STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1783

In re the Marriage of: Rebecca Ellen Bender, petitioner,
Appellant,

vs.

Peter Howard Bernhard,
Respondent.

Filed August 7, 2023
Affirmed; motion denied
Johnson, Judge

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

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

Peter H. Bernhard, Philadelphia, Pennsylvania (*pro se* respondent)

Considered and decided by Gaïtas, Presiding Judge; Johnson, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal is concerned with whether the father of a young adult should continue to pay child support on the ground that the young adult is incapable of self-support. In 2019, the young adult's mother moved to extend the father's obligation to pay child support, but the district court denied the motion. In 2020, the young adult's mother moved to reopen the earlier motion based on newly discovered evidence. The district court denied

the motion to reopen and, after an appeal and a remand, denied the motion to reopen a second time. We conclude that the district court did not err by denying the motion to reopen on the ground that the newly discovered evidence is not likely to change the outcome of the motion to extend child support. Therefore, we affirm.

FACTS

Almost all of the facts and procedural history relevant to this appeal are described in detail in three prior appellate opinions concerning the parties' dispute over child support. *See Bender v. Bernhard*, No. A19-1611, 2020 WL 3409243 (Minn. App. June 22, 2020) (*Bender I*); *Bender v. Bernhard*, No. A20-1234, 2021 WL 1525239 (Minn. App. Apr. 14, 2021) (order opinion) (*Bender II*) (subsequent history omitted); *Bender v. Bernhard*, 971 N.W.2d 257 (Minn. 2022) (*Bender III*). Those facts need not be repeated here.

On remand following the supreme court's opinion in *Bender III*, the district court allowed the parties to submit memoranda of law and to present oral argument at a motion hearing. In November 2022, the district court filed a ten-page order denying Bender's motion to reopen her motion to extend child support.

Bender filed a notice of appeal and an appellate brief. Bernhard has not filed a responsive brief. Nonetheless, this court must resolve the appeal on the merits. *See* Minn. R. Civ. App. P. 142.03.

DECISION

Bender argues that the district court erred by denying her motion to reopen her motion to extend child support.[1]

A.

We begin by reviewing the applicable legal principles.

A child-support obligation "terminates automatically . . . upon the emancipation of the child as provided under section 518A.26, subdivision 5." Minn. Stat. § 518A.39, subd. 5(a) (2022). The cross-referenced statute is a definitional statute, which provides that the term "child" means either "[1] an individual under 18 years of age, [2] an individual under age 20 who is still attending secondary school, or [3] an individual who, by reason of physical or mental condition, is incapable of self-support." Minn. Stat. § 518A.26, subd. 5 (2022). These two statutes, when read together, "imply that an individual incapable of self-support continues to be an unemancipated child for support . . . purposes." *Maki v. Hansen*, 694 N.W.2d 78, 83 (Minn. App. 2005). A child-support obligation may be

[1]After filing her appellate brief, Bender filed a "motion to protect parties' child's identity." She requests that this court, in its opinion, refrain from using the full name or the initials of the young adult at issue and instead refer to him as "the parties' child" or "a similar phrase." We prefer to avoid the use of the word "child" in our routine references because, as explained below, the ultimate issue is whether the young adult is a "child," as that word is used in the child-support statutes. The prior opinions have referred to the young adult using male pronouns. *See Bender I*, 2020 WL 3409243; *Bender II*, 2021 WL 1525239; *Bender III*, 971 N.W.2d 257. Accordingly, we will refer to him in this opinion as "the parties' son," thereby avoiding identifying information and avoiding any endorsement of Bender's position on the merits. In light of that means of identification, we deny Bender's motion as moot. *See Bender III*, 971 N.W.2d at 260 n.1 (denying similar motion as moot).

extended for the benefit of a person who has reached the age of majority if the person satisfies the statutory definition of "child" because he or she is incapable of self-support. *See, e.g.*, *State ex rel. Jarvela v. Burke*, 678 N.W.2d 68, 72 (Minn. App. 2004); *see also McCarthy v. McCarthy*, 222 N.W.2d 331, 334 (Minn. 1974). In this case, Bender seeks to establish that the parties' son is a "child" based on the third prong of the statutory definition.

We are reviewing the district court's ruling on a motion to reopen filed pursuant to section 518.145, subdivision 2, of the Minnesota Statutes. Under that statute, a district court

> may relieve a party from a judgment and decree, order, or proceeding under this chapter . . . and may order a new trial or grant other relief as may be just for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Rules of Civil Procedure, rule 59.03;
>
> (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
>
> (4) the judgment and decree or order is void; or
>
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

Minn. Stat. § 518.145, subd. 2 (2022). Bender's motion is based on the second paragraph of this statute, which applies to newly discovered evidence. In *Bender III*, the supreme court held that the evidence identified by Bender in her motion to reopen may be considered newly discovered evidence. 971 N.W.2d at 266-67.

A motion to reopen based on newly discovered evidence may be granted if the newly discovered evidence (1) was not "discoverable before the relevant proceeding by the exercise of reasonable diligence"; (2) is "relevant and admissible"; and (3) is not "cumulative, contradictory, or impeaching" and "will likely affect the outcome of the case." *Id*. at 266 (quotations omitted). Because the caselaw uses the word "and" in relation to the three requirements, the moving party must establish all three requirements. *J.L.B. v. T.E.B.*, 474 N.W.2d 599, 602 (Minn. App. 1991) (applying Minn. R. Civ. P. 60.02), *rev. denied* (Minn. Oct. 11, 1991); *Kozak v. Weis*, 348 N.W.2d 798, 802-03 (Minn. App. 1984) (same).

