STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1982

County of Ramsey, petitioner,
Respondent,

Pakou Lee, petitioner,
Respondent,

vs.

Eric J. Vacko,
Appellant.

Filed September 11, 2017
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-F1-00-051006

John J. Choi, Ramsey County Attorney, Fue Lo Thao, Assistant County Attorney, St. Paul, Minnesota (for respondent County of Ramsey)

Pakou Lee, St. Paul, Minnesota (pro se respondent)

Eric J. Vacko, St. Paul, Minnesota (pro se appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

In 2012, a child support magistrate (CSM) suspended appellant Eric Vacko's child-support and arrears obligations for any month he receives public assistance. In 2016, Vacko was convicted of wrongfully obtaining assistance. Respondent Pakou Lee moved to reinstate the previously suspended obligations, arguing that Vacko had not lawfully received public assistance and, therefore, was not entitled to have had his support and arrears obligations suspended. Vacko opposed Lee's motion and moved to modify child support. The district court reinstated Vacko's support and arrears obligations beginning June 2012, denied Vacko's motion to modify, and awarded Lee conduct-based attorney fees.

Vacko argues that the district court erred in (1) denying his motion to modify child support, (2) concluding that he had not lawfully received public assistance from June 2012 to present and reinstating his obligations, and (3) awarding Lee attorney fees. We conclude that (1) Vacko failed to meet his burden to show a substantial change in circumstances warranting modification of child support, (2) the district court properly interpreted the 2012 order as requiring Vacko to have lawfully received public assistance and properly reinstated Vacko's obligations from a portion of the time at issue, and (3) the district court did not abuse its discretion in awarding Lee attorney fees. But we conclude that the district court clearly erred in finding that Vacko did not lawfully receive public assistance from April 2015 to March 2016. We affirm in part, reverse in part, and remand.

FACTS

Vacko and Lee are the parents of L.L. The parties were never married. In December 2000, a CSM determined Vacko's gross income to be $1,733 a month and ordered Vacko to pay child support of $250 a month—a downward deviation—and medical support.

In 2012, Vacko moved to modify child support based on his receipt of temporary-assistance-for-needy-families (TANF) benefits. Vacko's child-support obligation had increased to $328 per month due to cost-of-living adjustments. The CSM found that Vacko was not employed, received TANF benefits, and had no potential income that could be imputed to him. The CSM therefore suspended Vacko's child-support and arrears obligations "for any month he receives cash public assistance." The CSM also determined that all other provisions of the 2000 order remained in full force and effect.

In January 2016, Vacko and his wife were charged with multiple counts of wrongfully obtaining assistance, theft by swindle, and forgery in connection with TANF benefits they received from May 2011 to March 2015. According to the criminal complaint, Vacko was employed at an auto dealership despite his representations that he was not working. Vacko entered an *Alford* plea[1] and was convicted of wrongfully obtaining assistance, theft by swindle, and forgery. Vacko and his wife were ordered to

[1] An *Alford* plea allows a defendant to plead guilty, while maintaining innocence of the charged offense, in order to take advantage of a plea bargain because there is sufficient evidence for a jury to find him guilty at trial. *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970). Minnesota formally recognized the validity of *Alford* pleas in *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977).

pay restitution of more than $141,000 for the public assistance they had wrongfully obtained. Vacko stopped receiving TANF benefits on March 31, 2016.

Lee moved to either (1) reopen the 2012 order based on Vacko's fraud on the court or (2) reinstate the obligations that were suspended under the 2012 order on the grounds that Vacko had not lawfully received TANF benefits. Vacko countered that he had actually received TANF benefits and was not able to work during this time because of several medical conditions. Vacko also moved for a decrease in his child-support and arrears obligations because of his medical conditions.

At a hearing before a CSM, Lee and the county agreed to pursue reinstatement of the obligations under the 2012 order instead of reopening the order based on fraud on the court. In its order, the CSM concluded that "[i]t is reasonable to infer that cash assistance is not received, for purposes of the [2012] order, when it is wrongfully obtained and is required to be repaid by court order." The CSM rejected Vacko's argument that he was unable to work because the CSM found Vacko's medical records not credible. The CSM reinstated Vacko's child-support and arrears obligations beginning June 2012. The CSM also denied Vacko's motion to modify child support, finding that Vacko did not produce sufficient evidence to show that he is unable to work on a full-time basis. The CSM found that Vacko is voluntarily unemployed, imputed a potential gross monthly income of $1,733 to Vacko based on the 2000 order, and concluded that Vacko did not demonstrate that his child-support obligation would be at least 20% or $75 lower than the current support order. Finally, the CSM granted Lee's motion for attorney fees.

