STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2242

In re the Marriage of:

Amy Lynn Brevik,
n/k/a Amy Lynn Ashbaugh, petitioner,
Respondent,

vs.

Scott Allan Brevik,
Appellant.

Filed October 7, 2013
Affirmed
Schellhas, Judge

Clay County District Court
File No. 14-FA-07-3103

Amy Lynn Ashbaugh, Pine Island, Minnesota (pro se respondent)

Christopher E. Brevik, Brevik Law, Anoka, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant argues that (1) the district court erred in determining the parties' incomes and establishing appellant's child-support obligation; (2) the district court erred by not providing appellant advance notice of its intent to address a pending contempt

issue at a hearing on July 25, 2012; (3) the findings in the district court's orders of August 30, 2011, and October 17, 2012, regarding the children's uninsured medical expenses, insurance premiums, and child-care expenses, are not based on sufficient evidence in the record; and (4) the district court erred by modifying appellant's parenting time after permitting respondent's relocation within the State of Minnesota. We affirm.

FACTS

Appellant-father Scott Brevik and respondent-mother Amy Ashbaugh married in 2003 and are the parents of two children: T.B., born in 2003, and M.B., born in 2004. The factual background of this protracted and contentious family dispute is set forth in this court's opinion in *Brevik v. Brevik*, No. A10-761, 2011 WL 1364274, at *1 (Minn. App. Apr. 12, 2011), *review denied* (Minn. June 14, 2011), and we will restate only the facts pertinent to this appeal. In the dissolution judgment in August 2009, the district court granted mother sole legal and physical custody of the children, subject to father's right to "reasonable and liberal parenting time," and ordered the parties to split the cost of the children's medical insurance, all uninsured or underinsured medical costs, and child-care expenses, with mother to pay 53% and father to pay 47%. The court ordered each party to provide the other with written documentation at the time of any reimbursement request.

Father appealed the district court's dissolution judgment to this court, raising numerous issues, and this court affirmed it on all grounds. *Brevik*, No. A10-761, 2011 WL 1364274, at *2, *7. Since the dissolution judgment, both parties have moved the district court for relief on numerous occasions. Father presently appeals from four orders.

Mother moved the district court for permission to relocate the children's residence, and, on July 25, 2012, a different district court judge heard mother's motion and also revisited the issue of father's contempt. On August 21, 2012, the court granted mother permission to relocate the children's residence from Moorhead to Rochester. Because of that relocation, the court modified father's parenting time. Father challenges the court's modification of his parenting time insofar as it reduced his parenting time.

On October 17, 2012, the district court denied mother's contempt motion and again found that father owes mother $5,341.29 for his 47% "share of the medical and dental expenses" and entered a judgment against father in that amount. Father appeals the district court's order and entry of judgment on October 17, 2012, arguing that the district court violated his right to due process and that the district court's finding that he owes mother $5,341.29 is erroneous.

D E C I S I O N

January 24, 2012 Order: *Determination of Mother's Income, Imputation of Income to Father, and Modification of Father's Child-Support Obligation*

In September 2010, father moved the district court for modification of his parenting time, modification of his child-support obligation, and attorney fees. The district court stayed the proceedings, pending this court's resolution of father's appeal from the dissolution judgment. In August 2011, father again moved the court for the relief requested in his September 2010 motion, and father requested that the court modify his child-support obligation retroactive to September 1, 2010.

On January 24, 2012, the district court issued a 32-page order, reducing father's child-support obligation by an amount less than that which father requested. The court's detailed order reflects a thorough and painstaking review of the parties' submissions. For the period between September 1, 2010, and August 31, 2011, applying what is now Minn. Stat. § 518A.39, subd. 2(a)(1) (2012), the district court found that the "evidence . . . indicate[d] that [both parents] . . . experienced two significant changes in income since [father] first filed his motion on September 1, 2010."[1] The court therefore granted father's motion to reduce his child-support obligation but reduced the obligation to an amount higher than father requested.

