais neither made this argument to the CSM nor challenged the CSM's finding as to Studeman's gross monthly income as

an issue to the district court on review. Because Vadnais did not raise the argument to the district court, we do not consider it on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

II.

In the initial order setting child support, issued in September 2007, the district court ordered Studeman to pay $1,270 per month in child support, which included $685 in basic support and $585 in child-care support. Due to cost of living adjustments, basic support increased to $716 per month. Studeman was not awarded any parenting time in this order. In December 2010, the court awarded Studeman parenting time of between 10% and 45%, and on January 3, 2011, Studeman petitioned to modify child support, including a decrease in basic support and a retroactive modification of child-care support. A CSM modified Studeman's child-support obligation, and the district court affirmed. Vadnais argues that the court abused its discretion in modifying Studeman's child-support obligation. We disagree.

Basic Support

Vadnais argues that the district court abused its discretion in modifying basic support. Minn. Stat. § 518A.34 (2010) provides the procedure for determining a parent's presumptive child-support obligation. Basic child support is "determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents." Minn. Stat. § 518A.35, subd. 1(b) (2010).

The district court modified Studeman's basic-support obligation to $656 per month beginning February 1, 2011. The court found that Studeman's monthly gross income is $4,125, and that Vadnais is currently unemployed and receives a temporary-assistance-to-a-needy-family cash grant and that no income may be imputed to her. The court found that based on a combined parental income for child support (PICS) of $4,125, for which Studeman's share is 100%, his basic support obligation is $746 per month. *See* Minn. Stat. § 518A.35, subd. 2 (2010) (providing basic support is divided between parents based on their proportionate share of PICS, and amount of basic support for combined monthly PICS ranging from $4,100-$4,199 and one joint child is $746). But the court also found that because Studeman had been awarded parenting time between 10% and 45% in December 2010, a parenting-time adjustment of 12% applies to his basic-support obligation. *See* Minn. Stat. § 518A.36, subd. 2 (2010) (providing calculation for parenting-time adjustment). Thus, the court found that Studeman's basic-support obligation is $656 per month and properly modified his basic-support obligation.

Vadnais argues that the district court abused its discretion in modifying basic support because the decrease in basic support neither represented a 20% difference nor satisfied the $75 threshold in Minn. Stat. § 518A.39, subd. 2(b)(1) (2010). We disagree.

Section 518A.39, subdivision 2(b), provides that if "the application of the child support guidelines in section 518A.35, to the current circumstances of the parties results in a *calculated court order* that is at least 20 percent and at least $75 per month higher or lower than the current support order," (1) it is presumed that there has been a substantial change in circumstances, and (2) the terms of the current support order "shall be

rebuttably presumed to be unreasonable and unfair." (Emphasis added.) A "calculated court order" is not derived solely from the child-support guidelines under section 518A.35. *Koser*, 809 N.W.2d at 242. The entire calculation of child support includes the amounts calculated for basic support, child-care support, and medical support, making the basic-support obligation "merely one element of a broader court order." *Id.* "[T]he child-support statute contemplates application of the entire calculation found in section 518A.34, including all adjustments made to the guidelines 'basic support' amount, when determining whether the presumption of changed circumstances and the rebuttable presumption of unreasonableness and unfairness are present in a particular case." *Id.* at 242-43.

Thus, to determine whether the statutory presumption arises, district courts must compare the total child-support obligation under the existing order with the total child-support obligation it calculated based on the offered evidence of changed circumstances. Here, Studeman's total obligation under the 2007 order, including basic support and child-care support, was $1,301 per month. Beginning February 1, 2011, Studeman's presumptive total child-support obligation is $656 per month, which is at least 20% less and $75 lower than his total obligation in the 2007 order.

