STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1015
A16-1612

Marjorie A. Gomes,
Appellant,

vs.

James D. Meyer,
Respondent,

County of Clay, intervenor,
Respondent.

Filed September 5, 2017
Affirmed in part, reversed in part, and remanded
Cleary, Chief Judge

Clay County District Court
File No. 14-FA-12-913

Marjorie A. Gomes, Sabin, Minnesota (pro se appellant)

James D. Meyer, Layton, Utah (respondent)

Brian J. Melton, Clay County Attorney, Jenny M. Samarzja, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent County)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge; and Toussaint, Judge.*

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

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

CLEARY, Chief Judge

In these consolidated appeals involving a dispute over the modification of two Minnesota child-support orders and enforcement of a Georgia spousal-maintenance order, pro se appellant-mother, Marjorie A. Gomes, argues that the child support magistrate (CSM) erred by: (1) modifying the child-support orders because respondent-father, James D. Meyer, failed to show that the new support orders would result in a child-support calculation at least 20% and at least $75 different from the existing orders; (2) finding that mother was "voluntarily underemployed"; (3) failing to apply Georgia law when calculating the parties' gross incomes for the purposes of determining the amount of child support; (4) failing to apply Georgia law on the accrual of interest to spousal-maintenance arrears when enforcing the order; (5) including the full amount of spousal maintenance ordered in the calculation of the parties' gross incomes, instead of the amount of spousal maintenance actually paid by father and received by mother; (6) reducing father's child-support obligation through a parenting-expense adjustment; (7) failing to include father's bonus in his gross-income calculation; and (8) determining that a child was emancipated for child-support purposes.

We affirm in part, reverse in part, and remand.

FACTS

After 21 years of marriage, mother and father divorced in October 2009 in Georgia. In the Georgia divorce settlement, father agreed to pay mother $2,500 per month in child

support for seven joint children, and $2,500 per month in spousal maintenance from 2010 until 2030.

Mother and the joint children now reside in Minnesota, and father resides in Utah. In March 2012, the Georgia divorce decree was registered in Minnesota. On a motion to modify father's child-support obligation in 2012, the CSM concluded there was a substantial change in circumstances rendering the existing child-support order unfair and unreasonable. The CSM modified the Georgia child-support order, and required father to pay $1,600 per month in child support beginning July 1, 2012, for five joint children.

As a basis for the 2012 modification order, the CSM found that (1) two children were emancipated, (2) mother was "voluntarily underemployed" and had the ability to earn $866.00 per month, and (3) father's monthly income from work decreased to $7,500 from $9,583. Under the Georgia decree, father was still obligated to pay $2,500 per month in spousal maintenance. That $2,500 was subtracted from father's income, resulting in a monthly gross income of $5,000, as calculated pursuant to Minn. Stat. § 518A.29 (2012). The CSM added the $2,500 in ordered monthly spousal maintenance to mother's income, resulting in a gross-income calculation of $3,366. The CSM also awarded father 10%-45% of total parenting time for child-support purposes, resulting in a 12% parenting-expense adjustment, reducing father's child-support obligation to $1,414. Because father did not fully use his parenting time, the CSM ordered an upward deviation, increasing father's child-support obligation to $1,600.

In September 2012, mother moved the CSM for review of the 2012 modification order, arguing that the CSM erred by including the full $2,500 in spousal maintenance in her gross-income calculation for child-support purposes because she never regularly received the full amount from father. The CSM denied mother's motion, ruling that because mother has a right to spousal-maintenance arrearages, and father has a legal obligation to pay, money not received one month will be received eventually. Mother did not appeal the 2012 order.

In November 2015, the county moved for child-support modification, requesting a reduced child-support obligation for father. At the February 2016 modification hearing, mother moved: (1) to dismiss the county's motion because it failed to prove under the modification statute that application of the child-support guidelines to the parties' current circumstances would result in a new obligation at least 20% and at least $75 per month different than the existing order; (2) to include father's bonus in his gross-income calculation; and (3) to calculate her gross income using only the amount of spousal maintenance that she actually received.

The CSM denied all of mother's motions. Mother's gross-income calculation remained $3,366, an amount that included the full $2,500 ordered for spousal maintenance. In his March 1, 2016 order, the CSM again concluded that the full $2,500 in ordered spousal maintenance, not the actual amount paid and received, should be accounted for in the parties' gross-income calculations for the purpose of calculating child support. The CSM reasoned that the amount of spousal maintenance actually paid was a "moving target"

month to month, and that any amount not paid by father was still owed to mother. The CSM acknowledged that the 20%/$75 difference threshold was not met to create a presumption that the existing order was unreasonable or unfair, but that the emancipation of one child caused a substantial change in circumstances that rendered the existing child-support order unreasonable and unfair. The CSM again found that mother was voluntarily underemployed and imputed potential income to her. The CSM did not include father's 2015 bonus in the calculation of father's gross-income. The CSM again awarded father a 12% parenting-expense adjustment, but deviated upward and ordered father to pay a total of $1,500 per month for child support.