On appeal, father argues that the district court's modification of his child-support obligation constitutes an abuse of discretion because the modification is based on the court's erroneous determination of mother's income and erroneous imputation of income to father. An appellate court "[g]enerally . . . review[s] orders modifying child support for abuse of discretion and will reverse only if the district court abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record." *Haefele v. Haefele*, ___ N.W.2d ___, ___, 2013 WL 2320039, at *4 (Minn. May 29, 2013) (quotation and citation omitted). "The district court's determination of net income must be based in fact and it will not be overturned unless it is clearly erroneous." *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (citing *Davis v. Davis*, 631 N.W.2d

[1] We cite the most recent version of all statutes in this opinion because they have not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

822, 827 (Minn. App. 2001) ("A district court's finding on net income for purposes of child support will be affirmed on appeal, if those findings have a reasonable basis in fact and are not clearly erroneous.")).

Determination of Parents' Incomes

The dissolution judgment states that father was "voluntarily underemployed and/or employed on a less than full-time basis," and the dissolution court therefore imputed income to father of $22,620 per year "from August 2009 and in the future," establishing father's child-support obligation at $462 per month. In considering father's modification motion, the district court considered "two relevant periods": "between September 1, 2010, and August 31, 2011," and "after September 1, 2011."

Between September 1, 2010, and August 31, 2011

For this period, the district court determined that mother's gross annual income was $45,425 ($40,000 from employment as a full-time faculty member at a college and $5,425 from work at a summer language camp), giving mother a monthly parental income for determining child support (PICS) of $3,785, and father's gross annual income was $27,015, giving him a PICS of $2,251. Based on those income amounts, the court determined that father's basic child-support obligation for the period was $457 and that, because father had paid mother $462 during the time period, he was entitled to a $60 credit against his future child-support obligations for the overpayment made during the period of September 1, 2010, to August 31, 2011.

Father argues that the district court erred by not continuing to impute income to him in the annual amount of $22,620 through 2011. The district court estimated father's

income for the period between September 1, 2010, and August 31, 2011, based on the following evidence that father submitted: father's 2010 income tax return; a report of father's wages paid during the period from January 1, 2011, to July 25, 2011, from his part-time newspaper-delivery position; a paystub from father's part-time auto-part sales position, reflecting wages paid during the period from January 1, 2011, to July 22, 2011; and father's handwritten estimate of his self-employment income from his karaoke business during the period from May 7, 2011, to July 31, 2011. Father argues that the court erred by applying its estimated income to the period between September 1, 2010, and October 31, 2010, because father did not begin his part-time auto-part sales position until November 2010. Father's argument is unpersuasive. The district court's calculations in its order show that the court averaged father's income for the period of September 1, 2010–August 31, 2011, which was within the district court's discretion. *See Veit v. Veit*, 413 N.W.2d 601, 606 (Minn. App. 1987) (concluding that "trial court . . . properly relied on respondent's average cash flow and additional available funds in calculating respondent's net monthly income" because an "average takes into account fluctuations and more accurately measures incomes").

Father also argues that the district court failed to consider his karaoke business expenses. Minnesota Statutes section 518A.30 (2012) provides that, for purposes of calculating gross income from self-employment or operation of a business in child-support cases, "income from self-employment or operation of a business . . . is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." But, here, the district court noted that father

did not submit "any claim or documentation in support of any necessary and ordinary expenses associated with his self-employment as a disc jockey in 2011."

To support his argument that the district court erroneously determined his income, father relies on his 2011 income tax return. But father did not provide the court with his 2011 tax return before the court issued its order on January 24, 2012. Father's 2011 income tax return is outside the record, and we decline to consider it. *See* Minn. R. Civ. App. P. 110.01 (defining the record on appeal as the papers submitted to the district court plus any transcripts of the proceeding); *Thiele v. Stich*, 425 N.W.2d 580, 582−83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.").

In sum, father's argument that the district court improperly established his child support because it erroneously determined mother's income and his income is unpersuasive. We conclude that the district court's determination of the parties' incomes was not clearly erroneous, or against logic or the facts on the record, and that the court did not abuse its discretion in establishing father's child-support obligation for the period of September 1, 2010, through August 31, 2011.

