STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0991

Thomas J. Boll, petitioner,
Appellant,

vs.

Rosemary Bryan,
Respondent,

County of Hennepin, intervenor,
Respondent.

Filed December 30, 2013
Affirmed in part and remanded
Hooten, Judge

Hennepin County District Court
File No. 27-PA-FA-000044919

Craig E. Shriver, Law Office of Craig E. Shriver, White Bear Lake, Minnesota (for appellant)

Rosemary Bryan, Cornwall, England (pro se respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant-father challenges the district court's order denying his motion to reduce his child-support obligation and granting respondent-county's motion to increase his obligation. He argues that the district court understated the gross income of respondent-mother by omitting foreign public assistance based on need or, in the alternative, by not attributing potential income to her. On this record, we affirm the district court's exclusion of the public assistance from mother's gross income but conclude that the district court erred in failing to consider potential income. Therefore, we affirm in part and remand.

FACTS

Appellant-father Thomas J. Boll and respondent-mother Rosemary Bryan have one minor child together. Boll and Bryan agreed that Bryan would have sole-physical and legal custody of the child, and Bryan and the child later moved to England.

In May 2012, respondent Hennepin County intervened and moved to increase Boll's monthly child-support obligation. The county asserted that Boll's income had increased and noted that Bryan receives public assistance, a child tax credit, and a child benefit in England. Referring to Bryan's public assistance as a "jobseeker's allowance," the county asked that that assistance be excluded from her income and that Boll's monthly support obligation be increased from $434 to $596.

Boll then moved to reduce his monthly support obligation to $294, disputing Bryan's income and asserting that she is voluntarily unemployed. At an evidentiary

hearing before a child support magistrate (CSM), Boll asserted that, in order to remain unemployed and continue receiving public assistance, Bryan rejected employment opportunities. He asserted that the CSM should attribute potential income to her. The county responded that the public assistance that Bryan receives in England is "the equivalent of TANF" (Temporary Assistance to Need Families) and should not be treated as income for purposes of setting support. Bryan explained that the assistance she receives is "for people that are unemployed, that are not working, and are a single, lone parent." She affirmed that she has no other sources of income and is not seeking full-time employment but only part-time work as a teacher.

The CSM denied Boll's motion and granted the county's motion, finding that Bryan receives public assistance for herself and the child because she is unemployed and that Boll failed to establish that Bryan's public assistance is income for purposes of determining child support. The CSM also ruled that Boll failed to establish that potential income should be attributed to Bryan when her only income is public assistance. Boll sought review of the CSM's order in district court. The district court affirmed the CSM's order. 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 we review the CSM's decision, to the extent it is affirmed by the district court, as if it were made by the district court." *Welsh v. Welsh*, 775 N.W.2d 364, 366 (Minn. App. 2009).

I.

Boll challenges the district court's interpretation of the child-support statutes to exclude Bryan's public assistance from her gross income. Generally, orders modifying child support are reviewed for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). But questions of statutory interpretation and of whether a source of funds is income for purposes of setting child support are both questions of law that are reviewed de novo. *Id.* (statutory interpretation); *Sherburne Cnty. Soc. Servs. ex rel. Schafer v. Riedle*, 481 N.W.2d 111, 112 (Minn. App. 1992) (income).

Regarding statutory interpretation, the supreme court has stated that:

> [T]he goal of all statutory interpretation is to ascertain and effectuate the intention of the legislature. The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. In determining whether a statute is ambiguous, we will construe the statute's words and phrases according to their plain and ordinary meaning. A statute is only ambiguous if its language is subject to more than one reasonable interpretation. Multiple parts of a statute may be read together so as to ascertain whether the statute is ambiguous. When we conclude that a statute is unambiguous, our role is to enforce the language of the statute and not explore the spirit or purpose of the law. Alternatively, if we conclude that the language in a statute is ambiguous, then we may consider the factors set forth by the Legislature for interpreting a statute.

Christianson v. Henke, 831 N.W.2d 532, 536−37 (Minn. 2013) (quotations and citations omitted).

For purposes of setting child support, a parent's gross income "does not include public assistance benefits received under section 256.741 or other forms of public assistance based on need." Minn. Stat. § 518A.29(h) (2012). Under Minn. Stat.

