**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0984**

In re the Marriage of:
Johnay Marie Fanning, n/k/a Johnay Marie Frandsen, petitioner,
Respondent,

vs.

Quentin Michael Fanning,
Appellant.

**Filed August 1, 2022**
**Affirmed in part, reversed in part, and remanded**
**Segal, Chief Judge**

Hennepin County District Court
File No. 27-FA-19-3631

Kathryn M. Lammers, Heimerl & Lammers, LLC, Minnetonka, Minnesota (for respondent)

Ryan J. Briese, Kristine J. Zajac, Zajac Law Firm, Minneapolis, Minnesota (for appellant)

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

**NONPRECEDENTIAL OPINION**

**SEGAL**, Chief Judge

In this child-support dispute, appellant-father argues that the district court misapplied Minn. Stat. § 518A.42 (2020) when determining his child-support obligation and erred in determining respondent-mother's income based on allegedly material

misrepresentations by mother about the financial benefit she received from a trust. Because we conclude that the district court misapplied Minn. Stat. § 518A.42 when it ordered father to pay the minimum basic child-support amount in subdivision 2(a)(2) of that statute, we reverse in part and remand. But because we discern no clear error in the district court's findings related to whether payments mother received from a trust should be included in mother's income for purposes of child support, we affirm on that issue.

## FACTS

Appellant-father Quentin Michael Fanning and respondent-mother Johnay Marie Frandsen were married in December 2005 and have three minor children. In March 2020, the parties' marriage was dissolved pursuant to a stipulated judgment and decree that reserved the issues of custody, parenting time, and child support for future determination. Following a trial, the district court awarded the parties joint legal and joint physical custody of the children with equal parenting time. But the district court could not resolve the issue of child support based on the record provided by the parties. The custody order noted that the district court "ha[d] significant concerns about the parties' testimony concerning their incomes—or their financial positions, generally." Based on "the parties' lack of credibility about their financial positions," the district court determined that it "lack[ed] a sufficient factual basis to make meaningful findings on income" and referred the matter to the expedited process for a decision by a child-support magistrate (CSM) pursuant to Minn. R. Gen. Prac. 353.02, subd. 2.

In March 2021, the CSM held a hearing. Mother testified that she was employed by her father's business, generally worked one day a week, and earned $1,000 per month

from that employment. She was also a beneficiary, along with others, of a trust established by her grandfather. Between 2015 and 2019, mother received amounts from the trust ranging between $30,000 to $41,000 each year, except in 2017 when she received approximately $90,000. Additionally, the trust paid for the children's private school tuition in 2020. Mother acknowledged, however, that she does not "have any control over the trustee's decision making" and had not yet received any disbursements in 2021.

Father was not employed at the time of the hearing. He testified that he had applied for various jobs and was attending college classes. He also testified that he had suffered a traumatic brain injury but, when asked if he anticipated the injury would impact his employment prospects, he stated that he had not "been able to gauge" the impact of the injury and "without actually being in [his] next career" he could not "clearly answer that." In addition, father is also a trustee and one of the beneficiaries of a trust established by his family, with assets valued at a total of over $4 million. According to an affidavit submitted by father, he expects to receive "$9,000 per year ongoing" from that trust.

The CSM filed an order establishing child support. The CSM found that mother earned $1,000 per month from her part-time employment and that she did not provide "any claim of a disability that would prevent her from working full-time." The CSM therefore imputed additional income to mother up to full-time and found her monthly parental income for determining child support (PICS) to be $2,397. The CSM declined to include any financial benefit mother received from her family trust in mother's PICS because the CSM found the benefit to be "clearly in the nature of a gift."

The CSM found that father was not currently employed, but determined that it was appropriate to impute full-time income to him "at minimum wage," or $1,747 per month. The CSM also added $750 to father's monthly income based on father's expectation that he would receive $9,000 per year from his family trust, resulting in a finding that father's monthly PICS was $2,497.