After September 1, 2011

For this period, the district court found that mother's position at a local college was reduced from full-time faculty to adjunct instructor, and that mother taught three classes over the fall semester at a rate of $4,500 per class. The district court excluded any income from the summer language camp. The court found that father's gross annual income was $27,105. Based on those income amounts, the court determined that father's

basic child-support obligation for the period was $473 and, because father had paid mother $462 during the time period, the court concluded that father had underpaid mother $11 per month and therefore owed mother $55 for the period.

Father argues that the district court's determination of mother's income for this period was erroneous because it excluded any income from the summer language camp. Father asserts that mother "has testified repeatedly that she has the summer language job as a permanent position for as long as she wants it." But at a related hearing on November 1, 2011, mother testified that the "camp job, because of the economy, is no longer. The sessions—the Spanish sessions at that site are being cut." Father submitted no evidence to rebut mother's testimony. Instead, he submits to this court mother's 2011 income tax return, asserting that it reveals a higher income for mother than the district court determined. But because mother's 2011 income tax return was not submitted to the district court before it issued its order on January 24, 2012, it is outside the record before this court and we therefore decline to consider it. *See* Minn. R. Civ. App. P. 110.01; *Thiele*, 425 N.W.2d at 583 ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.").

Because mother testified before the district court that her summer language-camp employment no longer existed, and because we defer to a district court's credibility determinations, *In re Kremer v. Kremer*, 827 N.W.2d 454, 462 (Minn. App. 2013), *review denied* (Minn. Apr. 16, 2013), we conclude that the district court's determination of mother's income was not clearly erroneous.

<u>October 17, 2012 Order</u>: Challenge to District Court's Decision to Consider at the July 25, 2012 Hearing Mother's Contempt Motion for Father's Failure to Pay Assigned Percentage of Children's Uninsured Medical Expenses, Insurance Premiums, and Child-Care Expenses

Father argues that the district court violated his right to procedural due process by not providing him with sufficient notice that it would consider mother's contempt motion at the hearing on July 25, 2012. "Due process requires notice before judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case . . . ." *Hunter v. Zenith Dredge Co.*, 220 Minn. 318, 326, 19 N.W.2d 795, 799 (1945). "An appellant cannot assert a procedural due-process claim without first establishing that he has suffered a direct and personal harm resulting from the alleged denial of his constitutional rights." *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. May 20, 2008). Whether a due-process violation has occurred is an issue of law reviewed de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

Father argues that, without advance notice, he was unprepared to address the matters considered by the district court, e.g., he did not have "many of the exhibits that he intended to rely on due to the lack of notice of the hearing." Father's argument is unpersuasive.

At the first hearing on mother's contempt motion on August 17, 2011, although father had the opportunity to testify about the contempt issue, he chose not to do so.[2] But

[2] Mother originally brought her contempt motion in April 2010, but the district court denied the motion because mother failed to serve father with an order to show cause.

he did submit a 30-page affidavit in which, among other things, he responded to mother's contempt motion. In its August 30, 2011 order, the district court informed father that, at a subsequent hearing, he would have the opportunity to "present his testimony regarding his *reasons for failing to comply* with [the] court[] order[] to pay 47% of medical insurance, uninsured medical expenses, and child care, and *his financial ability to comply* with the Court's finding that he currently owes to [mother] the sum of $5,341.29." (Emphasis added.) The court did not grant father the right to relitigate the facts presented to the court at the August 17 hearing. Yet, based on the record before us, the court nevertheless indulged father in this regard by allowing him to make factual arguments.

Moreover, before the July 25, 2012 hearing, the district court requested that mother and father provide the court with summaries of the outstanding issues that the court should consider at the July 25, 2012 hearing. Both parties listed the issue of father's contempt, and father specifically stated: "[t]here is an outstanding motion . . . by [mother] to find [father] in contempt of Court for failure to pay towards medical and dental expenses and for failure to contribute to child care expense." Father also stated that the "sole remaining issue on [the contempt] matter is whether sanctions, if any should be imposed based upon [father's] ability to pay." The district court nevertheless indulged both parties at the hearing by allowing them to present facts and argument about the unpaid uninsured medical expenses, insurance premiums, and child-care expenses. The court informed father that it would consider his previously filed submissions in response to mother's contempt motion, allowed mother to offer testimony in support of her contempt motion, and allowed father to cross-examine mother.

