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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1446**

In re the Marriage of:  
Jean Marie Kidd, petitioner,  
Appellant,

vs.

Steven Robert Kidd,  
Respondent.

**Filed July 13, 2020  
Reversed and remanded  
Kirk, Judge\***

Goodhue County District Court  
File No. 25-FA-11-2588

W. Bradley Frago, Frago & Lasswell, P.A., Northfield, Minnesota (for appellant)

Steven Robert Kidd, South St. Paul, Minnesota (pro se respondent)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Kirk,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**KIRK**, Judge

In this child-support appeal, mother argues that the district court erred by making a parenting-time expense adjustment for equal parenting time retroactive to a date before the parties actually had equal parenting time. We reverse and remand for further proceedings.

### FACTS

Appellant-mother Jean Marie Kidd and respondent-father Steven Robert Kidd were divorced on November 15, 2012. The district court awarded mother and father joint legal custody of their two minor children and awarded mother sole physical custody. Additionally, the court awarded father alternate-weekend parenting time, along with a holiday and vacation schedule. The monthly child support established in the original judgment called for cost of living increases. Mother never requested these increases.

On June 26, 2018, father filed a motion to modify the original custody order regarding the couple's child who was still a minor. Father argued for a change in physical custody based on the "child's expressed preference to live with him; the child's drinking and erratic behaviors while in her mother's care; [and] the mother's abuse of alcohol." Mediation was scheduled for January 9, 2019, and an evidentiary hearing was scheduled for January 23, 2019. Due to mother's infant having to be hospitalized, mediation was delayed and the evidentiary hearing was continued to February 15, 2019, in order to allow mother and father to complete mediation.

After the evidentiary hearing, on March 4, 2019 the court, by order filed March 4, 2019, ordered equal 50-50 parenting time between mother and father with an every other

week schedule. Father's child-support obligation had been \$483 per month since July 11, 2012. After the district court modified parenting time to 50-50, father's child-support obligation dropped to \$21 per month. The district court ordered the modification retroactive to July 1, 2018, with credit toward father's obligation given for sums already paid. July 1 was the first of the month following father's motion to seek a modification of custody, parenting time, and child support.

On March 29, 2019, mother filed a letter seeking reconsideration under Minn. R. Gen. Prac. 115.11. The district court heard that motion on April 24, 2019.<sup>1</sup> Mother did not challenge the change in parenting time or the new calculation in child support. She only challenged the retroactive nature of the change in child support and argued that the effective date should have been March 4, 2019, the date of the modification order, and not July 1, 2018. She argued that between the date father filed his motion to modify custody and the court's order on March 4, the parties had been having parenting time according to the schedule in the original judgment and decree, which meant father had parenting time every other weekend. Mother argued that the effective date of the new child support amount should be March 4, 2019, because the only basis for the child support adjustment was the order on that date modifying the parenting time. Father, who was pro se at the hearing, argued that prior to his filing the motion in June 2018, the child had been "living

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<sup>1</sup> Mother made four additional requests for relief that are not pertinent to this appeal.

with [him] for two solid months and was only staying with her mother on Wednesdays and Saturdays,” and he paid the full child support sum during those two months.<sup>2</sup>

The district court issued an order on July 11, 2019, and judgment was entered the next day. The court, in denying mother’s motion to change the effective date for child support, found that mother made “an equitable argument but [did] not provide legal authority for a later date of commencement for child support.” And, because “[g]enerally, a modification of child support may only be made retroactive to the date of service of a motion,” pursuant to Minn. Stat. § 518A.39, subd. 2(f) (2018), that is the date that was used by the court. Mother appeals from the order filed March 4, 2019, and the order and judgment entered July 12, 2019.<sup>3</sup>

## D E C I S I O N

Whether to modify child support is within the broad discretion of the district court. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017); *see also Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013) (stating that, generally, appellate courts review orders modifying child support “for abuse of discretion”). A district court abuses its discretion if its decision is based on a misapplication of the law, is contrary to the facts, or is contrary to logic. *Shearer*, 891 N.W.2d at 77.

Mother argues that the district court erred by retroactively applying the parenting expense adjustment based on equal parenting time to the period from July 1, 2018 through

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<sup>2</sup> During this time mother was experiencing stress due to her high risk pregnancy, so child was temporarily residing with her father.

<sup>3</sup> Father did not file a brief and therefore this matter proceeds pursuant to Minn. R. Civ. App. P. 142.03 per an order filed by this court on March 18, 2020.

March 4, 2019. She argues that during that period father had alternate-weekend parenting time, and that equal parenting time did not begin until after the March 4, 2019 order.

Minn. Stat. § 518A.39, subd. 2(f), sets out the procedure for modifications made to child support. “A modification of support or maintenance . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party.” *Id.* This court has held that a district court has discretion to set the effective date of a child-support modification. *Finch v. Marusich*, 457 N.W.2d 767, 770 (Minn. App. 1990). “[M]odification of support is generally retroactive to the date the moving party served notice of the motion on the responding party.” *Bormann v. Bormann*, 644 N.W.2d 478, 482 (Minn. App. 2002).

The district court set the effective date on the first of the month following father’s motion, which was within the period the motion for modification was pending and therefore was allowable under Minn. Stat. § 518A.39, subd. 2(f). The district court concluded that “a modification of child support may only be made retroactive to the date of service of a motion.” However, the word ‘may’ is permissive, and the district court is not required to make support retroactive. *See Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000) (“Because the word ‘may’ is defined as ‘permissive,’ a district court has discretion to set the effective date of a . . . modification.”).

An underlying policy for allowing the district court to make its modification of support retroactive to the date the moving party serves his or her motion to modify support is to encourage parties to file motions promptly when their circumstances

change. *See In re Dakota Cty.*, 866 N.W.2d 905, 913 (Minn. 2015). Here, it was the district court's modification of parenting time that prompted its associated modification of support. And while the district court made the new parenting-time schedule effective as of the date of its order, it made the associated modification of father's support obligation effective retroactively to a date shortly after he served his motion. Thus, the district court made father's modified support obligation effective *before* the date of the change in circumstances—the change in parenting-time—prompting its modification of father's support obligation. If adequately explained, this result might be within the scope of a district court's broad discretion regarding child support. This district court, however, did not make findings explaining its departure from the typically applicable idea that it is the change in circumstances that prompts modification of a parent's support obligation. Therefore, we reverse the district court's decision to make father's modified support obligation effective on July 1, 2018, and remand for the district court to readdress the effective date of its modification of support. On remand, the district court shall make findings explaining whatever date it may select as the effective date for father's modified support obligation. Whether to reopen the record on remand shall be discretionary with the district court.

**Reversed and remanded.**