The CSM ordered father to pay $75 per month, the basic minimum child-support amount under Minn. Stat. § 518A.42, subd. 2 (the minimum support amount), and $1,275 in past child support.[1] Father moved the district court to review the CSM's decision, arguing that the CSM misapplied Minn. Stat. § 518A.42 when calculating father's child-support obligation, and that mother "provided false statements under oath and in discovery responses regarding the income she has received from her family trust, making the final determination of her income unreliable." The district court denied father's motion for review and affirmed the decision of the CSM. Father now appeals.

## DECISION

### I. The district court misapplied Minn. Stat. § 518A.42 when calculating father's child-support obligation.

Father argues that the district court misapplied Minn. Stat. § 518A.42 when it ordered him to pay the minimum support amount under that statute. As set out below, the parties do not dispute the facts relevant to this issue. Appellate courts review de novo a

[1] This total represents 17 months' worth of past child support based on the support obligation of $75 per month.

district court's construction of a statute. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013).

There is "a rebuttable presumption that a child support order should not exceed the obligor's ability to pay." Minn. Stat. § 518A.42, subd. 1(a). An obligor's "ability to pay" is calculated under Minn. Stat. § 518A.42. *Id.* If the obligor's "income available for support . . . is equal to or greater than the obligor's support obligation calculated under section 518A.34, the court shall order child support under section 518A.34." *Id.*, subd. 1(b). But if the obligor's income available for support "is equal to or less than the minimum support amount under subdivision 2 or if the obligor's gross income is less than 120 percent of the federal poverty guidelines for one person, the minimum support amount under subdivision 2 applies." *Id.*, subd. 1(d).

The parties here agree that father's "income available for support" is $1,209 per month, and that father is the child-support obligor. The parties also agree that, because the parties have equal parenting time, father's child-support obligation as calculated under Minn. Stat. § 518A.34(b), (f) (2020), would be $15 per month.

Finally, the parties agree that neither of the prerequisites set out in Minn. Stat. § 518A.42, subd. 1(d), for applying the minimum support amount are satisfied here: (1) father's "income available for support" is neither equal to nor less than the $75 minimum basic support amount in subdivision 2 for three children, and (2) father's gross income is not less than 120% of the federal poverty guidelines for one person. Despite

this, the district court ordered father to pay $75 per month, the minimum support amount for three joint children as set out in Minn. Stat. § 518A.42, subd. 2(a)(2).[2]

Father argues that, under the plain language of Minn. Stat. § 518A.42, subd. 1(b), the district court erred in its conclusion that the minimum support amount applied to him. Father argues that, instead, because his income available for support is "greater than the obligor's support obligation calculated under section 518A.34," the statute dictates that "the court *shall* order child support under section 518A.34," which in this case is $15 per month. Minn. Stat. § 518A.42, subd. 1(b) (emphasis added).

If, as appears to be the case here, the district court set father's support obligation based on the statute and not on a discretionary deviation from the presumptively appropriate basic support obligation calculated under the support guidelines, we conclude that the court misapplied the statute. First, we note that the district court stated in its order that "the CSM correctly applied the presumptive minimum support order of $75 per month." Minn. Stat. § 518A.42, however, does not contain such a presumption. The statute references two presumptions—that there "is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay," Minn. Stat. § 518A.42, subd. 1(a), and that "[i]f the court orders the obligor to pay the minimum basic support amount under

[2] We note that the CSM and district court applied the 2020 version of the statute, which provided, in relevant part, that "for three or four children, the obligor's basic support obligation is $75 per month." Minn. Stat. § 518A.42, subd. 2(a)(2). The statute has since been amended, effective January 1, 2023, in a manner that will change the minimum support amount for three children but will not alter our analysis of whether the minimum support amount established in Minn. Stat. § 518A.42, subd. 2(a), applies under the facts of this case. *See* 2021 Minn. Laws ch. 30, art. 10, § 69.

this subdivision, the obligor is presumed unable to pay child care support and medical support," Minn. Stat. § 518A.42, subd. 2(b). The statute does not contain a presumption that the minimum support amount applies in all cases. Indeed, a different statute refers to the child-support obligation as calculated under Minn. Stat. § 518A.34 (2020) as "the presumptive child support obligation." Minn. Stat. § 518A.37, subd. 2 (2020).