In late March 2016, mother filed a motion for review in district court of the March 1 modification order. In her motion for review, mother objected to the 12% parenting-expense adjustment, asserting that the adjustment was unfair because father rarely had overnights with the children. Mother demonstrated that father owed her significant spousal-maintenance arrears and often failed to pay her the full spousal-maintenance obligation of $2,500 per month. By February 2016, father owed mother $70,948 in spousal-maintenance arrears that had accumulated since 2009. Mother submitted records showing that since 2010 she has consistently received less than the full $2,500 due in

monthly spousal maintenance.[1] In April 2016, the district court affirmed the CSM's March order.

In June 2016, the county moved to modify father's child-support obligation because of the emancipation of the child E.J.M. At the modification hearing, mother argued that E.J.M., who was then 19 years old and had graduated from high school, should not be considered emancipated because of his special needs and disabilities.

On August 8, 2016, the CSM modified the child-support order. The CSM found that mother presented insufficient evidence to show E.J.M. was incapable of self-support, concluding that E.J.M was no longer a "child" for child-support purposes. The new child-support-obligation calculation, based on one less child, did not result in a 20%/$75 difference, but the CSM concluded that there was a substantial change in circumstances rendering the existing child-support order unreasonable and unfair because E.J.M. was emancipated. The calculation of mother's gross income remained the same. Father was ordered to pay $1,293.00 per month in child support beginning July 1, 2016.

[1] In 2011, mother received a total of $3,992.39 for spousal maintenance, with an average monthly payment of $332.69. In the years following, mother received spousal maintenance in varying amounts:

2012—$12,118.81 (monthly average of $1,009.90)
2013—$23,311.86 (monthly average of $1,942.65)
2014—$21,766.43 (monthly average of $1,813.86)
2015—$23,905.81 (monthly average of $1,992.15)
2016 (Jan. and Feb. only)—$2,804.43 (monthly average of $1,402.21)

Mother now appeals the district court's April 2016 order and the CSM's August 2016 order.

D E C I S I O N

I. Threshold to Modify an Existing Child-Support Order

Mother argues that the CSM erred in both of the 2016 orders by modifying child support because the new child-support calculations did not result in at least a 20%/$75 difference from the existing orders.

Appellate courts review orders modifying child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). When a district court affirms a CSM's decision, the CSM's decision becomes the decision of the district court and we review that decision by the district court. *See Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004) (explaining appellate review of decisions made in the expedited child-support process). While a district court enjoys broad discretion in ordering modifications, it abuses its discretion when it acts outside the statutory limits set by the legislature, or when it reaches a "clearly erroneous conclusion that is against logic and the facts on record." *Haefele*, 837 N.W.2d. at 708 (quotation omitted).[2]

[2] Here, the district court affirmed the CSM's March 1, 2016 order after mother filed a motion for review. The CSM's August 8, 2016 order was not reviewed by the district court because mother did not move for district-court review. Pursuant to *Kilpatrick*, 673 N.W.2d at 530 n.2, we review the CSM's March 1, 2016 decision as if it was the district court's decision, and we review the CSM's August 8, 2016 decision on its own. For simplicity, we will refer to the decision-maker in both cases as the CSM.

A district court may modify an existing award for child support if the moving party shows both a substantial change in circumstances and that the changed circumstances render the existing child-support order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2016); *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002). The party seeking modification of a child-support order has the burden to prove a substantial change in circumstances. *Gorz v. Gorz*, 552 N.W.2d 566, 569 (Minn. App. 1996).

The terms of a child-support order may be modified upon the emancipation of the child, when the emancipation makes the terms of the current order "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a)(8). If the application of the child-support guidelines to the current circumstances of the parties would result in a calculated obligation that is at least 20%/$75 different from the existing order, a rebuttable presumption exists that the existing support obligation is unreasonable and unfair, and an irrebuttable presumption exists that there has been a substantial change in circumstances. Minn. Stat. § 518A.39, subd. 2(b)(1); *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009).

Mother argues that a moving party's failure to show that current circumstances would generate a support obligation at least 20%/$75 different than the existing obligation precludes modification of the existing support obligation. But because satisfaction of the 20%/$75 threshold creates only presumptions (an irrebuttable presumption of substantially changed circumstances and a rebuttable presumption that the existing support obligation is unreasonable and unfair), the lack of those presumptions does not preclude a decision-maker, on a proper record, from ruling that there is, in fact, a substantial change in

circumstances that renders the existing support obligation unreasonable and unfair. We reject mother's argument.

