STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0068

In re the Marriage of:
Brian Earl Grogg, petitioner,
Appellant,

vs.

Karen Lynne Rech,
Respondent.

Filed October 18, 2021
Affirmed
Bratvold, Judge

Olmsted County District Court
File No. 55-FA-19-4375

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for appellant)

Suzanne M. Remington, Erika N. Donner, Remington & Assoc., P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

SYLLABUS

When, based on a child's emancipation, a child-support obligor moves to reduce a support obligation that covers more than one child, the obligor must show both emancipation of the child at issue and that the existing support obligation is unreasonable and unfair. An exception to this rule is automatic termination of child support as provided by Minn. Stat. § 518A.39, subd. 5(a) (2020).

OPINION

BRATVOLD, Judge

After the parties' oldest of three children was emancipated, appellant-father moved to modify his child-support obligation. The district court denied father's motion, ruling that father showed a substantial change in circumstances but failed to show his existing support obligation was unreasonable and unfair. Father appeals, arguing (a) the district court misinterpreted the child-support-modification statute, Minn. Stat. § 518A.39 (2020), to require him to show, in addition to the child's emancipation, that his existing support obligation was unreasonable and unfair; and (b) even if Minn. Stat § 518A.39 does require him to show his existing support obligation is unreasonable and unfair, father made the required showing. Because the district court correctly interpreted and applied Minn. Stat. § 518A.39, and because the record supports the district court's determination that father's existing support obligation is not unreasonable and unfair, we affirm.

FACTS

Appellant Brian Earl Grogg (father) and respondent Karen Lynne Rech (mother) married in June 1993 and have three children. Father petitioned for divorce in June 2011. In December 2011, the parties reached a stipulated marital-termination agreement, on which the district court entered judgment. The judgment states father would pay child support "until such time as [the parties' youngest child] . . . is emancipated . . . at which time child support shall terminate." The judgment also states, "[e]mancipation of a child may be a basis for modification of child support."

In April 2019, father moved the district court to reduce his child-support obligation. Father relied on then-recent amendments to the child-support guidelines, which he argued were a substantial change in circumstances that made his current obligation unreasonable and unfair. Father asserted his monthly child-support obligation was $1,363.46 under the 2011 guidelines, but only $689.00 under the 2019 guidelines. The district court denied father's motion in a written order (2019 order). The district court reasoned while the amended guidelines were a substantial change in circumstances, the existing child-support obligation was not unreasonable and unfair. Father did not appeal the 2019 order.

In June 2020, father again moved the district court to modify his child-support obligation, this time based on emancipation of the parties' oldest child. At the hearing, father argued "[w]hen we're dealing with emancipation of a child, the substantial change in circumstances that makes the order unreasonable and unfair is no longer the standard." Father also argued the modification statute "anticipated that a parent should not pay the same amount of child support for three children as he might for . . . two" and the statute required modification of a child-support obligation when requested, based on current income. Mother argued the unreasonable-and-unfair prong of the support-modification analysis applies to emancipation-based modifications. She also contended the district court's "reasoning from [its 2019 order was] still applicable; and the court should reach the same result." (Emphasis omitted.)

In a December 2020 order and memorandum, the district court first accepted father's premise that emancipation of the oldest child was a substantial change in circumstances. The district court concluded, along with showing emancipation of the oldest

child, "Father needs to demonstrate the current obligation is 'unreasonable and unfair' in order to prevail on this modification motion." The district court explained, relying on related provisions in section 518A.39, that "modification is not automatic upon emancipation when there are other children." In other words, the district court explained, emancipation alone is not an independent and sufficient basis to modify support under the statute; "[e]mancipation plus a showing of unreasonableness and unfairness is required."

The district court then considered whether emancipation of the parties' oldest child rendered father's existing support obligation unreasonable and unfair. The district court concluded that "it does not[.]" The district court cited its 2019 order and reasoned "the dollar amount of the support reduction Father seeks here is mostly explained not by the amount of any actual expense reduction caused" by the oldest child's emancipation. Rather, father argues "this event triggers use of the new guidelines to recalculate a much smaller obligation." The district court denied father's motion.

This appeal follows.

ISSUES

I. When a party moves to modify child support based on emancipation of one child and the existing support order covers more than one child, is the movant required to show the existing support obligation is unreasonable and unfair?

