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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0231**

In re the Matter of:
Amy Sue Hagen, petitioner,
Appellant,

vs.

Daniel John Schirmers,
Respondent.

**Filed June 23, 2014
Affirmed
Stoneburner, Judge***

Benton County District Court
File No. 05-F3-04-050166

Lori L. Athmann, Jovanovich, Kadlec & Athmann, PLLP, St. Cloud, Minnesota (for appellant)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Reilly, Judge; and Stoneburner, Judge.

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

UNPUBLISHED OPINION

STONEBURNER, Judge

In this child-support matter, appellant-mother challenges the district court's determination of the amount of potential income to be imputed to respondent-father, who was found to be voluntarily underemployed. Mother argues that the district court abused its discretion by failing to give due regard to the statutory factors for determining the amount of potential income, resulting in a determination of potential income that is against logic and the facts on the record. Because the record supports the district court's determination of father's potential income, we affirm.

FACTS

Respondent Daniel John Schirmers (father), claiming change of circumstance due to decreased income, sought reduction of his child-support obligation for the parties' minor child. A Child Support Magistrate (CSM) concluded that father, who is a 50% owner of an unsuccessful concrete business, established a change of circumstances warranting a reduction in child support. The CSM also found that father is voluntarily underemployed. Based on a finding that father "basically has been working as a cement mason and cement finisher," the CSM used occupation data for cement masons and concrete finishers compiled by the Minnesota Department of Employment and Economic Development (DEED) to find that "in [father's] geographic location he has the ability to earn \$21.54 per hour and work 40 hours per week." The CSM ordered father to pay child support based on that imputed income.

Appellant Amy Sue Hagen (mother) moved the district court for review of the CSM's decision and provided a transcript of the hearing. Mother argued that the CSM clearly erred by attributing less income to father than father paid his sole remaining employee and by failing to base father's potential earnings on DEED data for construction managers that she introduced at the hearing to support her argument that father's potential income is \$48.83 per hour, which is the median income of construction managers in the Minneapolis-St. Paul geographic area. The district court affirmed the CSM's decision without additional findings. This appeal by mother followed, challenging only the amount of potential income imputed to father.

D E C I S I O N

1. Scope and standard of review

“When a district court affirms a CSM's ruling, the CSM's ruling becomes the ruling of the district court, and we review the CSM's decision, to the extent it is affirmed by the district court, as if it were made by the district court.” *Welsh v. Welsh*, 775 N.W.2d 364, 366 (Minn. App. 2009). The district court has broad discretion to modify child-support orders. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). We will reverse a district court's child-support order only if “the district court abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record.” *Id.*

2. Sufficiency of findings

After a finding that a parent is voluntarily underemployed, the district court must calculate the parent's child-support obligation based on a determination of potential income, using one of three statutory methods. Minn. Stat. § 518A.32, subd. 1 (2012);

Kuchinski v. Kuchinski, 551 N.W.2d 727, 729 (Minn. App. 1996) (reversing and remanding a finding of imputed income determined by using a method not provided for by the statute now codified at Minn. Stat. § 518A.32, subd. 2 (2012)). In this case, the record and the district court’s findings demonstrate that the district court properly determined father’s potential income based on his “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,” as provided in Minn. Stat. § 518A.32, subd. 2(1).

Mother makes three arguments supporting reversal of the district court’s findings. First, mother argues that the district court abused its discretion by failing to use the salary data for construction managers to determine father’s potential income. Mother supports her argument by reference to her testimony that, based on her personal knowledge of father’s work experience, it is consistent with a salary at management level, and father’s testimony that he (1) bids on jobs for his corporation; (2) manages the jobs; (3) interacts with people in getting subcontractors and contractors lined up; (4) employs and supervises subcontractors when needed; (5) works with the general contractor to determine materials needed; and (6) orders materials. Mother asserts that the record demonstrates that the district court’s imputation of income to father as a laborer is against logic and a misapplication of the law.

Second, mother argues that because father has been paying an employee, whom he considers to be a partner, \$25 per hour, it is against logic and the facts for the district court to impute earnings below \$25 per hour to father.

Third, mother argues that the district court's failure to make findings demonstrating consideration of father's potential earnings in construction management and specifically identifying the geographical location it considered require reversal and a remand for additional findings. We disagree with all of mother's arguments.

Although not expansive or detailed, the findings demonstrate that the district court considered father's work history and his occupational qualifications in light of prevailing job opportunities and earnings levels in the community, and the findings are supported by evidence in the record. Father's testimony supports the finding that he is a "hands-on" laborer in his business, doing whatever needs to be done to complete a job. To the extent that the record supports mother's contention that father possesses management skills in his field, the record contains no evidence of job opportunities in the community for construction-management employees. Father testified that there is no work available, many people in his line of work have been laid off, he has laid off all but one employee, and profit margins have been cut "to hardly anything." Father testified that he has looked for work on the internet, Craigslist, in newspapers and through his contacts in the industry. Father testified that if he closes his business he would look for work in concrete construction. He testified that even if he could get a job with a company he worked for years ago for \$17 per hour, he would not be able to work many hours because he would be "low on the totem pole."

Although the district court did not specifically identify the salary survey it relied on or the geographic area it considered, mother does not dispute that DEED data show "\$21.54/hr" as the median state-wide wage for cement masons and concrete finishers.

This finding is consistent with father's testimony that he has worked throughout the state and reflects a balancing of the Twin Cities' median wage of \$23.49/hr and Saint Cloud's median wage of \$18.39/hr. DEED, Detailed Occupation Data, <https://apps.deed.state.mn.us/lmi/projections/detail.asp?code=472051&geog=2701000000>. The fact that father, in his unsuccessful business, pays one employee \$25 per hour is not conclusive evidence that father could obtain employment at this level and does not make the district court's findings of father's potential income at a lower rate clearly erroneous.

"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). On this record, we cannot conclude that the district court acted against logic or the facts on record in determining father's income potential. Although the district court's findings could have been more detailed, mother has not persuaded us that the district court misapplied the law or failed to consider the statutory factors relevant to a determination of father's income potential.

Affirmed.