STATE OF MINNESOTA
IN COURT OF APPEALS
A10-520

Jay Anthony Johnson, petitioner,
Respondent,

vs.

Marnie Jo Johnson,
Appellant.

Filed May 23, 2011
Affirmed in part and remanded
Hudson, Judge

Hennepin County District Court
File No. 27-FA-000226851

Jason C. Brown, Brown Law Offices, P.A., Champlin, Minnesota (for respondent)

Matthew E. Ludt, The Law Office of M.E. Ludt, LLC, Stillwater, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Toussaint, Judge.

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

HUDSON, Judge

Appellant-mother challenges the district court's denial of her motion seeking increased child support and back support due from respondent-father. We affirm the portion of the district court's order imputing potential income to mother for support purposes. But we remand for the district court to determine whether, for any past year

during which father earned over $70,000, the children were integrated into father's home with mother's consent, and to make any appropriate adjustment to back support owed.

FACTS

The district court dissolved the 13-year marriage of appellant Marnie Jo Johnson (mother) and respondent Jay Anthony Johnson (father) in 1998. At that time, father worked as an engineer, earning $40,000 per year; mother worked part-time as a legal secretary, earning $11 per hour. The judgment granted the parties joint legal and physical custody of their two minor children, boys then ages six and four, and it provided that father have parenting time at his home in Fridley on Mondays and Tuesdays, and that mother have parenting time at her home in Woodbury on Wednesdays and Thursdays, with the parties alternating weekend parenting time.

The judgment ordered that father pay mother child support and that, for any years in which father's gross income exceeded $70,000 per year, father would pay additional support in an amount equal to one-third of his income over $60,000.[1] The judgment required that if mother provided tax returns and other documentation of income to father, he must furnish similar documentation to her. Each party was ordered to pay one-half of the children's unreimbursed medical and dental expenses.

[1] The judgment also stated that the additional support was to be retroactive to the date father's gross income exceeded $60,000 per year. Although these provisions appear to be internally inconsistent, neither party has challenged the district court's interpretation that father would not owe additional support unless his income exceeded $70,000. "We defer to a district court's interpretation of its own order." *LaChappelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

In January 1999, the district court amended the judgment to establish pick-up procedures and a holiday parenting-time schedule. In August 2000, the district court considered mother's motion to change the school that the children attended, based on her move to Stillwater, and for increased support. Father contested mother's motion and requested an order that mother pay her portion of the previously ordered unreimbursed medical expenses.

At a district court hearing, father testified that he had not received reimbursement for the children's medical and dental expenses. The district court suggested father take up that issue when mother was no longer a stay-at-home parent. Father testified that he was then earning about $55,000 per year. In its written order, the district court denied the motions to move the children's school location and for increased support but modified the children's summer schedule. The court declined to rule on the issue of medical reimbursement, but it ordered father to pay the annual insurance deductible and most of the copay amount for a psychologist for one of the children. The district court found that father was not yet making over $70,000 per year, but ordered that, starting for the year 2001, he supply mother with a copy of his tax return to the extent necessary to verify his gross income.

In January 2001, mother moved again to increase support, to change the children's school location, and to increase her school-year parenting time. The district court denied her motion but changed the parties' parenting-time schedule, with father to have parenting time on weekdays during the school year and mother to have parenting time on

weekends. The court ordered the opposite schedule during the summer, with the children residing with mother during the week and father on weekends.

The parties did not seek further assistance from the court until June 2009, when father moved to modify parenting time by reducing the time the children, who were now aged 17 and nearly 15, spent at mother's residence. Father alleged that the children had expressed a desire not to spend time at their mother's home, based on conflicts with their stepfather and their many school activities in Fridley. He also alleged that mother had recently moved to New Richmond, Wisconsin, without permission from him or the court, and that "[o]ver the years since the divorce, the boys have spent considerable time at [his] residence . . . when they have been scheduled to be at their mother's." Mother contested the motion, arguing that, until recent disciplinary issues with one child, the children had enjoyed parenting time with her, and it was not in the children's best interests to reduce her parenting time. The district court appointed a guardian ad litem (GAL) to recommend a parenting-time schedule.

