**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-1675**

In re the Marriage of: Matthew James Beland, petitioner,
Appellant,

vs.

Heidi Ann Beland,
Respondent,

and

Polk County,
Respondent.

**Filed August 22, 2022**
**Affirmed in part, reversed in part, and remanded; motions denied**
**Bryan, Judge**

Polk County District Court
File No. 60-FA-15-340

Sarah M. Kyte, Kyte Law Office, East Grand Forks, Minnesota (for appellant)

Denise A. Sollund, Brink Lawyers, P.A., Hallock, Minnesota (for respondent Heidi Ann Beland)

Greg Widseth, Polk County Attorney, Larry Orvik, Assistant County Attorney, Crookston, Minnesota (for respondent county)

Considered and decided by Bryan, Presiding Judge; Gaïtas, Judge; and Klaphake, Judge.[*]

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

## NONPRECEDENTIAL OPINION

**BRYAN**, Judge

In this child support modification matter, appellant disputes the following three aspects of the child support magistrate's (CSM) modification order: (1) the factual findings regarding respondent's employment; (2) the amount of deductions for appellant's two nonjoint children; and (3) the denial of appellant's request to provide the joint children's dental insurance. We conclude that the CSM did not clearly err in making findings regarding respondent's employment. However, because the record is insufficient to allow appellate review of the contested amount of the deduction for appellant's nonjoint children, we reverse and remand the second issue for further findings. We decline to consider the third issue because appellant previously litigated and appealed a decision requiring both parties to maintain dental coverage without reimbursement. Finally, we deny appellant's motion to strike respondent's brief and motion for sanctions.

## FACTS

Appellant Matthew James Beland (father) and respondent Heidi Ann Beland, n/k/a Heidi Ann Rylander (mother), share joint physical custody of their two children born in May 2010 and May 2012. In November 2015, the district court adopted the parties' stipulated divorce decree. The divorce decree ordered father to pay mother $703 per month, which included $251 in basic support. This obligation was based on father's gross monthly income of $4,820 and mother's gross income of $3,164.[1] The divorce decree also

[1] Before the final divorce decree, the parties stipulated to the court that "[mother] has taken a voluntary reduction in hours at her job. Her income for child support calculation purposes

required father to provide healthcare and vision coverage, and obligated mother to provide dental coverage. The decree ordered the parties to reimburse one another for these expenses based on their PICS percentages.[2]

In 2017, the parties agreed to modify child support due to an increase in childcare expenses. In 2018, the parties agreed father would reimburse mother $75 each month for his portion of the joint children's extracurricular expenses, and in October 2019, the district court ordered father to pay this amount, reasoning that "there will be many months where the children's [extracurricular] expenses will exceed [$150.00]." In April 2020, father moved to modify child support and to be reimbursed for the costs of providing dental insurance coverage for the joint children. The district court modified child support, after determining that father earned a gross monthly income of $5,722 and mother earned $3,222. The district court ordered father to pay $535 in basic support, found that "[e]ach of the parties has chosen to maintain dependent dental insurance coverage for the joint children," and ordered that "[n]either party shall pay the other party medical support reimbursement for the cost of dependent health insurance coverage." Father appealed the district court's modification and challenged the decision requiring both parties to provide dental insurance without reimbursement. This court affirmed the decision, specifically concluding that the district court did not abuse its discretion when it ordered both parents

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will remain the same as the original temporary support order." The first temporary child support order calculated mother's gross income based on 32 hours per week as a certified medical assistant, and the parties used this amount in their stipulated divorce decree.

[2] "PICS" stands for Parental Income for determining Child Support. Minn. Stat. § 518A.26, subd. 15 (2020). "PICS percentages" refers to a calculation of the parents' proportionate share of their combined monthly PICS. Minn. Stat. § 518A.35, subd. 2 (2020).

to provide healthcare coverage without adjusting their support obligations. *Beland v. Beland*, 2021 WL 1081487 (Minn. App. Mar. 22, 2021), *rev. denied* (Minn. June 15, 2021).

In July 2021, Polk County moved to modify basic support, medical support, and childcare support at father's request. The request was based on the following circumstances: both parents' gross monthly incomes have increased since the last order; both parents' childcare expenses have changed since the last order; and father has an "ordered support obligation" for his nonjoint child, L.B., born April 2021, who "resides in a household other than [his]." Beyond providing information about the parties' income, expenses, and changed circumstances, the county did not provide the district court with any proposed calculations or submit a proposed child support worksheet. Father submitted a responsive affidavit to the county's motion and generally echoed the county's statements, noting that he has a court-ordered child support obligation for L.B. and that he has another nonjoint child, C.B., whom he cares for. Father also asserted that mother regularly receives income from providing childcare and from rental properties.

