

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1345**

In re the Marriage of:
Ellen Johnson, petitioner,
Respondent,

vs.

Bradley Johnson,
Appellant.

**Filed May 20, 2013
Reversed and remanded
Halbrooks, Judge**

Marshall County District Court
File No. 45-FX-04-000011

Denise A. Sollund, Brink, Sobolik, Severson, Malm & Albrecht, P.A., Hallock,
Minnesota (for respondent)

Alan B. Fish, Dennis H. Ingold, Alan B. Fish, P.A., Roseau, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Kirk, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's order modifying his child-support obligation, arguing that the district court miscalculated his gross income by imputing an overstated amount of in-kind income to him. Because the district court's calculation of appellant's gross income was based on clearly erroneous findings, we reverse and remand.

FACTS

Appellant Bradley Johnson and respondent Ellen Johnson dissolved their marriage in 2004. Appellant was ordered to pay \$1,000 per month in child support as a result of the dissolution. Respondent earns approximately \$4,000 per month as a probation officer. Appellant is a farmer and the sole shareholder of his farming corporation. Appellant pays himself in cash (an annual salary of \$12,000) and in commodities—a pay structure that reduces his Social Security tax burden. Appellant sells the commodities that he receives from the corporation in his personal name and retains the resulting sale proceeds as wages. Appellant also earns income from rental property, which is reflected on his personal tax returns, and he routinely borrows money from his corporation to pay personal expenses, which is reflected on his corporate tax returns. Consequent to this earnings structure, appellant's income fluctuates significantly from year to year.

As indicated in appellant's corporate tax returns, appellant's corporation reported "other income" (on line 10) and "other deductions" (on line 26) every year for the five-year period of 2007-2011. The "other deductions" are explained on the tax forms simply

as “Farm Misc Deductions.” Appellant’s tax returns include no further documentation or explanation as to what comprised these deductions or on what basis they were deductible.

On the suspicion that appellant’s income had increased since their marriage dissolution, respondent subpoenaed appellant’s individual and corporate tax returns for the four-year period of 2007-2010. After reviewing those records, respondent moved the district court for an increase in appellant’s child-support obligation. In an affidavit submitted to the district court, respondent explained that, based on her review of appellant’s tax documents, she believed that the corporation’s line 26 “other deductions” were “not reasonable and necessary farm expenses” and, as such, should be considered in calculating his child-support obligation. In support of her argument, respondent noted that appellant “has repeatedly used his farm account for personal reasons” and “pays off most of his personal bills through the farm account.” In response, appellant moved for a reduction in his child-support obligation.

The district court held a hearing on the parties’ motions in which respondent, appellant, and appellant’s accountant Mark Wilson testified. Appellant also submitted to the district court his individual and corporate tax returns for the five-year period of 2007-2011. Wilson testified regarding appellant’s corporate and individual tax returns. He explained that appellant withdraws money from his corporation to pay personal expenses, which is treated as a shareholder loan, the outstanding balance of which is indicated on line 7 of Schedule L of the corporation’s tax returns. Wilson also testified that the farm expenses listed on Schedule F of the corporate tax returns were ordinary and necessary business expenses and included fuel, seed, fertilizers, and insurance premiums. But he

did not testify about what expenses comprised the corporation's line 26 deductions or whether they were for necessary and ordinary business expenses.

The district court concluded that respondent's gross income for child-support purposes is \$3,898 per month. Because appellant's income significantly fluctuates from year to year, the district court averaged appellant's earnings from 2007-2011 to determine his gross income for support purposes. In doing so, the district court first calculated appellant's personal income as the amount of wages plus rents received, which totaled \$140,757 (in 2007); \$182,966 (in 2008); \$163,449 (in 2009); \$74,697 (in 2010); and \$86,926 (in 2011). The district court found that the "other income" reported on line 10 of appellant's corporate tax returns reflects the personal loan that appellant received from the corporation, further noting that line 10 totaled \$444,989 in 2007 and had increased over the next four years by \$214,361. Under the belief that this amount represented the shareholder loan to appellant, the district court concluded that appellant borrowed an average of "\$53,590 per year as in-kind payments from the corporation over a period of four taxable years." The district court then added appellant's average personal income (per its determination based on wages plus rents received) to the in-kind payments it imputed to him to arrive at appellant's average gross income.

