STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0553

In re the Custody of E. J. B.,

Israel J. Perry, petitioner,
Appellant,

vs.

Rachel J. Beukema,
Respondent.

Filed March 16, 2020
Affirmed
Ross, Judge

Olmsted County District Court
File No. 55-FA-13-6679

Marcus P. Beyer, Beyer & Simonson, LLC, Edina, Minnesota (for appellant)

David W. VanDerHeyden, VanDerHeyden Law Office, P.A., Rochester, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal, Judge.

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

ROSS, Judge

Father appeals from the district court's refusal to grant his motion to reduce his obligation to pay child support, arguing that the district court miscalculated his potential income. Because father failed to offer evidence of his earning capacity in his community,

he has not established that the district court miscalculated his potential income or abused its discretion by denying the motion, and we affirm.

FACTS

This appeal concerns the latest in a series of orders establishing child support and motions to modify child support. Appellant-father Israel Perry and respondent-mother Rachel Beukema are the parents of a 12-year-old boy and have never been married to each other. In 2007, after both parents signed a recognition of father's parentage, the district court ordered father to pay mother $50 monthly in basic child support—the statutory minimum. At that time, father was an unemployed chiropractic student to whom the district court ascribed potential monthly income of $1,066 based on what it found to be his "probable earnings level based on employment potential, recent work history, and . . . occupational qualifications." Mother was then a full-time Mayo Clinic nurse earning $3,984 monthly.

Mother moved the district court in 2011 to increase father's child-support obligation after father became employed and mother had reduced to working only part time, became a student, and began relying on government assistance. The district court found that father was employed as a chiropractor in California earning $3,000 a month while mother earned $888. The district court granted mother's motion and ordered father to pay $543 monthly in basic support, $97 for health care, and $372 for childcare.

Later in 2011, father moved to modify child support, asserting that his cost of living had increased. Finding that father continued to be employed earning $3,000 monthly, the

district court kept intact father's basic-support obligation and his health-care obligation, but it reduced his monthly childcare obligation to $175.

Father again moved to modify his obligation in 2014, asserting that his monthly income had decreased to $2,000 because he and his previous employer did not renew his employment contract and he relocated to a small town in California to work for his wife's (then girlfriend's) chiropractic firm. The district court denied father's motion, finding that he was voluntarily underemployed with "the ability to earn at least $3,000" monthly, and that mother had become employed full time earning $4,676 monthly. After multiple reviews, the district court set father's basic support at $464, his health-care obligation at $124, and his childcare contribution at $300.

Father filed the latest motion to modify in 2017. He contended that a substantial change in circumstances warranted relief. He maintained that mother had graduated, became a registered nurse, and could work full time as a nurse practitioner. He represented that, in contrast, his gross monthly income was only $2,150. Mother insisted that father continued to be voluntarily underemployed and that the court should therefore ascribe income to him based on his potential income. Mother argued that father's potential income was much higher than his actual income, citing wage data for chiropractors nationally, in Minnesota, and in California. The data suggested average annual incomes widely ranging from about $80,000 to $177,000.

The district court delayed deciding father's motion while the parties attempted, unsuccessfully, to settle the dispute. Mother then submitted wage data for chiropractors working in Santa Rosa, which lies about 80 miles south of Willits, California, where father

resided and worked. The data implied that Santa Rosa chiropractors earn between $135,805 and $220,327 annually. Father argued that a more reliable source of wage data was the Bureau of Labor Statistics, which indicated that, nationally, chiropractors earn an average of about $83,000 annually.

The district court found that father was voluntarily underemployed and that his potential income was $7,000 monthly. It therefore denied his motion to modify.

Father appeals.