Regardless of the district court's handling of the hearing on July 25, 2012, the record reflects that father had sufficient notice that the court would consider mother's contempt motion. Moreover, in its October 17, 2012 order, the district court did not increase the amount of father's previously ordered obligation for his unpaid share of the expenses; but to father's benefit, the court eliminated the existing finding of contempt. In sum, the court's handling of the July 25, 2012 hearing in no way prejudiced father, it benefited him. Father has wholly failed to establish that he suffered a direct and personal harm as a result of the court's *purported* lack of notice. We conclude that the district court did not violate father's right to procedural due process.

***August 30, 2011 and October 17, 2012 Orders*: Claim that Findings Regarding Father's Obligation of $5,341.29 for 47% Share of Children's Uninsured Medical Expenses, Insurance Premiums, and Child-Care Costs are not Supported by Sufficient Record Evidence**

In its October 17, 2012 order, the district court adopted the finding and order from the court's August 30, 2011 order, that father owes mother $5,341.29 in uninsured medical expenses, insurance premiums, and child-care costs, and the court ordered judgment against father in that amount.[3] Father argues that the district court abused its discretion because its judgment "contain[s] an amount [for] alleged expenses that were not in evidence nor testified to" and that there is "no support [for] the judgment that the trial court ordered."

[3] The court determined the sum of $5,341.29 as follows: $2,677.12 (47% of $5,696 in child-care expenses) + $630.74 (47% of $1,342 in medical expenses) + $2,572.52 (47% of $5,473.44 in children's medical insurance premiums) = $5,880.38 − $539.09 (father's payment towards children's child-care costs) = $5,341.29.

"The amount allocated for medical support is considered child support . . . ." Minn. Stat. § 518A.41, subd. 5(a) (2012). This court reviews a district court's determination of medical support under an abuse-of-discretion standard. *See Casper v. Casper*, 593 N.W.2d 709, 714 (Minn. App. 1999) ("The medical needs of a minor child, including insurance coverage, 'are in the nature of child support' . . . [and] [t]he district court has discretion in determining child support obligations, and its decision will not be reversed absent an abuse of discretion." (quoting *Korf v. Korf*, 553 N.W.2d 706, 708 (Minn. App. 1996)). "Appellate courts set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

Father argues that the district court's judgment against him must be vacated because, at the July 25, 2012 hearing, "[l]imited testimony was taken by the trial court and the court specifically limited all testimony and evidence to those alleged expenses from 2010 only." He argues that the district court's finding that he owes mother $5,341.29 is not supported by the evidence in the record. Father is correct that at the July 25, 2012 hearing, the district court received evidence only in regard to mother's uninsured medical expenses, insurance premiums, and child-care costs incurred on behalf of the children up to 2010. As noted previously, the court's receipt of that evidence was beyond the scope of the hearing but indulged by the court.

The July 25, 2012 hearing was a continuation of mother's contempt motion first heard on August 17, 2011. On July 25, the district court noted the long and complicated history of this case. The district court also noted that it would be considering mother's contempt motion, supporting affidavit, and exhibits attached to the affidavit, those documents having become part of the record in 2011. After the hearing on August 17, 2011, the district court issued a 15-page order in which the court comprehensively described and discussed the evidence before it. In her affidavit in support of her contempt motion, mother set forth the facts that support the court's finding that father owed her amounts for medical expenses, child-care programs, and insurance premiums. As exhibits to the affidavit, she included copies of numerous e-mails that she sent to father, repeatedly informing him of the expenses she had incurred, and receipts detailing the children's child-care expenses, insurance costs, and medical expenses. Although mother's exhibits do not include receipts for every expense she incurred, she described the expenses in her affidavit. Further, in his responsive affidavit, father conceded that he only made one payment to mother for the children's medical expenses, child-care programs, and insurance premiums, stating that he had not paid more because he did not receive the bills from mother, an argument that he does not raise on appeal.

We conclude that sufficient record evidence supports the district court's finding that father owed mother $5,341.29, and we are not left with the "definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). The district court did not abuse its discretion by ordering judgment in the amount of $5,341.29 against father and in favor of mother.

