STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0268

Jeremiah John Palmquist, petitioner,
Appellant,

vs.

Stephanie Elizabeth Devens,
Respondent,

Joanne Mary Devens,
Respondent.

Filed December 26, 2017
Reversed and remanded
Halbrooks, Judge

Blue Earth County District Court
File No. 07-FA-14-3679

Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Stephanie Elizabeth Devens, Rock Hill, South Carolina (pro se respondent)

Meghan Maes, Julia Craig, Southern Minnesota Regional Legal Services, Inc., Mankato, Minnesota (for respondent Joanne Mary Devens)

Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

S Y L L A B U S

When a district court awards a father, mother, and grandmother joint physical custody of a child, the presumptively appropriate guideline basic support obligation is calculated based on the parents' combined parental income for child support (PICS) under

Minn. Stat. § 518A.35, subd. 1(b) (2016), and not the parents' individual PICS under Minn. Stat. § 518A.35, subd. 1(c) (2016).

O P I N I O N

HALBROOKS, Judge

Appellant-father challenges the district court's decision to deny his motion to modify child support, arguing that the district court erred as a matter of law by concluding that father's child is not "in the custody of" father for purposes of Minn. Stat. § 518A.35, subd. 1(c). We reverse and remand for recalculation of father's child-support obligation using father and mother's combined parental incomes under Minn. Stat. § 518A.35, subd. 1(b).

FACTS

Appellant Jeremiah John Palmquist (father) and respondent Stephanie Elizabeth Devens (mother) have one child together, L.D.P. Father and mother never married, but father established paternity through genetic testing. L.D.P. lives with respondent maternal grandmother Joanne Mary Devens (grandmother). Father and grandmother live in Minnesota. Mother, who has a nonjoint child also living with grandmother, lives in another state. Father and mother pay child support to grandmother.

In 2014, father, mother, and grandmother reached an agreement on custody and parenting time. Father prepared a proposed stipulated order incorporating the facts and terms of the parties' agreement. In 2015, the district court adopted this stipulated order. The stipulated order provides that it is in L.D.P.'s best interests that father, mother, and grandmother "be granted joint legal custody" and that it is in L.D.P.'s best interests that

father, mother, and grandmother "be granted joint physical custody, subject to the parties' rights to reasonable parenting time." The stipulated order provides that father, mother, and grandmother are awarded joint legal and joint physical custody of L.D.P. and that L.D.P.'s "primary residence" is with grandmother. The stipulated order also includes father's current child-support obligation, which was calculated using father and mother's combined parental incomes and by applying a parenting-expense adjustment.

In 2016, father moved to modify parenting time, primary residence, and child support. The parties stipulated to increasing father's parenting time to at least 45.1% for purposes of calculating child support and to keeping L.D.P.'s primary residence with grandmother, but disagreed on father's new child-support obligation, given the increase in his parenting time. The district court adopted the stipulation to increase father's parenting time but reserved father's motion to modify child support.

At the hearing on father's motion, father argued that he is entitled to a reduction in his child-support obligation due to the increase in his parenting time. Grandmother opposed the motion. The district court denied father's motion, concluding that father's current child-support obligation is not unreasonable and unfair. The district court explained that father's current child-support obligation should have been calculated using father's individual parental income under Minn. Stat. § 518A.35, subd. 1(c), rather than combined incomes under Minn. Stat. § 518A.35, subd. 1(b), because L.D.P. is not "in the custody of" father. The district court reasoned that L.D.P. is not in the custody of father because "[L.D.P.'s] primary residence is with Grandmother and Father has parenting time with the child less than 50 percent of the time." The district court calculated father's child-

support obligation based on his increased parenting time using father's individual parental income and determined that it did not result in "a calculated support obligation . . . that is at least 20 percent and at least $75 per month lower than the current support order." The district court concluded on that basis that there had not been a substantial change in circumstances making the terms of father's current support order unreasonable and unfair and denied father's motion to modify child support. This appeal follows.

ISSUE

Did the district court err as a matter of law by applying Minn. Stat. § 518A.35, subd. 1(c), instead of Minn. Stat. § 518A.35, subd. 1(b), to determine father's child-support obligation when father has court-awarded joint physical custody of L.D.P.?

ANALYSIS

Father argues that the district court erred as a matter of law in denying his motion to modify his child-support obligation. We review a district court's decision whether to modify child support for abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013); *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). We will reverse only if the district court "abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record." *Haefele*, 837 N.W.2d at 708. We review questions interpreting Minnesota child-support statutes de novo. *Id.* "The purpose of all statutory interpretation is to ascertain and effectuate the intention of the Legislature." *Id.*

A child-support order may be modified upon a showing of a substantial change in circumstances that makes the order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2016); *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009). If the

application of the child-support guidelines to the current circumstances of the parties results in a calculated obligation that is at least 20% and $75 different from the existing order, then 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) (2016); *Rose*, 765 N.W.2d at 145.

Father argues that the district court applied the wrong statute in determining whether there had been a substantial change in circumstances making father's current child-support order unreasonable and unfair. Father maintains that the district court improperly used father's individual parental income under Minn. Stat. § 518A.35, subd. 1(c), rather than father and mother's combined incomes under Minn. Stat. § 518A.35, subd. 1(b), for calculating father's new child-support obligation.

