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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2322

In re the Marriage of:
Paul David Scofield, petitioner,
Appellant,

vs.

Leisa C. Scofield,
Respondent.

Filed August 19, 2013
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-FA-000278762

Andrew J. Laufers, Cordell and Cordell, P.C., Edina, Minnesota (for appellant)

Susan A. Daudelin, Mackall, Crounse & Moore, PLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Willis, Judge.*

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

BJORKMAN, Judge

Appellant challenges the district court's modification of his spousal-maintenance and child-support obligations, arguing that the district court abused its discretion (1) in

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

setting his spousal-maintenance and child-support obligations, (2) by not imputing $40,000 of income to respondent, and (3) by not conducting an evidentiary hearing. We affirm.

FACTS

On November 3, 2004, the 19-year marriage between appellant Paul Scofield (father) and respondent Leisa Scofield (mother) was dissolved. The dissolution judgment granted the parties joint legal custody of their three minor children. Mother retained sole physical custody of the children, and father had parenting time every Wednesday overnight and every other weekend.

At the time of the dissolution, father's gross monthly income was $9,111. Mother was a homemaker with the ability to earn a gross monthly income of $1,646.67. Father's presumptive child-support obligation was $1,884.66. But given the children's needs and the standard of living enjoyed during the marriage, the district court deviated upward, setting father's support obligation at $2,384.65.

It is undisputed that the parties did not have sufficient income to maintain their marital standard of living. Accordingly, the district court concluded that it was fair and equitable for the parties to share the shortfall. The district court determined that father's reasonable expenses were $2,463.78 (down from $3,714.10 under the marital standard of living) and mother's reasonable expenses were $3,938.91 (down from $5,488.76). Although mother needed $1,027.95 in maintenance to meet her reduced expenses, the

judgment set father's spousal-maintenance obligation at $536.30—his remaining income after paying his child-support obligation and expenses.[1]

On June 3, 2009, the district court reduced father's monthly child-support obligation to $1,000 and temporarily suspended spousal maintenance because father lost his job. At that time mother was working for a school district and expected to be employed as a special-education teacher with a $40,000 annual salary by fall 2009.

On October 26, 2011, the district court issued an order modifying father's spousal-maintenance and child-support obligations. The parties still did not have sufficient income to maintain the standard of living enjoyed during the marriage. Father's gross monthly income was $8,124, and his reasonable monthly expenses were $3,491. Mother's gross monthly income was $2,228; her reasonable expenses were $3,243, creating a need of $1,015. Mother was close to receiving a master's degree in education and had a special-education teaching license but was unable to find full-time employment in that field. The district court ordered father to pay $1,015 per month in spousal maintenance for 12 months and $1,932 in child support. The order reduced father's monthly child-support obligation to $1,563 as of February 1, 2012, following the emancipation of the parties' oldest child.

On April 6, 2012, the district court ordered equal parenting time pursuant to the parties' agreement. Father subsequently moved to reduce his child-support and spousal-maintenance obligations, arguing the court should impute $40,000 of income to mother

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[1] Father's spousal-maintenance obligation was increased to $557 in a November 27, 2007 order.

based on her failure to obtain a full-time teaching position. A hearing was scheduled for September 10. Mother moved to increase father's obligations and to establish medical support[2] but subsequently requested that the hearing be rescheduled. Rather than setting a new hearing date, the district court indicated that it would decide the motions based on the parties' written submissions. Father did not object or renew his request for a hearing.

In its October 30, 2012 order, the district court found that father's gross income is $7,500 per month and that mother's gross income, without spousal maintenance, is $2,415.63.[3] The district court did not impute $40,000 of annual income to mother because father did not provide credible evidence that mother could obtain a teaching position. After reviewing father's expenses, the district court concluded that his ability to pay spousal maintenance had not substantially changed since the October 2011 order. The district court stated that mother's reasonable monthly expenses approximate $3,423, similar to her expenses at the time of the existing order.[4]

The district court again emphasized that this is a hardship-sharing case and that father's income is still not sufficient to cover his child-support obligation and mother's expenses under the marital standard of living. The district court stated that, in such cases,

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[2] Mother also argued that the oldest child was not emancipated. The district court rejected this argument because Mother did not demonstrate that the child was still in school.