A party seeking relief under section 518.145, subdivision 2, bears the burden of establishing the requirements for relief by a preponderance of the evidence. *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016). This court applies an abuse-of-discretion standard of review to a district court's ruling on a motion to reopen. *Bender III*, 971 N.W.2d at 262.

B.

The district court denied Bender's motion to reopen on the grounds that she did not establish any of the three requirements of the caselaw interpreting paragraph 2 of section 518.145, subdivision 2. *See id.* at 266. First, the district court determined that Bender did

not exercise reasonable diligence in obtaining the newly discovered evidence because she "waited more than 2 years and 10 months to file the SSI [*i.e.*, Supplemental Security Income] application." Second, the district court determined that the newly discovered evidence is not admissible because it is not relevant and, if it were relevant, the danger of unfair prejudice and confusion would substantially outweigh its probative value. *See* Minn. R. Evid. 401, 403. Third, the district court determined that the newly discovered evidence would not change the result of the motion to extend child support because the Social Security Administration (SSA) applied a different legal standard than the standard that applies to Bender's motion to extend and because the newly discovered evidence does not prove that the parties' son "is incapable of self-support." *See* Minn. Stat. § 518A.26, subd. 5.

Bender argues that the district court erred in each of its three determinations.[2] We will focus on the district court's third determination. Bender challenges that determination

[2]We note that Bender criticizes the district court for excessive reliance on Bernhard's proposed order and for adopting many of his proposed findings and conclusions verbatim. She does not argue that this court should reverse on that ground alone. Her argument is appropriate in light of *Bliss v. Bliss*, 493 N.W.2d 583 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993), in which this court stated that the "wholesale adoption" of proposed findings could "raise[] the question of whether the trial court independently evaluated each party's testimony and evidence" but that "the verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Id.* at 590. We have carefully compared the district court's order with Bernhard's proposed order, which are identical or similar in numerous paragraphs. But the differences are sufficient in quantity and quality to indicate that the district court "independently evaluated each party's testimony and evidence." *See id.* Nonetheless, we will consider the extent of the district court's verbatim adoption of proposed findings and conclusions in the course of determining whether the district court abused its discretion. *See Dukes v. State*, 621 N.W.2d 246, 258 (Minn. 2001); *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *rev. denied* (Minn. Sept. 28, 2005).

by arguing that the district court misinterpreted the statutory standard, "incapable of self-support," and did not properly consider the newly discovered evidence.

The phrase "incapable of self-support" in section 518A.26, subdivision 5, has not been interpreted in a prior appellate opinion in a way that provides additional meaning. The district court referred to a lay dictionary to explain that the term means "lacking capacity, ability, or qualification for the purpose" of being "independent, self-sufficient, and self-reliant." Bender contends that the district court erred by not giving sufficient weight to the SSA's disability determination in its analysis of whether the parties' son is "incapable of self-support."

The district court did not err by not deeming the SSA's determination to be conclusive of the relevant factual issue. The district court was not required by law to give preclusive effect to the SSA's determination. Rather, it was appropriate for the district court to consider the evidentiary value of the newly discovered evidence and determine whether that evidence, in combination with the evidence previously considered, may prove that the parties' son "is incapable of self-support." *See* Minn. Stat. § 518A.26, subd. 5.

This court previously noted that Bender's newly discovered evidence consists of two documents that post-dated the district court's September 2019 order denying Bender's motion to extend child support. *Bender II*, 2021 WL 1525239, at *3. The first new document is a May 1, 2020 letter from the SSA to Bender. The first paragraph of the letter states that the SSA has determined that the parties' son is eligible for SSI benefits as of September 2019. The second paragraph of the letter states, "The rest of this letter explains his current monthly payment, his back payments, how we figured his payment amount,

information about Medicaid, your reporting responsibilities, and his appeal rights." The letter is accompanied by 14 pages of attachments, which provide additional information about federal regulations concerning the SSI program and its benefits. The letter and its attachments provide information to Bender and the parties' son about the amount of his SSI benefits and how his SSI benefits will be administered. The letter does *not* contain any information about the parties' son's disability, the SSA's analysis of the information presented to it concerning the parties' son's condition, or the SSA's determination that the parties' son is disabled for purposes of the SSI program.

The second new document is a 12-page document created by the SSA entitled "Disability Determination Explanation" and dated April 2020. The document recites the information received by the agency but does not contain much discussion about the reasons for the SSA's determination that the parties' son is disabled for purposes of SSI benefits. The second new document includes numerous one-paragraph summaries of records of prior treatment and therapy. Much of that part of the document simply repeats information that Bender previously submitted into evidence in support of her motion to extend child support. The district court noted in its order that the document includes summaries of only a few appointments that occurred after the district court denied Bender's motion to extend child support. The district court determined that the summaries of the recent appointments are consistent with the evidence that was before the district court in September 2019 and do not show that the parties' son is incapable of self-support. Specifically, the district court found that the recent evidence shows that the parties' son had obtained a new job and, although he had received some negative feedback, had agreed to "approach work with a

positive attitude" and "was able to listen and agree to handling things differently." The second new document supports the district court's determination. The second new document also shows that the parties' son had remained employed in the new position for at least one month, which tends to show that he is capable of self-support.

In light of the two new documents that Bender submitted with her motion to reopen, which have limited evidentiary value, the district court did not abuse its discretion by determining that the newly discovered evidence would not change the result of the motion to extend child support. Thus, the district court did not abuse its discretion by determining that Bender has not established the third requirement of the caselaw interpreting section 518.145, subdivision 2. *See Bender III*, 971 N.W.2d at 266. Because Bender is required to establish all three requirements, it is unnecessary to consider whether the district court erred by determining that Bender has not established the first and second requirements.

In sum, the district court did not err by denying Bender's motion to reopen her motion to extend child support.

Affirmed; motion denied.