ANALYSIS

Father argues the district court misinterpreted and misapplied the child-support-modification statute by requiring him to show his existing support obligation was unreasonable and unfair together with showing the child was emancipated. Because interpretation of section 518A.39 is central to our analysis, we address father's

statutory-interpretation issue first, then consider whether the district court abused its discretion when it denied father's modification request.

A. Statutory interpretation

We begin by summarizing Minn. Stat. § 518A.39, which provides for modification of child support and spousal maintenance. This statute has eight subdivisions, only two of which are squarely at issue in this appeal, subdivisions 2 and 5. Subdivision 2, titled "Modification," provides that a district court may modify a child-support or maintenance order when the movant shows any of the eight listed circumstances makes the terms of the existing order "unreasonable and unfair." The eighth of those circumstances addresses emancipation of a child:

> (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following, any of which makes the terms unreasonable and unfair: . . . . (8) upon the emancipation of the child, as provided in subdivision 5.

Minn. Stat. § 518A.39, subd. 2(a).

We have interpreted subdivision 2(a) to allow modification of a child-support order "upon a showing of a substantial change in circumstances that makes the order 'unreasonable and unfair.'" *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009) (quoting Minn. Stat. § 518A.39, subd. 2(a)). We have also explained that subdivision 2(a) "lists eight types of changes that can qualify for modification." *Id.*; *see also* Minn. Stat. § 518A.39, subd. 2(b) ("It is presumed that there has been a substantial change in circumstances under paragraph (a)" if certain conditions apply).

Father's argument focuses on subdivision 5, which is titled "Automatic termination of support." *Id.*, subd. 5. Subdivision 5 has three subparts that discuss what happens to a child-support obligation when a child becomes emancipated. *Id.* Subdivision 5(a) provides that child support "terminates automatically" when the obligation is "in a specific amount per child" and a child emancipates:

> (a) Unless a court order provides otherwise, a child support obligation in a specific amount per child terminates automatically and without any action by the obligor to reduce, modify, or terminate the order upon the emancipation of the child as provided under section 518A.26, subdivision 5.

Id., subd. 5(a). Father does not contend subdivision 5(a) applies to his modification motion. Although the parties do not discuss subdivision 5(a) in detail, our review of the stipulated judgment dissolving the parties' marriage shows that father's support obligation was not in a specific amount per child, and therefore no part of that obligation automatically terminated when the oldest child emancipated.

Subdivision 5(b) provides that when subdivision 5(a) does not apply, child support "continues in the full amount" until emancipation of the "last child for whose benefit the order was made." *Id.*, subd. 5(b). The general rules for termination of support recited in subdivisions 5(a) and 5(b) do not apply if the court directs otherwise. *See id.*, subd. 5(a) (stating a support obligation set in a per-child amount "terminates automatically" upon emancipation of a child "[u]nless a court order provides otherwise"), subd. 5(b) (stating a support obligation not set in a per-child amount continues in the full amount of the obligation until emancipation of the youngest child "or until further order of the court").

Subdivision 5(c) authorizes a motion to modify child support based on emancipation of one child and states how the support amount is determined:

> (c) The obligor may request a modification of the obligor's child support order upon the emancipation of a child if there are still minor children under the order. The child support obligation shall be determined based on the income of the parties at the time the modification is sought.

Id., subd. 5(c). Father argues subdivision 5 "sets forth the standard for modification" based on emancipation of a child and the district court erred by ignoring "the clear language of" subdivision 5(c), which "does not reference the substantial change of circumstance standard or the unreasonable and unfair standard." Mother argues father's argument is "flawed" because "emancipation is part of subdivision 2(a) of [section] 518A.39, and [subdivision 5] is not its own stand-alone basis for modification." Thus, this appeal asks us to interpret relevant provisions of Minn. Stat. § 518A.39.