Vacko requested that the district court review the CSM's order. The district court affirmed the decision of the CSM.

Vacko appeals.[2]

D E C I S I O N

The district court reviews a CSM's decision de novo. *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001). To the extent that the district court affirms the CSM's decision, the CSM's decision becomes the decision of the district court. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). We review the district court's decision affirming the CSM's order for an abuse of discretion. *Davis*, 631 N.W.2d at 826.

We review questions of statutory interpretation de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). The goal of statutory interpretation is to ascertain the intent of the legislature. Minn. Stat. § 645.16 (2016). The legislature does not intend absurd or unreasonable results. Minn. Stat. § 645.17 (2016).

We will not set aside the district court's findings of fact unless clearly erroneous. Minn. R. Civ. P. 52.01. Under rule 52.01, findings are clearly erroneous only if they are not reasonably supported by the evidence. *City of Golden Valley v. One 1998 Pontiac Grand Prix*, 616 N.W.2d 780, 782 (Minn. App. 2000). We defer to the district court's credibility findings and weighing of the evidence. *Id.*; *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 241 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). We ignore

[2] The county filed a responsive brief in this appeal. Lee did not file a responsive brief.

harmless error and de minimis error. Minn. R. Civ. P. 61 (harmless error); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (de minimis error).

I. The district court did not abuse its discretion in denying Vacko's motion to modify child support.

Vacko argues that the district court abused its discretion in finding that there has not been a substantial change in circumstances for purposes of modifying child support.

The district court may modify the terms of a support order if the moving party shows that there has been a substantial change in circumstances that renders the existing 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 moving party has the burden of proof in support-modification proceedings. *Id.* at 481. We review the district court's decision for an abuse of discretion and will reverse only if the district court reached a conclusion that is against logic and the facts in the record. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013).

Vacko submitted medical records allegedly showing that he is unable to work and has no income. The district court found Vacko's medical records not credible for two reasons. First, the district court found that the records were stale because they were over one year old. Second, the district court found that the records were dated from the period regarding which Vacko was convicted of forgery. Vacko did not produce newer records or testimony from his treating physicians, and he abruptly left the hearing as the parties

were discussing his medical records.[3] Vacko submitted no other credible evidence related to his change in income. We defer to the credibility findings of the district court. *Eisenschenk*, 668 N.W.2d at 241. In light of these credibility findings, Vacko did not demonstrate a substantial change in circumstances. *See* Minn. Stat. § 518A.39, subd. 2(a).

Vacko argues that the district court erred in finding that he was not entitled to a presumption of substantial change. There is a presumption of substantial change if the moving party can demonstrate that the calculated child support is at least 20% or $75 per month higher or lower than the current support order. *See* Minn. Stat. § 518A.39, subd. 2(b)(1) (2016). It is rebuttably presumed that a parent can be gainfully employed on a full-time basis. *See* Minn. Stat. § 518A.32, subd. 1 (2016). Because Vacko moved to modify child support, it was his burden to produce evidence showing that he is entitled to the presumption of substantial change. *Bormann*, 644 N.W.2d at 480-81. In order to benefit from the presumption, Vacko needed to produce credible evidence of his income to show that his presumptive child-support obligation would be at least 20% or $75 lower than the current order. *See* Minn. Stat. § 518A.34(b)(1) (2016) (requiring gross monthly income to determine the obligor's basic support obligation). Vacko did not meet his burden.

[3] Vacko argues that the district court erred in denying his request to submit newer medical records that he obtained for purposes of the district court's review of the CSM's order. On a motion to review a CSM's order, a party may request an order authorizing the party to submit new evidence. Minn. R. Gen. Prac. 377.03, subd. 2(e). But "the parties shall not submit any new evidence unless the child support magistrate or district court judge, upon written or oral notice to all parties, requests additional evidence." Minn. R. Gen. Prac. 377.09, subd. 4. Neither the CSM nor the district court requested Vacko's additional medical records, and Vacko was not entitled to submit them.