D E C I S I O N

Father challenges the district court's decision to deny his 2017 motion to modify child support. We review a district court decision to deny a motion to modify child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). A district court may grant a party's motion to modify an existing child-support obligation if the terms are "unreasonable and unfair" based on "substantially increased or decreased gross income of an obligor or obligee." Minn. Stat. § 518A.39, subd. 2(a)(1) (2018). In the child-support context, "gross income includes any form of periodic payment to an individual, including . . . potential income under section 518A.32." Minn. Stat. § 518A.29(a) (2018). A district court may determine a party's potential income by calculating the party's "probable earnings level." Minn. Stat. § 518A.32, subd. 2(1) (2018). The district court denied father's motion because it found that father failed to establish that his actual income was reasonable based on the potential earnings levels in the community.

Father challenges the district court's finding of his potential income. We will affirm a district court's findings on income for the purposes of child support if the findings rest

on "a reasonable basis in fact and are not clearly erroneous." *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). The district court did not base its decision on father's actual income, but on its finding of father's potential income. Although child support depends largely on the parties' incomes, *see* Minn. Stat. § 518A.34(b)(1) (2018), if the district court finds that a party is voluntarily underemployed, it must use that party's potential income to calculate child support. Minn. Stat. § 518A.32, subd. 1 (2018). Father asks us to conclude that the district court's potential-income finding is clearly erroneous.

Father focuses on the broad geographic area the district court allegedly considered in determining his potential income. The district court determines potential income using one of three methods: a party's employment potential, his recent work history, or "earnings levels in the community." Minn. Stat. § 518A.32, subd. 2(1). It is apparently the case, as father suggests, that the district court here failed to consider the potential earnings levels of chiropractors within the narrow community of Willits. But the district court was not precluded from considering the data of chiropractor income in various places, including general data about earnings in the state where father was employed and specific data from the large city nearest to where father was employed, so as to assess mother's contention that father was voluntarily underemployed. And although we agree with father's premise that the most useful data would focus as narrowly as practical—if possible even on the small California town where he lives and works rather than on the state generally—for the following reasons, we will not reverse.

Father cannot prevail by criticizing the district court for failing to consider evidence that he should have provided but did not provide. Father is the party who bore the burden to support his motion with evidence. *See Gorz v. Gorz*, 552 N.W.2d 566, 569 (Minn. App. 1996). A party does not succeed on appeal by complaining 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 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). To prevail on his motion to modify, father had to convince the district court to overturn its extant finding that his Willits employment constituted voluntary underemployment. In other words, father had the burden to provide the evidence that he now asserts was necessary for an accurate income finding, and he failed to carry that burden. We therefore lack any basis in fact to say that the district court clearly erred in its findings as to voluntary underemployment or potential income. And for that reason, we conclude that father has failed to demonstrate that the district court's decision to deny his motion to modify reflects an abuse of discretion.

In affirming, we clarify that the term "community" in Minnesota Statutes section 518A.32, subdivision 2, contemplates a nuanced consideration of the economic opportunities that may differ from one residential and employment region to the next. The district court should therefore apply the statute in a manner that carefully considers and reflects those differences. Our decision today rests only on the fact that father failed in the district court and again on appeal to demonstrate that applying the statute more precisely would have fostered a different result. We will not alter an order if an alleged error caused

no prejudice to the appealing party, *see* Minn. R. Civ. P. 61, and father has shown no prejudice here.

And we add that the district court's order does include findings not supported by the record. The district court found, for example, that it was unreasonable for father's actual monthly income to be $2,150 in part because father had eight years of experience as a chiropractor and has had time to build a business. It also found that father could earn more money serving in a retail job or restaurant management. We see nothing in the record to support a finding about the building of a chiropractic practice or the wages a retail employee or restaurant manager would earn in father's community. Similarly, the district court based its conclusion that father must be earning more than he reports in part on the fact that father had been recently married in Costa Rica, but nothing in the record reveals the cost of the wedding, the cost of father's travel, or the means by which he covered those costs. Despite our concerns about these unsupported findings and speculative reasoning, they were unnecessary to the district court's conclusion and have no bearing on our decision.

Affirmed.