STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1611

Rebecca Ellen Bender,
Appellant,

vs.

Peter Howard Bernhard,
Respondent.

Filed June 22, 2020
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-FA-000281147

Rebecca E. Bender, Minnetonka, Minnesota (pro se appellant)

Michael P. Boulette, Molly N. Sigler, Barnes & Thornburg LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and Schellhas, 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

SMITH, TRACY M., Judge

Appellant Rebecca Ellen Bender challenges the district court's denial of her motion to modify its child-support order. She argues that the district court erred in its interpretation and application of the statutory definition of "child" in Minn. Stat. § 518A.26, subd. 5 (2018), and clearly erred in its factual findings. We affirm.

FACTS

This dispute arises out of the dissolution of the marriage between Bender and respondent Peter Howard Bernhard. The parties' marriage dissolved in February 2004, although the proceedings continued until 2006. Since 2006, there has been extensive additional litigation in this file. One key point of contention has been the extent of the parties' son's special needs. Their son, L.B., was five years old at the time the marriage dissolved and had developmental delays consistent with an autism diagnosis. Bender argued that caring for L.B. prevented her from returning to full-time work as an attorney, but the district court disagreed. Still, the district court ordered Bernhard to pay temporary spousal maintenance until September 2007. The district court also ordered Bernhard to pay child support until L.B.'s emancipation or further order from the court. Bender appealed, and this court affirmed the decision. *Bender v. Bernhard*, No. A05-1545, 2006 WL 1704114, at *1 (Minn. App. June 20, 2006), *review denied* (Minn. Aug. 15, 2006).

After the divorce, L.B. continued to live with Bender. He attended several schools during middle school and high school and performed well academically. In the fall of

L.B.'s senior year, L.B. was assessed to evaluate his upcoming transition out of high school. The assessment found that L.B. excelled in math and writing but struggled with certain social activities. Soon after the assessment, but before L.B.'s graduation, Bender moved the district court to continue child support beyond the child's graduation from high school. A child-support magistrate (CSM) determined that L.B. was not capable of supporting himself at that time. But, though Bender requested that child support be extended indefinitely, the CSM ordered that child support be continued only until L.B. turned 21 years old. By order dated August 29, 2017, the district court adopted the CSM's decision.

L.B. went on to graduate high school and attend college in South Dakota on an academic scholarship.[1] He was also a member of the college's basketball team. While at college, L.B. lived with Bender, who had moved to South Dakota with him, because L.B. could not sleep without total darkness and he did not like the "bad smells or unexpected noises" in the residence halls. L.B. soon withdrew from the school, however, after he was dismissed from the basketball team for missing team events and practices.

After withdrawing from the college in South Dakota, L.B. underwent three hip surgeries to address pain in his right hip. After his surgeries, L.B. applied to several other colleges. He received offers of admission and two scholarships, but he declined them to focus on rehabilitating for basketball.

[1] Bender asserts that Bernhard incorrectly told the district court that L.B.'s scholarship was a full academic scholarship when instead it was a partial one.

As L.B. approached his 21st birthday, Bender moved the district court again to continue child support, as well as to order payment for unreimbursed/uninsured medical expenses. As part of her motion, Bender included L.B.'s 2016 assessment and a new assessment done in 2019 in preparation for the motion. The 2019 assessment confirmed the autism diagnosis and stated that L.B. "lacks the executive functioning needed to manage his life without his mother's support, direction, and limit setting." It recommended that L.B. attend counseling and stated that he qualified for social services if his mother chose to help him pursue them.

By order dated September 10, 2019, the district court determined that L.B. was not incapable of self-support by reason of physical or mental condition and denied Bender's request for indefinite child support. The district court also concluded that, because L.B. was emancipated, Bernhard was not obligated to provide medical support for L.B.

Bender appeals.

D E C I S I O N

Bender contends that the district court erred in its interpretation of the statutory definition of "child" and clearly erred in its factual findings when it denied her motion to modify the child-support order. Appellate courts review the decision whether to modify child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). A district court has broad discretion in denying modifications, but it abuses its discretion when it resolves the question in a manner that is "against logic and the facts on record." *Id.* (quotation omitted). A district court's factual finding is clearly erroneous "if

the reviewing court is left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotations omitted). To the extent that a case involves the interpretation of a statute, an appellate court reviews that issue de novo. *Haefele*, 837 N.W.2d at 708.

A request to extend child support is akin to a request to modify a child-support order. *Schultz v. Schultz*, 495 N.W.2d 463, 465-66 (Minn. App. 1993). A district court may modify a child-support order upon a showing of a substantial change in circumstances that makes the existing order unreasonable and unfair. *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002); *see* Minn. Stat. § 518A.39, subd. 2(a) (2018) (describing circumstances constituting a substantial change). The party moving for modification of a child-support order bears the burden of proof. *Bormann*, 644 N.W.2d at 481.