While the district court recognized that Vacko failed to meet his burden, the court nevertheless imputed $1,733 of potential income to Vacko based on the 2000 order, calculated Vacko's guideline child-support obligation, and concluded that Vacko failed to demonstrate a presumptive substantial change in circumstances. When calculating a parent's guideline child-support obligation, a district court must determine a parent's potential income if there is no direct evidence of income. Minn. Stat. § 518A.32, subd. 1. Vacko argues that the district court did not follow one of the three prescribed methods to calculate his potential income in determining whether he was entitled to the presumption of substantial change. *See* Minn. Stat. § 518A.32, subd. 2 (2016). But, because this issue arises from Vacko's motion to modify child support, the burden was on Vacko to produce credible evidence of his actual income to establish that his guideline child-support obligation would be at least 20% or $75 lower than the current order. *See Bormann*, 644 N.W.2d at 481. He did not do so. Because Vacko did not meet his burden, the district court was under no obligation to calculate Vacko's guideline child-support obligation using his potential income. Thus, any errors stemming from the calculation of Vacko's potential income are harmless. Minn. R. Civ. P. 61.

We conclude that the district court did not abuse its discretion in denying Vacko's motion to modify child support because Vacko failed to prove a substantial change in circumstances.

II. The district court did not abuse its discretion in reinstating Vacko's suspended obligations for the period of time in which the record shows that he unlawfully obtained public assistance, but clearly erred in finding that Vacko did not lawfully receive public assistance from April 2015 to March 2016.

Vacko argues that the district court abused its discretion in finding that he did not receive TANF benefits from June 2012 to March 2016. The district court interpreted the 2012 order to require Vacko to have *lawfully* received public assistance and found that Vacko was not entitled to suspension of his child-support and arrears obligations from June 2012 onward. The district court reinstated Vacko's suspended obligations from June 2012 to March 2016.

A. The district court properly interpreted the 2012 order to require Vacko to have lawfully received public assistance.

A district court may interpret and clarify a judgment that is ambiguous on its face, but may not interpret an unambiguous judgment. *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986); *Robertson v. Robertson*, 376 N.W.2d 733, 735-36 (Minn. App. 1985). An interpretation of a judgment is not an amendment or modification to the judgment's terms or a challenge to its validity. *Edelman v. Edelman*, 354 N.W.2d 562, 563 (Minn. App. 1984). The interpretation of a judgment is a legal question reviewed de novo. *Gray v. Farmland Indus., Inc.*, 529 N.W.2d 514, 516 (Minn. App. 1995), *review denied* (Minn. June 14, 1995).

A district court may suspend an obligor's child-support and arrears obligations if the obligor receives public assistance. Minn. Stat. § 518A.32, subd. 4 (2016) ("If the parent of a joint child is a recipient of [TANF benefits], no potential income is to be imputed to that parent."); Minn. Stat. § 548.091, subd. 1a(c) (2016) (permitting suspension of interest

on child-support arrears for "a recipient of . . . public assistance based upon need"). These statutes further the legislature's intent of ensuring that child-support orders do not exceed the obligor's ability to pay. Minn. Stat. § 518A.42, subd. 1 (2016). But it would be absurd to construe the statutes to authorize suspension of child-support and arrears obligations when the obligor *unlawfully* receives public assistance because it would encourage obligors to fraudulently obtain public assistance in order to avoid child support. *See* Minn. Stat. § 645.17. We therefore conclude that the statute requires an obligor to have lawfully received public assistance in order for a district court to suspend the obligor's child-support and arrears obligations. Because the statutes require the lawful receipt of public assistance for suspension of child-support and arrears obligations, and because the 2012 order is premised on these statutes, the district court properly interpreted the 2012 order to require Vacko to have lawfully received public assistance in order for his child-support and arrears obligations to be suspended. *Halverson*, 381 N.W.2d at 71.

Vacko argues that the district court's interpretation constitutes a retroactive modification of child support. A modification of support may be made retroactive only with respect to any period during which the moving party has a pending motion for modification. Minn. Stat. § 518A.39, subd. 2(f) (2016). In *Martin v. Martin*, this court held that a district court did not retroactively modify child support when it ordered child support to commence on the date of a previous order. 401 N.W.2d 107, 110-11 (Minn.