Appellate courts "review issues of statutory interpretation de novo." *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). "The purpose of all statutory interpretation is to ascertain and effectuate the intention of the Legislature." *Id.*; *see also* Minn. Stat. § 645.16 (2020). When a statute's language is "plain and unambiguous, [appellate courts] will look only to that language in ascertaining legislative intent." *Haefele*, 837 N.W.2d at 708. Appellate courts interpret statutes "as a whole," and "the words and sentences therein are to be understood . . . in the light of their context." *In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015) (quotations omitted). When reading a statute as a whole, we seek to "harmonize all its parts, and, whenever possible, no word, phrase or sentence should be deemed superfluous, void or insignificant." *Kremer v. Kremer*, 912 N.W.2d 617, 623

(Minn. 2018). "Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16.

The parties agree the language of the child-support-modification statute is unambiguous, though they advance different interpretations. We begin our analysis with father's interpretation. Father argues subdivision 5(c) is the sole vehicle for a modification motion based on emancipation of one child when other children are covered by the support order. Because subdivision 5(c) does not mention whether a motion to modify must show emancipation makes the existing support order "unreasonable and unfair," father argues, the district court erred by rejecting his motion for failing to make that showing.

We are not persuaded for two reasons. First, father's interpretation of subdivision 5(c) would require us to ignore the plain language of subdivision 2(a). We must read a statute "to harmonize all its parts" and seek to avoid treating any language as "superfluous, void or insignificant." *Kremer*, 912 N.W.2d at 623. Subdivision 2(a) provides that a child's emancipation is one circumstance that may make a current child-support order unreasonable and unfair and specifically references subdivision 5. Minn. Stat. § 518A.39, subd. 2(a)(8). Father's interpretation would render subdivision 2(a)(8) meaningless.

Our rejection of father's proposed reading of Minn. Stat. § 518A.39, subd. 5(c) adheres to the supreme court's recent observation that Minn. Stat. § 518A.39, subd. 2(a), requires a party seeking to modify an existing obligation to show the existing obligation is unreasonable and unfair no matter which of the eight statutory circumstances the movant asserted as the basis for the motion to modify: "After a maintenance award has been issued, it 'may be modified upon a showing of one or more of' eight statutory factors, 'any of

which makes the [award] unreasonable and unfair.'" *Honke v. Honke*, 960 N.W.2d 261, 267 (Minn. 2021) (quoting Minn. Stat. § 518A.39, subd. 2(a) (2020)). While *Honke* addresses a motion to modify maintenance rather than child support, modification of maintenance, like modification of child support, is governed by the statute at issue: Minn. Stat. § 518A.39. Thus, even though the supreme court's observation was made in a different context, it bears noting here.

Second, father's interpretation of subdivision 5(c) would *require* a district court to modify child support upon the obligor's motion whenever a child emancipates. Father emphasizes subdivision 5(c) provides an obligor "may" request modification based on emancipation of one child, and that the district court "shall" set the new support order based on the income of the parties at the time modification is sought. Father contends the use of "shall" in subdivision 5(c) makes modification mandatory for the district court whenever a child emancipates and the obligor moves to modify. *See* Minn. Stat. § 645.44, subd. 16 (2020) ("'Shall' is mandatory."). Father's interpretation of subdivision 5(c) conflicts with Minnesota caselaw that has "repeatedly stated that the district court enjoys broad discretion in ordering modifications to child support orders." *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

In contrast, if we read section 518A.39 to give effect to both subdivision 5(c) and subdivision 2(a), then a district court determines *whether* the current obligation is unreasonable and unfair under subdivision 2(a), and, if so, sets the new obligation "as provided in subdivision 5." Minn. Stat. § 518A.39, subd. 2(a)(8). Subdivision 5(c) provides that the new obligation "shall be determined based on the income of the parties at

the time the modification is sought." *Id.*, subd. 5(c). Simply stated, if the modification is granted under subdivision 2(a)(8) based on a child's emancipation, then the new obligation must be based on the parties' incomes at the time the motion was made per subdivision 5(c).

