STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1266

In re the Marriage of
Amanda Joy Grace Edmond, petitioner,
Appellant,

vs.

Caleb Bay Grace,
Respondent,

County of Pine,
Intervenor.

Filed April 8, 2013
Affirmed
Ross, Judge

Pine County District Court
File No. 58-FA-08-53

Christopher L. Vatsaas, Tessneer Law Office, Cambridge, Minnesota (for appellant)

Elizabeth A. Storaasli, Dryer Storaasli Knutson & Pommerville, Ltd., Duluth, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Chutich, Judge.

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

ROSS, Judge

The district court dissolved the marriage of Amanda Grace Edmond and Caleb Grace based on the parties' stipulation, which included an agreement allocating child

support for the two minor children. After Caleb left his teaching career, the parties asked the child-support magistrate to establish support based on the statutory guidelines. The child-support magistrate found that Caleb was voluntarily underemployed and imputed income to him based on his potential income as a teacher. The district court vacated the magistrate's order, finding that Caleb's career change was in good faith and modifying his child support under his actual income. Amanda appeals the child-support order, contending that the district court erred because it failed to make proper findings, improperly concluded that Caleb was not voluntarily underemployed, and failed to enforce the parties' stipulation. Amanda also contends that the district court abused its discretion in allocating the dependency tax exemptions for the children. Because the district court did not err in determining Caleb's income or abuse its discretion in assigning the dependency exemption, we affirm.

FACTS

Caleb and Amanda married in 2003, had two children, and sought dissolution in March 2008. They stipulated to the resolution of all dissolution issues in May 2009. The district court adopted the agreement as its judgment and decree in February 2010. The stipulated dissolution decree conveys joint legal custody of the children to both parties but sole physical custody to Amanda, subject to Caleb's parenting time.

The decree recognized that Caleb was a licensed teacher but working part time as a paraprofessional at Edison Charter School in Duluth earning $19,992 annually. Caleb was also enrolled part-time at the University of Wisconsin-Superior pursuing a Master's Degree in Special Education, which he expected to complete in August 2010. The

judgment and decree directed Caleb to pay $200 in monthly child support beginning June 1, 2009, increasing to $350 monthly beginning January 1, 2010. Most relevant to the issues on appeal, it also included the following language about Caleb's future employment plans:

> The parties agreed not to impute potential income to [Caleb] through 2010, to permit [Caleb] an opportunity to complete his Master's degree, which is expected to lead to higher earning potential. . . . .
>
> It is in the best interest of the minor children to deviate downward from the child support guideline and to reserve [Caleb's] obligation to pay a portion of the medical and dental support, as well as child care support, through 2010.
>
> [Amanda] has provided for the minor children's needs, without financial contribution from [Caleb], throughout this proceeding. It is in the best interests of the minor children that [Caleb] pay child support as set forth herein through December 31, 2010. This agreement provided [Caleb] sufficient time to earn his master's degree and an opportunity to improve his earning capacity and economic circumstances.

The judgment and decree gave Amanda the right to claim the dependency tax exemptions for both children for 2009 and 2010, and it provided that "[u]pon commencement of [Caleb's] payment of guideline child support, the issue of tax dependency exemptions shall be reviewed."

Caleb did not follow the employment and educational plan anticipated in the stipulated decree. His part-time employment at Edison Charter School ended in June 2009 when his position was eliminated. In fall 2009, Caleb accepted a full-time position as an achievement coordinator at Harbor City School in Duluth, earning $32,000 annually. He also worked part time as a youth minister, earning about $4,800 annually. He withdrew from the special-education master's program. He testified that he quit

because he discovered that he does "not enjoy that line of work." He said that he had "a philosophical disagreement with the whole approach" and "disagreed with the structure of the organization." He also testified that he quit the program because he was working full time at Harbor City School and because his part-time position at the church conflicted with his college schedule. And he testified that the Harbor City School position "was a full-time job with a decent salary, so [his] choices were to continue the schooling for a degree that [he] wasn't really interested in anymore or to take full-time work as a teacher, which was [his] profession at the time."

The stipulated-child support would terminate at the end of 2010. But the parties agreed in late 2010 that, beginning January 1, 2011, Caleb would pay child support of $583—the presumptive support under the child-support guidelines. The agreement was never reduced to writing or adopted by the district court, but Caleb made the agreed-upon payments anyway. He reduced his payments after July 31, 2011, however, because his employment at Harbor City School ended due to restructuring. Despite losing his job, Caleb continued to pay child support at about $90 monthly for the months of August, September, and October 2011. In late September 2011, Caleb took a job at Fantasy Flight Games in Roseville as a "living card game designer," which he described as his "dream job."

