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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0231**

In re the Marriage of: Huyen Thi Chung, petitioner,
Appellant,

vs.

Phuong Khai Chung,
Respondent.

**Filed September 15, 2009
Reversed and remanded
Stoneburner, Judge**

Anoka County District Court
File No. 02F906010409

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Considered and decided by Toussaint, Presiding Chief Judge; Stoneburner, Judge;
and Collins, Judge.*

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant mother challenges the district court's sua sponte downward deviation from respondent father's presumptive child-support obligation of \$984 per month to \$260 per month. Because the district court's findings supporting the downward deviation are inadequate to explain why the deviation is necessary or how it serves the best interests of the children and do not permit meaningful review of the district court's exercise of discretion, we reverse and remand.

FACTS

Appellant Huyen Thi Chung (mother) and respondent Phuong Khai Chung (father) terminated their marriage in October 2008 by an agreement that was incorporated into the judgment of dissolution. The parties stipulated that mother's gross monthly income (GMI) and reasonable expenses are \$5,477 and \$4,230 respectively, father's GMI and reasonable expenses are \$5,405 and \$4,551 respectively. The parties agreed (1) to joint legal custody of their two children; (2) to a formula for allocating child-care costs; (3) that mother will continue to provide the children's medical and dental insurance with coverage available through her employment; (4) that each will be responsible for one-half of the deductible and non-insured medical and dental expenses for the children; and (5) that each will receive the income-tax exemption for one child. Mother was awarded a home in Eagan that the parties had purchased in anticipation of their separation.

The parties submitted the issues of physical custody and parenting time to the district court for trial. The amount of child support was also submitted to the district

court, but neither party argued for a departure from child-support guidelines: each presumed child support would depend on the award of parenting time. After the trial, each submitted a child-support worksheet to the district court based on stipulated incomes, PICS¹ and the amount of parenting time proposed by each party. Mother requested that father's parenting time be less than 45%, resulting in guideline support of \$984 to mother. Father requested 50% parenting time resulting in guideline support of zero for each party.

The district court awarded father physical custody of the children for six out of every 14 overnights, giving father 42.9% of the total parenting time under the guideline formula for calculating percent of parenting time. *See* Minn. Stat. § 518A.36, subd. 1 (2008) (providing in relevant part that: “[t]he percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent”). The district court ordered father to pay \$260 per month for child support, and, without stating the presumptive support amount, acknowledged that this award constitutes a downward deviation from support guidelines. The district court noted the parties' respective incomes and the amount of parenting time ordered as a basis for its sua sponte deviation from the guidelines. The district court made the following findings with respect to the deviation:

- a. The earnings, income, circumstances and resources of each parent, including real and personal property are

¹ PICS is the acronym for “parental income for determining child support,” and “means gross income minus deductions for nonjoint children allowed under section 518A.33.” Minn. Stat. § 518A.26, subd. 15 (2008).

sufficient to provide the children with adequate and proper care and support if the downward deviation is ordered;

b. The extraordinary medical needs of [daughter] are currently being met and will continue to be properly met even if a downward deviation is ordered;

c. Recognizing that the parents will have separate households and concomitant extra expense attendant thereto, the children will nonetheless not suffer any reduction in standard of living from that they would have enjoyed had the parents remained together;

d. The tax exemption for the children is not a factor in this dissolution, given the earnings, income, circumstances and resources of each parent.

Mother appeals from the downward deviation from the child-support guidelines, arguing that the district court's findings are inadequate to support a deviation from the guidelines that neither party requested.

D E C I S I O N

The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record or it misapplies the law. *Id.*

Mother acknowledges that the district court adopted the stipulated gross-income figures for both parties but argues the district court failed to make other statutorily required findings, such as the parties' PICS, the presumptive guideline amount, and how a deviation would serve the best interests of the children. *See* Minn. Stat. § 518A.37, subd. 2 (2008) (stating that if the district court deviates from the guidelines "the court

must make written findings that state: (1) each parent's gross income; (2) each parent's PICS; (3) the amount of [guideline support]; (4) the reasons for the deviation; and (5) how the deviation serves the best interests of the child").

Mother argues that the district court's failure to make the required findings constitutes an abuse of discretion. Mother points out that neither party requested a deviation from the presumptive-support calculation, and no evidence was introduced on the issue of why there should be a deviation or how a deviation would affect the children's standard of living. Mother argues that the evidence in the record of her financial difficulties weighs against any downward deviation from the child-support guidelines.² Mother asks this court to reverse the district court and impose guideline support, or, in the alternative, remand for the required findings.

Father argues that because the parties had previously stipulated to income and expense amounts, and because the district court had each parent's child-support worksheet containing the statutorily mandated factors to consider in calculating child support and demonstrating the parties' agreement on the calculation of guideline support under each parenting-time schedule presented, this court should presume that the district court made an "informed and reasoned decision" and affirm.

Father argues that the absence of specific findings on PICS and presumptive support is harmless error where those amounts are not disputed. Technical errors do not require remand. *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985).

² The district court found that mother had to have her sister and her sister's fiancé live with her in order to "defer costs," and, in June 2008, mother moved back into her parents' home.

Therefore, we agree with father that the district court's failure to make a specific written finding about PICs and the presumptive guideline support is harmless error. But the district court also failed to make sufficient findings explaining how or why it determined that \$260 is appropriate support in this case or what evidence supports its conclusory findings about the effect of the deviation on the children. Without such explanations, we are unable to review whether the district court abused its broad discretion.

Father speculates that the district court modified his support obligation because he was granted 42.9% of parenting time, which is very close to the level of parenting time at which his presumptive obligation would be zero. *See* Minn. Stat. § 518A.35, subd. 2 (2008) (setting out the guidelines for basic support based on combined PICS and the number of children); Minn. Stat. § 518A.36, subds. 2 (providing a 12 percent parenting expense adjustment for a parent with 10–45 percent of the parenting time, and that parenting time of 45.1 percent to 50 percent is presumed to be equal parenting time), and 3(a) (2008) (providing that if parenting time is equal, the PICS are equal, and the child's expenses are equally shared, no basic support shall be paid). But we decline to substitute speculation for required findings for the purpose of appellate review.

The district court's four findings of fact concerning deviation do not individually or collectively answer the question of how the deviation serves the best interests of the children. Instead, the findings seem to apply a different standard—that such a downward departure will not harm the children. But a “no harm” standard is not the same as a “best interest” standard. Because the district court failed, beyond a cursory reference to the parties' gross incomes and parenting time, to state reasons required under the law for

deviating from the guidelines and awarding \$260 per month in support, we are compelled to reverse and remand for more complete findings. The findings must address why any deviation ordered is in the best interests of the children. The district court, in its discretion, may reopen the record on remand.

Reversed and remanded.