STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2048

In re the Marriage of:
Valerie A. Blaeser, f/k/a Valerie A. Fiscus, petitioner,
Respondent,

vs.

Larry D. Fiscus,
Appellant,

and

County of Dakota, intervenor,
Respondent.

Filed October 14, 2008
Affirmed
Halbrooks, Judge

Dakota County District Court
File No. F9-99-7387

Valerie A. Blaeser, 606 Sibley Memorial Highway, Mendota Heights, MN 55118 (pro se respondent)

Steven T. Hennek, Timothy D. Lees, Hennek, Klaenhammer & Lees, P.A., 2585 Hamline Avenue North, Suite A, Roseville, MN 55113 (for appellant)

James C. Backstrom, Dakota County Attorney, Sandra M. Torgerson, Assistant County Attorney, Northern Service Center, One Mendota Road West, Suite 220, West St. Paul, MN 55118 (for respondent Dakota County)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

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

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to modify his child-support obligation on the grounds that the district court (1) applied the incorrect statute in denying his motion and (2) abused its discretion by refusing to modify his child-support obligation following the emancipation of his oldest child. We affirm.

FACTS

Appellant Larry Fiscus and respondent Valerie Blaeser were married on September 18, 1987; their marriage was dissolved 13 years later on March 23, 2000. In the dissolution judgment and decree, respondent was awarded sole legal custody (with some specified limited legal custody rights to appellant) and sole physical custody of the parties' four children. Appellant stipulated that his net monthly income based on his self-employment as a painter/maintenance worker was approximately $3,750; respondent was employed as a waitress, earning a net monthly income of approximately $1,200. Neither party's expenses were stated. Appellant was ordered to pay monthly child support of $1,000 for four years, through February 2004. Starting March 1, 2004, the terms of the dissolution judgment increased appellant's child-support obligation to $1,500 per month for one year. Both parties agreed that the amounts and dates of child support were absolute and agreed to waive the right to seek modification of child support until March 1, 2005. The district court further stated:

> In the event that either party experiences a significant change of circumstances following March 1, 2005, that party shall retain the right to seek modification of the child support

> according to Minnesota Law. If no modification is granted, the child support shall continue to be paid by the [appellant] at a rate of $1,500.00 per month, until the last minor child reaches the age of 18 years, becomes emancipated, graduates from high school, or enlists in active military service.
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> In the event that a child remains in high school beyond the age of 18 years, and continues their education and resides with the custodial parent, the responsibility for continuation of child support shall remain, but no longer than the child attaining the age of 20 years.
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> Upon emancipation of each child, the child support obligation of [appellant] shall be reduced in a percentage consistent with Minnesota Child Support Guidelines.

On October 27, 2005, Dakota County moved to modify appellant's child-support and medical-support obligations. From October 1, 2003, through October 1, 2005, a total of $14,269.14 in public assistance had been provided for the children. The county's motion for modifying appellant's child support was based on an estimate of appellant's income derived from general salary information for experienced painters such as appellant.[1] Appellant did not appear at the December 12, 2005 motion hearing or provide any verification of his income to the district court. The district court found that respondent's current gross monthly income was $780. Her monthly expenses for herself and four children were found to be $2,995.63. At the time of the hearing, appellant owed more than $38,000 in child support. His last payment of child support occurred more than two years earlier, in May 2003, when he paid a lump sum of $28,000 in response to a civil-contempt order.

[1] Dakota County sought to impute income of $46,212 to appellant—the median-expected salary for a Painter III (experienced painter) in Minneapolis/St. Paul.

Because the parties' children received non-cash public assistance in the form of MinnesotaCare and Dakota County did not receive notice of the parties' stipulated agreement in the dissolution judgment or have an opportunity to be heard as required by Minn. Stat. § 518.551, subd. 5 (2004), and because the medical-support provision in the judgment was not enforceable, the district court modified the terms of the judgment and ordered appellant to pay $100 per month in medical support, effective December 1, 2005.[2] But because the district court concluded that there was no evidence of a substantial change in appellant's income, it denied the county's motion to modify appellant's child-support obligation. In addition, the district court specifically noted that any child-support arrears did not merge with its order and that appellant should continue to make a monthly payment toward the arrears in an amount equal to 20% of his ongoing child-support obligation.

On April 27, 2007, following the emancipation of the parties' oldest child, appellant moved to modify his child-support obligation. In response to the motion, the county calculated appellant's income using the $5,000 per month gross-income figure that appellant claimed at the time of the dissolution judgment.