Here, the CSM based his March 1 and August 8 orders to modify child support on the fact that, in both instances, a child had been emancipated. Although mother challenges the emancipation determination in the August 2016 order, mother does not challenge this reason as being legally insufficient to justify modification. Appellate courts decline to reach an issue in the absence of adequate briefing. *State, Dep't of Labor & Industry v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). Because the issue was not adequately briefed, we do not address whether the emancipation of a child, on its own, is a legally sufficient reason to modify a child-support order.

In sum, the CSM did not abuse his discretion in modifying the child-support orders despite the fact that the moving party did not demonstrate a 20%/$75 difference.

II. Imputing "Potential Income" to Mother

Next, mother challenges the CSM's finding that she was voluntarily underemployed, resulting in potential income being imputed to her for purposes of calculating gross income under Minn. Stat. § 518A.29 (2016). *See* Minn. Stat. § 518A.32 (2016) (providing methods of determining "potential income"). Whether a parent is voluntarily unemployed or underemployed is a finding of fact, which we review for clear error. *Welsh v. Welsh*, 775 N.W.2d at 364, 370 (Minn. App. 2009).

"If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be

calculated based on a determination of potential income." Minn. Stat. § 518A.32, subd. 1. Potential income is determined by considering

> (1) the parent's 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; . . . or
>
> (3) the amount of income a parent could earn working 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher.

Id., subd. 2(1), (3). However, a parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis if the status is temporary and will ultimately lead to an increase in income, or if the parent has made a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child. *Id.*, subd. 3(1)-(2).

After considering the fact that mother cares for children with special needs, the CSM determined in its modification orders that mother had the ability to work 20 hours per week at $10 an hour, and that her potential income was $866 per month. Mother argues that she submitted evidence and testimony that she made a bona fide career change as a paralegal, and that her lower wages during her internship "will be more than offset with increased future earnings." Mother testified at the February and July 2016 hearings about her experience working at her attorney's law office and her development of paralegal skills.

The CSM briefly touched on the issue by finding that although mother asserted she received "non-cash income" for her internship, "no income is here assigned to [mother's] 'internship' with the [law office]. The evidence presented is insufficient to determine any

value to the internship." These findings and conclusions, though, do not address the relevant statutory factors under Minn. Stat § 518A.32, subd. 3, of whether mother's internship would "ultimately lead to an increase in income," or whether the internship represented a "bona fide career change" that outweighs the adverse effect of mother's diminished income on the children. *Id.*, subd. 3(1)-(2).

Accordingly, we remand for the CSM to make findings on the statutory factors and readdress whether mother is voluntarily underemployed under Minn. Stat. § 518A.32, subd. 3.

III. Application of Minnesota's Substantive Law to Modification of an Issuing State's Child-Support Order Under the Uniform Interstate Family Support Act (UIFSA)

Mother next challenges the CSM ruling that Minnesota substantive law dictates the child-support calculation in the 2016 modification orders.

Both Minnesota and Georgia have adopted the UIFSA, which governs inter-state child-support matters. Minn. Stat. §§ 518C.101-.905 (2016); Ga. Code. Ann. 19-11-100 to -191 (West 2016). Whether Minnesota or Georgia substantive law applies to the child-support calculation is a choice-of-law question, which this court reviews de novo. *Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 4 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). The issue raised by mother—whether Minn. Stat. §§ 518C.604, .611(c) require a Minnesota court to apply Georgia law to calculate child support when modifying a Georgia child-support order—requires us to construe the meaning of various provisions

of the UIFSA. We review issues of statutory interpretation de novo. *In re Welfare of S.R.S.*, 756 N.W.2d 123, 126 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008).

The goal of all statutory interpretation is to ascertain and effectuate the intent of the legislature. Minn. Stat. § 645.16 (2016); *Christianson v. Henke*, 831 N.W.2d 532, 536-37 (Minn. 2013). Our supreme court noted in *Christianson*:

> [T]he first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. In determining whether a statute is ambiguous, we will construe the statute's words and phrases according to their plain and ordinary meaning. A statute is only ambiguous if its language is subject to more than one reasonable interpretation. Multiple parts of a statute may be read together so as to ascertain whether the statute is ambiguous. When we conclude that a statute is unambiguous, our role is to enforce the language of the statute and not explore the spirit or purpose of the law. Alternatively, if we conclude that the language in a statute is ambiguous, then we may consider the factors set forth by the Legislature [under Minn. Stat. § 645.16(1)-(8)] for interpreting a statute.

