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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2180**

In re the Marriage of:
Daniel Arthur Meyer, petitioner,
Appellant,

vs.

Karen Marie Meyer,
Respondent.

**Filed June 20, 2011
Reversed
Toussaint, Judge**

Scott County District Court
File No. 70-2004-1715

Christopher S. Petros, Tuttle Bergeson, P.A., Shakopee, Minnesota (for appellant)

Gary G. Liebmann, Liebmann Law Office, P.A., Savage, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and
Connolly, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant-father Daniel Arthur Meyer challenges the district court's allocation of the annual dependency tax exemption, I.R.C. § 151 (2006), to respondent-mother Karen Marie Meyer, who previously had the right to the exemption only in even-numbered

years. Because the district court erroneously considered reassignment of the annual exemption to respondent de novo, rather than as a modification of the support order, and there has not been a substantial change in circumstances, the district court abused its discretion and we reverse.

DECISION

The allocation of federal tax exemptions is within the discretion of the district court and will not be overturned absent an abuse of that discretion. *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). Dependency exemptions are aligned with child support and “may be modified upon a showing of a substantial change in circumstances pursuant to [the modification statute].” *Biscoe v. Biscoe*, 443 N.W.2d 221, 224 (Minn. App. 1989); *see also Joneja v. Joneja*, 422 N.W.2d 306, 310 (Minn. App. 1988) (stating that dependency exemptions may be modified in accordance with the child-support-modification statute).

The relevant portion of the parties’ 2004 divorce decree provided that:

The parties shall share the State and Federal tax exemptions as follows: [respondent] shall be entitled to the tax exemption for the minor child in 2004 and every even year thereafter, [appellant] shall be entitled to the tax exemption for the minor child in 2005 and every odd year thereafter, and so on or until modified by Court order.

When respondent moved that she be entitled to the exemption every year, the district court concluded that the “or until modified by Court order” provision in the original decree allowed for the issue to be decided de novo, without regard to the prior order or the requirements of the support modification statute, Minn. Stat. § 518A.39 (2010).

By conducting a de novo review of the allocation of the dependency exemption, the district court disregarded our holdings in *Biscoe* and *Joneja*, stating that modification of the allocation of dependency exemptions is governed by the child-support-modification statute. As such, the district court abused its discretion by deciding de novo to allocate the annual dependency exemption to respondent. See *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009) (“Misapplying the law is an abuse of discretion.”); *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (“The [district] court abuses its discretion if it erroneously applies the law to the case.”).

Having concluded that the district court abused its discretion, we next turn to whether the error was harmless. See Minn. R. Civ. P. 61 (requiring courts to ignore or disregard errors that do not affect a party’s substantial rights). Under the modification statute, the district court may modify the award upon a showing of a substantial change in circumstances that makes the terms of the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2. The district court, by way of an alternative analysis, found that a 2007 lump-sum payment in satisfaction of appellant’s future child-support obligation constituted a substantial change in circumstances that rendered the existing award unreasonable and unfair. We disagree.

“Judicial interpretation of [the modification] statute and its predecessors has established that an award is to be modified only upon clear proof of facts showing a substantial change of circumstances from those existing at the time of the dissolution or, as in the instant case, at the time the award was last modified.” *Weise v. Weise*, 295 N.W.2d 371, 372 (Minn. 1980). In the present case, the support award was last modified

on June 27, 2007, when the district court approved the one-time, lump-sum payment in satisfaction of all of appellant's child support obligations with regard to the joint child. Because the 2007 lump-sum payment *was* the prior modification of appellant's child-support obligation, that lump-sum payment cannot constitute the "substantial change in circumstances" under the modification statute. We therefore reverse the district court's modification of the allocation of the dependency exemption.¹

Reversed.

¹ We note that the district court also ordered appellant to pay respondent \$450 per month for childcare expenses through automatic income withholding. Appellant does not challenge this portion of the district court order, and the issue of the support for childcare expenses is not before this court on appeal. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding issues not briefed on appeal are waived).