

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0847**

In re the Marriage of:
Julie Marie Fuchs, petitioner,
Respondent,

vs.

Douglas James Fuchs,
Appellant.

**Filed August 5, 2008
Reversed and remanded
Johnson, Judge**

Dakota County District Court
File No. F0-04-3048

DeAnne L. Dulas, Strandemo, Sheridan & Dulas, P.A., 320 Eagandale Office Center, 1380 Corporate Center Curve, Eagan, MN 55121 (for respondent)

Jori L. Whitehead, Ronald L. Whitehead, Whitehead Law Office, P.O. Box 2309, Burnsville, MN 55337 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

After taking a new job with a lower level of compensation, Douglas James Fuchs filed a motion in the district court to modify his child-support obligation, but the district court denied the motion. On appeal, he argues that the district court's findings of fact

were insufficient and that the district court erred by concluding that there was no change in circumstances to warrant a modification of his child-support obligation. We conclude that the district court's findings do not reflect the statutorily required consideration of factors relevant to a modification motion and, therefore, reverse and remand.

FACTS

Julie Marie Fuchs and Douglas James Fuchs were married in 1993. The marriage was dissolved in December 2004. During their marriage, they had two children together, and they agreed to a joint-custody arrangement upon dissolution.

At the time of the dissolution, Julie Fuchs had a net monthly salary of \$2,662. Douglas Fuchs had a net monthly base salary of \$4,214, and his net monthly income was \$4,931 after inclusion of bonuses. The parties stipulated to a child-support obligation that deviated upward from the child-support guidelines. The stipulated obligation required Douglas Fuchs to pay child support in an amount equal to 19% of his then-current base pay and, in addition, 30% of any bonuses or commissions he received.

In May 2005, Douglas Fuchs moved to modify his child-support obligation, but the district court denied the motion on the ground that he had failed to demonstrate a change in circumstances. In July 2006, Douglas Fuchs resigned from his position of employment at Calvary Portfolio Services to take a new job at TCF Equipment Finance, Inc. In December 2006, he again moved to modify his child-support obligation. The district court again denied the motion, concluding that he "has not established a change in circumstances sufficient to warrant a modification of the existing support as ordered in

the Judgment and Decree.” Douglas Fuchs appeals from the denial of his second motion to modify his child-support obligation.

D E C I S I O N

A district court may modify a child-support order upon a showing of substantially changed circumstances making the terms of an existing support order unreasonable and unfair. Minn. Stat. § 518.64, subd. 2(a) (2004). A substantial change in circumstances is presumed if the application of the child-support guidelines to the parties’ current circumstances produces a guideline support obligation that is at least 20 percent and \$50 per month different from the obligation in the prior order. *Id.*, subd. 2(b)(1). The same showing creates a rebuttable presumption that the child-support obligation is unreasonable and unfair. *Id.*

An appellate court should “reverse a district court’s order regarding child support only if [the appellate court is] convinced that the district court abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record.” *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). Accordingly, modification decisions will be upheld “absent an abuse of . . . discretion, which occurs if the district court resolves the matter in a manner that is against logic and the facts on the record.” *Frank-Bretwisch v. Ryan*, 741 N.W.2d 910, 914 (Minn. App. 2007) (citing *Putz*, 645 N.W.2d at 347).

A. Scope of Review

Douglas Fuchs’s first argument on appeal is that the district court’s findings of fact are insufficient to justify the denial of his motion to modify his child-support

obligation. Before addressing the substance of this argument, we first must address Julie Fuchs's procedural counter-argument that our scope of review is limited because Douglas Fuchs did not move in the district court for amended findings pursuant to Minn. R. Civ. P. 52.02. She relies on a body of caselaw that provides, "on appeal from a judgment where there has been no motion for a new trial the only questions for review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment." *See, e.g., Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976); *see also Frank v. Illinois Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983) ("Where the court fails in its duty to make a finding, the burden is on the parties to alert the court by a motion for amended finding under Minn. R. Civ. P. 52.02.").

Child-support-modification proceedings are "special proceedings" within the meaning of Minn. R. Civ. App. P. 103.03(g). *Huso v. Huso*, 465 N.W.2d 719, 720 (Minn. App. 1991). As such, a motion for a new trial pursuant to Minn. R. Civ. P. 59 is "not authorized" and, thus, "unnecessary to preserve issues for appeal." *Id.* at 721. In contrast, a motion for amended findings pursuant to rule 52.02 is permitted following a ruling on a motion to modify a child-support obligation. *Hughes v. Hughley*, 569 N.W.2d 534, 536 (Minn. App. 1997) ("motions for amended findings . . . are not improper in post-decree modification proceedings."). However, a motion for amended findings is not necessary to challenge the sufficiency of a district court's findings in child-support proceedings. In *Naffke v. Naffke*, 240 Minn. 468, 62 N.W.2d 63 (1953), the appellant challenged the sufficiency of the district court's findings regarding child-support and

spousal-maintenance awards. *Id.* at 469, 62 N.W.2d at 65. The respondent argued that even if the findings were inadequate, the proper remedy was for the appellant to bring a motion for amended findings after trial. *Id.* at 471, 62 N.W.2d at 66. The supreme court rejected that argument, noting that appellate review is available even without a motion for amended findings. *Id.* at 472, 62 N.W.2d at 66. Because decisions regarding child-support and spousal-maintenance awards require “separate findings on issues of fact tried by the court” and the district court failed to make “specific findings as to the financial status or income” of either party, the court reversed and remanded to the district court with instructions to “make specific findings on the income and assets of the parties” and to make conclusions regarding the proper amounts of child support and maintenance based on the amended findings. *Id.* at 470, 473, 62 N.W.2d at 65, 67; *see also Roberson v. Roberson*, 296 Minn. 476, 478, 206 N.W.2d 347, 348-49 (1973) (remanding under *Naffke* for findings of fact regarding property distribution in dissolution order even though appellant failed to move for amended findings of fact).