Id. (quotations and citations omitted). Further, uniform laws "shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Minn. Stat. § 645.22 (2016). "Accordingly, we give great weight to other states' interpretations of a uniform law." *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

Under UIFSA parlance, Minnesota is the "responding state" and Georgia is the "issuing state," because Minnesota courts were asked to modify a support order filed by a Georgia court. *See* Minn. Stat. § 518C.101(m), (w) (defining both terms). Georgia lost

"continuing, exclusive jurisdiction" over its support order in 2012, when the Georgia order was registered in Minnesota, no party resided in Georgia, and the parties did not consent to continuing jurisdiction before a Georgia court. *See* Ga. Code Ann. § 19-11-114(a) (West 2016) (explaining when Georgia loses continuing, exclusive jurisdiction under the UIFSA).

Minnesota's version of the UIFSA under chapter 518C has multiple provisions addressing choice of law. Minn. Stat. § 518C.303 provides that a responding tribunal in Minnesota must (1) "apply the procedural and substantive law generally applicable to similar proceedings originating in this state" and (2) "determine the duty of support and the amount payable in accordance with the law and support guidelines of this state." In contrast, Minn. Stat. § 518C.604, which is titled as "Choice of Law," provides that the law of the issuing state or foreign country governs "(1) the nature, extent, amount, and duration of current payments under a registered support order; [and] (2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order." Finally, under section 518C.611(c), which governs modification of a child-support order of another state, "[a] tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state."

Collectively, these statutes are subject to multiple reasonable interpretations. For example, mother's reading of Minn. Stat. § 518C.604 to require Minnesota, as the responding state, to apply the law of the issuing state in calculating a child-support obligation, is reasonable because the statute states that the issuing state's law governs the "nature, extent, *amount*, and duration of current payments." (Emphasis added.) But

because Minn. Stat. § 518C.604 requires that the issuing state's law governs the amount of "current payments," this suggests that it only applies to the enforcement of a support order currently in effect. Further, Minn. Stat. § 518C.303 provides that "the duty of support and the amount payable" must be determined in accordance with the law and child-support guidelines of Minnesota. Because the UIFSA statutes addressing choice of law are subject to more than one reasonable interpretation, they are ambiguous.

The Nebraska Supreme Court in *Groseth v. Groseth*, 600 N.W.2d 159, 164 (Neb. 1999), also determined that the same choice-of-law provisions in its version of the UIFSA, which are nearly identical to Minnesota's UIFSA statutes, were ambiguous, and it examined the intent of its legislature. In *Groseth*, the parties divorced in Massachusetts, wife subsequently moved with the children to Nebraska, and husband moved to Texas. *Id*. at 163. Modification of the Massachusetts support order was sought in Nebraska. *Id*. Applying Nebraska's UIFSA statute, a Nebraska district court applied the substantive law of the "issuing state," Massachusetts, in calculating child support. *Id*. at 166.

The Nebraska Supreme Court, however, held that Nebraska's statute—mirroring Minn. Stat. § 518C.604 and governing "the nature, extent, amount, and duration of current payments under a registered support order"—applied only to *enforcement* of the currently registered out-of-state support order, not to modification. *Id*. This is because the Nebraska statute uses the phrase "current payments" to reference the order currently in effect and being enforced. *Id*.

We find the *Groseth* court's reading of this UIFSA section persuasive. Minnesota's statute also states that the issuing state's law applies to "the nature, extent, amount, and duration of *current payments under a registered support order*." Minn. Stat. § 518C.604 (emphasis added). Appellate courts interpret statutes to give effect to all of the statute's provisions so that no word, phrase, or sentence should be deemed superfluous, void, or insignificant. *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015). The phrase "current payments under a registered support order" evinces an intent for the provision to apply only to orders then in effect, not future orders that may result from a petition for modification. The phrase limits the language of section 518C.604 to enforcement of current orders.

Further, section 518C.604 is placed under the heading "Registration and Enforcement of Support Order." While a statute's heading or caption is not part of the statute, Minn. Stat. § 645.49 (2016), the headings are relevant to legislative intent. *Minnesota Exp., Inc. v. Travelers Ins. Co.*, 333 N.W.2d 871, 873 (Minn. 1983). The heading demonstrates an intent that the choice-of-law provisions in section § 518C.604 apply to the enforcement of existing orders, not modification.

Finally, as the court in *Groseth* noted, the comments to the UIFSA's model version of Minn. Stat. § 518C.604 bolster this interpretation. 600 N.W.2d at 167. The comments state:

> A basic principle of UIFSA is that throughout the process the controlling order remains the order of the tribunal of the issuing state or foreign country *until a valid modification*. *The*

> *responding tribunal only assists in the enforcement of that order*. Absent a loss of continuing, exclusive jurisdiction by the issuing tribunal and a subsequent modification of the order, the order never becomes an order of a responding tribunal.