The matter proceeded to an evidentiary hearing before a CSM on October 7, 2021. The CSM admitted three exhibits offered by father and received testimony from mother, father, and K.M. (a human resources manager from mother's employer). K.M. testified that her knowledge was limited because she only completed the employment verification form and had not reviewed mother's entire employment record. She explained that she did not know of any scheduling requirements for certified medical assistants and that any changes to her hours were at the department's discretion. K.M. also explained that there were "other hours available within [the] organization" but she could not speak to

availability of specific hours for medical assistants. K.M. confirmed that mother had worked 32 hours a week since 2012.

Mother testified that her employer considered her to be a full-time employee at 32 hours per week. Mother also explained that she could get more hours on a sporadic basis when other colleagues needed time off, but that it was unlikely her employer would grant a request for more hours on a more permanent basis. Mother testified that the number of hours per week has remained constant and that she has never asked for a reduction in hours or refused to increase her hours.

Father introduced exhibits including one exhibit relating to local job listings for certified medical assistants, part of the parties' 2015 stipulated interim order, and certified medical assistant reports from the Bureau of Labor and Statistics. Father testified about his change in childcare expenses and discussed L.B., the nonjoint child he has with Sarah Kyte.[3] Father also mentioned C.B., a "boy that we'll hopefully [sic] will adopt here pretty soon."[4] Father has a stipulated child support order for L.B. requiring father to pay $1,332 a month to Ms. Kyte. Father also requested that the CSM modify the previous order to require him to provide dental insurance and to require mother to reimburse him based on the PICS percentages. The CSM clarified that father was not asking the court to preclude mother from also maintaining insurance and confirmed that mother was currently providing

[3] Ms. Kyte is father's attorney on appeal and also represented father during the evidentiary hearing before the CSM. Father and Ms. Kyte are not married, but father testified that he resides with Ms. Kyte, L.B., C.B., and Ms. Kyte's four children from a previous marriage.
[4] There are only two other references to C.B. in the record: on father's 2020 tax form listing C.B. with the relationship status redacted and, as noted above, in father's affidavit asserting father cares for C.B.

both medical and dental coverage.[5] Mother requested to maintain the status quo, arguing that father's motion was previously litigated.

On October 12, 2021, the CSM granted the county's motion to modify child support, concluding that since the last support order there had been substantial changes in the parties' incomes, childcare expenses, and "number of [nonjoint] children." The CSM found that father's gross monthly income was $5,959 and that mother's gross monthly income was $3,319. The CSM found that mother "is a licensed practical nurse, who works 32 hours per week . . . [and she] is not voluntarily underemployed." The CSM set father's new, ongoing basic child support obligation at $482 a month. The CSM ordered father to maintain dependent medical insurance coverage and designated father's medical insurance as the primary medical coverage for the joint children. The CSM denied father's modification request regarding dental insurance and continued to require both parents to provide dental insurance at their own expense and without reimbursement. The CSM designated mother's dental insurance as the primary coverage for the joint children.

The CSM found that father "has one [nonjoint] child in his home," for whom there is a court-ordered, monthly child support obligation in the amount of $1,332. However, the CSM found that "this was a stipulated support order between the [father] and [Ms. Kyte], and the [nonjoint] child resides in this same household [with father and Ms. Kyte]." The CSM concluded that the stipulated child support obligation "has not been added to the

[5] To the extent that any portion of father's brief can be construed as challenging the CSM's factual finding that mother is currently providing dental insurance, we conclude that the finding was not clearly erroneous given mother's statements at the evidentiary hearing.

guideline calculation for the joint children of the parties." The CSM did not include a child support worksheet as an attachment and made no mention of C.B. in its order.

Father appeals. Father also made two motions to this court: a motion to strike portions of mother's brief and a motion for attorney fees.

## DECISION

Father raises three primary challenges to the CSM's order. First, father argues that the CSM made an erroneous finding of fact when it determined that mother was not voluntarily underemployed as part of its calculation of mother's gross income.[6] We conclude that the CSM did not clearly err because the record supports the finding that mother was not voluntarily underemployed. Second, father argues that the CSM erred in determining the applicable adjustment for father's nonjoint children, L.B. and C.B. Because the record is insufficient to review the CSM's decision regarding deductions for father's nonjoint children, we remand for further findings. Finally, father argues that the CSM erred when it ordered both parties to provide dental insurance without reimbursement. Because this court previously affirmed the decision ordering both parents

[6] Father also challenges the CSM's income findings because mother's income did not include the $75 per month that father is obligated to pay mother for his portion of the joint children's extracurricular expenses. Father characterizes the reimbursements as equivalent to spousal maintenance and argues they should be counted as income for purposes of child support. We decline to consider this argument because father does not cite to any binding authority treating one parent's portion of a joint child's extracurricular expenses as equivalent to spousal maintenance. *Kaehler v. Kaehler*, 18 N.W.2d 312, 537 (Minn. 1945) (declining to review an argument not supported by legal authorities); *see also, e.g.*, *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an issue absent adequate briefing); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal).

to provide healthcare coverage without reimbursement, we decline to consider the merits of this decision a second time.

