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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1918**

David Roger Williams, petitioner,
Appellant,

vs.

Margaret Mary Williams,
Respondent.

**Filed April 8, 2008
Reversed and remanded
Ross, Judge**

Hennepin County District Court
File No. DC 239684

Dianne Wright, Wright Family Law & Mediation, White Pine Building, 342 Fifth Avenue North, Bayport, MN 55003 (for appellant)

Margaret Mary Williams, 185 Bederwood Drive, Orono, MN 55356 (respondent pro se)

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

UNPUBLISHED OPINION

ROSS, Judge

This appeal requires us to assess the district court's decision to modify child support, which it ordered at a sum greater than the statutory presumptive amount. Appellant David Williams argues that the district court erred by finding a change in

circumstances that makes his original child-support obligation to respondent Margaret Williams unreasonably and unfairly low. He also contends that the district court abused its discretion by increasing child support to a level in excess of the guidelines amount in an attempt to equalize the parties' incomes and their standards of living. We hold that the district court's factual findings do not support its conclusion that a substantial change in circumstances made the original child-support arrangement unreasonable and unfair. But we remand to allow the parties to address the presumption of a substantial, unfair change in circumstances because that material issue was raised but not decided in the district court.

FACTS

David Williams and Margaret Williams married in 1992. They had a son in 1993, separated in 1996, and dissolved their marriage in 1999 under the terms of a stipulated dissolution decree. Under the dissolution decree, the parties shared physical and legal custody of their son, but the decree did not order any specific child support. Instead, it required Mr. Williams to pay for the child's camp and extracurricular activities and Ms. Williams to pay for the child's clothing expenses and health insurance premiums. Otherwise, it required the parties to share equally the child's medical, dental and work-related daycare expenses, and each was to pay the general child-related expenses incurred when the child was in his or her care.

Ms. Williams moved the district court to modify custody and child support in 2004. In 2005, the court denied her motion as it regards custody and heard the issue of child support in March 2006. Ms. Williams based her motion to modify support on

several financial factors, claiming that her share of their son's expenses had increased faster than Mr. William's share and that the insurance premiums that the decree required her to pay had more than doubled from \$3,153 to \$6,888 annually.

The court admitted evidence of the parties' relative financial circumstances at the 2006 hearing and made limited findings. The district court found Mr. Williams's gross monthly income to be \$6,517, just as it had been at the time of the dissolution decree in 1999. Although Mr. Williams had obtained different employment with a higher salary, the district court applied the 1999 income figure because it found that he failed to provide credible evidence of his claimed offsetting business expenses that he alleged left him with a lower income in 2006 than he had in 1999. Mr. Williams acknowledged that he had recently inherited \$600,000, of which he applied approximately \$200,000 to eliminate the mortgage on his home. He claimed to have \$5,424 in nonbusiness monthly expenses, with \$1,310 attributable to care for the parties' son, but the court made no express findings of Mr. Williams's actual monthly expenses. The district court did find that by retiring his mortgage, Mr. Williams eliminated his monthly house payment of \$1,500, resulting in what the district court held to be a substantial change in financial circumstances.

The district court also had difficulty making findings regarding Ms. Williams's overall financial circumstances. It noted that she overstated her claimed increase in health-insurance premiums—the expense that formed the primary basis of her contention that circumstances were substantially changed—and it also calculated her net monthly income as having increased approximately \$1,000 since the 1999 decree, to \$3,558. It

questioned her claim that she incurred \$6,483 in monthly expenses because that amount is about twice her net income. It did not make a finding of her actual monthly expenses but noted that she claims that \$410 of her expenses are attributable to her care for the parties' son.

The district court implicitly determined that the child-support arrangement under the 1999 decree was unreasonable and unfair because the decree did not order child support at a specified dollar amount. It granted Ms. Williams's motion to modify child support, ordering Mr. Williams to pay monthly child support in the amount of \$1,200, approximately three times the presumptive amount under the *Hortis/Valento* guidelines formula. The court based this upward deviation on its finding that the child experienced "widely varying standards of living" between Mr. Williams's home and Ms. Williams's home. It also ordered the parties to share equally the cost of the child's extracurricular activities, which Mr. Williams previously paid for entirely, and that each would pay medical expenses incurred while the child is in that party's care. This appeal follows.