UIFSA 2008 § 604 cmt. (emphasis added). In sum, the language of section 518C.604, directing courts to apply the law of the issuing state, applies to enforcement of support orders under the UIFSA, not to modification.

Minn. Stat. § 518C.611(c) is also not controlling on the choice-of-law question here. In *Groseth*, Nebraska's version of section 518C.611(c) also precluded a Nebraska court from modifying "any aspect of a child support order that may not be modified under the law of the issuing state," and the court further determined that the issuing state certainly could have modified the amount of the obligor's child-support obligation. 600 N.W.2d at 169. Likewise, here, because Georgia law allows the amount of a child-support award to be modified based on a substantial change of circumstances, Ga. Code. Ann. § 19-6-15(k) (West 2016), Minnesota has authority to modify the registered Georgia order on this basis. *Cf. Hennepin County v. Hill*, 777 N.W.2d 252, 257 (Minn. App. 2010) (concluding that district court did not err when it determined it could not modify duration of child-support award pursuant to Minn. Stat. § 518C.611 because issuing state's law did not allow that aspect of order to be modified).

While Minn. Stat. § 518C.611(c) prevents a court in a responding state from modifying any aspect of a support order that cannot be modified under the issuing state's law, the statute does not dictate which state's substantive law applies when an aspect of an

order can be modified. Furthermore, in ascertaining the legislature's intent, we presume that the legislature does not intend an absurd, impossible, or unreasonable result. Minn. Stat. § 645.17 (2016). Mother's reading of Minn. Stat. §§ 518C.604, .611 would result in Minnesota district courts issuing vastly disparate orders by applying the child-support guidelines of 49 other states and foreign countries. Similarly situated parties in Minnesota could end up with very different results, depending on which state's child-support guidelines were applied.

Other UIFSA states have followed *Groseth*'s interpretation. *See, e.g.*, *Crosby v. Grooms*, 10 Cal. Rptr. 3d 146, 151-52 (Cal. Ct. App. 2004) ("[W]hen California assumes continuing, exclusive jurisdiction over a child support order for purposes of modification of that order, it must apply California law to determine the amount of child support owed."); *Batterman v. Bender*, 809 N.E.2d 410, 413 (Ind. Ct. App. 2004) (statute allowing application of issuing state's law applies to enforcement, not modification); *Cook v. Cook*, 758 N.E.2d 1158, 1160 (Ohio Ct. App. 2001) ("Because Georgia law allows the modification of a child support order, the trial court had the authority to modify the child support pursuant to Ohio law, if appropriate.").

Because Minn. Stat. § 518C.604(a) applies to the enforcement of an out-of-state order, and Minn. Stat. § 518C.611(c) does not address which state's substantive law applies, the more general choice-of-law provisions under Minn. Stat. § 518C.303 apply to the modification order. We conclude that the language of Minn. Stat. § 518C.303, providing that a responding court of this state shall "determine the duty of support and the

amount payable in accordance with the law and support guidelines of this state," means that when a Minnesota court modifies an issuing state's child-support order pursuant to the UIFSA, the court applies Minnesota substantive law in calculating a child-support obligation. The CSM appropriately applied Minnesota law.

IV. Application of Georgia Law on the Interest on Arrears

Mother also contends that Georgia law should dictate the amount of interest accruing on the spousal-maintenance arrears. Minn. Stat. § 518C.604 specifically addresses which state's law applies when determining the accrual of interest on arrears. The CSM denied mother's motion, stating that the court had no authority to address a spousal-maintenance issue in an expedited child-support hearing.

Whether the CSM had the statutory authority to address the enforcement of the spousal-maintenance order during an expedited child-support hearing involves interpretation of statutes and court rules, questions that we review de novo. *Nelson v. Nelson*, 866 N.W.2d 901, 903 (Minn. 2015); *Lennartson v. Anoka-Hennepin Ind. Sch. Dist. No. 11*, 662 N.W.2d 125, 129 (Minn. 2003).

Minn. Stat. § 484.702, subd. 1 (2016), provides that the Minnesota Supreme Court "shall create an expedited child support hearing process to establish, modify, and enforce child support; and enforce maintenance." Minn. Stat. § 484.702, subd. 3 (2016), allows the appointment of child support magistrates to preside over expedited child-support hearings. Minnesota's General Rule of Practice for the District Courts 353.01, subdivision 1, provides that proceedings to enforce spousal maintenance, "shall, if

combined with a support issue, be conducted in the expedited process if the case is a IV-D case,[3] except as provided in subdivision 2 and Rule 353.02." Subdivision 2 of Rule 353.02 applies when a proceeding is commenced in district court, and the district court refers support issues to a magistrate with a "clear statement of the issues referred."

