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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0168**

In re the Marriage of:
Mechelle M. Lund, petitioner,
Appellant,

vs.

Jeffrey W. Lund,
Respondent.

**Filed November 26, 2018
Affirmed
Johnson, Judge**

Chisago County District Court
File No. 13-FA-10-25

Mechelle M. Lund, Forest Lake, Minnesota (*pro se* appellant)

Jeffrey W. Lund, Zimmerman, Minnesota (*pro se* respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Tracy M. Smith, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Mechelle M. Lund moved to modify the child-support obligation of her former husband, Jeffrey W. Lund. The district court denied the motion on the ground that the parties' circumstances had not substantially changed. On appeal, Mechelle argues that the district court erred in its finding of Jeffrey's gross income by not including the income of

his current wife, who owns a company for which Jeffrey works. We conclude that the district court did not err by rejecting Mechelle's argument that Jeffrey's wife's income or the income of her company should be included in his gross income. Therefore, we affirm.

FACTS

The parties were married in 1999. They have three children who were born in 2000, 2003, and 2004. During the marriage, Jeffrey was a self-employed truck driver, and Mechelle was a stay-at-home mother.

In 2010, Mechelle petitioned for dissolution of the marriage. The marriage was dissolved in October 2011. At that time, the district court ordered Jeffrey to pay Mechelle \$1,725 per month in basic child support. In April 2012, after Jeffrey filed for bankruptcy, the district court granted Jeffrey's motion to modify the original child-support award and ordered him to pay Mechelle \$676 per month in basic child support. That amount grew to \$708 per month due to cost-of-living adjustments.

In September 2017, Mechelle moved to modify Jeffrey's child-support obligation. Her motion was based on evidence that, since 2012, Jeffrey has worked as a truck driver for a company, Lund Transport, Inc. (LTI), that is owned by his current wife, Schelley Lund. Mechelle argued that Schelley's income from LTI or LTI's net income should be included in Jeffrey's gross income for purposes of calculating his child-support obligation. In response to the motion, Jeffrey submitted three years of his personal income tax returns and LTI's income tax returns as well as an affidavit in which Schelley stated that no person other than her "has ever had an ownership interest in" LTI.

Mechelle's motion was assigned to a child-support magistrate. At an evidentiary hearing in November 2017, both Mechelle and Jeffrey testified. In a five-page order, the district court denied Mechelle's motion to modify Jeffrey's basic child-support obligation. The district court rejected Mechelle's argument by making the following findings:

It . . . appears to this court that [Schelley] commenced Lund Transport partly because of [Jeffrey's] prior financial difficulties. The court was not provided with any evidence to indicate that [Jeffrey] owns any part of Lund Transport and all he does is "drive truck" with his spouse performing all of the duties of Lund Transport including the bookkeeping, making sales calls, hiring other independent contractors, obtaining supplies, etc. [Mechelle] asserted that since the parties are married that half of her income from Lund is his income. The court does not agree with that assertion. The court has not been provided with any evidence to indicate that [Jeffrey] is in reality a part-owner, much less a 50% owner of Lund, and thus none of Lund's profits (or losses) will be attributed to [Jeffrey].

In light of those findings, the district court determined that Jeffrey's gross income should not include either Schelley's income or the net income of LTI. Using each party's gross income and the child-support guidelines, the district court calculated Jeffrey's presumptively appropriate guideline child-support obligation to be \$790 per month. Because the newly calculated amount is not more than 20 percent greater than Jeffrey's existing obligation of \$708 per month, the district court concluded that there is no statutory presumption requiring modification. Accordingly, the district court denied Mechelle's motion to modify Jeffrey's basic child-support obligation. Mechelle appeals.

DECISION

Mechelle argues that the district court erred by denying her motion to modify Jeffrey's child-support obligation.