Child-Care Support

Vadnais argues that the district court abused its discretion in retroactively modifying child-care support. "In cases where there is a substantial increase or decrease in child-care expenses, the parties may modify the order under section 518A.39." Minn. Stat. § 518A.40, subd. 4(c) (2010). "Child care support must be based on the actual child

care expenses. The court may provide that a decrease in the amount of the child care based on a decrease in the actual child care expenses is effective as of the date the expense is decreased." Minn. Stat. § 518A.39, subd. 7 (2010). "The statute's use of the term 'must' creates a mandate that child-care support be based on actual child-care expenses." *Jones v. Jarvinen*, 814 N.W.2d 45, 47 (Minn. App. 2012). "The subsequent use of the term 'may' in subdivision 7 is permissive, giving the district court authority to provide a decrease in child-care support that is effective as of the date that the expense is decreased." *Id.*

The county offered evidence that Vadnais's child-care assistance began in April 2007 and ended in July 2008. Studeman alleged that after child-care assistance ceased, Vadnais did not continue to incur any work- or education-related child-care expenses. But the county and Vadnais offered evidence that Vadnais remained a paid employee until August 2010, and Vadnais testified that from August 2010 through October 2010 she worked for an individual starting a nonprofit organization for no wages with the understanding that she would eventually be a paid employee. Vadnais also offered evidence that she currently has education-related child-care expenses that she began incurring in the fall of 2010, when she began training with Jason Becht at RazorWire Solutions to do web-design work.

Vadnais provided a series of documents she alleged verified her child-care expenses for 2008, 2009, and 2010, which consisted of documents signed by Vadnais's adult children, friends, and relatives. Vadnais prepared the documents by reconstructing

her expenses using notations on her past calendars. Many documents are undated and not notarized.

The district court concluded as a matter of law that "[t]he change in child care is a substantial change of circumstances which renders the existing order unfair and unreasonable." The court retroactively modified child-care support for two time periods. First, the court modified child-care support from August 1, 2008, through October 31, 2010, to $384 per month, and second, beginning November 1, 2010, the court modified child-care support to $0 per month.

Vadnais challenges the district court's retroactive reduction from August 1, 2008, through October 31, 2010, asserting that "[t]here was no evidence that the prior order concerning child-care support was unfair or unreasonable to [Studeman]." We disagree.

Significantly, the district court found that Studeman did not satisfy his burden of showing that Vadnais did not have child-care expenses from 2008 through 2010, and accepted Vadnais's evidence to calculate a $600 monthly average for her actual child-care costs from 2008 through 2010. *See* Minn. Stat. § 518A.40, subd. 1 (2010) (stating amount of work- or education-related child care is the "total amount received by the child-care provider"). The court properly divided this monthly average between Vadnais and Studeman based on their proportionate share of the combined PICS during that time period. *See id.* (providing procedure for allocating child-care costs). Thus, the court's retroactive reduction in child care for this period adequately reflects the actual child-care expenses incurred during this period.

Vadnais also challenges the modification eliminating child-care support beginning November 1, 2010, asserting that "[t]here was clear evidence before the court of [Vadnais's] training for future employment," and the district court failed "to make any finding to support the elimination of child[-]care support." We disagree.

"That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). To demonstrate that findings are clearly erroneous, "the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Id.*

Vadnais alleged that she has ongoing education-related child-care expenses. But Vadnais offered only her testimony and two letters from Jason Becht as evidence of her ongoing education. Vadnais said she studies with Becht in his home from 4:00 a.m. to 8:00 a.m. four days a week, she does not pay him, and he has promised to hire her when she is sufficiently trained. She said that during these hours she pays a relative to care for her child in her home.

The district court made several findings concerning the evidence Vadnais offered and found that "[g]iven the evidence presented the child care being utilized for these unusual arrangements does not appear to be education-related child care." "Deference must be given to the opportunity of the [district] court to assess the credibility of the witnesses." *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see* Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the trial court to judge the

credibility of the witnesses."). Because we defer to the district court's credibility determination, the court's finding that beginning November 1, 2010, Vadnais was not incurring education-related child-care costs is not clearly erroneous.

Accordingly, the district court did not abuse its discretion by concluding that the change in child care was a substantial change of circumstances that rendered the existing order unfair and unreasonable or by retroactively modifying child-care support from August 2008 through October 2010 and eliminating it after November 1, 2010.

Affirmed.