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Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0024

In re the Matter of:
Peter H. Stier, petitioner,
Appellant,

vs.

Debra A. Peterson, n/k/a Debra A. Hershberger,
Respondent,

County of Mower, intervenor,
Respondent.

Filed September 18, 2017
Affirmed
Halbrooks, Judge

Mower County District Court
File No. 50-FA-08-1204

Amber Lawrence, Dittrich & Lawrence, PA, Rochester, Minnesota (for appellant)

Craig M. Byram, Hoversten, Johnson, Beckmann & Hovey, LLP, Austin, Minnesota (for respondent Debra A. Peterson, n/k/a Debra A. Hershberger)

Kristen Nelsen, Mower County Attorney, Megan A. Burroughs, Assistant County Attorney, Austin, Minnesota (for respondent county)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's order, arguing that it was error to (1) attribute his corporation's retained income to him for calculation of child support and (2) require him to provide and pay for the full cost of medical and dental coverage for the dependent children. We affirm.

FACTS

Appellant Peter H. Stier and respondent Debra A. Peterson, n/k/a Debra A. Hershberger have two minor children, one of whom has special needs. In 2011, they stipulated that Stier would pay $1,167 per month in child support, $201 per month toward the children's medical assistance,[1] and 80% of the children's uninsured medical and dental expenses. In May 2016, the county moved to modify Stier's child support under Minn. Stat. §§ 518A.34, .39, .41 (2016). The child-support magistrate (CSM) held a hearing on the motion and instructed Stier to provide supplemental information. After Stier submitted additional documents, the CSM closed the record.

In an order dated August 23, 2016, the CSM granted the county's motion. The CSM found that Stier is the sole owner of Stier Steel Corporation and that Stier Steel paid Stier an annual salary of $49,250 from 2013 to 2015 but that the total gross profits of Stier Steel were $221,259 in 2013, $306,386 in 2014, and $265,994 in 2015. The CSM did not find Stier credible in his assertion that Stier Steel retained most of those earnings for future

[1] Respondent Mower County provides IV-D services to Hershberger, who has primary physical custody of the children.

business expenses, noting that Stier had used retained earnings for an oil investment that was unrelated to the business. Using the formula from Minn. Stat. § 518A.30 (2016), the CSM determined that Stier's average gross monthly income from 2013 to 2015 was $21,379 and ordered Stier to pay $2,280 per month in child support. In addition, noting that Stier has medical and dental insurance for himself that is paid through Stier Steel, the CSM ordered Stier to obtain and maintain dependent medical and dental coverage for the minor children. The CSM found that a medical offset for Stier was not appropriate given "the significant disparity in [Stier's] and [Hershberger's] income." With respect to any unreimbursed and/or uninsured medical expenses, the CSM stated that Stier was responsible for 95% and Hershberger responsible for 5% of the expenses.

Stier moved the district court to review the CSM's order. The district court denied Stier's motion for review and affirmed the CSM's findings of fact, conclusions of law, and order in its entirety. This appeal follows.

D E C I S I O N

I.

Stier contends that the district court incorrectly calculated his gross income for child-support purposes because it included profits that Stier Steel retained. As this court has noted:

> On appeal from an order deciding a motion for review, this court reviews the order from which the appeal is taken . . . and, *to the extent the reviewer of the CSM's original decision affirms the CSM's original decision, that original decision becomes the decision of the reviewer*. *See* Minn. R. Gen. Pract. 378.01 (noting review may be taken from final ruling of CSM "or" order deciding motion for review).

Kilpatrick v. Kilpatrick, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004) (emphasis added). We review a district court's order modifying child support for an abuse of discretion.[2] *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). "A district court abuses its discretion when it establishes a child-support obligation in a manner that is against logic and the facts in the record or when it misapplies the law." *Hubbard Cty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 226 (Minn. App. 2007).

The first step of the presumptive child-support formula is to calculate the gross income of the parties. Minn. Stat. § 518A.34(b)(1). Gross income includes self-employment income. Minn. Stat. § 518A.29(a) (2016). The statute defines self-employment income as "gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30. This definition "does not turn on whether the corporation has 'distributed' the funds, or whether the funds are 'available' to the parent." *Haefele*, 837 N.W.2d at 712.