App. 1987).[4] On January 17, the district court in *Martin* denied a father's motion for child support because the mother was attending school. *Id.* at 109. But the district court ordered that, when the mother returned to full-time employment, she was to pay support according to the statutory child-support guidelines. *Id.* Unbeknownst to the district court at the time of its January 17 order, the mother had already returned to full-time employment. *Id.* The father again moved for child support, which the district court, in a July order, granted and made effective back to January 17. *Id.* This court affirmed, concluding that the July order did not retroactively modify child support. *Id.*

This case is similar to *Martin* because the 2012 order requires Vacko to pay the previously set child-support and arrears obligations in months that he did not receive public assistance. The 2012 order concluded that Vacko's child-support and arrears obligations would be suspended for any month he receives public assistance. Vacko was still required to pay child support and arrears when he did not receive public assistance. Here, Lee effectively sought enforcement of the 2012 order, not modification. For purposes of enforcement, the 2012 order requires the fact-finder to determine whether Vacko received public assistance in each month for which he claims to be entitled to suspension. The 2016 order is not a retroactive modification of child support; it is an interpretation of whether Vacko received TANF benefits in particular months. *See Edelman*, 354 N.W.2d at 563.

[4] We note that the statutory limits on retroactive modification of support at issue in *Martin* are different than those currently in effect. *Compare* Minn. Stat. § 518.64, subd. 2 (Supp. 1985), *with* Minn. Stat. § 518A.39, subd. 2(f) (2016). But because the relevant portion of *Martin* addressed *whether* the change in support constituted a retroactive modification, rather than the date to which a modification could be retroactive, the differences in the statutes are not dispositive here.

B. The district court did not clearly err in finding that Vacko did not lawfully receive public assistance from June 2012 to March 2015.

Vacko argues that, even if the 2012 order required him to lawfully receive TANF benefits, the district court clearly erred because sufficient evidence did not show that Vacko did not lawfully receive TANF benefits from June 2012 to March 2015.[5] We will set aside the district court's findings as clearly erroneous only if they are not reasonably supported by the evidence. Minn. R. Civ. P. 52.01; *City of Golden Valley*, 616 N.W.2d at 782.

Sufficient evidence supports the district court's finding that Vacko did not lawfully receive TANF benefits from June 2012 to March 2015. The criminal complaint shows that Vacko was charged with wrongfully obtaining assistance from May 2011 to March 2015. A warrant of commitment shows that Vacko was convicted of two counts of wrongfully obtaining assistance. Vacko and his wife were ordered to pay restitution for amounts of public assistance wrongfully received. A fraud schedule shows that Vacko and his wife received over $128,000 in public-benefit overpayments from May 2011 to March 2015 and that Vacko and his wife failed to report a substantial amount of income during this period. A rental application dated December 2013 states that Vacko was employed by an auto dealership as a sales manager, worked over 40 hours per week, and earned $5,000 per month. The district court did not clearly err in finding that Vacko did not lawfully receive

[5] The county argues that Vacko's arguments should be precluded as a result of his criminal convictions. Minnesota courts have not considered whether an *Alford* plea is admissible for issue preclusion in a civil case. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 885 (Minn. 2015) (Lillehaug, J., dissenting). We need not consider whether an *Alford* plea results in issue preclusion because sufficient evidence in this record shows that Vacko unlawfully received TANF benefits from June 2012 to March 2015.

TANF benefits from June 2012 to March 2015 because sufficient evidence supports its finding. *See* Minn. R. Civ. P. 52.01; *City of Golden Valley*, 616 N.W.2d at 782.

Vacko argues that the evidence about his convictions is inadmissible because he entered an *Alford* plea. "A conviction based upon an *Alford* plea generally carries the same penalties and collateral consequences as a conventional guilty plea." *Id.* at 880. Evidence that a party has entered a guilty plea is admissible in a subsequent civil trial, and the Minnesota Supreme Court has never held that a conviction resulting from an *Alford* plea cannot be admitted as substantive evidence. *See Glens Falls Grp. Ins. Corp. v. Hoium*, 294 Minn. 247, 251, 200 N.W.2d 189, 191-92 (1972); *see also Doe 136*, 872 N.W.2d at 881-82 (stating with respect to an *Alford* plea that a district court may admit evidence of a guilty plea but is not required to do so). As the Minnesota Supreme Court noted in *Doe 136*, other courts have permitted the admission of evidence of *Alford* pleas "'for any legitimate purpose.'" *Doe 136*, 872 N.W.2d at 880 (quoting *Armenakes v. State*, 821 A.2d 239, 242 (R.I. 2003)). The district court did not err in admitting evidence of Vacko's *Alford* plea.