Here, mother's case is a IV-D case, and there is no evidence that a district court referred certain specific issues for the CSM to address. The CSM had the authority under rule 353.01 to address both child-support and spousal-maintenance issues at the hearings because mother moved for a specific type of enforcement of her spousal maintenance. Further, the issue of spousal-maintenance enforcement was discussed at the hearings and considered by the CSM when determining how to calculate the parties' gross income to determine child support. Finally, Minn. R. Gen. Pract. 373.01 provides that when a party is seeking a statutory remedy, the proceeding "shall be heard in the expedited process."

The CSM erred in determining that spousal-maintenance enforcement issues could not be addressed at the expedited hearing. We remand so that the CSM can determine whether Georgia law regarding interest accrual to spousal-maintenance arrears applies when enforcing the spousal-maintenance order in Minnesota pursuant to the UIFSA.

[3] "A IV-D case is any proceeding where a party has either assigned to the state the right to receive support because of the receipt of public assistance or has applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4)." *Kilpatrick*, 673 N.W.2d at 531 n.3.

V. Gross-Income Calculation

Mother next argues that the CSM erred in the calculation of the parties' gross incomes for child-support purposes by including the full $2,500 of spousal maintenance ordered, rather than the actual amount of maintenance that father paid and mother received.

Mother's argument requires us to examine the meaning of Minn. Stat. § 518A.29(a), (g), which explains what is included in a party's "gross income" for the purposes of calculating a child-support obligation. We review issues of statutory interpretation de novo. *S.R.S.*, 756 N.W.2d at 126.

We start with the statute's plain meaning. Minn. Stat. § 518A.29(a) provides that "gross income includes any form of periodic payment to an individual, including, . . . spousal maintenance received under a previous order or the current proceeding." Further, Minn. Stat. § 518A.29(g) provides that "spousal maintenance payments . . . ordered payable to the other party as part of the current proceeding are deducted from other periodic payments received by a party for purposes of determining gross income." A literal reading of section 518A.29(a) leads to a conclusion that spousal maintenance actually received by the obligee, as opposed to the maintenance ordered, is included in a gross-income calculation for child support. In contrast, the plain language of "payments . . . ordered payable" under section 518A.29(g) leads to a conclusion that spousal-maintenance payments ordered, not payments actually made, are deducted from the obligor's gross income.

Appellate courts look beyond the statutory language to other indicia of legislative intent when the literal meaning of the words of a statute would produce an absurd result. *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997); *Wegener v. Comm'r of Revenue*, 505 N.W.2d 612, 617 (Minn. 1993). In *Wegener*, the supreme court recognized appellate courts' obligation to follow the plain meaning of the words of a statute when its words are sufficient in and of themselves to determine the purpose of the legislation, but noted there is an equal obligation to reject a construction that leads to absurd or unreasonable results that "utterly depart from the purpose of the statute." *Id.*

Despite, the legislature's use of the wording "spousal maintenance received" under section 518A.29(a), the application of a literal reading of the statute would produce absurd and unreasonable results for several reasons. First, if spousal maintenance actually received, as opposed to maintenance ordered, was included in a gross-income calculation, the obligee could be entitled to a modification of a child-support award each time a monthly spousal-maintenance payment was missed by the obligor. We agree with the CSM that the amount the obligor actually pays is a "moving target" month to month. Disregarding this reality would result in an inconsistent and topsy-turvy child-support system, where a modification motion could be granted one month for a lack of payment and another modification motion could be granted the next month when an obligor payed in full.

Second, under a literal interpretation of Minn. Stat. § 518A.29(a), it is unclear how a court, when entering a judgment of dissolution, would initially calculate child-support and spousal-maintenance obligations as required by Minn. Stat. § 518A.27 (2016), because

at the time of the initial child-support award, the obligor would not have made any payments of spousal maintenance yet in order for a court to accurately calculate gross income. If spousal maintenance ordered is not included in the initial gross-income calculation before a dissolution judgment is entered, the obligor could immediately seek modification once a first payment of maintenance was made.

Third, unlike other sources of income, which can end due to job loss or other circumstances, spousal-maintenance arrearages from a court order will not go away. The obligee of unpaid spousal maintenance has several remedies to secure payment, including initiating contempt proceedings. *See* Minn. Stat. §§ 518A.64-.75 (2016).