A. Burden of proof

Bender presents this motion to modify child support in a somewhat inverted light. As noted, the moving party must show that circumstances have substantially changed. *See id.*; Minn. Stat. § 518A.39 (2018). But Bender is, in many ways, arguing that circumstances have *not* changed since the district court ordered that child support continue until L.B. turned 21. The lack of improvement in L.B.'s ability to support himself, she asserts, warrants continuing child support. Bender goes on to argue that the situation has, if anything, only worsened since the district court continued child support in 2017. Bender claims that her position is consistent with the CSM's 2017 order, arguing that the CSM "stated that her decision need not be permanent" and that the CSM "was, appropriately,

giving an opportunity to the Family Court in the future to examine the child's present situation."

Despite Bender's interpretation of the earlier child-support order, this matter arose on a motion to modify a child-support order. Nothing in the 2017 CSM order or the district court order adopting it indicates that the district court was reserving the question of whether to extend child support indefinitely. Both orders state that child support will continue until L.B. reaches the age of 21. Neither the CSM nor the district court elected to use the language from the original order, which stated that child support would continue until L.B. was emancipated; they instead chose a fixed of age 21. Bender thus has the burden of proof as the party moving to modify the order. *See Bormann*, 644 N.W.2d at 481.

B. The district court did not clearly err by finding that L.B. is capable of self-support.

A child-support obligation in a specific amount automatically terminates "upon the emancipation of the child as provided under section 518A.26, subdivision 5." Minn. Stat. § 518A.39, subd. 5. Section 518A.26, subdivision 5, defines "child" as "an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support." Minn. Stat. § 518A.26, subd. 5. That an individual has been diagnosed with a physical or mental condition does not necessarily mean that the individual is incapable of self-support or that child support for that individual will automatically be extended beyond the time the child reaches the age of majority. *Cf. Hoppenrath v. Cullen*, 383 N.W.2d 394, 395, 397 (Minn. App. 1986) (affirming the denial of a motion to extend child-support past

the age of majority for a four-year-old child with Down Syndrome, in part because the mother had not provided evidence on the extent of the child's disability in the future).

The parties, Bender in particular, frame the dispute as turning on whether L.B. is "incapable of self-support" when the evidence indicates that he relies on his mother for support in addressing certain social situations and daily routines. The statute does not define "incapable of self-support." Bender provides the following definition, referencing *Merriam-Webster*: "lacking capacity, ability, or qualification for the purpose" of being "independent, self-sufficient, and self-reliant." Bernhard provides a similar definition, referencing the *American Heritage Dictionary*, defining it as "lacking the necessary ability, capacity, or power" to "support[] oneself, especially financially, without the help of others."

Nothing in the district court's order indicates that it interpreted or applied the phrase "incapable of self-support" differently from the provided definitions. The district court cited the relevant statutory language and explained that "self-support" is not statutorily defined. The district court cited cases on emancipation, which, it noted, turn on the facts and circumstances of each case, but also pointed out that earlier emancipation cases focus on a parent's legal right to control a child's actions. *See In re Fiihr*, 184 N.W.2d 22, 25 (Minn. 1971); *Streitz v. Streitz*, 363 N.W.2d 135, 137 (Minn. App. 1985). The district court went on to conclude that, while L.B. faces challenges, those challenges do not rise to the "level that, by reason of physical or mental condition, [L.B.] is incapable of self-support."

The district court's conclusion relies on the district court's factual finding that L.B.'s mental condition does not make him incapable of self-support. Appellate courts review a district court's factual findings for clear error. *See Haefele*, 837 N.W.2d at 708. While the district court's findings describe the challenges that L.B. faces, they also describe L.B.'s academic success and note how part of L.B.'s 2019 assessment indicates "the need for low intensity community-based services." The district court's findings also observe that L.B. made choices about continuing with college and has expressed interest in pursuing certain jobs. The district court's findings are supported by the record. Although Bender presented evidence that might support another outcome, the fact that another district court might reach a different determination on the presented evidence is insufficient to show that the district court's findings are clearly erroneous. *See Vangsness*, 607 N.W.2d at 474.

Bender challenges the district court's determination on a number of additional grounds. First, she argues that the district court incorrectly considered L.B.'s future potential ability to support himself, which goes beyond the terms of the statute. But this argument mischaracterizes the district court's factual determinations addressing the causation requirement of the statute. An individual that is incapable of self-support is only defined as a "child" under Minn. Stat. § 518A.26, subd. 5, if that incapability is "by reason of physical or mental condition." While L.B. has multiple mental-health diagnoses, the district court concluded that these do not make him incapable of self-support. It is true that the district court found that L.B. "is in need of assistance in strengthening his abilities to live independently, obtain career counseling, and finding a college program that meets his

needs," but, in so finding, the district court was not considering L.B.'s future ability to support himself—it was analyzing his present capability, with some assistance and counseling, to self-support.