Father claims subdivision 2(a) cannot apply to subdivision 5(c) modification because "[t]o argue that the unreasonable and unfair standard applies to modification motions brought under subdivision 5(c), would also require that standard to be applied to . . . subdivisions 3, 4, 5(a), 7, or 8." We disagree. Three of these subdivisions address termination of an obligation upon the occurrence of certain statutorily defined events. *See* Minn. Stat. § 518A.39, subds. 3 (termination of maintenance on death or remarriage), 4 (termination of child support on death of obligor), 5(a) (termination of support on emancipation of child when support order is "a specific amount per child"). By statute, these events—which are changes in circumstances—are, generally, independently sufficient to terminate the obligations involved. Thus, application of the unreasonable-and-unfair prong of the modification standard to these specific statutorily defined events is out of place. Subdivisions 2(a) and 5 are directly linked because subdivision 2(a) mentions subdivision 5.[1]

[1] We are not persuaded by father's arguments about subdivisions 7 and 8 for other reasons. Subdivision 2(a)(7) allows modification of support based on certain changes in child-care expenses if the changes "make[] the terms [of the existing order] unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a)(7). And Minn. Stat. § 518A.39, subd. 7, states, "Child care support must be based on the actual child care expenses. The court may provide that a decrease in the amount of the child care based on a decrease in the actual child care expenses is effective as of the date the expense is decreased." Thus, subdivision 2(a)(7) guides the district court's determination of *when* a change in child-care expenses warrants

Finally, our interpretation of the child-support-modification statute aligns with existing caselaw on child-support modification. This court has repeatedly stated: "A child-support order may be modified upon a showing of a substantial change in circumstances that makes the order unreasonable and unfair." *Palmquist v. Devens*, 907 N.W.2d 204, 206 (Minn. App. 2017) (citing Minn. Stat. § 518A.39, subd. 2(a)); *see also Jones v. Jarvinen,* 814 N.W.2d 45, 47 (Minn. App. 2012); *Welsh v. Welsh*, 775 N.W.2d 364, 371 (Minn. App. 2009); *Rose*, 765 N.W.2d at 145. We recognize, however, none of our precedential opinions have addressed modification of a support obligation after emancipation of one child while other children remain under the order.[2] Even still, it is worth noting this court's interpretation of section 518A.39 builds on existing caselaw, while father's interpretation does not.

In sum, we reject father's argument, under subdivision 5(c), that a district court may modify a child-support obligation covering more than one child based solely on

---

modification, and subdivision 7 directs *how* any new child-care support obligation should be calculated and *when* any new child-support obligation should be effective. Thus, our view that subdivision 2 governs when to modify support and that subdivision 5(c) directs how to calculate any modified obligation is mirrored in subdivision 7.

Subdivision 8, on the other hand, has no relevance to our analysis because it provides for "[m]edical support-only modification" in limited circumstances "without modification of the full order for support." Minn. Stat. § 518A.39, subd. 8(a). Thus, a motion under subdivision 8 does not implicate modification under subdivision 2(a).

[2] Noting the lack of precedential caselaw on this issue, father's brief to this court asked that we issue a precedential opinion. *See* Minn. R. Civ. App. P. 128.02, subd. 1(f) (allowing a party to include an optional statement as to the form of this court's opinion under Minn. R. Civ. App. P. 136.01, subd. 1(b)). During oral arguments, mother also asked this court to release a precedential opinion. We appreciate the parties' comments about whether this opinion is appropriate for precedential release. We also note the district court relied in part on nonprecedential opinions.

emancipation of a child. Rather, when modification of a support obligation is sought based on emancipation of a child, a district court must determine both whether the child has emancipated and whether the existing obligation is unreasonable and unfair, unless subdivision 5(a) allows for automatic termination of child support. Minn. Stat. § 518A.39, subds. 2(a), 5(a). If the district court determines the existing obligation is unreasonable and unfair, then it may modify the support obligation, and must base the new obligation on the income of the parties at the time the request is made. *Id.*, subd. 5(c).

B. District court's decision to deny father's motion

"The district court has broad discretion when deciding child-support modification issues." *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). Appellate courts review a district court's child-support-modification decision for abuse of discretion. *Haefele*, 837 N.W.2d at 708. A district court abuses its discretion when it misapplies the law, its decision is against logic and the facts on record, or its factual findings are clearly erroneous. *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014).

Father argues the district court "abused its discretion by failing to modify child support consistent with the child support guidelines." Mother argues (1) father forfeited any issue that his current child-support obligation is unreasonable and unfair by failing to contend otherwise during district court proceedings, and (2) even if father did not forfeit the issue, the record supports the district court's determination that the current order is not unreasonable and unfair. We address mother's arguments in turn.