The Fantasy Flight Games position is full time and Caleb earns $29,000 annually with possible bonuses. Amanda earns about $86,000 annually as a physician's assistant.

Amanda applied to Pine County for child-support services, and the county moved to modify Caleb's child-support obligation in December 2011, asking the child-support

magistrate to determine Caleb's obligation beginning August 1, 2011. The county's "motion for modification" designation is a misnomer, since the district court had not actually ordered child support after December 31, 2010. Caleb responded with his own motion, asking the district court to reduce his child-support obligation because of his decreased income and the need to allocate the dependency tax exemptions.

The child-support magistrate conducted an evidentiary hearing. He found Caleb voluntarily underemployed and imputed annual income to him in the amount of $36,800, the amount he earned as a teacher at Harbor City School combined with his previous part-time income. The magistrate stated that he was "troubled" by Caleb's stipulating to a downward departure from the presumptive guideline support amount so that he could complete his master's degree only to quit school and take "a job in a field that he was not educated or trained in and earns [him] less income." The magistrate therefore ordered Caleb to pay $563 in monthly child support, which is the amount designated by the guidelines using the amount of imputed income. The magistrate also awarded Amanda both dependency tax exemptions because she had been paying for the "vast majority of the children's needs."

The district court reviewed the case and found the child-support magistrate's order unsupported by the record. The district court recognized that the parties' stipulation had anticipated that Caleb would have a higher earning potential, but it found that his career change was in good faith and not motivated to avoid his child-support obligation. Because it found that Caleb is not voluntarily underemployed, it did not impute extra income to him and instead ordered him to pay monthly child support of $474 based on his

actual annual income of $29,000. Reasoning that the children live with Caleb during the summer, the court suspended the child-support obligation during each June, July, and August. The district court also ordered the parties to divide the two dependency exemptions each year until only one child could be claimed. At that point, the parties must alternate the exemption annually, with the first year going to the winner of a future coin toss.

Amanda appeals the district court's child-support order.

D E C I S I O N

I

Amanda first challenges the district court's decision not to base Caleb's child-support obligation on imputed income from what he might have earned had he continued in the teaching profession. The district court has broad discretion to assign child support. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses that discretion when it sets support in a manner that is against logic and the facts on record or when it misapplies the law. *Id.*; *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998).

The parties agree that some child-support obligation is appropriate, so the only issue concerns the rationale in arriving at the amount. Child support is generally based on the parties' respective gross incomes. *See* Minn. Stat. § 518A.34(b)(2) (2012). That might include fictional, potential income instead of actual income, depending on the circumstances. If the district court finds that a parent is "voluntarily unemployed, underemployed, or employed on a less than full-time basis," it uses potential income to

calculate the parent's child-support obligation. Minn. Stat. § 518A.32, subd. 1 (2012). Amanda asserts that Caleb is voluntarily underemployed because he voluntarily chose to discontinue his teaching career and could earn more money as a teacher. The statute does not define underemployment, and it includes no express or implied duty that an obligor remain employed in the highest paying position. The district court implicitly found that Caleb is not voluntarily underemployed; it found instead that he has changed careers in good faith with no child-support-related motive. Our only question then is whether the finding is supported.

We review the district court's factual finding as to whether a parent is voluntarily underemployed for clear error. *See Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). To prevail in an argument to reverse based on clear error, "the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). The district court's finding that Caleb is not voluntarily underemployed is not clearly erroneous. Caleb detailed his work history and his efforts to find work as a teacher after leaving Harbor City School. The district court credited Caleb's testimony and the evidence that full-time teaching positions were sparse and that layoffs in the profession were common. We must defer to the district court's credibility determinations and weighing of the evidence. *See* Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Haefele v. Haefele*, 621 N.W.2d 758, 763 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). And the evidence shows that Caleb had been laid

off through no fault of his own, losing two teaching positions within two years and unsuccessfully applying for numerous teaching positions before he was offered his current job.

We realize that a finding of bad faith is not required to impute income under section 518A.32, *Melius v. Melius*, 765 N.W.2d 411, 415 (Minn. App. 2009), but Amanda highlights no evidence that Caleb made the change to reduce his child-support obligation. We also observe that the highest salary Caleb earned as a teacher was $32,000, and his current job pays $29,000 per year. The modest reduction does not suggest mischief, let alone require a finding of voluntariness. We have no reason to hold that the district court's finding that Caleb is not voluntarily underemployed is clearly erroneous.