[3] The district court imputed $235.63 per month—seven and one-half hours per week at 150% the minimum wage—to mother because she worked only six and one-half hours per day.

[4] The district court deducted $1,000 from mother's claimed expenses but noted that even her claimed expenses are substantially less than her reasonable expenses under the marital standard of living.

it has the discretion to balance child-support and spousal-maintenance obligations to fashion an overall equitable result. After discussing several combinations of spousal-maintenance and child-support awards, the district court increased father's spousal-maintenance obligation to $1,450 per month, reduced his child-support obligation to $1,300 per month,[5] and found that each party's share of parental income for determining child support (PICS) is 50%. The court noted this is "a reasonable, post-emancipation, downward reduction in combined family support" that saves father about $200 per month and reduces his tax liability by increasing the percentage of his total payments that goes to spousal maintenance. This appeal follows.

D E C I S I O N

We review a district court's decision to modify child-support and spousal-maintenance obligations for an abuse of discretion. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Kielley v. Kielley*, 674 N.W.2d 770, 775 (Minn. App. 2004). A district court abuses its discretion by misapplying the law or setting the award against logic and the facts on record. *Dobrin*, 569 N.W.2d at 202 & n.3; *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). We will not alter findings of fact unless they are clearly erroneous. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002).

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[5] This amount includes the health-care-coverage contribution of $435.14.

I. The district court did not abuse its discretion by modifying father's spousal-maintenance and child-support obligations.

A. Changed circumstances rendered the existing child-support and spousal-maintenance obligations unreasonable and unfair.

The district court may modify existing child-support and spousal-maintenance obligations if substantially changed circumstances make the obligations unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2012). A substantial change in circumstances includes a substantial increase or decrease in the needs of a party and the emancipation of a child. *Id.* When a presumptive child-support obligation is at least 20% and $75 higher or lower than the existing support order, a district court presumes that a substantial change in circumstances occurred, and rebuttably presumes that the existing obligation is unreasonable and unfair. *Id.*, subd. 2(b)(1) (2012).

Father first argues that the district court misapplied the law by failing to determine whether a substantial change in circumstances occurred that rendered the obligations unreasonable and unfair. We disagree.

As to child support, the record shows changed circumstances made the existing obligation unreasonable and unfair. Father's current child-support obligation was $1,563, following the emancipation of his oldest child in January 2012. Father subsequently received equal parenting time with respect to the two minor children. Based on this change, father's income at the time of the existing order,[6] and his existing spousal-

[6] The district court should have calculated the presumptive support obligation using father's current gross monthly income of $7,500. *See* Minn. Stat. § 518A.39, subd. 2(b)(1). Use of the current income amount would show an even greater change in circumstances.

maintenance obligation of $557, the district court found father's presumptive child-support obligation to be $912, an amount 42% and $651 less than his existing obligation. Because the presumptive child-support obligation is at least 20% and $75 lower than the existing obligation, the irrebuttable presumption of changed circumstances applies.

With respect to spousal maintenance, the district court determined that father has a greater ability to pay maintenance because of the reduction in his child-support obligation. Father's spousal-maintenance obligation has always been insufficient to meet mother's reasonable expenses due, in part, to his need to pay child support. Thus, any decrease in his child-support obligation reasonably prompts consideration of an increase in spousal maintenance. *See Peterka v. Peterka*, 675 N.W.2d 353, 359 (Minn. App. 2004) ("The statutory framework for the setting and modification of maintenance awards implicitly acknowledges that a sub-marital-standard-of-living maintenance award may be initially equitable, but it also recognizes that circumstances can change to render such an award unreasonable and unfair and justify imposition on the obligor of all or part of the remainder of the obligor's duty to support the recipient at the marital standard of living.").