D E C I S I O N

I

Mr. Williams challenges the district court's decision to modify his 1999 child support obligation. A district court has broad discretion to award child support. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). We will uphold the district court's child-support decision unless the decision demonstrates an abuse of discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Sept. 28, 2005). A

district court abuses its discretion if it sets support in a manner that is against logic and the facts on the record or as a result of misapplying the law. *Id.*

Changed Circumstances

Mr. Williams asserts that there was no basis for the district court to modify the child-support obligation. A district court may modify child support if one or more statutory factors show a substantial change in circumstances that makes the current support terms unreasonable and unfair. Minn. Stat. § 518.64, subd. 2 (2004).¹ Among other factors, a substantial change in the income of either party constitutes a substantial change in circumstances. *Id.*, subd. 2(a)(1). We have interpreted this factor also to include substantial changes in a party's expenses. *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004) (summarizing 2002 version of the statute, stating, "A change of circumstances includes a substantial increase or decrease in a party's earnings or expenses"). The district court found a substantial change in Mr. Williams's expenses by virtue of the fact that he eliminated his \$1,500 monthly mortgage payment by applying part of a recent inheritance to retire his mortgage.

Mr. Williams does not challenge the district court's finding that the mortgage retirement eliminated his \$1,500 monthly payment. Nor does he challenge the district

¹ Minnesota statutes section 518.64 (2004) was amended by 2005 Minn. Laws ch. 164, § 10, at 1893 and then by 2006 Minn. Laws ch. 280, § 23, at 1123. These amendments indicate that Minn. Stat. § 518A.39 (2006), the successor to section 518.64, applies to motions to modify child support filed after January 1, 2007. *See* 2006 Minn. Laws ch. 280, § 44, at 1145 ("[T]he provisions used to calculate parties' support obligations apply to actions or motions filed after January 1, 2007.") Because Ms. Williams's motion was filed before January 1, 2007, we apply the 2004 version of the modification statute.

court's use of his inheritance as a basis for the calculation. He contests the district court's reliance on his 1999 income rather than on his allegedly lower 2006 income, and he contends that regardless of his income amount the district court's failure to find that his overall expenses had decreased prevents a finding of a substantial change in circumstances. We address these arguments in turn.

Regarding his income, Mr. Williams argues that because the district court did not subtract his approximately \$30,600 of unreimbursed business expenses from his salary amount, the finding of a substantial change in his financial circumstances is factually unsupported. This argument does not fairly construe the district court's analysis, and it disregards Mr. Williams's own accounting theory. He urged the district court not to treat the difference between his 1999 gross income of \$127,714 and his 2006 income of \$151,727 as an increase. He asserted that his apparently higher 2006 income should be reduced by \$30,600 for claimed business expenses because this approach is analogous to the accounting that led to his 1999 income figure as stated in the decree. But the district court chose not to determine his 2006 income because it found that it lacked sufficient information to do so accurately. For the purposes of the motion to modify, the court left undisturbed the finding of his income as stated in the 1999 decree.

The district court was not required to follow Mr. Williams's valuation approach, and it reasonably rejected it, finding it impossible to distinguish his personal expenses from his business expenses. *See* Minn. Stat. § 518.551, subd. 5b(f) (2004) (noting that party seeking expense deduction has burden of proving the expense is ordinary and necessary); *Preussner v. Timmer*, 414 N.W.2d 577, 579–80 (Minn. App. 1987)

(explaining that if a party can show that deductions are necessary for business purposes, then the district court should consider deducting those expenses). The district court explained that although Williams “provid[ed] receipts to document some claimed unreimbursed business expenses, [he] has failed to demonstrate that those expenses were incurred solely under the color of his employment.” For example, it considered the claimed expense of \$26,827 for “mileage and parking”—by far the greatest portion of the \$30,600. The district court found no basis to distinguish business and personal mileage.

While a different factfinder may have been persuaded that the claimed business expenses could properly be deducted, the district court’s valuation approach under these facts was neither arbitrary nor unmerited. For the purposes of our review, Mr. Williams has not demonstrated that the district court’s valuation method was an abuse of discretion. Because the income calculation is neither illogical nor contrary to the record, the district court did not clearly err by finding that Mr. Williams’s gross monthly income is \$6,517. We turn to Mr. Williams’s challenge to the district court’s conclusion that there was an overall change in his financial condition that constitutes a substantial change in circumstances.