Based on these calculations, the district court determined that appellant's average monthly income is \$14,385 and that the combined parental income of the parties is \$18,283. The district court concluded that appellant's pro rata share of basic child support is \$1,488 per month and his pro rata share of his daughter's health and dental insurance is \$127, for a total monthly obligation of \$1,615.

Appellant moved for amended findings and/or a new trial, objecting to the district court's calculation of his gross income. The district court held a hearing on the motion in which appellant argued, among other things, that the amount of in-kind income imputed to appellant was overstated. The district court denied appellant's motion. This appeal follows.

D E C I S I O N

Whether to modify child support is within the district court's broad discretion and we will not alter that decision unless it was resolved in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). We will affirm the district court's findings on income for child-support purposes so long as "those findings have a reasonable basis in fact and are not clearly erroneous." *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002) (quotation omitted).

A self-employed parent's income for child-support purposes is the amount of "gross receipts minus costs of goods sold minus ordinary and necessary business expenses." Minn. Stat. § 518A.30 (2012). The person seeking to deduct an expense from their income has the burden of proving, if challenged, that the expense is ordinary and necessary for the operation of the business. *Id.* In-kind payments received during the course of employment, self-employment, or the operation of a business must be included as income if such payments reduce personal living expenses. Minn. Stat. § 518A.29(c) (2012).

Appellant challenges the district court's imputation of income to him based on the difference in the "other income" reported on line 10 of his corporate tax returns from

2007-2011. It is undisputed on appeal that the district court erred by interpreting line 10 to be representative of the loan that appellant received from his corporation. The district court inaccurately stated in its decision that appellant testified to this fact. But when asked whether line 10 reflected the shareholder loan, appellant testified that he was unable to answer the question. And appellant's accountant explained that the outstanding amount of the loan is reflected on line 7 of Schedule L of the corporate tax returns and that line 10 "strictly" indicates the farm's gross receipts and in "no manner" reflects the shareholder loan to appellant. Schedule L indicates that appellant borrowed \$21,344 from his corporation from 2008-2011. Upon this record, the district court's finding that appellant personally received \$214,361 in loan proceeds from 2008-2011—the amount that the line 10 income increased during that period—is clearly erroneous and against logic and the facts in the record.

Respondent invites us to overlook the district court's error, however, because appellant "admitted" on cross-examination that he borrowed about \$300,000 during the period in question:

Q: [A]s the tax returns reflect, since 2007 [the] amount [of the shareholder loan] has increased about \$300,000; is that correct?

A: If that's what the tax forms say, I imagine it is. Yes.

Not only is appellant's testimony contradicted by his corporate tax records, it reveals that appellant lacked direct knowledge of how much he had borrowed and merely sought to defer to his tax records on that issue. The district court recognized this and disallowed any further questioning of appellant about the amount of the loan. Furthermore, the

district court's imputation of in-kind income to appellant was not based on appellant's testimony—it was expressly based on the amounts reported on line 10 of his corporate tax returns and the district court's concomitant determination of what those amounts represented.

On this record, we conclude that the district court erred by overstating the amount that appellant received in shareholder-loan proceeds during the relevant time period and by imputing that amount to him as income. This warrants reversal. On remand, the district court shall recalculate appellant's gross income for the purposes of determining his child-support obligation and, in so doing, shall utilize line 7 on Schedule L of appellant's corporate tax returns for determining the amount that appellant borrowed from his corporation during the years in question. The district court may, in its discretion, reopen the record to receive additional evidence and argument.

Reversed and remanded.