Appellate courts use the same standard to review a CSM's order as they use to review orders issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009); *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). We review a district court's factual findings for clear error, *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014), questions of law de novo, *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013), and the ultimate decision to modify child support for an abuse of discretion, *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999).

## I. Challenge to Finding Regarding Mother's Full-time Employment

Father argues that the CSM clearly erred in finding that mother was not voluntarily underemployed under Minnesota Statutes section 518A.32, subdivision 1 (2020). Because the record supports the CSM's finding, the CSM did not clearly err.

For purposes of calculating child support, the Minnesota Legislature requires imputation of a full-time income when a parent is voluntarily underemployed: "If a parent is voluntarily unemployed, underemployed, or employed on less than full-time basis, . . . child support must be calculated based on a determination of potential income . . . . [I]t is rebuttably presumed that a parent can be gainfully employed on a full-time basis." *Id.* "Full-time means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week." *Id.*

Reviewing findings regarding income and whether a party is voluntarily underemployed presents questions of fact that we review for clear error. *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (noting that appellate courts review district court's findings on income for clear error); *see also* Minn. Stat. § 518A.29(a) (2020) ("gross income" includes "potential income," if any). "[Appellate courts] will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted). Nor should appellate courts reconcile conflicting evidence or "weigh the evidence as if trying the matter de novo." *Id.* (quotation and emphasis omitted). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted).

In this case, the CSM found that mother "is a licensed practical nurse, who works 32 hours per week . . . [and] is not voluntarily underemployed" and stated at the hearing that it believed mother's employer considered her a full-time employee. We conclude that the record supports these findings.[7] First, the record shows that mother has been employed as a certified medical assistant at 32 hours a week since 2012, three years before the parties divorced. Mother's testimony indicates that while her income has changed, the number of hours she works has not changed. Second, according to mother, her employer considers

[7] The CSM incorrectly stated mother's title, as mother is a certified medical assistant. Father does not assert any error arising from this discrepancy.

her full-time at 32 hours a week and has since 2012. This testimony was generally corroborated by K.M., the human resources manager for mother's employer. Mother also testified that she is unable to increase her hours on anything more permanent than a shift-by-shift basis. Given this testimony, the record supports the CSM's factual finding.[8]

## II. Challenge to Decision Regarding Income Deduction for Nonjoint Children

Next, father argues that the CSM clearly erred when it did not include a deduction in the amount of father's court-ordered child support obligation for L.B. and when it did not include the statutory deduction for C.B.[9] We are unable to review the determinations made by the CSM regarding L.B. and C.B. and remand the matter for further findings.

When calculating child support, Minnesota Statutes section 518A.33(a) (2020) requires the district court to include deductions from a parent's income when that parent is "legally responsible for a nonjoint child." The statute contemplates the use of the actual amount of a court-ordered child support obligation or the use of a standard amount derived using the basic support guideline table. The testimony at the evidentiary hearing shows that father owes court-ordered child support for L.B. in the amount of $1,332 pursuant to

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[8] We also observe that the parties and the district court have consistently classified mother as employed full-time at 32 hours per week. Although mother stipulated that she took "a voluntary reduction in hours at her job" before to the divorce decree in 2015, in every order since the divorce decree, mother's income has been calculated using her hourly rate for 32 hours a week. Given our decision regarding the evidentiary support for the CSM's factual finding, however, we need not determine whether father has forfeited the argument that mother is voluntarily underemployed.

[9] Father also asserts, in passing, that withholding income to satisfy his child support obligation violates the Consumer Credit Protection Act (CCPA). *See* 15 U.S.C. § 1673(b)(2)(A) (2021). We need not address this argument because father does not provide adequate analysis to allow meaningful review. *Wintz*, 558 N.W.2d at 480; *Kaehler*, 18 N.W.2d at 537; *Brodsky*, 733 N.W.2d at 479.

a stipulation that father and Ms. Kyte agreed to. The written order, however, does not include a child support worksheet and while the CSM noted that the stipulated amount of $1,332 "has not been added to the guideline calculation," the order does not specify whether the CSM used some other amount, such as the standard statutory deduction, when it calculated father's child support obligation. In addition, there is no specific mention of C.B. in the CSM's written order or analysis regarding possible deductions relating to C.B. Nor is there any statement regarding the total deduction made, if any, or the total number of nonjoint children for whom father is legally responsible.