Mr. Williams contends that even if his income has not decreased, the elimination of his \$1,500 monthly house payment cannot alone demonstrate substantially changed circumstances. The argument is persuasive. The conclusion that Mr. Williams improved his overall monthly financial circumstances by eliminating his mortgage is not supported with necessary factual findings. The district court acknowledged that it was unaware of what Mr. Williams’s expenses were at the time of the decree in 1999, and the 1999

decree also does not provide the answer. The court made no finding of his 1999 or 2006 reasonable expenses. With no finding of Mr. Williams's other 2006 expenses and particularly with no finding of his comparative 1999 total expenses, there is no apparent or stated basis in the district court's order to support the finding that Mr. Williams's 2006 expenses are substantially lower than they were in 1999. Separately, the district court also made no findings allowing for a clear comparison of the parties' overall financial changes. It made no finding of the amount of reasonable monthly expenses for the care of the child, either for 1999 or 2006. It did not evaluate whether the \$1,000 increase in Ms. Williams's monthly income demonstrates a greater improvement to her financial circumstances over the possible improvement in Mr. Williams's circumstances. We hold that the findings do not describe a substantial change in the parties' financial circumstances that would support modification.

Unreasonableness and Unfairness

The district court never expressly found that the original support obligation is unreasonable and unfair or specified the bases for the implied finding. The district court implied a basis, citing Minnesota Statutes section 518.64, subdivision 2, and stating that public policy favors the award of child support at a set dollar amount while the 1999 decree set no specific child-support obligation. Mr. Williams challenges the district court's public-policy based explanation for its conclusion.

Although the legislature has imposed a presumption that circumstances have substantially changed and that the terms of a current child-support order are unreasonable and unfair if the "support obligation is in the form of a statement of percentage and

not a specific dollar amount,” Minn. Stat. § 518.64, subd. 2(b)(4) (2004), the policy concerns in favor of a specific dollar amount are not triggered in this case because the 1999 decree does not assign child support on a percentage basis. The public policy favoring “child support at a specific amount” rests on the concern that apportioning support on the flexible and uncertain amounts of a party’s income makes the obligation difficult to enforce and financial affairs difficult to plan. *Keil v. Keil*, 390 N.W.2d 36, 38 (Minn. 1986). The concern arising from percentage-based obligations is not prompted here, where the 1999 decree set no child-support obligation, assigned to each parent the duty to pay for the child’s general expenses incurred while in his or her care, and required specific other expenses to be paid by either parent depending on the type of the expense. That the 1999 decree lacked a specific child-support amount does not alone support the statutory presumption, let alone a finding, of substantially changed circumstances that render the decree unreasonable and unfair. We hold that the findings do not support the district court’s implied conclusion of unreasonableness and unfairness.

II

Mr. Williams argues that even if modifying child support is appropriate, the district court abused its discretion by ordering support at a sum three times the presumptive guideline amount by using an upward deviation to equalize the parties’ incomes. The objection is well founded. Minnesota Statutes section 518.551 (2004) sets the presumptive amount for the district court to apply when determining child-support obligations. When the parties have joint physical custody, the court should apply a