Mother relies on *Haefele*, 837 N.W.2d at 710, and *Lee v. Lee*, 775 N.W.2d 631, 638 (Minn. 2009), for the proposition that payments must be "received" to be included in a parties "gross income." In *Haefele*, the supreme court noted that "the Legislature's use of the term 'payment' in [section 518A.29] generally means that a benefit must be actually received by the parent, as opposed to merely vested or owed, in order to constitute income." 837 N.W.2d at 710. In *Haefele*, however, the supreme court held that in order to properly calculate a party's gross income under Minn. Stat § 518A.29, when the source of income is distributed earnings from a corporation, courts must use the calculation method under Minn. Stat. § 518A.30 (2016). *Id.* at 710-11. *Haefele*'s holding is inapposite, as it deals with a different statute from the one at issue here. In *Lee*, the supreme court held that pension benefits are properly considered income and are included in a gross-income calculation at the time the benefits are received, not vested or earned. 775 N.W.2d at 638.

But the type of income here distinguishes this case from *Lee* and *Haefele*. Unlike the pension income in *Lee*, or the distributed earnings in *Haefele*, mother's right to spousal-maintenance income stems from a court order that also awarded child support. Accordingly, mother's remedy to correct father's under- or nonpayment is through the enforcement mechanisms listed under Minn. Stat. §§ 518A.64-.75, and not through a recalculation of her income each time there is under- or nonpayment.

Finally, our reading of Minn. Stat. § 518A.29(a), (g) is in accord with the principle that gross income is only the starting point for a child-support analysis and "the obligation calculated by applying gross income to the child support guidelines is merely a rebuttable presumption." *Haefele*, 837 N.W.2d at 714. Minn. Stat. § 518A.43 (2016) allows a court to deviate from the presumptive child-support obligation after considering, inter alia, "all earnings, income, circumstances, and resources of each parent," as well as any extraordinary financial needs of the children. The statute's explicit intent is to "prevent either parent or the joint children from living in poverty." *Id*., subd. 1. Accordingly, where an obligor is not paying or underpaying spousal maintenance, resulting in increased support needs, the child-support statute allows a court to account for this and deviate upward.

In sum, the CSM properly included spousal maintenance ordered, instead of spousal maintenance actually received, in mother's gross-income calculation, and properly deducted spousal maintenance ordered from father's gross-income calculation.

VI. Father's Parenting-Expense Adjustment

Mother contends that the CSM erred in awarding father a 12% parenting-expense adjustment. The CSM has broad discretion when deciding child-support modification issues. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009).

The parenting-expense adjustment statute provides that "[e]very child support order shall specify the percentage of parenting time granted to or presumed for each parent," and that "[f]or purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order." Minn. Stat. § 518A.36, subd. 1(a) (2016). If the percentage range of parenting time scheduled is less than 10%, there is no adjustment of the obligor's basic child-support obligation. *Id.*, subd. 2 (2014).[4] If the percentage range of parenting time scheduled is 10% to 45%, then the obligor is awarded a 12% deduction of the obligor's basic child-support obligation. *Id.*

Here, under the divorce decree, father has the "right to visit with the minor children at all times mutually agreed upon by the parties," and was awarded "less than 180 days per year" in parenting time. The Georgia decree did not specify the exact amount of parenting time awarded to father. The CSM reasoned that because father's parenting time is less than 50%, and because there is a rebuttable presumption under Minnesota law that a parent is

[4] The 2016 version of Minn. Stat. § 518A.36, subd. 2, has a different calculation, but it does not go into effect until August 1, 2018. 2016 Minn. Laws, ch. 189, art. 15, § 20, at 1120-21.

entitled to receive at least 25% of the parenting time, Minn. Stat. § 518.175, subd. 1(g) (2016), the Georgia decree is deemed to have awarded father between 10% and 45% parenting time. Per statute, this finding resulted in a 12% parenting-expense adjustment.

Mother contends that the CSM erred because father exercises less than 1% of his parenting time. However, a parent is due a parenting-expense adjustment for parenting time scheduled, even if a parent does not exercise that parenting time. *Hesse*, 778 N.W.2d at 103. The CSM's findings and conclusions are not against logic and the facts in the record, and the court did not abuse its discretion.

VII. Father's Bonus

Mother argues that the CSM erred in not including father's bonus in the calculation of his gross income. Under the gross-income calculation statute, Minn. Stat. § 518A.29(a), the relevant inquiry in determining whether money is gross income is whether it is a "periodic payment to an individual." *Haefele*, 837 N.W.2d at 710. The record shows that father received one bonus in 2015 after being hired at his current employer in 2012. Father said that he had not been promised a bonus going forward. Mother did not bring forth any evidence showing that father expected or received yearly bonuses that may have been considered periodic payments under the gross-income calculation statute. The CSM did not err in not including father's one-time bonus in his gross-income calculation.

