STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0190

In re the Marriage of: Anna Modeo-Price, petitioner,
Respondent,

vs.

Anthony Keith Price,
Appellant,
and Hennepin County, intervenor,
Respondent.

Filed October 28, 2013
Reversed and remanded
Stoneburner, Judge

Hennepin County District Court
File No. 27FA101949

Andrew J. Haugen, Julius Law Offices, Prior Lake, Minnesota (for respondent)

Anthony K. Price, Roseville, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, Theresa A. Farrell-Strauss, Assistant County Attorney, Minneapolis, Minnesota (for intervenor)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

Appellant father challenges the district court's denial of his motion to modify child support. Because the district court's finding about father's current ability to earn income

is not supported by the record and because that finding affects the relevance of mother's income to a determination of changed circumstances, we reverse and remand.

FACTS

The 2010 judgment, dissolving the marriage of appellant Anthony Keith Price (father) and respondent Anna Modeo-Price (mother), established father's basic child-support obligation for the two children of the marriage at $773 per month, based on the district court's finding that each parent had the ability to earn $1,885 per month (150% of the minimum wage for full-time employment) and that father received $1,163 in disability benefits from the Veteran's Administration (VA).

In 2012, father moved for a modification of his child-support obligation, based on his claim of inability to pay the ordered support because of his medical disability. Hennepin County intervened as a party.[1]

At the hearing on his motion, father testified that he suffers from headaches and migraines, which cause him to pass out occasionally, but he does not use medication to manage his pain. He testified that his VA disability benefit has increased to $1,260 per month and that he is considered 60% disabled.[2] Father asserted that his annual income is about $6,000 per year[3] plus his VA benefit and that his monthly expenses exceed his

[1] The county intervened in this IV-D action as a matter of right. *See* Minn. R. Gen. Pract. 360.01; Minn. Stat. §518A.49 (2012).

[2] Father received the VA disability rating in December 2000.

[3] Father works as an independent contractor in the information-technology field. He provided a 2011 Form 1099 showing income of $8,546.68, but no documentation of expenses or tax return for that year. He also prepared a 2012 year-to-date income statement, claiming income of $9,835.71 and expenses of $4,002.71, but provided no independent documentation verifying these figures.

income. Father asserted that his worsening physical condition and his inability to find regular work, despite his best efforts, justify imputing only $500-per-month income to him for child support purposes.[4] As of the date of the hearing, father had paid only a total of $20 in the more than two years since the court imposed the support obligation, and he owed $19,914.62 in arrearages, more than $3,000 of which was owed to the state.

The Child Support Magistrate (CSM) found that father "has not established that he is working to his full capacity [or] that he is unable to earn more than the $500 per month he claims he will earn this year."

Mother testified that she is employed as a flight attendant, working three to five nights per month and earning $200 to $450 per month. Mother testified that one of the parties' children has special needs and requires a great deal of her time and care. At the time of the hearing, this child was attending school and was in the second grade. Mother is also enrolled as a student at a community college for six credit-hours of coursework. Father has no overnight parenting time with the children.

[4] To document his disability, father provided a letter from his chiropractor, who is related to father by marriage. The letter reads in its entirety:

> Anthony Price has been seen at my office since October 14, 2009. He has progressive disc degenerative disease in his lower back and neck. He is progressively losing his range of motion and strength. He is prone to episodic flair ups caused by repetitive stresses and moderate lifting. These flair ups have limited his ability to work certain jobs and the length in hours in which he can work. Anthony was last examined on August 8, 2012.

The CSM, concluded that mother currently has the ability to work 20 hours per week while she is attending school. The CSM then calculated father's current child-support obligation under the guidelines based on imputed gross monthly income to each party of $942 (income for 20 hours per week at 150% of the minimum wage) and concluded that "[e]ven if [father's] parental income for child support were based on potential income for 20 hours per week, he does not meet the threshold to modify support," because his current obligation under this calculation is neither 20% nor $75 less than his existing support obligation. The CSM denied father's motion based on his failure to show a substantial change in circumstances that warrants modification.