Minn. Stat. § 518A.35 (2016) provides the guideline for determining a parent's applicable total child-support figure. *Haefele*, 837 N.W.2d at 708. Under Minn. Stat. § 518A.35, subd. 1(b), "The basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents." But under Minn. Stat. § 518A.35, subd. 1(c):

> If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual parental income for determining child support, not the combined parental incomes for determining child support of the parents.

Father contends that Minn. Stat. § 518A.35, subd. 1(c), does not apply here because he has court-ordered joint physical custody of L.D.P., reasoning that "custody" unambiguously refers to physical custody.

When interpreting a statute, we first determine "whether the statute's language, on its face, is clear or ambiguous." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute is ambiguous if its language is subject to more than one reasonable interpretation. *Id.* But if the statutory language is clear and unambiguous, we "will look only to that language in ascertaining legislative intent." *Haefele*, 837 N.W.2d at 708.

Neither Minn. Stat. § 518A.35 nor the definitions section of chapter 518A defines "custody." The definitions section of chapter 518A defines "[p]rimary physical custody" as "the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child." Minn. Stat. § 518A.26, subd. 17 (2016). Minnesota Statutes chapter 518, which applies to chapter 518A, defines different custody types, including legal custody, joint legal custody, custodial parent, custodian, physical custody and residence, and joint physical custody. Minn. Stat. § 518.003 (2016). "[C]ustodial parent" and "custodian" are both defined as the "person who has the *physical custody* of the child at any particular time." *Id.*, subd. 3(e) (emphasis added). "Physical custody and residence" is defined as "the routine daily care and control and the residence of the child." *Id.*, subd. 3(c). "Joint physical custody" is defined as "the routine daily care and control and the residence of the child is structured between the parties." *Id.*, subd. 3(d).

While chapters 518 and 518A define different custody types, neither defines "custody" alone. *See* Minn. Stat. §§ 518.003, 518A.26 (2016).

When a word is undefined, we look to the word's plain meaning. *In re Welfare of A.S.*, 882 N.W.2d 633, 639 (Minn. App. 2016). "To determine the plain meaning of a word, [courts] often consider dictionary definitions." *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). Custody is defined as the "care and control of a thing or person for inspection, preservation, or security." *Black's Law Dictionary* 467 (10th ed. 2009). Custody is also defined as the "control and care of a person or property, especially when granted by a court." *The American Heritage Dictionary* 449 (5th ed. 2011).

We agree with father that the word "custody" in Minn. Stat. § 518A.35, subd. 1(c), is unambiguous. The plain meaning of custody in the child-support context refers to the care and control of a person granted by a court. *Black's Law Dictionary* 467 (10th ed. 2009); *The American Heritage Dictionary* 449 (5th ed. 2011). "'Joint physical custody' means that the routine daily *care and control* and the residence of the child is structured between the parties." Minn. Stat. § 518.003, subd. 3(d) (emphasis added). "When a word or phrase has a plain meaning, we presume that the plain meaning is consistent with legislative intent and engage in no further statutory construction." *Shire*, 875 N.W.2d at 292.

Under their stipulated custody order, father, mother, and grandmother have joint physical custody of L.D.P., meaning the routine daily "care and control" and the residence of L.D.P. is structured between father, mother, and grandmother. Minn. Stat. § 518.003, subd. 3(d). Parties are bound by their stipulated custody arrangements. *See Nolte v.*

Mehrens, 648 N.W.2d 727, 730 (Minn. App. 2002) ("[T]he label the parties place on their stipulated custodial arrangement is binding."). We therefore conclude that L.D.P. is in the custody of father because father has a court-awarded role in L.D.P.'s care and control.

We decline to read into the statute a requirement that father have at least 50% parenting time or provide L.D.P.'s primary residence for L.D.P. to be "in the custody of" father. First, parenting time is defined as "the time a parent spends with a child *regardless* of the custodial designation regarding the child." Minn. Stat. § 518.003, subd. 5 (emphasis added). Second, grandmother contends that the legislature intended "custody" under Minn. Stat. § 518A.35, subd. 1(c), to mean "primary physical custody," and because she provides L.D.P.'s primary residence, L.D.P. is not in the custody of either parent. Minn. Stat. § 518A.26, subd. 17. But we need not engage in further statutory construction because custody under Minn. Stat. § 518A.35, subd. 1(c), unambiguously refers to court-ordered care and control. *See Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015) ("If the statutory language is unambiguous, [appellate courts] must enforce the plain meaning of the statute and not explore the spirit or purpose of the law."). L.D.P. is "in the custody of" father because the district court granted father joint physical custody of L.D.P.

D E C I S I O N

Minn. Stat. § 518A.35, subd. 1(c), applies only when a child is not in the custody of either parent. Because father has joint physical custody of L.D.P. granted by the district court, the district court erred as a matter of law by applying Minn. Stat. § 518A.35, subd. 1(c), to determine father's child-support obligation. On remand, to determine

whether there has been a substantial change in circumstances making the terms of father's current child-support obligation unreasonable and unfair, the district court shall calculate father's new child-support obligation using father and mother's combined parental incomes under Minn. Stat. § 518A.35, subd. 1(b), and apply the applicable parenting expense adjustment for father having at least 45.1% parenting time.

Reversed and remanded.