This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0141, A18-1594

In re the Matter of:
Ronald Joseph Claeson, petitioner,
Appellant,

vs.

Florence Marie Denais,
Respondent.

Filed September 23, 2019
Affirmed
Worke, Judge

Washington County District Court
File No. 82-FA-16-76

Ronald Joseph Claeson, White Bear Lake, Minnesota (pro se appellant)

Valerie Arnold, Micaela Wattenbarger, Arnold, Rodman & Kretchmer, P.A., Bloomington, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Klaphake, 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

WORKE, Judge

These are consolidated appeals, in which appellant challenges the district court's findings in this custody and support dispute. By notice of related appeal (NORA), respondent challenges the district court's calculation of appellant's future child-support obligations and arrears. We affirm.

FACTS

Appellant-father Ronald Joseph Claeson (father) and respondent-mother Florence Marie Denais (mother) have one minor child together, J.C., born in 2014. The parties lived together when J.C. was born. In March 2015, mother left the home and took J.C. with her.

In 2016, father filed a custody petition, and mother filed a counter-petition. On July 22, 2016, the district court issued its temporary order for relief granting mother temporary custody, implementing a visitation plan, and directing father to pay mother $50 per month in child support.

On July 5, 2017, following a court trial, the district court issued its findings of fact and order, which awarded father and mother joint legal custody of J.C., with primary residence with mother and parenting time based on a prescribed schedule. Father was ordered to pay child support of $239 per month, child-care costs of $200 per month, and $550 in back child support.

In August 2017, father moved for amended findings. Mother also moved for amended findings, a new trial, and modification of parenting time. On November 21, 2017, the district court denied father's motion for amended findings, amended its findings and

order regarding parenting time and school as requested by mother, and denied all other motions.

In January 2018, father appealed the district court's July 5 and November 21, 2017 findings of fact and orders. Mother filed a NORA. Following father's initial notice of appeal, both parties moved the district court to modify its physical and legal custody award and to modify parenting time. Father's modification request was denied, and an evidentiary hearing was held on mother's motion June 26, 2018.

On July 27, 2018, the district court filed findings of fact, conclusions of law, and order granting mother permanent sole legal custody of J.C. and amended the existing parenting-time schedule. In September 2018, father appealed the July 27, 2018 order. On October 1, 2018, this court consolidated father's two appeals and mother's NORA.

DECISION

Evidentiary and procedural rulings

Father asserts that the district court made inconsistent or erroneous evidentiary and procedural rulings that prejudiced him. Procedural and evidentiary rulings are within the district court's discretion and are reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

Father asserts the district court erred by: (1) allowing Denais's mother and J.C.'s preschool teacher to testify at trial on subjects for which they did not have personal knowledge, in violation of Minn. R. Evid. 602; (2) admitting hearsay testimony from Denais and her mother; (3) allowing mother's counsel's presentation to go over the allotted time; (4) denying father a continuance; (5) appearing to not have read or reviewed

documents submitted by father; (6) not providing father equal time to present at the April 13, 2018, or June 26, 2018 hearings; (7) allowing mother to present new information at the evidentiary hearing after appearing to forbid father from doing the same; (8) claiming to have denied a motion that father asserts was never addressed; (9) questioning father's credibility, while not questioning mother's; (10) forbidding father from making an opening statement at the June 26, 2018 hearing; (11) failing to include accusations made by father in its orders; (12) failing to consider his claim that mother concealed the child; and (13) ignoring Minn. Stat. § 256.741 (2018), which applies to the assignment of rights to support for people on public assistance.

In *Sauter v. Wasemiller*, the supreme court stated "that matters such as trial procedure, evidentiary rulings and jury instructions are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error." 389 N.W.2d 200, 201 (Minn. 1986). A motion for a new trial is required because it facilitates development of "critical aspects of the record." *Id.* It also centers the district court's "attention on the specifics of an objection" in order to provide the district court the "opportunity to consider the context in which the alleged error occurred and the effect it might have had upon the outcome of the litigation." *Id.* at 201-02. "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Father did not make such a motion, and therefore his evidentiary and procedural issues are not preserved for appeal. However, even after reviewing the record, father's arguments

are unavailing as they result from a failure to understand the district court's rulings or an assumption that the district court was being prejudicial when it was not.

Best-interests analysis

Father argues that the district court did not properly consider the statutory best-interests factors of Minn. Stat. § 518.17, subd. 1(a) (2018), in determining custody and parenting time. "Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). There is "scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

Here, the district court considered and addressed the best-interests factors in its July 27, 2018 order. The district court's findings are supported by the record through testimony and submissions, and therefore the district court did not err in its application of the statute.

Imputation of income

Father argues that the district court failed to properly apply Minn. Stat. § 518A.34 (2018) in making its decision regarding his child-support obligations. Father asserts that the district court erred by calculating his income based on a 40-hour work week. "A [district] court's determination of income must be based in fact and will stand unless clearly erroneous." *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Dec. 15, 2015).