Mother also requested an order that father supply his tax returns to her for child-support purposes. The district court ordered father to provide tax returns for the years 2007 and 2008; father provided a pay stub indicating a gross annual income of approximately $92,000. In July 2009, mother moved to increase support based on father's increased income.

In September 2009, based on recommendations from the GAL, the district court suspended mother's parenting time and ordered that she receive individual therapy. After

a month, the court reinstated mother's parenting time and ordered that her parenting time occur as the boys decided.

The district court referred mother's support motion to the expedited child-support process. Mother then amended her motion to seek recovery of back support to set ongoing support based on the child-support guidelines in Minn. Stat. § 518A.35 (2010) and for attorney fees. She alleged that father had provided only limited tax information showing his income for the years in which he earned more than $70,000 and that, based on that information, he had underpaid his child-support obligation by $45,595. She alleged that her gross income for child-support purposes from her wedding-planning business was $883 per month.

Father challenged the requests for back support and attorney fees. He furnished his past tax returns to the court and alleged that mother's motion for back support appeared to be in retaliation for his motion to modify parenting time. He alleged that although he had continued to pay the base amount of child support, the children reside primarily with him, spending more time with him than provided by the parenting-time schedule; and that, since April 2009, the younger son had spent no time at mother's residence, and the older son had spent only a brief amount of time there. He also alleged that, since the 2001 parenting-time change, he had paid all of the children's school-related expenses and additional expenses, such as college-fund contributions. He alleged that despite his requests, mother had never reimbursed him for several thousand dollars of unreimbursed medical expenses. He contended that his gross income did not exceed $70,000 until 2006 and that, based on equity, any arrears should be offset by the amounts

he had spent for the children in excess of support paid. He also alleged that mother had admitted her failure to file income taxes for a number of years and understated her income, and he argued that the court should impute additional income to her for child-support purposes.

After a hearing, the child-support magistrate (CSM) issued its findings of fact, conclusions of law, and order. The CSM found that, based on the previous order and father's tax returns showing his income of over $70,000 in the years 2002–2004 and 2006–2008, father owed mother past additional support totaling $32,296. But the CSM found credible father's allegations, reinforced by the 2000 hearing testimony, that he had incurred significant additional expenses for the children, including unreimbursed medical expenses, school expenses, and college-fund contributions, and it found that mother had not made such contributions, and father may have overpaid his basic support obligation. The CSM found that mother had not sought additional support for seven years, until the district court modified her parenting time, that it would not be in the children's best interests to impose such a large past support obligation on father when he was primarily financially responsible for them, and that equity required that he receive credit for the additional expenses he had paid.

The CSM therefore calculated father's unpaid support based on the average monthly additional support due during the years in which he earned more than $70,000, ordered this amount to be offset by the approximate monthly amount father had contributed to the children's expenses from 2002–2008, and ordered that father reimburse mother for the remaining monthly additional support due her for those years. The CSM

calculated both parents' income for support purposes going forward, with mother's income based on potential income and on its finding that she was either voluntarily underemployed or her actual income for support purposes was greater than the net profit from her business reported in 2008. The CSM ordered that the arrears due from father take the form of a reduction in mother's basic support obligation until they were fully paid.

On mother's motion for district-court review, the district court affirmed the CSM's order, and this appeal follows.

D E C I S I O N

When a district court affirms a CSM's ruling, the CSM's ruling becomes the ruling of the district court, and this court reviews the district court's decision. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). We review the district court's decision in a child-support matter for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001). A district court abuses its discretion when its ruling is against logic and the facts on record, *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), or when it misapplies the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1988).