Vacko also argues that he submitted sufficient evidence to show that he lawfully received TANF benefits and, in any event, was unable to work during this time period. Vacko submitted documents showing that he received TANF benefits from March 2012 to March 2016. Vacko submitted an affidavit from the owner of the auto dealership, denying that Vacko was an employee of the dealership. Vacko also submitted an affidavit from his wife, stating that she filled out the rental application and was dishonest about the income that Vacko received. Finally, Vacko submitted his medical records, which allegedly show that he is unable to work. Vacko's evidence is contradicted by evidence submitted by Lee.

The district court exercised its discretion in weighing this evidence and concluding that Vacko had not lawfully received assistance from June 2012 to March 2015. *See* Minn. R. Civ. P. 52.01; *Eisenschenk*, 668 N.W.2d at 241.

We conclude that the district court did not clearly err in finding that Vacko did not lawfully receive public assistance from June 2012 to March 2015.

C. The district court clearly erred in finding that Vacko did not lawfully receive public assistance from April 2015 to March 2016.

Vacko argues that the evidence does not support a finding that he did not lawfully receive TANF benefits from April 2015 to March 2016 because he was not convicted of wrongfully receiving assistance for this period. The county concedes that Vacko received TANF benefits from April 2015 to March 2016 and was not convicted of wrongfully obtaining assistance for this time but argues that the district court was not required to limit Vacko's obligation to the period for which he was convicted.

The 2012 order unambiguously provides that Vacko's child-support and arrears obligations are suspended "for any month he receives cash public assistance." The district court concluded that Vacko "is deemed to have not received cash assistance for the purposes of the [2012 order.]" The district court did not make any findings as to why it found that Vacko had unlawfully received TANF benefits from April 2015 to March 2016. Evidence shows that Vacko received TANF benefits from April 2015 to March 2016, and nothing in this record shows that Vacko's receipt of TANF benefits during this period was unlawful. Absent evidence showing unlawful receipt of TANF benefits during this period,

the 2012 order entitled Vacko to suspension of his child-support and arrears obligations from April 2015 to March 2016.

If the district court had found that Vacko committed fraud on the court in 2012, it would have had the option of reopening the entirety of the 2012 order to ensure enforcement of Vacko's child-support and arrears obligations from April 2015 to March 2016. *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). Lee and the county, however, decided not to reopen the 2012 order because, according to Lee's trial attorney, fraud on the court "is a much higher standard," "would be a much more complex solution," and would have required discovery. Lee and the county decided to present this case as a motion to reinstate Vacko's child-support and arrears obligations, which, while a simpler solution, limits their recourse to circumstances in which Vacko did not lawfully receive public assistance.

We conclude that the district court clearly erred in finding that Vacko did not lawfully receive TANF benefits from April 2015 to March 2016 and in reinstating his child-support and arrears obligations from that time period.

III. The district court did not abuse its discretion in awarding Lee attorney fees.

Vacko argues that the district court abused its discretion in awarding Lee attorney fees because he was not criminally charged or convicted for misrepresentations or forgeries in relation to any of these proceedings.[6] The district court awarded Lee attorney fees

[6] The county takes no position on whether the district court erred in awarding Lee attorney fees.

because Vacko's conduct necessitated Lee's motion to reinstate Vacko's child-support and arrears obligations that were suspended under the 2012 order.

A district court may award conduct-based attorney fees against a party "who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2016). Conduct-based attorney-fee awards "are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). Vacko moved to modify child support in 2012 based on his receipt of TANF benefits. From June 2012 onward, Vacko did not pay child support even though he was not lawfully receiving TANF benefits from June 2012 to March 2015. The district court found that Vacko's nonpayment unreasonably contributed to the length and expense of the proceeding by requiring Lee to bring a motion to reinstate Vacko's child-support and arrears obligations. The district court did not abuse its discretion in awarding Lee attorney fees. *Id.*

Affirmed in part, reversed in part, and remanded.