To determine the existence and amount of a basic child-support obligation, a district court must determine the gross income of each parent. Minn. Stat. §§ 518A.29, .34(a), (b)(1) (2016). The district court must subtract certain credits from gross income to determine each parent's parental income for purposes of child support. Minn. Stat. § 518A.34(b)(1), (2). The district court must refer to statutory guidelines to determine the presumptively appropriate amount of basic child-support and must calculate each parent's proportional share of that amount. Minn. Stat. § 518A.35, subd. 2 (2016). The district court then must consider certain statutory factors to determine whether to deviate from the presumptive child-support obligation. Minn. Stat. § 518A.43 (2016); *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013).

A district court may modify an existing child-support obligation if the moving party shows that either the obligor or the obligee has experienced a substantial change in circumstances that makes the existing obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2016). An irrebuttable presumption of a substantial change in circumstances arises if a new application of the child-support guidelines would result in a child-support obligation that is at least 20 percent more or less and at least \$75 more or less than the amount of the existing obligation. *Id.*, subd. 2(b)(1); *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009). The moving party bears the burden of showing both a substantial change in circumstances and that the substantial change makes the existing obligation unreasonable and unfair. *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002).

This court applies a clear-error standard of review to a district court’s findings of fact concerning the parties’ gross income for child-support purposes. *Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984); *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002). We apply a *de novo* standard of review to a district court’s ruling on a motion to modify child support to the extent that the appellant’s argument is based on an interpretation of the child-support statute. *See In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015); *Hubbard County Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 227 (Minn. App. 2007).

In this case, Mechelle contends that the district court erred by finding that Jeffrey’s gross income does not include either Schelley’s income from LTI or the net income of LTI. For child-support purposes, a parent’s gross income includes “any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income under section 518A.30, . . . and potential income under section 518A.32.” Minn. Stat. § 518A.29(a). But, a party’s gross income “*does not include the income of the obligor’s spouse and the obligee’s spouse.*” Minn. Stat. § 518A.29(f) (emphasis added). Both parties have an obligation to provide accurate financial information in child-support proceedings, and the district court “may consider credible evidence from one party that the financial affidavit submitted by the other party is false or inaccurate.” *See* Minn. Stat. § 518A.28(a)-(c) (2016).

The district court properly applied these legal principles. The district court properly sought to determine Jeffrey’s gross income but not Schelley’s gross income. *See* Minn. Stat. § 518A.29(a), (f). The district court considered whether Jeffrey’s financial

submissions were false or inaccurate on the ground that Jeffrey had shifted income from himself to Schelley or to LTI, but the district court determined that there was no falsity or inaccuracy. The district court found that Jeffrey has no ownership interest in LTI and that Schelley actually manages LTI while Jeffrey's role is limited to driving, for which he is paid on a contractual basis. The district court noted that LTI is more successful than the sole proprietorship Jeffrey previously operated, which resulted in bankruptcy.

The district court's findings are supported by the evidence in the record. Schelley stated in an affidavit that she is the sole owner of LTI. Jeffrey testified that Schelley "does everything that's required as an owner" of LTI and that he only drives a truck as an independent contractor. LTI's records show that Jeffrey is an independent contractor. Jeffrey's income tax records and other financial records for 2014, 2015, and 2016 support the district court's finding that his monthly gross income is \$3,753. Mechelle did not introduce any evidence that directly contradicts Jeffrey's evidence. She simply attempted to challenge the credibility of Jeffrey's evidence through cross-examination. In light of the evidence presented by the parties, the district court did not clearly err by finding that Jeffrey's gross income does not include Schelley's gross income or the net income of LTI.

Mechelle also appears to argue that the district court erred by not recognizing that LTI is marital property. She cites a statute that governs the division of marital property upon the dissolution of a marriage. *See* Minn. Stat. § 518.58 (2016). That statute simply has no application to a finding of gross income for purposes of child support. Thus, her secondary argument fails as a matter of law.

In sum, the district court did not err by denying Mechelle's motion to modify Jeffrey's child-support obligation.

Affirmed.