Appellant submitted an affidavit, asserting that he was employed by Bacalar Bay Engineering with a gross yearly income of $30,000. Following a hearing, the district court made the following detailed findings in a June 27, 2007 order:

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[2] The district court noted that although the income information provided by the county differed from appellant's stipulated income in the dissolution judgment, appellant did not "file any verification as to his current income . . . [and] [h]e has not provided any documentation to support a claim that there has been a change in circumstances." As a result, the district court did not modify appellant's child-support obligation.

2. [Appellant] is currently the CEO of Bacalar Engineering, according to the company's web site. [Appellant] denies he is the CEO and claims he is an employee with an employment contract that pays him $30,000 annually. The company is located in Medford, Wisconsin. The company manufactures a router table "designed for small commercial shops, serious amateur woodworkers, and vocational schools." [Appellant] claims he sleeps at the business and teaches employees there English as a second language and woodworking. Bacalar is a limited liability corporation. [Appellant] failed to submit any financial statements from the company but claims it has indebtedness of $300,000. [Appellant] also reported a 17% interest in a hotel in Mexico evidenced by $70,000 in stock. The hotel is currently on the market for sale.

3. [Appellant] has current child support arrears of $60,801.51, medical arrears of $1,165.73, and spousal maintenance arrears of $3500.

4. [Respondent] works as a paraprofessional with ISD 197. She works 173 hours per year earning $16.23 per hour. Her gross monthly income is $1404 per month. [Respondent] has been so employed for a number of years. She averages six hours per day so that she can attend to the needs of the parties' four children.

5. [Appellant] did not provide wage statements, tax returns, pay stubs, or financial statements for Bacalar Engineering except one copy of an alleged pay check dated 5-15-07 signed by Robert somebody and an employment agreement signed on behalf of the company by Joe, BBE. His employment agreement began effective May 1, but when he appeared before Judge Asphaug in December of 2006 he was "self-employed at a shop in Medford." He identified himself as a master woodworker and his shop was "under the umbrella of an industry." The name of the business, with the same address as Bacalar Engineering, was "under the name of Joe Getty, Plastic Decorating." [Appellant] has stated that he has health

> and hospitalization insurance available for the four children through his employment, but he has provided no evidence of the policy or that the children are named insureds on the policy. The employment agreement does not mention a health insurance benefit.
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> . . . .
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> 9. Pursuant to the former child support guidelines, a parent with net monthly income of $3750 would pay 35% of that amount for three children, or $1312.50 per month. The parties' stipulation and Judgment and Decree provided that, "If no child support modification is granted after March 1, 2005, [appellant] shall continue to pay $1500 per month until the last minor child reaches the age of 18 or is otherwise emancipated. (The $1500 has been increased by cost of living adjustments.) The J & D goes on to provide that, "Upon emancipation of each child, the child support obligation of [appellant] shall be reduced in a percentage consistent with the Child Support Guidelines. Although these two provisions seem to be at odds, the Court finds that the paragraph regarding reduction as each child emancipates is effective only if there is a modification of child support.

Having concluded that appellant failed to provide credible evidence regarding his claimed income or that he had not self-limited his income, the district court ordered that appellant's child-care obligation continue at $1,500 per month (with cost-of-living increases) under the terms of the dissolution judgment until the parties' youngest child emancipates. Appellant moved for a new trial and/or amended findings, which the district court denied. This appeal follows.

D E C I S I O N

Appellant argues that the district court erroneously applied the 2004 version of the relevant child-support statute rather than the current version when it denied his motion to

modify his child-support obligation. The construction and applicability of a statute is a question of law, which we review de novo. *Meritt v. Mendel*, 690 N.W.2d 570, 572 (Minn. App. 2005).

Appellant asserts that the district court applied Minn. Stat. § 518.551 (2004), instead of Minn. Stat. § 518A.26-.78 (2006), when it stated in its June 27, 2007 order:

> Pursuant to the former child support guidelines, a parent with net monthly income of $3750 would pay 35% of that amount for three children, or $1312.50 per month. The parties' stipulation and Judgment and Decree provided that, "If no child support modification is granted after March 1, 2005, [appellant] shall continue to pay $1500 per month until the last minor child reaches the age of 18 or is otherwise emancipated."

The district court's findings of fact do refer to the former child-support statute and its application to appellant's claimed income. But the district court did not rely on Minn. Stat. § 518.551 when it denied appellant's motion. Instead, the district court denied appellant's motion because appellant "failed to provide credible evidence . . . that he has gross income of $2,500 per month and that he has not self-limited his income."