<u>August 21, 2012 Order</u>: Challenge to Modification of Father's Parenting Time Following Children's Relocation to Rochester with Mother

On August 21, 2012, the district court granted mother's motion for permission to relocate the children's residence from Moorhead to Rochester, finding that it was in the children's best interests. The court found that relocation allowed mother to obtain employment with a good wage and that mother is the "primary financial supporter of the children." Based on the relocation, the court modified father's parenting-time schedule. Father does not challenge the relocation order. Father argues that the district court abused its discretion by modifying his parenting-time schedule because the modification constitutes a restriction of his parenting time and the district court failed to make the findings necessary to support such a restriction. Father also argues that the district court abused its discretion because the modification to the parenting-time schedule reduced his parenting time to below the statutory 25% presumption.

"District courts have broad discretion in deciding parenting-time questions." *Hagen v. Shirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citing *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995) ("The trial court has broad discretion to determine what is in the best interests of the child in the area of visitation and its determination will not be overturned absent an abuse of discretion.")). "A district court abuses that discretion by making findings unsupported by the evidence or improperly applying the law." *Id.* (citing *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985)). This court reviews the district court's findings of fact for clear error and defers to the district court's credibility determinations. *Id.*

Minnesota Statutes section 518.175, subdivision 5 (2012), provides that a district court may restrict parenting time only if "it finds that: (1) parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development; or (2) the parent has chronically and unreasonably failed to comply with the court-ordered parenting time." "Determining the legal standard applicable to a change in parenting time is a question of law and is subject to de novo review." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). "A reduction of parenting time is not necessarily a restriction of parenting time." *Boland v. Murtha*, 800 N.W.2d 179, 182 n.1 (Minn. App. 2011). Rather, a "restriction occurs when a change to parenting time is 'substantial.'" *Dahl*, 765 N.W.2d at 123 (quotation omitted). "To determine whether a reduction in parenting time constitutes a restriction or modification, the court should consider the reasons for the change as well as the amount of the reduction." *Id.* at 124 (citing *Danielson v. Danielson*, 393 N.W.2d 405, 407 (Minn. App. 1986)).

Here, the reason for the change in father's parenting-time schedule is mother's relocation, with the children, to Rochester. In granting mother permission to relocate with the children, the district court found that mother's relocation was not for the purpose of interfering with father's parenting time.

The dissolution judgment contains a detailed parenting-time schedule. In its order of January 24, 2012, the district court found that, in 2010, based on the dissolution judgment, father had 43% of the available parenting time and, in 2011, he was scheduled to have 41.1% of the available parenting time. Father does not challenge these findings on appeal. In its August 21, 2012 order, the district court issued a detailed, modified

parenting-time schedule that provides that father will have time with the children every other weekend from after school on Friday until Sunday at 5:00 p.m. during the school year; the majority of the holidays during the school year; two consecutive weeks in June, July, and August; and alternating New Year's Day, Easter weekend, Memorial Day weekend, Labor Day weekend, Thanksgiving weekend, the children's Spring Break, and the first and second halves of winter school break.[4] Additionally, the modified parenting-time schedule provides that, upon at least 48-hour notice to mother, "[w]henever [father] is visiting in Rochester, he can have parenting time with the children, and can have them for overnights on such occasions." The modified parenting-time schedule grants father parenting time during 4 non-holiday weekend days per month from September–May (36 days), 14 days per month from June–August (42 days), and no less than 15 additional holiday days per year. Without including any parenting time that father may exercise if he visits Rochester, the modified parenting-time schedule grants father no less than 93 days of parenting time per year.