presumptive obligation based on what is known as the *Hortis/Valento* formula. *Schlichting v. Paulus*, 632 N.W.2d 790, 792 (Minn. App. 2001). This formula, reflected in a guideline table found in section 518.551, subdivision, 5(b), directs the district court to calculate child support in specific amounts for the time that the other parent cares for the child. *Id.*; *Rogers v. Rogers*, 622 N.W.2d 813, 821 (Minn. 2001) (“[T]he percentage of the children’s days that are spent with the noncustodial parent . . . may be . . . considered in setting or modifying child support, or in determining whether a deviation from the guidelines should be approved.”). The separate obligations are offset against each other, so that the parent with the greater obligation faces the imposition of a presumptive payment obligation to the parent with the smaller overall obligation. *In re Bender*, 671 N.W.2d 602, 608 (Minn. App. 2003); *see also* Minn. Stat. § 518.551. These guidelines also apply when modifying child support. Minn. Stat. § 518.64, subd. 2(b) (2004). Most relevant here, one factor allowing a deviation from the guideline obligation is “the standard of living the child *would have enjoyed* had the marriage not been dissolved, but recognizing that the parents now have separate households.” Minn. Stat. § 518.551, subd. 5(c)(3) (emphasis added). In contrast, equalizing income may not be the basis to deviate when calculating child support. *Hortis v. Hortis*, 367 N.W.2d 633, 635–36 (Minn. App. 1985) (“[C]hild support should not be used as a means of equalizing income between parents.”) Without evidence that the child requires more support from the higher-income parent, the fact that one parent earns more does not justify deviation from the *Hortis/Valento* formula. *Broas v. Broas*, 472 N.W.2d 671, 674 (Minn. App. 1991).

The district court here calculated the presumptive amount to be \$370 and then deviated upward to impose a \$1,200 child-support obligation on Mr. Williams. In doing so, it focused on the parties' current separate standards of living rather than on what the child's standard of living would have been if the marriage had continued. It referenced the "child's lifestyle during the marriage," but made no findings of the child's expenses or standard of living during the marriage, and it decided that "a monthly budget for [Ms. Williams] that is equal or nearly equal to [Mr. Williams's] is appropriate." Its express rationale was its concern that the child should not "experienc[e] widely varying standards of living depending on the household he is in," and on the view that the court should set child support at an "amount that allows for a near equalization of the standard of living between the parties' households." There is no indication in the court's order that it found that the parties' relative net worths or income had any impact on the child's standard of living in either home in comparison to the other or to the standard he would have enjoyed if the parties' marriage had survived. We hold that the district court acted beyond the scope of its discretion by deviating upward from the guideline formula on the reasons given in its order.

III

Despite our holdings against the stated bases and amount of the district court's ordering of child support, we remand for the district court to address the incompletely litigated issue of statutory presumption of unfairly changed circumstances. Under Minnesota Statutes section 518.64, subdivision 2(b)(1) (2004), for the purpose of a motion to modify child support, "It is presumed that there has been a substantial change

in circumstances . . . and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if . . . the application of the child support guidelines . . . to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$50 per month higher or lower than the current support order.” The 1999 decree is the comparative “current order,” and it essentially set *no* child-support obligation for either parent. Therefore, although the district court did not discuss this presumption, its calculation that Mr. William’s child-support obligation would be \$370 by applying the guidelines to the current circumstances indicates that the presumption of an unfair change in circumstances under section 518.64, subdivision 2(b)(1), has been triggered. Ms. Williams noted the issue in her briefing to the district court, and Mr. Williams presented facts that arguably bear on whether he rebutted the presumption of unfairness. But the district court’s discussion of the *Hortis/Valento* formula did not address the presumption or its potential rebuttal. *See Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 843 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007) (explaining that when a district court does not decide a necessary issue within its discretion, we will remand the case to the district court).

After Ms. Williams raised the issue of the presumption of unfairness in briefing to the district court, Mr. Williams asserted that the parties’ financial circumstances put Ms. Williams in a substantially better relative position. He contended that her increased income and decreased expenses, and his own alleged decreased income and increased expenses, demonstrate no unfairness in continuing the 1999 decree. The district court did not expressly address the presumption or find that Mr. Williams failed to rebut it. And

even if we might infer that finding based on the district court's conclusions, the finding would rest on a clearly erroneous footing; although the district court expressed doubt concerning Ms. Williams's claimed 2006 expenses, it did not make any finding of either party's 2006 expenses or their 1999 expenses or explain why findings on those facts are unnecessary to the question of unreasonableness and unfairness. We offer no opinion on this issue, but because the district court's application of the guidelines in relation to the current child-support arrangement indicates that the presumption in section 518.64, subdivision 2(b)(1) likely applies, we remand the case for proceedings to address the issue.

On remand, the district court should determine the applicability of section 518.64, subdivision 2(b)(1), and whether Mr. Williams has introduced evidence that rebuts the statutory presumption. In doing so, the court may, within its discretion, choose to reopen the record to hear evidence and accept additional arguments on that issue.

Reversed and remanded.