The district court illustrates that it considered the language of the current statute by citing Minn. Stat. § 518A.75, subd. 1(b), for its language that provides the district court with an ability to waive the requirement for a cost-of-living increase in the event that an obligor's income or occupation does not provide for cost-of-living increases. We find no basis to support appellant's argument that the district court applied the incorrect version of the relevant child-support statute. *See Grundtner v. Univ. of Minn.*, 730

N.W.2d 323, 334 (Minn. App. 2007) (stating that the appellant bears the burden of providing a record that demonstrates the claimed errors).

Appellant's primary argument is that the district court abused its discretion by denying his motion to reduce his child-support obligation. According to appellant, the plain language of the dissolution judgment requires that his child-support obligation be reduced upon emancipation of each of the parties' children.

The dissolution judgment contains two passages that appellant asserts are conflicting and that the district court acknowledges "seem to be at odds." The first passage states:

> In the event that either party experiences a significant change of circumstances following March 1, 2005, that party shall retain the right to seek modification of the child support according to Minnesota Law. If no modification is granted, the child support shall continue to be paid by [appellant] at a rate of $1,500.00 per month, until the last minor child reaches the age of 18 years, becomes emancipated, graduates from high school, or enlists in active military service.

This language clearly permits a party to seek a modification after March 1, 2005, due to a significant change in circumstances. But if no modification is granted, the district court stated that appellant's monthly obligation of $1,500 continues until the last minor child reaches the age of 18 or is otherwise emancipated. The language in this passage of the dissolution judgment is similar to the statutory language in Minn. Stat. § 518A.39, subd. 5(b), which states that a "child support obligation for two or more children that is not a support obligation in a specific amount per child continues in the full amount until the emancipation of the last child . . . or until further order of the court."

Here, the child-support award in the dissolution judgment does not specify an amount per child and is instead a general amount.

The passage that appellant contends is conflicting states: "Upon emancipation of each child, the child support obligation of [appellant] shall be reduced in a percentage consistent with Minnesota Child Support Guidelines." By using the term "shall" in this sentence, the discretion of the district court is seemingly limited, and it is required to reduce appellant's child-support obligation by a guideline amount whenever one of the parties' children emancipates. This apparent conflict with the first passage was resolved by the district court's statement in its order that "the paragraph regarding reduction as each child emancipates is effective only if there is a modification of child support." With this construction of the dissolution judgment, the district court gave full effect to the language of the first passage.

While the term "shall" is traditionally a mandate that a district court must follow, Minn. Stat. § 645.44, subd. 16 (2006), we conclude that the district court's interpretation of the dissolution judgment is an appropriate exercise of its broad discretion in child-support matters. If the stipulated terms of a judgment conflict with the best interests of the children, the best interests of the children take precedence over any stipulated terms, and a district court is free to give the conflicting terms in the dissolution judgment little weight. *Sydnes v. Sydnes*, 388 N.W.2d 3, 7 (Minn. App. 1986); *see also Gordon v. Gordon*, 356 N.W.2d 436, 437-38 (Minn. App. 1984) (holding that child support may be modified, provided the best interests of the child are considered). Although the district court did not explicitly state that disregarding the term "shall" in the dissolution judgment

is in the best interests of the children, a fair reading of the district court's multiple orders in this matter underscores our conclusion that the district court considered the children's best interests in its ruling on appellant's motion. *See Sydnes*, 388 N.W.2d at 7.

Appellant argues that even if the district court properly construed the dissolution judgment, the emancipation of his oldest child, in addition to his current income, renders the previous support obligation unreasonable and unfair, warranting modification. Emancipation of a child is an event that constitutes a "substantial change in circumstances" for purposes of modifying a child-support order. Minn. Stat. § 518A.39, subds. 2, 5. But a substantial change in circumstance is only the first step of modification determination; a party moving to modify the child-support award must also show that the previous terms of the award are unreasonable and unfair. *Id.*, subd. 2. The party moving for child-support modification can create a rebuttable presumption that the previous terms of the award are unreasonable and unfair if the "application of the child support guidelines in section 518A.35, to the current circumstances of the parties results in a calculated order that is at least 20 percent . . . higher or lower than the current support order" or "the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party." *Id.*, subd. 2(b)(1), (5).

Appellant asserts that he has met this burden and thus created a rebuttable presumption that his $1,500 monthly child-support obligation is unreasonable and unfair based on his submissions to the district court. We disagree. The district court concluded that appellant "has provided no credible evidence regarding his income or occupation." Without more evidence to support his claim that the previous award is unreasonable and

unfair, the district court acted within its discretion in denying his request for modification. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997).

Affirmed.