Whether Parenting-Time Modification Constitutes a Restriction

Whether father's modified parenting time constitutes such a substantial change that it is a restriction on father's parenting presents a close question. In *Dahl*, a case not involving a custodial parent's relocation, this court concluded that where a mother's parenting time was reduced from an "uninterrupted week over Christmas or spring break

[4] The district court's order is internally inconsistent in that it provides that father has parenting time "[e]very Memorial Day Weekend" but also provides the parties "shall alternate having parenting time . . . on an annual basis" for Memorial Day weekend. It also provides that mother shall have every Labor Day weekend, but that the parents will alternate Labor Day weekend on odd and even years.

each year and 'an extended summer visit' of undefined duration" to "only 11 hours on three Saturdays per month with an additional 11-hour visit on either Christmas Eve or Christmas Day, all limited to Minnesota," the change was "substantial and constitute[d] a restriction of parenting time, regardless of the reason for the restriction of parenting time." 765 N.W.2d at 124. In a case involving the custodial parent's relocation outside of Minnesota, this court concluded that the district court's modification was a restriction when the court reduced a parent's visitation from "'reasonable and liberal visitation' of 14 weeks per year, to 7½ weeks per year, to 6½ weeks per year, to 5½ weeks per year." *Clark v. Clark*, 346 N.W.2d 383, 385−86 (Minn. App. 1984), *review denied* (Minn. June 12, 1984).

But in another case involving the custodial parent's relocation outside of Minnesota, this court stated "that reasonable modifications in parenting time caused by a good-faith removal to another state are not usually 'restrictions' for purposes of Minn. Stat. § 518.175, subd. 5." *Hagen*, 783 N.W.2d at 219 (citing *Danielson v. Danielson*, 393 N.W.2d 405, 406−07 (Minn. App. 1986) (concluding that, where mother relocated with children to Montana, a reduction in father's visitation from "every other weekend, plus alternating holidays, on certain conditions" to "summer visitation of 2 weeks in 1986, 3 weeks in 1987, and 4 weeks in 1988 and subsequent years," "visitation in Montana on reasonable notice," and "right to notice of the children's visits to Minnesota with 24 hours' visitation during each visit" was not a restriction because a modification of visitation was necessary given mother's relocation)).

Here, mother did not move to another state, but she did move five hours away from her previous home in Moorhead, making continuation of father's existing parenting time "impossible to continue," according to the district court. And father continues to maintain substantial parenting time. *See Anderson v. Archer*, 510 N.W.2d 1, 2–5 (Minn. App. 1993) (concluding that modification of father's visitation from "full term of summer vacation" and "every weekend" and "Tuesday and Thursday evening" when father was in Minnesota to "alternating weekends, two evenings a week, six weeks during the summer, and alternating holidays" was not a restriction because father retained substantial visitation rights and "the children will spend about equal amounts of time with each parent").

We conclude that the district court's modification of father's parenting-time schedule is not a restriction of father's parenting time. As in *Danielson*, mother's move to Rochester necessitated the parenting-time modification, and, as in *Anderson*, father retains a substantial amount of parenting time.

Statutory Presumption of 25% Parenting Time

Father argues that the district court's modification of the parenting-time schedule decreased his parenting time below the statutory presumption of 25% without making findings that address the presumption. Minnesota Statutes section 518.175, subdivision 1(e) (2012), provides that in "the absence of other evidence, there is a rebuttable presumption that a parent is entitled to at least 25 percent of the parenting time for the child." This court has "direct[ed] district courts to demonstrate an awareness and application of the 25% presumption when the issue is appropriately raised and the court

awards less than 25% parenting time." *Hagen*, 783 N.W.2d at 217 (citing *Dahl*, 765 N.W.2d at 124). "[P]arenting-time allocations that merely fall below the 25% presumption can be justified by reasons related to the child's best interests and considerations of what is feasible given the circumstances of the parties." *Id*. at 218. But "[t]he failure to consider the issue is error." *Id.* In both *Hagen* and *Dahl*, this court remanded for consideration of section 518.175, subdivision 1(e), when the district court failed to consider it. *Id.* at 218−19; *Dahl*, 765 N.W.2d at 124.

Father argues that the district court reduced his parenting time to 65−72 days, resulting in only 17–19% of the total parenting time. But the record reflects that the district court's modification of the parenting-time schedule reduced father's parenting time to no less than 93 days per year, or 25.5% of the total parenting time. We therefore conclude that the district court was not required to make findings to address the parenting-time presumption in Minn. Stat. § 518.175, subd. 1(e). We further conclude that the district court did not err by not considering Minn. Stat. § 518.715, subd. 1(e).

Affirmed.