VIII. Emancipation Determination

Finally, mother contends that (1) the CSM lacked jurisdiction to declare a developmentally disabled child emancipated, and (2) even if the CSM had jurisdiction, he

erred as a matter of law in determining that E.J.M. was no longer a child for child-support purposes. While mother uses the word "jurisdiction" in her brief, she does not identify whether she is referring to personal jurisdiction, subject matter jurisdiction, in rem jurisdiction or something else, but her argument centers on the CSM's authority under rules and statutes. Accordingly, we construe mother's argument as a challenge to the CSM's statutory authority to declare a child emancipated.

A. *Authority to Declare a Child Emancipated*

This question requires interpretation of statutes and court rules, questions of law that we review de novo. *Nelson*, 866 N.W.2d at 903; *Lennartson*, 662 N.W.2d at 129.

"Child support magistrates shall have the powers and authority necessary to perform their duties in the expedited process pursuant to statute and rule." Minn. R. Gen. Pract. 367.03. In order to compute a child-support obligation, a CSM must determine the "combined basic support obligation by application of the guidelines in section 518A.35." Minn. Stat. § 518A.34(b)(4) (2016). That section, in turn, provides that the basic child-support obligation "shall be determined by referencing the guideline for the appropriate number of joint children." Minn. Stat. § 518A.35, subd. 1(b) (2016). The number of joint children affects the amount of basic support ordered. *Id.*, subd. 2. Further, the statute defines a "child," for the purposes of a child-support order, as an individual under 18 years of age, an individual under 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support. Minn. Stat. § 518A.26 (2016). The CSM had the authority to determine the number of joint children

at the time of the modification order to determine the basic child-support obligation. Because mother alleged E.J.M. was incapable of self-support, the CSM had the statutory authority to determine whether E.J.M. was a child or emancipated for child-support purposes.

B. *E.J.M.'s Status*

Mother contends the district court erred in finding that E.J.M. is not a "child" for child-support purposes due to his disabilities. Whether a person is a "child" or emancipated for child-support purposes is a factual determination, which we review for clear error. *Streitz v. Streitz*, 363 N.W.2d 135, 137 (Minn. App. 1985).

An individual incapable of self-support continues to be a "child" for purposes of child-support and maintenance. Minn. Stat. 518A.26, subd. 5; *Maki v. Hansen*, 694 N.W.2d 78, 83 (Minn. App. 2005).

In support of his conclusion that E.J.M. is not a child for child-support purposes, the CSM found that E.J.M. (1) had a job coach to assist him in finding appropriate employment, (2) had expressed the goal of living independently and finding a job, (3) has had limited employment in the past, (4) has been over 18 for almost one year with no guardian or conservator in place, (5) has not applied for SSI, and (6) "has many recognized strengths including his intelligence and ability to read."

Mother presented evidence that E.J.M. is diagnosed with autism, ADHD, Asberger's syndrome, major depressive syndrome, and mood dysregularity. The county social worker determined that, because of his diagnoses, E.J.M requires significantly more

assistance with activities of daily living as compared to his peers. A member of E.J.M.'s individual education plan team wrote in a letter that E.J.M. was deficient in the area of executive functioning "which impact[s] his ability to plan, initiate, problem solve, organize, and carry out goal directed activities," and that E.J.M.'s needs adversely affect his capacity for independent living, requiring "significant adult support."

While many of the facts support mother's contention that E.J.M. is incapable of self-support, the CSM's factual findings are not clearly erroneous, and his conclusion that E.J.M. is able to support himself with the help of a jobs program has factual support in the record. Based on the facts that the CSM relied on, the CSM did not err in determining E.J.M. is no longer a child for child-support purposes.

In conclusion, we affirm in part for the following reasons. The CSM did not err in modifying the child-support orders despite the fact that the newly calculated child-support obligations were not at least 20% and at least $75 different than the existing orders. The CSM did not err in applying Minnesota's substantive law in calculating a child-support obligation when modifying an issuing state's child-support order under the UIFSA. The CSM did not err in calculating the parties' gross incomes. The CSM did not abuse his discretion in reducing father's child-support obligation through a parenting-expense adjustment. The CSM correctly determined that father's one-time bonus was not part of his gross income as defined by statute. The CSM's finding that E.J.M. is no longer a "child" for child-support purposes is not clearly erroneous.

We reverse in part for the following reasons. The CSM's finding that mother was "voluntarily underemployed" was premature and erroneous because the court did not consider the relevant statutory factors. The CSM had the statutory authority to rule on mother's motion to apply Georgia law on the accrual of interest to spousal-maintenance arrears.

On remand, the CSM must (1) consider the relevant statutory factors regarding whether mother was engaged in a bona fide career change or whether her internship would ultimately lead to an increase in income in the future, and (2) determine whether Georgia law on accrual of interest to spousal maintenance applies to the enforcement of the Georgia spousal-maintenance order in Minnesota.

Affirmed in part, reversed in part, and remanded.