II

Amanda asserts that Caleb's discontinuing the master's program and switching careers violated the child-support provision of the parties' 2009 stipulated agreement. Our "[c]ourts favor stipulations in dissolution cases as a means of simplifying and expediting litigation" in family matters. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). And we treat family-law stipulations as binding contracts. *Id*. But nowhere does the parties' stipulation state that Caleb was *required* to advance his education or seek any particular type of employment. It predicted only that Caleb's master's program was "expected to lead to higher earning potential." This is not a contract obligation. At oral argument, Amanda suggested through counsel that we apply promissory estoppel principles and impose an obligation in that way. Even if she had raised the argument

formally (she did not, so we do not consider it), it would likely fail because a promissory-estoppel claim cannot succeed without a promise. *See Heidbreder v. Carton*, 645 N.W.2d 355, 371 (Minn. 2002) (listing promissory estoppel elements and placing burden of proof of the party invoking the doctrine). And the stipulation includes no promise that Caleb would engage in any specific employment. Both parties were represented by counsel when they entered the stipulation, and converting the employment plan into a promise or requirement would have been simple, if that were the parties' actual intent.

We hold that the district court did not erroneously fail to apply the terms of the stipulation and that it did not abuse its discretion in determining Caleb's income for the purposes of child support.

III

Amanda contends also that the district court improperly allocated the dependency tax exemptions for the children. She maintains that, as the primary custodial parent, she should have the exclusive right to claim the exemptions. The allocation of income tax exemptions is discretionary with the district court. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 449 (Minn. App. 2002). Amanda is correct that, generally, the dependency exemption is allocated to the custodial parent. *See Gerardy v. Gerardy*, 406 N.W.2d 10, 14 (Minn. App. 1987); 26 U.S.C. § 152(e)(1) (2006). The district court may, however, award an exemption to the noncustodial parent if it considers the relative resources of the parties and concludes that the best interests of the children would be served by doing so. *Rogers v. Rogers*, 622 N.W.2d 813, 823 (Minn. 2001). In exercising its discretion, the district court may also consider the financial benefit that will accrue to each party as a

result of the allocation. *See Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

Amanda's argument is well taken. She is the primary custodial parent and provides most of the children's financial support. But neither of the parties presented the district court with any financial evidence, and Amanda points us to no evidence on appeal to support the conclusion that she would actually receive a greater economic benefit if she is exclusively allocated both exemptions. It is true that her gross income is greater than Caleb's, but this is only one of various financial facts that the district court could have considered had the parties raised the question and presented material evidence on the issue. We observe that Caleb does not pay an insubstantial amount of child support, and the children are with him three months each year. Because the record contains no financial evidence to inform us of the economic consequences of allocating the tax exemptions to either party, we have no basis on which to conclude that the district court abused its discretion by allocating the exemptions equally.

Amanda next contends that the district court's requirement that the parties determine who gets the tax exemption when only one child remains by "flipping a coin" was an abuse of discretion because it "lacks practicality, procedural specificity, and reasonable foresight." She clarifies the argument by protesting that the district court "provides no description of the time, place, and manner of the 'coin flip.'" We are confident that the district court did not abuse its discretion by failing to provide elaborate instructions on a coin-toss procedure, and remanding for the court to assign those specific instructions would be trivial.

We point out our own concern about the coin-toss requirement only to emphasize that although the results of a coin toss are arbitrary, the requirement itself might not be. This is the case here. When circumstances leave the parties with only one available exemption, the party who gets the exemption in the first alternating year could end up with it one year more than the other. The coin toss settles which party that is. In most cases, a court's deciding an issue (or directing the parties to decide an issue) based on a coin toss would be arbitrary, since a coin toss offers only chance, random results rather than results that follow logic based on articulated legal or equitable rationale. That would present a legal problem because our ultimate issue is whether the challenged decision constitutes an abuse of discretion, and "[a]n abuse of discretion occurs when the order is arbitrary or unreasonable or without evidentiary support." *Curtis v. Curtis*, 442 N.W.2d 173, 176 (Minn. App. 1989) (quotation omitted).

But sometimes parties present no persuasive legal or equitable reason to favor one outcome over another. This was so here. As discussed, neither parent persuaded the district court with specific financial data that would justify assigning the exemptions exclusively either way, so the court divided them equally. Having found no compelling evidence on which it could make an informed decision to assign the possibly extra exemption in either party's favor, the district court directed the parties to a simple, impartial method of chance. A coin toss is as good a method as any to choose between two apparently equally merited options. We understand that Amanda contends that the district court erroneously decided that the options were equally merited. But again, she points us to no financial evidence before the district court that would have compelled a

different finding. The coin-toss requirement also has the benefit of defeating any appearance of judicial favoritism toward either party. Although other options may have been available and a different decision about the exemptions would likely also have been supported on this record, we will not substitute our judgment for the district court's. We hold only that the district court's directing the method of the arbitrary exemption assignment was itself reasonable, not arbitrary. Given our deferential standard of review and the parties' failure to make a specific and factually supported argument to the district court, we have no basis to reverse the district court's allocation of the dependency tax exemptions.

Affirmed.