The district court found, and the record supports, that father is voluntarily unemployed. Minn. Stat. § 518A.32, subd. 1 (2018), provides:

> 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. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

The child support statute provides that:

> Determination of potential income must be made according to one of three methods, as appropriate:
>
> (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;
>
> . . . .
>
> (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.

Minn. Stat. § 518A.32, subd. 2 (2018).

In accordance with section 518A.32, subdivision 2(1), the district court found that father had the potential to work 40 hours per week at Minnesota's minimum wage, for a total potential income of $1,645 per month. This finding was based on evidence of father's marketable skills, ability to care for the elderly, and claimed ability to care for children. This finding is not clearly erroneous.

Father also argues that the district court made summary and erroneous findings regarding child-support obligations. A district court's findings of fact will be sustained unless they are clearly erroneous. *Pikula*, 374 N.W.2d at 710.

Father claims that the district court misused evidence regarding his financial situation. However, both parties had the opportunity to testify about their financial situations and submit accompanying documentation. Father testified that he owns his home and car outright, that his monthly expenses are low, and that his parents routinely pay off his credit-card balance. Based on this evidence, the district court's findings regarding father's financial situation are supported by the record.

Prima facie case

Father argues that the district court abused its discretion by determining that mother made a prima facie case for modification of custody after previously ordering joint custody. "A district court is required under section 518.18(d) to conduct an evidentiary hearing only if the party seeking to modify a custody order makes a prima facie case for modification." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). "A district court, however, has discretion in deciding whether a moving party makes a prima facie case to modify custody." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007).

Here, mother submitted affidavits which set forth a change in circumstances based on demonstrated alterations in J.C.'s behavior that both endangered J.C. and necessitated a modification of custody. An evidentiary hearing was held on June 26, 2018. On May 10, 2018, the district court ultimately determined that mother had made a prima facie case for custody modification. This action is consistent with the record and does not constitute an abuse of discretion.

Self-support income reserve

By NORA, mother argues that the district court erred by including a self-support reserve adjustment when considering father's income available for support, or alternatively, that the district court erred in declining to order a deviation in child support pursuant to Minn. Stat. § 518A.43 (2018). A district court's order regarding child support will be reversed only if we are convinced it abused its broad discretion by resolving the matter in a manner that is against logic and the facts in the record. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999).

"It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay." Minn. Stat. § 518A.42, subd. 1(a) (2018). An obligor's ability to pay is determined as follows:

> The court shall calculate the obligor's income available for support by subtracting a monthly self-support reserve equal to 120 percent of the federal poverty guidelines for one person from the obligor's gross income. If the obligor's income available for support calculated under this paragraph is equal to or greater than the obligor's support obligation calculated under section 518A.34, the court shall order child support under section 518A.34.

Minn. Stat. § 518A.42, subd. 1(b) (2018).

Here, the district court included the self-support reserve in its calculation despite finding that father's parents regularly provided for his needs. Mother cites only to an unpublished opinion to support her argument. Unpublished opinions are not precedential. Minn. Stat. § 480A.03, subd. 3 (2018). Moreover, the unpublished opinion that mother

cites is distinguishable. Mother has not shown that the district court's inclusion of a self-support reserve constitutes an abuse of discretion.

Similarly, the district court did not abuse its discretion in declining to order an upward deviation under Minn. Stat. § 518A.43. In considering whether to deviate from the child-support guidelines, district courts consider factors including, but not limited to, all of the earnings, income, and resources of each parent, including real and personal property. Minn. Stat. § 518A.43, subd. 1(1). Mother had the burden to convince the district court that a deviation was warranted. *See Buntje v. Buntje*, 511 N.W.2d 479, 481 (Minn. App. 1994). The district court's findings and orders demonstrate that it was thoroughly aware of father's financial situation. On this record the district court did not err in declining such a deviation.

Unpaid child support

By NORA, mother also argues that the district court erred by calculating father's child support for the period of April 2015 to June 2017, based on the parties' incomes as determined in its July 22, 2016 order for temporary relief, rather than amending that figure based on its July 5, 2017 findings of fact and order. The district court has broad discretion to provide for the support of the parties' child. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Determinations of past child support due are also reviewed for an abuse of discretion. *LaChapelle v. Mitten*, 607 N.W.2d 151, 166 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

The district court declined to increase father's unpaid support based on the newly calculated support obligation. Instead, the district court used the obligation amount it found

in its temporary order for relief, because "[father did] not have any savings of which the [c]ourt [was] aware," and it was therefore "unwilling to establish a large lump sum amount that [Claeson's] father would undoubtedly be requested to pay."

Further, pursuant to Minn. Stat. § 518A.42, subd. 1(a), "[i]t is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay," and therefore, the district court's refusal to modify father's unpaid support amount based on father's inability to pay a lump sum of $10,903 does not constitute an abuse of discretion.

Affirmed.