§ 256.741, subd. 1(b) (2012), "'public assistance' as used in [chapter 518A] includes any form of assistance" from the governmental sources listed in that statute. Referring to this definition of "public assistance[,]" Boll asserts that section 518A.29(h) is ambiguous because it is unclear whether it "applies broadly to include a foreign country's benefits based on need" or is "restricted" to benefits of the same type and character as enumerated in section 256.741, subdivision 1(b). Based on this asserted ambiguity, Boll asks this court to apply the ejusdem generis canon of statutory interpretation to section 518A.29(h) and to restrict its exclusions to what he asserts is the "interlocking state and [f]ederal regulatory scheme" referred to in section 518A.29(h) via its reference to section 256.741, subdivision 1(b). Boll also raises policy concerns. We reject all of Boll's arguments.

A. Section 518A.29(h) is not ambiguous.

We first conclude that section 518A.29(h) is not ambiguous. Section 518A.29(h) contains two items separated by the word "or." The first part of section 518A.29(h) states that gross income "does not include public assistance benefits received under section 256.741." Section 256.741, subdivision 1(b) states that "public assistance" for purposes of chapter 518A "includes" funds from the sources listed in that statute. The plain meaning of "includes" refers to a nonexhaustive and nonexclusive list. *See Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100, 162 S. Ct. 1, 4 (1941) (stating that "the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle"); *LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 19 (Minn. 2012) (stating that "[t]he word 'includes' is not exhaustive or exclusive"); *The American Heritage Dictionary of the English Language*

888 (5th ed. 2011) (defining "include" as "[t]o contain or take in as a part, element, or member" and "[t]o consider as part of or allow into a group or class").

The second part of section 518A.29(h) excludes from gross income "other forms of public assistance based on need." No other language within the statute indicates that the legislature intended "other forms" to be limited to Minnesota or federal forms of public assistance based on need.

The statutory framework evidences the legislature's broad intention to exclude from gross income several forms of public assistance based on need. The statute contains a nonexhaustive and nonexclusive list followed by a general statement. We discern no intention by the legislature to treat foreign public assistance based on need differently than from domestic public assistance based on need. Restricting "other forms" to domestic public assistance based on need would require us to add a qualification to the statute, which we decline to do. *See Rohmiller v. Hart*, 811 N.W.2d 585, 591 (Minn. 2012) (stating that courts will not add to a statute "that which the legislature purposely omits or inadvertently overlooks" (quotation omitted)). Because we can ascertain the legislature's intent from the plain language of the statute, we will not apply canons of statutory interpretation. *See Billion v. Comm'r of Revenue*, 827 N.W.2d 773, 777 (Minn. 2013) (noting that the canons of statutory interpretation apply only when a statute is ambiguous).

B. Ejusdem generis does not apply.

But even if the statute was ambiguous, the prerequisites for applying the ejusdem generis canon are not satisfied here. Under the ejusdem generis canon, "where general

language follows an enumeration of specific subjects, the general language is presumed to include only subjects of a class similar to those enumerated." *Krech v. Krech*, 624 N.W.2d 310, 312 (Minn. App. 2001); *see also* Minn. Stat. § 645.08(3) (2012) (stating that when a court construes an ambiguous statute, "general words are construed to be restricted in their meaning by preceding particular words").

The first part of section 518A.29(h) refers to section 256.741, which lacks a specific list of subjects, meaning that section 518A.29(h) is not the particular list followed by general language required for application of ejusdem generis. It is a nonexhaustive and nonexclusive list followed by general language. Because the statute is unambiguous and because the prerequisites for applying the ejusdem generis canon of statutory interpretation are not satisfied here, we reject appellant's request that we apply that canon.

C. Policy arguments.

We also reject Boll's policy arguments. Boll claims that excluding foreign public assistance from gross income serves a private interest over a public one because Bryan is a "private party," the benefits she receives are not subject to the assignment of support provisions in Minn. Stat. § 256.741, subd. 2 (2012), and, therefore, Bryan "keeps all of her benefits and all of . . . [the] child support." This result, he asserts, runs afoul of the idea that, when enacting laws, "the legislature intends to favor the public interest as against any private interest." *See* Minn. Stat. § 645.17(5) (2012).