In sum, although the district court did not explicitly state that there has been a substantial change of circumstances, it is clear that the district court considered the parties' current circumstances and concluded that substantial changes made father's existing obligations unreasonable and unfair. Because the record supports this conclusion, any error occasioned by the district court's failure to expressly find a

substantial change in circumstances is harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

B. The district court did not abuse its discretion in setting father's spousal-maintenance and child-support obligations.

The district court must calculate spousal maintenance before calculating child support. *See* Minn. Stat. §§ 518A.29(a), (g), .34(b)(1) (2012). Spousal-maintenance awards attempt to "allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances." *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009) (quotation omitted). The maintenance obligor has a continuing duty, to the extent equitable, to support the maintenance recipient at the marital standard of living. *Peterka*, 675 N.W.2d at 358-59. In modifying a spousal-maintenance award, the district court considers all relevant factors, including the financial resources of the parties, the likelihood that the obligee will become self-supporting, the standard of living established during the marriage, and the ability of the obligor to meet both his needs and the needs of the obligee. Minn. Stat. §§ 518.552, subd. 2(a)-(c), (g), 518A.39, subd. 2(d) (2012). Essentially, the district court balances the obligee's need for maintenance against the obligor's ability to pay. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

Once the district court determines the spousal-maintenance obligation, it can determine the parties' gross income and calculate the presumptive child-support obligation. *See* Minn. Stat. §§ 518A.29(a), (g), .34(a)-(b)(1) (2012). The district court may deviate to encourage prompt and regular support payments and to prevent either

party from living in poverty. Minn. Stat. § 518A.43, subd. 1 (2012). When deviating from a presumptive child-support obligation, the district court must consider (1) the earnings, income, and resources of each parent; (2) the extraordinary financial needs and resources, physical or emotional condition, and educational needs of the children; and (3) the standard of living the child would enjoy if the parents lived together. Minn. Stat. § 518A.43, subd. 1(1)-(3).

Father first argues that the district court abused its discretion by creating a family-support obligation rather than properly analyzing his spousal-maintenance and child-support obligations. We are not persuaded. The order does impose separate support and maintenance obligations on father. The district court's use of the phrase "combined family support order" reflects the hardship-sharing aspect of the dissolution judgment. There is a tension between father's spousal-maintenance and child-support obligations caused by his continued inability to fully meet the needs of the children and mother.

Instead of first calculating spousal maintenance and then determining the presumptive child-support obligation, the district court considered various support combinations to arrive at reasonable spousal-maintenance and child-support awards. Father asserts that this method was improper; we disagree. In setting spousal maintenance, the district court balanced father's ability to pay maintenance against mother's need, finding that father has the ability to provide the combined amount of support and maintenance that was ordered at the time of the dissolution ($2,920.95). Because mother has unmet expenses of $1,015, the district court determined that either maintenance or child support must be increased, or she would not "have enough money

to house, feed, and clothe the children, let alone support their social life and extracurricular activities." And the court considered the tax implications for both parents. After thoroughly reviewing these factors, the district court determined that an award of $1,450 in spousal maintenance and $1,300 in child support (a total of $2,750) "represents a reasonable, post-emancipation, downward reduction in combined family support as far as [father] is concerned because he saves about $200 per month in out-of-pocket payments and secures a substantial tax break by moving most of the payment from the non-deductible child support column, to the deductible maintenance column." On this record, we conclude that the district court considered the appropriate factors when calculating the spousal-maintenance and child-support awards.