The district court may depart from this presumption "based on the unavailability of money included in gross income, or based on other facts or considerations that suggest that

[2] Stier frames this issue as one of statutory interpretation of the term "gross income" and argues that the correct standard of review is de novo. But he does not argue interpretation of the statute, only that Stier Steel's retained income should not affect Stier's gross income because the undistributed earnings are retained for legitimate business reasons. Minn. Stat. § 518A.30 leaves this determination to the district court's discretion, and thus it is not a matter of statutory interpretation. *See* Minn. Stat. § 518A.30 (stating that income from self-employment "is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation," and that the district court may exclude from ordinary and necessary expenses "any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support").

the guidelines do not accurately represent the amount of the child-support obligation for which a parent should be responsible." *Id.* at 714. But "[t]he person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary." Minn. Stat. § 518A.30; *see also Bunge v. Zachman*, 578 N.W.2d 387, 390 (Minn. App. 1998) ("There is a presumption that the guidelines will be followed when determining child support; and a party who requests departure from the guidelines should provide evidence that would merit a deviation."), *review denied* (Minn. July 30, 1998). The district court may also exclude from ordinary and necessary expenses "any other business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support." Minn. Stat. § 518A.30.

At the hearing on the county's motion for child-support modification, Stier presented evidence regarding Stier Steel's retained earnings. Stier alleged that the retained earnings were for legitimate business expenses and later supplemented the record with his affidavit, a letter from a CPA who had prepared Stier Steel's tax returns for several years, copies of his tax returns, and a list of his business expenses. But the CSM determined that Stier was not credible in his assertions, in part because he "utilized the retained earnings for [a $71,842 oil investment] that was wholly unrelated to the business expenses." The CSM also noted that Stier Steel functioned "without the benefit of retained earnings without mishap for prior years." On this record, we conclude that the district court did not abuse its discretion when it included Stier Steel's retained profits in Stier's gross income. *Haefele*, 837 N.W.2d at 713.

II.

Stier argues that the district court abused its discretion when it failed to make any findings addressing whether his health-care insurance through his company was "appropriate" for the children under Minn. Stat. § 518A.41, subd. 3, and that the record lacks any evidence that would allow findings addressing the statutory factors. On this point, Hershberger and the county note that the CSM requested the necessary information from Stier, but he failed to provide it. As a result, respondents argue that Stier should not benefit from his failure to provide the CSM with essential information. Stier also challenges the district court's decision to allocate 100% of the cost of the coverage to him.

A. Findings

We review a district court's decision regarding medical support for an abuse of discretion. *Casper v. Casper*, 593 N.W.2d 709, 714 (Minn. App. 1999). In assessing "whether a parent has appropriate health care coverage" for joint children, a district court must consider the comprehensiveness of the health-care coverage, its accessibility, any special needs of the children, and its affordability. Minn. Stat. § 518A.41, subd. 3. To allow the district court to do so, the parties must provide "information relating to dependent health care coverage or public coverage available for the benefit of the joint child for whom support is sought, including all information required to be included in a medical support order under this section." *Id.*, subd. 13(1).

In this case, the county had been providing the children with medical assistance due to the fact that they resided primarily with Hershberger. At the hearing, however, Stier conceded that Stier Steel provided him with medical coverage and stated that he believed

that the company provided medical coverage to its employees as well. As a result, the CSM directed Stier to provide the relevant company insurance information. After Stier failed to do so, the CSM found that "[Stier] has coverage that is paid through his corporation" but that it was "unclear" both whether that coverage included the joint children and whether any coverage for the children was "in place." The CSM then ruled that if no coverage for the children was in place, Stier should obtain coverage for the children through his business. The district court adopted these rulings.

Generally, when addressing a basic support obligation, a district court must make written findings as to each parent's gross income, each parent's parental income for determining child support (PICS), and any other significant evidentiary factors affecting the determination. Minn. Stat. § 518A.37, subd. 1 (2016). While Minn. Stat. § 518A.41, subd. 3, does not explicitly require a district court to make written findings on the medical-support factors, caselaw suggests that, usually, findings regarding those factors may be required. *See, e.g.*, *Rosenfeld v. Rosenfeld*, 311 Minn. 76, 82, 249 N.W.2d 168, 171 (1976) (stating, in a custody dispute, that findings on the statutory factors are required because they "(1) assure consideration of the statutory factors by the family court; (2) facilitate appellate review of the family court's custody decision; and (3) satisfy the parties that this important decision was carefully and fairly considered by the family court"); *Hesse*, 778 N.W.2d at 104 (citing this aspect of *Rosenfeld* in a child-support dispute). But we decline to use the lack of findings on the statutory factors as a basis to reverse the district court in this instance.

First, on appeal, "a party cannot complain about a district court's failure to rule in [his] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Stier refused to produce the insurance information requested by the CSM. Even if caselaw is read to require findings on the statutory factors in the typical case, Stier's conduct in this case precludes him from complaining about a lack of findings.