Second, the plain language of Minn. Stat. § 518A.42, does not support the outcome reached by the district court. Subdivision 1(b) of Minn. Stat. § 518A.42 specifies that, when the obligor's income for child support equals or exceeds the obligor's obligation under Minn. Stat. § 518A.34, as is the case here, "the court shall order child support under section 518A.34." Shall is a mandatory term. *See* Minn. Stat. § 645.44, subd. 16 (2020) (stating that "'[s]hall' is mandatory"); *see also DSCC v. Simon*, 950 N.W.2d 280, 289 (Minn. 2020) (citing Minn. Stat. § 645.44, subd. 16 (2018) when construing a statute).

Third, subdivision 1(d) of Minn. Stat. § 518A.42 provides criteria—not satisfied here—specifying when the minimum support amount is to be applied. And subdivision 2 of that section, which sets out the minimum support amounts, is prefaced by the statement that, "[i]f the basic support amount applies, the court must order" the listed minimum support amounts. Minn. Stat. § 518A.42, subd. 2(a). Here, because the criteria for applying the minimum support amount is not satisfied, the amount is not applicable.

Mother acknowledges that "neither of the triggering events set out in Minn. Stat. § 518A.42, subd. 1(d), requiring the minimum support amount . . . is present in this case." But she argues that it was still appropriate for the district court to order father to pay $75 per month in child support because "applying Minn. Stat. § 518A.42 in the manner [father]

advocates would produce absurd results." Mother posits, for example, that a parent who has less available income than father could be obligated to pay the minimum support amount and thereby pay more in child support than father. We acknowledge the logic of mother's argument, but this is an issue for the legislature to address, not the courts. *See Leifur v. Leifur*, 820 N.W.2d 40, 43 (Minn. App. 2012) (refusing to reach a result consistent with what this court called "meritorious policy arguments" because doing so would require this court to "disregard unambiguous statutory language"), *rev. dismissed* (Minn. Nov. 1, 2012).

Mother also argues that an affirmance is needed "to ensure that [the] children's needs are met." A court setting a support obligation has discretion to deviate from the presumptively appropriate support amount. *See, e.g.*, Minn. Stat. § 518A.43 (2020). But here, neither the order of the CSM nor the order of the district court contains any indication that such discretion was exercised. *See* Minn. Stat. § 518A.37 (2020) (requiring the district court to make certain findings when exercising such discretion). The CSM's order simply states that the $75 support amount "is the statutory minimum support for three joint children." The district court's order references Minn. Stat. § 518A.42, subd. 1(d), and states that "the CSM correctly applied the presumptive minimum support order of $75 per month." Absent more, we must conclude that the order for father to pay the minimum basic support amount of $75 was based on a misapplication of Minn. Stat. § 518A.42, and not an exercise of the court's discretion to deviate from the amount calculated under Minn. Stat. § 518A.34. We therefore reverse the district court's determination of father's child-support obligation and remand for a reevaluation.

## II. The district court did not clearly err in determining mother's income.

Father challenges the district court's determination of mother's income. Generally, the "determination of income must be based in fact and will stand unless clearly erroneous." *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015) (quotations omitted), *rev. denied* (Minn. Dec. 15, 2015). The clear-error standard of review "does not permit an appellate court to weigh the evidence as if trying the matter *de novo*" or "to engage in fact-finding anew." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted). "Deference must be given to the opportunity of the [fact-finder] to assess the credibility of the witnesses." *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Father argues that mother made "material misrepresentations" about her income and the financial benefit she received from her family trust. He asserts that the district court's income determination must be reversed because mother's alleged "misrepresentations call into question the veracity of all [mother's] submissions and negates the Court's determination that the trust income was in the nature of a gift and not income." We are not persuaded.

