

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1603**

In re the Marriage of:

Teresa Corinne MacNabb, petitioner,
Respondent,

vs.

John Michael Kysylyczyn,
Appellant.

**Filed September 27, 2021
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-FA-08-2020

Teresa Corinne MacNabb, Little Canada, Minnesota (pro se respondent)

Carl A. Blondin, Oakdale, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal of the district court's denial of his motion to modify the allocation of the tax dependency exemption for one of the parties' children, appellant argues that the district court abused its discretion when it denied his motion. We affirm.

FACTS

This is the latest appeal in a contentious marital dissolution between appellant John Michael Kysylyczyn (father) and respondent Teresa Corrine MacNabb (mother). The parties married in 1999, and their marriage was dissolved by a judgment and decree (J&D) in 2010. The parties have two children: a daughter, born in 2003, and a son, born in 2005.

In the J&D, the district court granted the parties joint legal and joint physical custody of the minor children and granted each party parenting time. The district court also allocated income tax exemptions for the children: starting with tax year 2010 mother would have the right to daughter's income tax exemption and father would have the right to son's income tax exemption. When only one exemption remained, the parties would alternate the right to son's income tax exemption.

In 2019, father moved to reassign daughter's income tax exemption for tax year 2019 from wife to him, arguing that there was a substantial change in circumstances since the district court allocated the exemptions in 2010. The district court denied father's motion.

Father appeals.¹

¹ Mother did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

DECISION

The only issue before us is whether the district court abused its discretion by denying father's motion to modify the allocation of daughter's income tax exemption. "The allocation of the federal-tax exemptions is within the [district] court's discretion." *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 449 (Minn. App. 2002). A district court abuses its discretion when its decision is against logic and the facts in the record or misapplies the law.² See *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

A district court may modify an order allocating an income tax dependency exemption provided there has been a substantial change in the four statutory factors that are to be considered in allocating the exemption. Minn. Stat. § 518A.38, subd. 7(e) (2020).

The four statutory factors are:

- (1) the financial resources of each party;
- (2) if not awarding the dependency exemption negatively impacts a parent's ability to provide for the needs of the child;
- (3) if only one party or both parties would receive a tax benefit from the dependency exemption; and
- (4) the impact of the dependent exemption on either party's ability to claim a premium tax credit or a premium subsidy under the federal Patient Protection and Affordable Care Act . . . including the federal Health Care and Education Reconciliation Act of 2010 . . . and any amendments to, and any federal guidance or regulations issued under, these acts.

Id. at subd. 7(b) (2020).

² Father argues that the standard of review should be de novo because he appeals the district court's application of undisputed facts to the law. But because father challenges the district court's weighing of statutory factors, the proper standard of review is for an abuse of discretion. *Ludwigson*, 642 N.W.2d at 449.

The district court analyzed each of the statutory factors and concluded that father failed to meet his burden of showing a substantial change with respect to any of them. The district court further determined that, even if there were a substantial change in the fourth factor, modification of the J&D still would not be warranted. We turn to the district court's determinations regarding each statutory factor.

The Financial Resources of Each Party

The district court first found that father failed to show a substantial change in the parties' financial resources. *See* Minn. Stat. § 518A.38, subd. 7(b)(1). Father argues that the district court's analysis is flawed because mother is a high-income earner while he earns less than she does each year.

The district court determined that mother's annual income grew from \$68,548.98 in 2010 to \$101,143 in 2019, and that Father's annual income grew from \$25,650 in 2010 to \$39,499 in 2019. The district court calculated the percent increase in both parties' income and found that mother's income increased by 47.5% over that time period, while father's income increased by 53.9%. The district court found that, given father's larger percentage increase in income, father had not shown a substantial change in financial resources. That determination is supported by the record. The district court did not abuse its discretion in determining that the first statutory factor weighs against modification.

Impact on the Parent's Ability to Provide for the Needs of the Children

The district court next found that father did not meet his burden of showing that the allocation of the tax exemption impacts his ability to provide for the needs of the children. *See* Minn. Stat. § 518A.38, subd. 7(b)(2).

Father contends that the district court's analysis does not properly address this statutory factor because it focuses too much on how reallocating the tax exemptions would impact the parties' tax burdens. But, in the district court, father argued that not claiming a tax dependency exemption for his daughter would increase his tax burden and negatively affect his ability to provide for his children's needs. The district court therefore reviewed both parties' draft federal and state tax returns and determined the impact that reallocating daughter's tax exemption would have on father's and mother's income tax obligations for 2019. The district court determined that the differences between mother's and father's income tax obligations were present at the time of the J&D and did not significantly change in the intervening decade. That determination is supported by the record.