Second, Bender argues that the district court imposed two additional requirements to continue child support that are not based on the statute. Specifically, Bender states that the district court added a requirement that she demonstrate that L.B. was under guardianship and that she has a legal right to control his actions. But a review of the district court order shows that it did not impose such a requirement. The district court did note in its order that Bender did not have the legal authority to control L.B.'s actions after the age of emancipation. L.B.'s legal authority to make his own decisions is relevant to assessing the impact of L.B.'s diagnoses on his capability to self-support. But nothing in the district court's order indicates that it viewed who had the authority to control L.B.'s actions as dispositive in either direction. The district court did not impose extra-statutory requirements upon Bender's motion to extend child support.

Third and lastly, Bender asserts that the district court did not follow precedent regarding emancipation of a child. She argues that, once she established a prima facie case that L.B. was not self-supporting, Bernhard had a burden to prove emancipation. As discussed above, however, because Bender was moving to modify a child-support order, she bore the burden of proof.[2] Bender also argues that the district court failed to evaluate

[2] Bender cites *Lufkin v. Harvey*: "Emancipation is not, however, to be presumed. It must be proved." 154 N.W. 1097, 1098 (Minn. 1915). But she does not provide any of the

factors required by Minnesota courts in determining emancipation. She cites three cases in which appellate courts highlighted facts such as whether the individual still lived with a parent and whether the parent or the individual paid for the individual's expenses as indications of whether the individual was emancipated. *See Cummins v. Redman*, 251 N.W.2d 343, 345 (Minn. 1977) (holding that a child who lived at home and had her expenses paid by a parent was not emancipated); *Fiihr*, 184 N.W.2d at 24-25 (concluding that a 19-year-old woman was emancipated because she lived on her own and was not financially supported by her parents); *Streitz*, 363 N.W.2d at 136-37 (concluding that it was not clearly erroneous to determine that a daughter was not emancipated because she lived at home intermittently and her mother paid for some of her expenses). But applying those cases here would address only whether L.B. is currently supporting himself; it would not address whether L.B. is capable of self-support, nor whether, if he is incapable of self-support, it is by reason of physical or mental condition. Because the district court was deciding these latter questions, it did not erroneously fail to follow the caselaw cited by Bender.

C. Bender's other factual arguments

Bender also alleges a number of factual errors that she believes the district court made. But none of the alleged factual errors show that the district court erred when it

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procedural context of the case. *Lufkin* did not arise out of a motion to modify child support, *id.* at 1097, and the burdens of proof were not the same as in this case.

concluded that the challenges facing L.B. "do not rise to a level that, by reason of physical or mental condition, [L.B.] is incapable of self-support."

Bender's primary allegation of clear error is that the district court mischaracterized the degree of support needed by L.B. to function in his day-to-day life. The district court notes that the most recent assessment stated that L.B. had taken a "Locus Assessment," which placed him in "Level II." The assessment stated that level II "indicates the need for low intensity community-based services." Bender argues that the assessments state that L.B. was "level 2 in severity of symptoms," which means he required "substantial support" in the areas of "social communication" and "restricted, repetitive patterns of behaviors."

It is not clear from the record what "substantial support" in the context of the assessment means, nor is it clear how needing "substantial support" ties into L.B.'s capability to self-support.[3] Nothing in the record equates requiring "substantial support"—to address social communication and restricted, repetitive behaviors—with being incapable of self-support.

But more importantly, both assessments indicate that L.B. is mentally capable, mental-health diagnoses included, of addressing his challenges with counseling. Neither assessment indicates that L.B. requires indefinite support from his parents. Again, while

[3] Bender refers to federal law and state law defining the criteria for a diagnosis of Autism Spectrum Disorder and its connection with the requirement for "substantial support." But Bender does not cite authority that indicates a disability diagnosis is dispositive in the determination of whether an individual is incapable of self-support. This court has indicated that a diagnosis alone is not enough to establish that a child is incapable of self-support. *Cf. Hoppenrath*, 383 N.W.2d at 395, 397.

there is room in the assessments for a different court to potentially make different findings, and Bender presented facts in support of her position, the district court's findings were not clearly erroneous.

Bender points to other aspects of the district court's findings that she believes are clearly erroneous. These alleged errors are largely superficial errors with respect to the material issue[4] or not errors at all,[5] but, more importantly, Bender does not elaborate on how these errors amount to reversible error with respect to the district court's determination that L.B. was not incapable of self-support by reason of mental condition.

In sum, we conclude that the district court did not commit legal or factual error in denying Bender's motion to amend its child-support order.

Affirmed.

[4] Bender asserts that L.B. only had a partial scholarship, not a full one, to attend college. Bender also asserts that the district court inserted the word "often" into her testimony about L.B. looking for jobs in the newspaper and removed the word "only" in her argument about the importance of an economic assessment.

[5] For instance, Bender asserts that it was inaccurate to say there was no expert testimony because she submitted expert reports, but no experts testified at the hearing on the motion. Bender also claims the district court mistakenly interpreted a sarcastic comment from Bernhard about L.B. working in the basketball industry as evidence that he had worked in the industry, but the district court order only states that Bernhard thinks L.B. can work, potentially in the basketball industry.