Accordingly, we remand this matter for further findings regarding the applicable deductions. We acknowledge that the record from the evidentiary hearing contains almost no testimony or evidence regarding C.B. or regarding father's legal relationship to C.B. at the time of the evidentiary hearing. Nevertheless, the record on remand shall be limited to the evidence presented at the October 7, 2021 hearing and neither party is permitted to reopen the record. If father wishes to present new evidence because circumstances have changed since the evidentiary hearing (for example, father may now have formally adopted C.B. or may now have court-ordered child support specifically relating to C.B.), he may proceed by filing a new motion for modification.

## III. Challenge to Decision Regarding Dental Insurance

Father's final arguments on appeal challenge the CSM's order requiring both parties to provide dental insurance coverage without requiring reimbursement. We decline to consider this argument in light of our previous opinion affirming the CSM's earlier decision to require both parties to provide dental insurance without reimbursement.

In his previous appeal, father challenged the CSM's decision to require both parties to provide dental insurance at their own expense. Specifically, father argued that the CSM "should not have ordered both parties to provide medical support without adjusting their support obligations accordingly." *Beland*, 2021 WL 1081487 at *4. Father argued that Minnesota Statutes section 518A.41, subdivision 3(1) (2020), required the CSM to "determine which parent's coverage [was] more comprehensive by considering what other benefits [were] included in the coverage." *Id.* And father argued that section 518A.41, subdivision 5(b), required the CSM to reduce the carrying party's support obligation by the amount of the contributing party's contribution. Minn. Stat. § 518A.41, subd. 5(b) (2020). This court determined that "the CSM was not obligated to follow subdivisions 3(1), 5(a), or 5(b)" because "the parties entered into their own agreement regarding the division of medical and dental insurance obligations for their children, and because Beland decided to provide supplemental dental insurance for the children of his own volition." *Id*. at *5. In his present appeal, father asserts the same error as before. Because we already determined that the CSM did not abuse its discretion in requiring both parties to provide dental insurance without reimbursement, we decline to consider father's argument.[10]

[10] To the extent that any part of father's brief can be construed as challenging the portion of the CSM's decision that designated mother as primarily responsible for dental insurance, we are not convinced that this decision compels reversal. We previously concluded that the CSM was not obligated to apply subdivision 3(1) to these parties. *Beland*, 2021 WL 1081487, at *5. In addition, even assuming there is a significant difference between the comprehensiveness of the policies, father makes no attempt to explain why it is an abuse of discretion to designate the less comprehensive policy as primary and the more comprehensive policy as secondary or supplemental. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made [to] appear affirmatively before there can be reversal . . . . [T]he burden of showing error rests

## IV. Motion to Strike and for Sanctions

While this appeal was pending, father moved to strike 19 portions of mother's responsive submissions to this court and moved for attorney fees. Father argues that mother's submissions contained copies of documents not in the record below and that she submitted them for an impermissible purpose. Father seeks attorney fees under Minnesota Statutes section 549.211, subdivision 2 (2020), arguing that mother acted in bad faith. We deny both motions and address each in turn.

Father's motion to strike mother's brief included general assertions, inaccurate characterizations of the record, arguments that were generally not supported by authority, and arguments regarding issues we have declined to consider. In addition, to the extent that mother's responsive submissions improperly included documents not in the appellate record, such as the register of actions from another case, we did not rely on any of those documents in resolving this appeal. *See* Minn. R. Civ. App. P. 110.01 ("The appellate record is limited to "documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any"); *Thiele v. Stich*, 425 N.W.2d 580, 582-83 ("An appellate court may not base its decision on matters outside of the record on appeal, and may not consider matters not produced and received in evidence below"). Therefore, we need not consider father's arguments to strike those documents.

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upon the one who relies upon it"); *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quoting this aspect of *Waters* in a family law appeal); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying this aspect of *Loth*).

Turning to father's motion for sanctions, we find his arguments unavailing. Minnesota Statutes section 549.211 (2020) permits this court to award reasonable attorney fees when a party acts in bad faith by asserting frivolous or unfounded claims solely to harass or to delay proceedings. The assertions made by father do not establish that mother acted in bad faith, intended to harass father, or cause unnecessary delay, and we deny his motion for attorney fees.

**Affirmed in part, reversed in part, and remanded; motions denied.**