Father also asserts that "over the past five to ten years" he has become 100% responsible for the children's educational and extracurricular expenses, rather than 25% as required under the J&D. First, father provides no citation to the record to support this claim. *See* Minn. R. Civ. App. P. 128.02, subd. 1(c) (stating that each statement of material fact in an appellant's brief "shall" be accompanied by a reference to the record). Second, the district court made no such finding. Third, even if father is correct in his assertion that he has assumed the children's educational and extracurricular expenses, according to the J&D, father need not pay these expenses. Thus, if he voluntarily assumes these expenses, it does not constitute a change in circumstances. *Cf. Hesse v. Hesse*, 778 N.W.2d 98, 100 (Minn. App. 2009) (stating, in the context of a dispute about a parenting-time expense adjustment, that the relevant amount of parenting time is "the percentage of parenting time scheduled

under an existing court order, regardless of whether the parent exercises the full amount of court-ordered parenting time”).

The district court’s determination that father failed to show how the current allocation of daughter’s tax exemption impacts his ability to provide for the children is supported by the record. The district court did not abuse its discretion in determining that the second statutory factor weighs against modification.

If One or Both Parties Receive a Tax Benefit from the Exemption

The district court determined that a reallocation of daughter’s tax exemption would only benefit father. *See* Minn. Stat. § 518A.38, subd. 7(b)(3). The district court determined that this factor weighed against reallocating daughter’s tax exemption because the detriment to mother caused by the reallocation outweighs the benefits for father.

The district court found that, if the tax exemption were reassigned to father, mother would have an additional tax burden of over \$4,000 plus underpayment penalties and that she would also lose her ability to claim head of household, which would decrease the amount of her standard deduction and put her into a higher income tax bracket. The district court’s findings are drawn from the tax documents submitted to the district court and are supported by the record. The district court’s determination that the third factor weighs against modification is not an abuse of discretion.

Impact of the Exemption on the Ability to Claim an Affordable Care Act (ACA) Tax Credit or Subsidy

Finally, father argues that the ACA taking effect after the 2010 J&D constitutes a per se substantial change in circumstances warranting reallocation of daughter’s tax

exemption. *See* Minn. Stat. § 518A.38, subd. 7(b)(4). The district court determined that the enactment of the ACA “in and of itself” does not show a substantial change of circumstances but that, even if the factor did favor father, that single factor would not warrant reallocating daughter’s tax exemption.

While father’s brief does not identify the cost difference for father to obtain health insurance for himself pre- and post-ACA, in response to questioning during oral argument, father did point to an affidavit he filed in July 2020. In that affidavit, father states that, without daughter’s tax exemption, his health insurance premiums would be between \$279 and \$372 a month and that with the daughter’s tax exemption, his premium would be reduced to \$77 a month. While that difference could perhaps constitute a substantial change with respect to the fourth statutory factor, the district court found that this factor alone did not support modification. Because we do not reweigh the statutory factors, *see Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating the appellate courts do not reweigh the evidence), we conclude that the district court did not abuse its discretion by finding that change in this factor alone does not warrant reallocating daughter’s tax exemption.

Finally, father also argues that the district court erred as a matter of law by focusing on the best interests of the children rather than on the benefit to the parent, as required by the fourth statutory factor. The fourth factor addresses the impact of an exemption “on either party’s ability to claim a premium tax credit or a premium subsidy under the federal Patient Protection and Affordable Care Act.” Minn. Stat. § 518A.38, subd. 7(b)(4). Father argues that the district court applied *Rogers v. Rogers*, where the supreme court allowed a noncustodial parent to claim the child’s tax exemption provided that doing so was in the

child's best interests. 622 N.W.2d 813, 823 (Minn. 2001). He contends that, by applying *Rogers*, the district court improperly shifted its analysis away from the effect of the tax exemption on the parents and looked instead at the children's best interests.

To the extent that father's argument would elevate the interests of parents over the interests of their children, we have grave doubts about the viability of that analysis. *See Doll v. Barnell*, 693 N.W.2d 455, 461 (Minn. App. 2005) (noting "the child's paramount right to support and the public protection of the child's best interests"); *see also Putz v. Putz*, 645 N.W.2d 343, 352 (Minn. 2002) (noting strong state policy of assuring that children have adequate and timely economic support of their parents). Even ignoring these doubts, however, father's argument is unpersuasive. Although the district court's order cites to *Rogers* in discussing the discretion of the district courts to allocate tax exemptions, it does not apply *Rogers* in the way that father contends. The district court's order does not simply apply a children's-best-interests analysis; rather, it explicitly and carefully analyzes each of the statutory factors, including the fourth factor. Father's assertion of legal error therefore fails.

In sum, the district court did not abuse its discretion by denying father's motion to modify the allocation of the tax dependency exemption for daughter.

Affirmed.