Mother argues on appeal that the district court abused its discretion by reducing the amount of father's back support for the years 2002–2004 and 2006–2008 and by failing to award her back support for the first nine months of 2009, when she had court-ordered parenting time. She maintains that the district court improperly applied equitable principles to order a retroactive modification of father's support obligation; that the

district court clearly erred by crediting father, who was previously ordered to pay a portion of the children's unreimbursed medical expenses and their insurance premiums, with payment of those expenses; that father's payment of additional expenses for the children could not reduce his past support obligation; and that the district court clearly erred in its mathematical calculation of back support. Mother also argues that the district court abused its discretion by imputing income to her for purposes of calculating her ongoing support obligation. Father maintains that the district court did not abuse its discretion by imputing potential income to mother and properly offset his obligation of past support by crediting him with expenses incurred for the children while they were living in his household under his care.

I

Generally, the forgiveness of unpaid support that accrues before a party has brought a support-modification motion amounts to a retroactive modification of support. *Long v. Creighton*, 670 N.W.2d 621, 627 (Minn. App. 2003). Generally, a modification of support may be made retroactive only back to the date of service of the motion. Minn. Stat. § 518A.39, subd. 2(e) (2010).

Nonetheless, certain exceptions to this rule exist. Under one exception, "if the court finds that the child was integrated into the family of the obligor with the consent of the obligee[,]" an obligor may be deemed to have satisfied his or her support obligation "by providing a home, care, and support for the child while the child is living with the obligor." Minn. Stat. § 518A.38, subd. 3 (2010). Relieving a parent of a support obligation under this exception is not a retroactive modification, but recognition that the

parent has satisfied the support obligation. Thus, courts have a "practical way to prevent inequity." *Karypis v. Karypis*, 458 N.W.2d 129, 131 (Minn. App. 1990) (noting that court does not "lose authority to do equity in family law unless there is a pure question of law"), *review denied* (Minn. Sept. 14, 1990); *see also* Minn. Stat. § 518A.38, subd. 3 (codifying rule announced in *Karypis*). In *Karypis*, we affirmed the district court's determination that a father's support obligation was satisfied for the period that his children were living in his household. *Id.* at 131–32; *cf. Cnty. of Washington v. Johnson*, 568 N.W.2d 459, 462 (Minn. App. 1997) (distinguishing *Karypis* and upholding award of retroactive support based on finding that obligor, who only cared for children in his home two nights per week and on alternate weekends, had not satisfied his support obligation).

Whether a child has been integrated into a parent's home with the consent of the other parent presents a question of fact. *Greenlaw v. Greenlaw*, 396 N.W.2d 68, 71 n.1 (Minn. App. 1986) (stating, in custody-modification proceeding, that existence of integration is reviewed on clearly erroneous standard applicable to factual determinations). "[I]f the child has been integrated into the life of another family, consent . . . will normally exist in the absence of kidnapping, fraud, or coercion." *Gibson v. Gibson*, 471 N.W.2d 384, 386 (Minn. App. 1991), *review denied* (Minn. Aug. 12, 1991); *cf. Peterson v. Peterson*, 365 N.W.2d 315, 318 (Minn. App. 1985) (determining that when minor child had lived with father for two of nine years since dissolution, but left abruptly five months before father brought motion to modify custody, integration had not occurred), *review denied* (Minn. June 14, 1985).

Father argues that the children were integrated into his home with mother's consent because they have resided primarily with him since March 2001, when the district court modified the parenting-time schedule to order that the children reside with him on weekdays during the school year. He also asserts that the children have stayed at his home on many weekends when mother was working at her wedding-planning business or when they had weekend sporting events. Mother asserts, however, that she has exercised parenting time as ordered and has transported the children to activities from her home in Stillwater, and her parenting time was not adversely affected until recent discipline problems with one child. Based on this record, which shows a factual dispute as to the parties' exercise of parenting time, we conclude that father has raised a colorable claim that the children were integrated into his home with mother's consent for some or all of the period after March 2001. We therefore remand to the district court to consider this issue, to receive further evidence at its discretion, and to make appropriate findings as to what periods, if any, integration occurred.