1. Father did not forfeit review of this issue but seeks to raise a new theory on appeal.

Father did not discuss whether his current child-support obligation was unreasonable and unfair during district court proceedings. Rather, he relied on his interpretation of section 518A.39 to relieve him of that requirement. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Here, mother argued during district court proceedings that the current support order was not unreasonable and unfair, and the district court agreed. Thus, this issue was presented to and considered by the district court.

Father argues to this court that the district court erred by failing to accord him, as provided in Minn. Stat. § 518A.39, either the irrebuttable presumption that emancipation is a substantial change in circumstances, or the rebuttable presumption that the existing order is unreasonable and unfair. Father then points to the district court's memorandum, which stated father "had the burden" of showing emancipation and his existing support obligation was unreasonable and unfair. Father contends this was error because "the burden of proof shifted" to mother based on the two presumptions and thus the district court "misapplied the law [by] concluding that [father] failed to prove that the existing order is unreasonable and unfair." This argument—that the burden of proof shifted to mother—appears to be one of first impression.[3]

[3] In *Rose*, this court held "[t]he party who moves to modify an existing child-support order has the burden of demonstrating both a substantial change in circumstances and the

Father's argument is somewhat correct. First, generally, a substantial change is irrebuttably presumed and the unreasonableness and unfairness of the existing order is rebuttably presumed when the moving party shows "the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least $75 per month higher or lower than the current support order." Minn. Stat. § 518A.39, subd. 2(b)(1); *see also Rose*, 765 N.W.2d at 145. Second, father's child-support obligation would decrease more than $75 based on the current circumstances of the parties—those circumstances being a child's emancipation and the parties' current income. Indeed, the district court recognized in a footnote that recent changes in the child-support guidelines would lead to "a reduction from $1,363 per month to $698," which is almost a 50 percent reduction in father's child-support obligation.

But father did not argue mother had the burden of proof during district court proceedings, and instead relied entirely on his interpretation of subdivision 5(c) as the rationale for granting modification. "[A] party may not 'obtain review by raising the same general issue litigated below but under a different theory.'" *Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017) (quoting *Thiele*, 425 N.W.2d at 582). We therefore do not reach the burden-shifting issue father raises for the first time on appeal. Rather, we review the district court's determination that the current order is not unreasonable and unfair for abuse of discretion.

---

unfairness and unreasonableness of the order because of the change." 765 N.W.2d at 145 (citing *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002)).

2. The district court did not abuse its discretion by refusing to modify the existing child-support order.

The district court's analysis of the existing support order followed three steps. First, the district court referred to its 2019 order, noting "[m]ost, if not all, of the reasonableness and fairness considerations . . . still apply." Second, the district court found father's "support obligation is still no hardship for Father to pay, as it amounts to a small portion of his income." And third, the district court determined father "still has no legitimate unfairness complaint." The district court reasoned the "reduction Father seeks here" is not explained "by the amount of any actual expense reduction caused by [the oldest child's] emancipation." Instead, the reduction sought relies on father's "argument that this event triggers use of the new guidelines to recalculate a much smaller obligation."

The record supports the district court's decision. The district court's analysis from the 2019 order largely applied to father's June 2020 modification motion. The record shows most of the identified change in father's support obligation derived from the amended child-support guidelines, not the oldest child's emancipation. The record also shows father's child-support obligation is only a fraction of his gross income. Father is correct that the district court recognized "some costs go down with emancipation: Groceries for example." But the district court also recognized "emancipation of one child does not decrease certain fixed household expenses." Importantly, no record evidence established whether mother's expenses decreased based on the oldest child's emancipation. We discern no abuse of discretion in the district court's determination that the existing child-support obligation is not unreasonable and unfair.

DECISION

A motion to modify child support based on emancipation of one child while others remain under the support order requires both a showing of emancipation and that the substantial change in circumstances makes the existing order unreasonable and unfair under Minn. Stat. § 518A.39, subd. 2(a). The exception to this rule is automatic termination of child support under Minn. Stat. § 518A.39, subd. 5(a). Here, automatic termination of child support does not apply. And the record supports the district court's determination that emancipation of the parties' oldest of three children did not make the existing support order unreasonable and unfair. Thus, the district court followed the child-support-modification statute and did not abuse its discretion when it denied father's request for modification of child support.

Affirmed.