Father moved the district court for review of the CSM's order. After de-novo review of the file, the district court relied on a finding that father "failed to verify any changes to his income[,] and he continues to have the ability to work and earn at least the income he was earning at the time of the [judgment]."[5] Regarding father's challenge to the CSM's imputation of less-than-full-time income to mother, the district court concluded that mother's income is irrelevant and declined to address her income. The district court affirmed the CSM's order based on its conclusion that father failed to demonstrate a substantial change in circumstances that would make the existing support order unreasonable and unfair. This appeal followed.

[5] The CSM did not make such a finding, and it does not appear from the district court's order that it was independently making such a finding.

D E C I S I O N

Father argues that the district court erred by (1) not accepting his testimony relating to his disability; (2) incorrectly imputing more than $500-per-month income to him; and (3) adopting the CSM's imputation of less than full-time earnings to mother.[6] On appeal from a CSM's ruling that has been affirmed by the district court, the standard of review is the same standard as would have been applied if the decision had been made by a district court in the first instance. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002).

A district court has broad discretion to provide for the support of parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We will not alter a district court's decision on a motion to modify child support unless that decision is against logic and the facts in the record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

The district court may modify an existing child-support obligation if substantially changed circumstances make the obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2012). When a presumptive child-support obligation is at least 20 percent and $75 higher or lower than the existing support order, a district court presumes that a substantial change in circumstances has occurred and rebuttably presumes that the existing obligation is unreasonable and unfair. *Id.*, subd. 2(b)(1). Moreover, if an obligor's gross monthly income has decreased by at least 20 percent through no fault or

[6] Father, in his pro se brief on appeal, also raises many issues concerning mother's conduct that are not related to modification of child support and were not argued to the district court. We therefore do not address them on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

choice of the party, the existing order is presumed unreasonable and unfair. *Id.*, subd. 2(b)(5). The moving party bears the burden of proof of demonstrating both a substantial change in circumstances and the unfairness and unreasonableness of the existing order. *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002).

First, father contends that the district court erred by not accepting his testimony relating to his disability and erred by imputing more than $500-per-month income to father. The district court considered and did not dispute evidence that father suffers from a disability. But the district court implicitly found that father's evidence of disability did not credibly support his testimony that he is only capable of earning $500 per month.[7]

The district court is in the best position to judge the credibility of witness testimony. *Vitalis v. Vitalis*, 363 N.W.2d 57, 59 (Minn. App. 1985). And we defer to the district court's determinations of credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Father's assertion that the district court failed to consider his disability or clearly erred by rejecting his claimed limitation on earning capacity to $500 per month is without merit.

We conclude, however, that there is merit in father's argument that the district court clearly erred by relying on a finding that father "continues to have the ability to work and earn at least the income that he was earning at the time of [judgment]." At the time of the judgment, income from full-time employment was imputed to father. The CSM did not find that father continues to have the capacity to work full time and instead

[7] A district court's findings of fact regarding credibility and other matters can be implicit. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

based its order on the presumption that father is able to work part time. To determine whether father had met the threshold for support modification, the CSM calculated father's current child-support obligation based on imputation of only part-time earnings to father. The district court's reliance on a finding that father has the current ability to work full time is not supported by the record and is clearly erroneous.

On this record, the district court also clearly erred by finding that mother's income is irrelevant to the issue of whether father met the threshold for support modification. Child-support determinations are based on the incomes of both parents. *See* Minn. Stat. § 518A.39, subd. 2(a), (b) (providing that child support may be modified based on the obligor *or* obligee having substantially increased or decreased income and that a substantial change in circumstances is presumed if the parties' circumstances results in a calculated order that is at least 20% lower than the current order). A calculation based on mother's capacity for full-time work and father's capacity for only part-time work, would result in father meeting the statutory threshold for child-support modification.

Because the district court erred by finding that father has the ability to work full time and erred by concluding that mother's income is irrelevant, we remand to the district court for a finding on father's income-earning capacity that is supported by the record; consideration of father's challenge to imputation of only part-time income to mother, and appropriate consideration of the effect of the earnings of both parents on a calculation of father's current child-support obligation to determine if he has met the threshold for support modification.

Reversed and remanded.