Should the district court determine on remand that the children were integrated into father's home with mother's consent for some or all of the period from March 2001–2008, or for the first nine months of 2009, the issue of unpaid support for that period becomes moot.[2] But should the district court determine that integration did not occur for all or part of those periods, the court is directed to address the additional issues of the reduction of father's unpaid past-support obligation based on his payment of medical-

[2] The integration analysis would also apply to the first nine months of 2009 because mother had court-ordered parenting time through September of 2009.

expense reimbursement, medical-insurance premiums, and the children's additional expenses. The district court may, at its discretion, receive additional evidence on these issues. As to expenses incurred, however, we note that the 1998 judgment requires father to pay one-half of the children's unreimbursed medical expenses and their medical-insurance premiums, and it would be inappropriate to reduce father's unpaid support based on his payment of expenses that he was already required to pay. In addition, a party requesting reimbursement of medical expenses currently must initiate a request documenting those expenses to the other party within two years of incurring those expenses. Minn. Stat. § 518A.41, subd. 17(e) (2010). The record currently contains no documentation of the medical expenses that father claims to have paid on behalf of the children or his request to mother for those expenses. Finally, we observe that a child-support obligor's in-kind gifts or purchase of food or clothing does not reduce that obligor's support obligation. Minn. Stat. § 518.68 (2010). Therefore, father's payment of the children's additional expenses, to the extent that those expenses amounted to in-kind gifts, may not reduce any support he otherwise did not pay.

Because the amount of unpaid support, if any, will be redetermined on remand, we do not address mother's additional argument that the district court clearly erred in its mathematical calculation of father's back support. We note, however, that the district court's method of apportioning the payment of unpaid support over a specified number of months is appropriate and would not affect the amount owed.

II

Mother also argues that the district court abused its discretion by imputing income to her for the purpose of calculating her income for child-support purposes. When a district court imputes income to a party for the purpose of child support, it enjoys broad discretion, and we review that imputation only for an abuse of that discretion. *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008).

A party moving to modify child support must provide supporting documents that disclose all sources of gross income, including statements of receipts and expenses from a self-employed person. Minn. Stat. § 518A.28(a) (2010). If a district court determines that a parent is "voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income," the court must base child support on potential income. Minn. Stat. § 518A.32, subd. 1 (2010). If a party has not provided sufficient income information, the court must presume that the party "is voluntarily unemployed or underemployed and . . . attribute income to that party." *Butt*, 747 N.W.2d at 576.

Here, mother provided the district court with schedule C of her 2008 federal tax return. But she did not furnish her complete personal tax return or other information relating to her income. The district court found that mother did not explain her business expenses, which the district court found to appear high for a personal-service business, and did not provide additional financial information. Based on those findings, the court determined that mother was either voluntarily underemployed or had an actual income greater than her reported 2008 profit, and the CSM imputed income to her of 150% of the

minimum wage. *See* Minn. Stat. § 518A.32, subd. 2(3) (2010) (allowing court to determine potential income by attributing to parent amount of income the parent could earn by working full time at 150% of the higher of the federal or state minimum wage).

Mother argues that the economy has adversely affected her business, and no evidence shows that she was working on a less-than-full-time basis. But mother did not provide the district court with the complete financial documentation required for a motion to modify support. *See* Minn. Stat. § 518A.28(a). Absent this information, the district court did not clearly err in its findings relating to her potential income and did not abuse its discretion by imputing potential income to her.

In summary, we affirm the portion of the district court's order relating to the parties' current support obligation, including the imputation of income to mother for support purposes. But we remand for the district court to determine whether, during a portion or all of the time the children resided with father since the 2001 order, they were integrated into father's home with mother's consent. Based on its findings with respect to that issue, we direct the district court to order an appropriate adjustment to any support that was not paid. The district court may reopen the record on remand at its discretion.

Affirmed in part and remanded.