Father next contends that the district court deviated from the presumptive child-support obligation without making the required findings. We disagree. To deviate from the presumptive child-support obligation, the district court must make written findings as to (1) the parents' gross incomes, (2) the parents' PICS, (3) the presumptive child-support obligation, (4) the reasons for deviation, and (5) how deviation serves the best interests of the child. Minn. Stat. § 518A.37, subd. 2 (2012). Our review of the record reveals that the district court made the required findings. The district court found (1) father's gross monthly income is $7,500; (2) mother's gross monthly income is $2,415.63; (3) the parties' respective shares of the combined PICS is 50%; and (4) father's presumptive support obligation is $912. And as stated above, the district court thoroughly explained its reasons for deviating from the presumptive support obligation; essentially, due to the parties' lack of resources, the district court attempted to achieve "an overall equitable

result and balance 'the child support and spousal maintenance obligations to develop an equitable obligation.'" And while the district court did not use the words "best interests," it expressly found that the deviation would allow mother to house, feed, and clothe the children and support their social and extracurricular activities.

Our careful review of the record indicates that the district court's findings contain errors. First, the district court did not factor in father's spousal-maintenance obligation when determining the parties' gross income for child-support purposes. *See* Minn. Stat. § 518A.29(a), (g) (stating that gross income includes spousal maintenance received and does not include spousal-maintenance payments made). Father's correct gross monthly income is $6,050, and mother's is $3,865.63. Second, father's and mother's PICS are actually 61% and 39% respectively, not 50% each, as the district court found. And the district court found the presumptive child-support obligation using a spousal-maintenance obligation of $1,500, rather than the current $1,450 obligation. But none of these errors makes a difference. The presumptive child-support obligation remains the same. Accordingly, we conclude that the district court's de minimis technical errors do not warrant reversal or a remand for additional findings. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (concluding that omitting a cost-of-living provision without findings was a de minimis technical error); *see also* Minn. R. Civ. P. 61 (stating that the court "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties").

II. The district court did not clearly err by declining to impute $40,000 of income to mother.

There is a rebuttable presumption that "a parent can be gainfully employed on a full-time basis." Minn. Stat. § 518A.32, subd. 1 (2012). When a parent is voluntarily unemployed, underemployed, or employed on less than a full-time basis, child support must be calculated based on the parent's potential income. *Id.* Potential income may be determined from a parent's probable earnings level based on employment potential and occupational qualifications in light of the prevailing job opportunities and earnings level in the community. *Id.*, subd. 2(1) (2012). Whether a parent is voluntarily underemployed is a factual determination, which we review for clear error. *See Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

Father argues that mother is voluntarily underemployed because she does not work as a special-education teacher earning $40,000 a year. We are not persuaded. There is no evidence that teaching positions paying $40,000 are available to mother. References in the June 2009 order to mother's expectation that she will soon be employed at that salary level and in the October 2011 order that she needed 12 months to obtain a full-time teaching position are not evidence of current job opportunities. Even if we construe these references to imply that mother is obligated to seek a full-time teaching position, there is no evidence that mother failed to comply with this obligation. In fact, when requesting a continuance of the motion hearing, mother stated that she was "desperately trying to get a job for the new school year." And even if mother's gross income was $40,000, the district court found that mother would not have sufficient income to meet her needs under

the marital standard of living and would still be entitled to spousal maintenance. On this record, we conclude that the district court did not clearly err by declining to impute $40,000 of income to mother.

III. The district court did not abuse its discretion by deciding the motion on the parties' written submissions.

Finally, father asserts that the district court abused its discretion by not holding an evidentiary hearing on the parties' motions. We disagree. Although father stated that he was "somewhat disappointed not to have [the] hearing," he did not object to the district court deciding the motions on the written submissions. Because father did not raise this issue to the district court, the argument is waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Even if we considered father's argument, we discern no basis for appellate relief. Family-law motions are generally decided on affidavits, exhibits, documents, memoranda, and arguments of counsel. Minn. R. Gen. Pract. 303.03(d)(1); *see also* Minn. R. Civ. P. 43.05 (stating "[w]henever a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties"). The district court has the discretion to hold an evidentiary hearing. *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007). Based on our review of the record, we discern no abuse of discretion.

Affirmed.