But courts presume that the legislature acts with full knowledge of existing statutes. *Rockford Twp. v. City of Rockford*, 608 N.W.2d 903, 908 (Minn. App. 2000). If

the legislature intended to require assignment of need-based public assistance to the public authority as a prerequisite to including those benefits in section 518A.29(h), it could have done so. And Boll's proposed remedy for this purported problem—reading the second clause of the statute to limit the exclusion to benefits that are assigned to the state—would require this court to read into the statute language to this effect. We must decline to do so. *See Rohmiller*, 811 N.W.2d at 591.

Moreover, adequate economic support of children is in the public interest. *See Schaefer v. Weber*, 567 N.W.2d 29, 33 (Minn. 1997) (noting that Minnesota has a "strong state policy of assuring that children have the adequate and timely economic support of their parents"); *State ex rel. Comm'r of Human Servs. v. Buchmann*, 830 N.W.2d 895, 902–03 (Minn. App. 2013) (noting that the statute prohibiting the issuance of commercial driver's licenses to child-support obligors whose driver's licenses have been suspended for nonpayment promotes a public purpose "by attempting to ensure adequate and timely payment of child support"), *review denied* (Minn. July 16, 2013). Requiring a custodial parent to include foreign need-based public assistance in gross income could hinder that public interest by decreasing the amount of support available for the child. That would be particularly problematic if those benefits are set based on an assumption that they will not be used to reduce any child support the benefit recipient may receive. The public interest in ensuring that children are adequately supported trumps any private interest in reducing a child-support obligation merely because the support recipient receives foreign public assistance based on need.

Boll also worries that interpreting section 518A.29(h) to exclude foreign public assistance from gross income "would often require complex analysis of policies and laws pertinent to societies and cultures perhaps unfamiliar to many Minnesotans." We agree with Boll that if Bryan's foreign public assistance is equivalent to unemployment benefits, then that income should be included in gross income. *See* Minn. Stat. § 518A.29(a) (defining gross income for purposes of setting child support to include unemployment benefits). But it is the party seeking modification who bears the burden of showing that a modification is warranted. *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). And here, Boll moved to reduce his support obligation based, in part, on Bryan's receipt of public assistance. The result was the CSM's dual-ruling that Bryan's public benefits are the equivalent of TANF funds—need-based public assistance excluded from gross income—and that Boll failed to meet his burden to show that Bryan's public assistance is to be included as gross income. The district court did not alter this ruling and, on appeal, Boll does not argue that Bryan's public assistance is not based on need. Therefore, we will not disturb the district court's ruling on that point. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived).

In sum, section 518A.29(h) is not ambiguous. Its plain language excludes from gross income public assistance based on need. To read the statute as Boll proposes would contravene the statute's clear language and the state's policy of ensuring that children are adequately supported. On this record, the district court did not err by excluding Bryan's public assistance from her gross income.

II.

"If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, . . . child support must be calculated based on a determination of potential income." Minn. Stat. § 518A.32, subd. 1 (2012). Boll argues that if the district court had addressed the relevant statutory factors, it would have found Bryan to be voluntarily unemployed, underemployed, or employed on a less than full-time basis. "Whether a parent is voluntarily unemployed is a finding of fact, which we review for clear error." *Welsh*, 775 N.W.2d at 370.

Here, it is undisputed that Bryan is currently unemployed and is seeking part-time employment. When addressing whether a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, "it is rebuttably presumed that a parent can be gainfully employed on a full-time basis." Minn. Stat. § 518A.32, subd. 1. If, however, a parent stays at home to care for a child who is subject to the support order, the district court may consider the five factors listed in Minn. Stat. § 518A.32, subd. 5 (2012). Even though Boll adequately raised the question of Bryan's employment status to both the CSM and the district court, neither decision-maker specifically addressed the statutory factors, and neither otherwise addressed whether Bryan is voluntarily unemployed, underemployed, or employed on a less than full-time basis.

The factual nature of this inquiry means that this court is without the authority to address the point. *See Welsh*, 775 N.W.2d at 370. Therefore, we remand for a determination of whether Bryan is voluntarily unemployed, underemployed, or employed

on a less than full-time basis and, as part of that determination, to consider the factors enumerated in section 518A.32, subdivision 5. *See id.* at 370–71 (remanding to district court to consider factors in section 518A.32, subdivision 5, and "to determine whether Bryan's status as the caretaker of the parties' children precludes her from being found to be voluntarily unemployed" after the district court did not make findings addressing the factors in section 518A.32, subdivision 5).

Affirmed in part and remanded.