Second, and more fundamentally, because Stier refused to provide the relevant information, the record lacks the evidence on which the district court could make the missing findings. Stier is functionally arguing that the district court erred by not speculating about medical insurance. We will not reverse the district court because it declined to speculate. *See, e.g.*, *Grigsby v. Grigsby*, 648 N.W.2d 716, 727 (Minn. App. 2002) (affirming a district court's refusal to "speculate" about certain tax consequences, stating that the refusal to do so was "proper[]"), *review denied* (Minn. Oct. 15, 2002); *see also Taflin v. Taflin*, 366 N.W.2d 315, 319 (Minn. App. 1985) (stating, in a child-support dispute, that "[t]his court will not engage in speculation and the father will not be heard to complain when he has failed to provide this court with a reviewable record").

For similar reasons, we will not reverse the district court's requirement that Stier provide medical-insurance coverage for the children. Specifically, Stier's refusal to provide the insurance information sought by the CSM justifies an inference adverse to him on the issue. *See, e.g.*, *Butt v. Schmidt*, 747 N.W.2d 566, 576 (Minn. 2008) (noting, in a

child-support dispute, that "we have stated that if a party is in exclusive possession of evidence and that party fails to produce the evidence, an unfavorable inference may be drawn about that party as to the relevant issue"); *Bollenbach v. Bollenbach*, 285 Minn. 418, 428, 175 N.W.2d 148, 155 (1970) (stating that in dissolution proceedings, parties "must make a full and accurate disclosure of their assets and liabilities" and failure to do so "justifies inferences adverse to the party who conceals or evades"); *Zaldivar v. Rodriguez*, 819 N.W.2d 187, 197 (Minn. App. 2012) (allowing an adverse inference to be drawn in a contempt matter arising out of child-support dispute), *review denied* (Minn. Sept. 25, 2012). Therefore, on this record, we conclude that the district court did not abuse its discretion when it ordered Stier to obtain and maintain medical coverage for the children.

B. Cost

Stier challenges the requirement that he pay for all of the children's medical coverage. The crux of Stier's argument is that, under the relevant part of Minn. Stat. § 518A.41, subd. 5(a), a court "must" apportion the cost of health-care coverage between the parties "based on their proportionate share of the parties' combined monthly PICS," and that "must" is statutorily defined as "mandatory." Minn. Stat. § 645.44, subd. 15a (2016). We reject Stier's argument as it applies to this case.

By statute, "[t]o determine the presumptive child support obligation of a parent, the court shall follow the procedure set forth in [Minn. Stat. § 518A.34.]" Minn. Stat. § 518A.34(a). Under Minn. Stat. § 518A.34, calculating "the presumptive child support obligation" requires the court to calculate the parents' basic, child care, and "medical support" obligations. Minn. Stat. § 518A.34(b)-(e). "Medical support" is defined, in

relevant part, as "providing health care coverage for a joint child." Minn. Stat. § 518A.41, subd. 1(d). Once the various figures are calculated, "[t]he court shall determine each parent's total child support obligation by adding together each parent's basic support, child care support, and health care coverage obligations . . . ." Minn. Stat. § 518A.34(f).

After adding these figures, the district court may elect to deviate from "the presumptive child support obligation computed under section 518A.34." Minn. Stat. § 518A.43, subd. 1 (2016); *see* Minn. Stat. § 518A.37, subds. 1, 2 (2016) (using the same "presumptive child support obligation computed under section 518A.34" language to address findings necessary to make a support award). Thus, the figure from which a district court can deviate is the sum of amounts including the cost of health-care coverage—not any particular component of that sum. For this reason, Stier's argument based solely on the medical-support provisions both misapprehends the figure from which the district court may deviate and reads those medical-support provisions without the greater context of the overall child-support scheme.

Further, as a result of Stier's failure to provide the CSM with information concerning the cost, if any, of medical insurance to Stier Steel employees, it is unknown whether there is a cost to an individual for single or family coverage. Given the lack of evidence regarding whether there are, in fact, any costs to even apportion, as well as the significant disparity in the parties' incomes, any error in not apportioning those possible costs is de minimis. And de miminis errors regarding child support are insufficient to compel a remand. *See, e.g.*, *Hesse*, 778 N.W.2d at 105; *Duffney v. Duffney*, 625 N.W.2d 839, 843 (Minn. App. 2001); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App.

1985); *see also Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (refusing to remand for de minimis error in property division), *review denied* (Minn. Nov. 16, 2010).

Affirmed.