Father's brief alleges that mother's filings with the district court and testimony contain contradictory allegations. But the district court referred the matter to the CSM specifically because of "the parties' lack of credibility about their financial positions." It is therefore unsurprising that there are discrepancies between mother's filings and her testimony. Indeed, the district court found neither party was very forthcoming about their finances. We also note that father's attorney questioned mother about the discrepancies

during the hearing, highlighting father's position for the CSM that mother's testimony was not credible.

Moreover, in its order denying father's motion for review and affirming the CSM's order, the district court explicitly acknowledged the credibility problems posed by the parties' financial disclosures. The district court found:

> [Father] accuses [mother] of making multiple false statements both to the Court and during discovery. The record reflects that both parties have credibility issues and that the CSM correctly made income determinations based on the evidence submitted and the testimony of the parties. The CSM wrote a detailed and comprehensive order in this respect.

In short, the CSM made findings based on the evidence presented and its assessment of the credibility of the parties—an assessment that was reviewed and approved by the district court. By asking this court to conclude that the findings are erroneous because they were based on discrepancies known to the CSM and district court, father is essentially asking this court to reweigh the evidence and make independent credibility determinations. This is outside the proper scope of appellate review. *See id.* (noting that an appellate court misapplies the scope of review when it "usurp[s] the role of the [fact-finder] by reweighing the evidence and finding its own facts"); *see also Kenney*, 963 N.W.2d at 223 (stating that, on review for clear error, the "appellate court is not to weigh, reweigh, or inherently reweigh the evidence," but must consider the evidence "only as is necessary to determine beyond question that it reasonably tends to support the findings of the factfinder" (quotation omitted)).

Finally, father argues that "[t]rust income has traditionally been considered income for the purposes of calculating child support." Whether funds from a particular source are considered to be income for child-support purposes is a legal question reviewed de novo. *Sherburne Cnty. Soc. Servs. ex rel. Schafer v. Riedle*, 481 N.W.2d 111, 112 (Minn. App. 1992). Father cites *Welsh v. Welsh* to support his assertion that trust income is traditionally included when calculating a party's income for child-support purposes. 775 N.W.2d 364 (Minn. App. 2009). But as mother notes, father's argument overstates the holding in *Welsh*.

In *Welsh*, a party was "the beneficiary of certain monthly payments from a trust." *Id.* at 366. The district court included the monthly trust income when calculating the party's income, and on appeal the party did "not challenge the finding that she receive[d] monthly distributions from the trust." *Id.* at 366, 369. Consequently, the *Welsh* court noted that "gross income" included "any form of periodic payment to an individual," and determined that the payments from the trust were periodic and could be included when calculating the party's gross income. *Id.* at 369 (quoting Minn. Stat. § 518A.29(a) (2008)).

The requirement that, to be income, a payment must be periodic, has not changed since *Welsh*. *Compare* Minn. Stat. § 518A.29(a) (2008) *with* Minn. Stat. § 518A.32(a) (2020). Here, the CSM, affirmed by the district court, concluded that the funds received by mother from her grandfather's trust constituted gifts, not periodic payments. Based on the evidence presented by the parties, we discern no error in this conclusion.

The only evidence in the record regarding the nature of mother's trust payments is from mother. Mother testified and submitted affidavit evidence to the effect that she is only a beneficiary of the trust, not a trustee; the payments made to her are at the discretion

and under the control of the trustees, not her; and she cannot predict whether and how much she might receive from the trust. This fact distinguishes mother's situation from both the trust beneficiary in *Welsh* and from father, who indicated that he expects to receive an annual benefit of $9,000 per year from his family trust. Thus, even though she has received significant amounts from the trust, the determination that the trust payments to mother do not qualify as "periodic payments" has support in the record and we therefore affirm the district court's calculation of mother's income.

In summary, we conclude that the district court erred in its determination of father's child-support obligation, and we reverse and remand to the district court to reevaluate father's support obligation. The district court may, in its discretion, reopen the record on remand. We, however, discern no error in the calculation of mother's income and affirm on that issue.

**Affirmed in part, reversed in part, and remanded.**