Thus, Julie Fuchs’s procedural counter-argument does not find support in the applicable caselaw. Accordingly, we will proceed to consider Douglas Fuchs’s arguments.

B. Sufficiency of Findings of Fact

As stated above, Douglas Fuchs first argues that the district court failed to make the factual findings required by statute before determining that there was no change in circumstances warranting a modification of his child-support obligation.

“In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” Minn. R. Civ. P. 52.01. In *Moylan v. Moylan*, 384 N.W.2d 859 (Minn. 1986), the supreme court remanded for further findings because a district court had granted a motion to modify a child-support obligation without making findings indicating that it had considered the statutorily required factors. *Id.* at 864-65. The court of appeals had affirmed, reasoning:

While our review would have been facilitated by the presence of complete findings regarding the needs of the minor child, we do not deem remand to be necessary. The record before the trial court contained affidavits of both parties. The parties’ opinions regarding the needs of the child were adequately set forth in those affidavits.

Id. at 865. The supreme court, however, reversed the court of appeals, stating that “in all child support cases . . . the trial court must make specific findings of fact as to the factors it considered in formulating the award.” *Id.* at 863.

More recently, the supreme court, citing *Moylan*, emphasized “the importance of having findings of fact that demonstrate the trial court actually did take all relevant factors into consideration.” *Putz*, 645 N.W.2d at 353 (quotation omitted). The *Putz* court remanded the case to the district court for application of the child-support guidelines to the obligor’s imputed income and for consideration of “the six factors enumerated in section 518.551, subd. 5(c).” *Id.* at 353-54. Likewise, only last year this court held in *Frank-Bretwisch* that a modification decision by the district court could not be adequately reviewed because the findings regarding the modification decision and the original

dissolution decree were inadequate. 741 N.W.2d at 915. Accordingly, the court remanded to the district court for findings as to “respondent’s net income; respondent’s needs, relevant to the question of whether her ability to pay is hampered; appellant’s needs, showing the deficiency of the current award, if any, in meeting those needs; other considerations suggesting cause for a downward deviation; and changes in any of these circumstances.” *Id.*; see also *Bormann v. Bormann*, 644 N.W.2d 478, 482 (Minn. App. 2002) (remanding for further findings on obligor’s net monthly income, which bore on claim of change in circumstances, stating that “particularized findings on child-support issues ensures effective appellate review”); *Allan v. Allan*, 509 N.W.2d 593, 596 (Minn. App. 1993) (remanding under *Moylan* for “specific findings on the factors listed in Minn. Stat. § 518.64, subd. 2”).

The district court in this case made only two findings of fact relevant to its decision to deny Douglas Fuchs’s motion to modify. First, the district court recited the stipulated child-support obligation that was provided for in the original order. Second, the district court found that Douglas Fuchs had changed jobs. In its conclusions of law, the order first recites the relevant statutory provisions in section 518.64 and then concludes, “Respondent has not established a change in circumstances sufficient to warrant a modification of the existing support as Ordered in the Judgment and Decree.” The district court’s order is silent regarding the net incomes of the parties, the figures that the district court relied on in concluding that there had not been a substantial change in circumstances, and the factors listed in section 518.551.

The district court's order is insufficient. *See Moylan*, 384 N.W.2d at 864-65. A district court must consider the factors in Minn. Stat. § 518.551, subd. 5 (2004), and make written findings as required by subdivision 5(i). In subdivisions 5(a) through (b), the statute details the child-support guidelines, including a progressive child-support scale that calculates the percentage of an obligor's net income that must be paid toward child support based on the number of children supported and the obligor's net monthly income. Minn. Stat. § 518.551, subd. 5(a)-(b). Subdivision 5(c) identifies other factors that the district court "shall" consider "[i]n addition to the child support guidelines," including:

- (1) all earnings, income, and resources of the parents, including real and personal property, but excluding income from [employment in excess of 40-hour work week as described in subdivision 5(b)(2)(ii)];
- (2) the financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;
- (3) the standard of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;

Id., subd. 5(c).

As the parties' arguments have acknowledged, the caselaw addresses the impact of the parties' earlier stipulation on a district court's analysis of a subsequent motion to modify. "Child support requirements, relating as they do to the non-bargainable interest of the children, are less subject to restraint by stipulation." *Moylan*, 384 N.W.2d at 865 (quoting *Kaiser v. Kaiser*, 290 Minn. 173, 180, 186 N.W.2d 678, 683 (1971)). That a

party has stipulated to an award does not relieve a district court of the obligation to consider the statutory factors regarding modification. *Frank-Bretwisch*, 741 N.W.2d at 914 (noting that although a stipulation is “relevant to issues of fairness and reasonableness . . . nothing in section 518.64 suggests that the presumptions are inapplicable in the aftermath of a stipulated award”); *O’Donnell v. O’Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004) (“the existence of a stipulation does not bar later consideration of whether a change in circumstances warrants a modification”) (quotation omitted).

In sum, the district court’s order does not contain findings of fact and conclusions of law that are sufficient to permit appellate review. We reverse and remand for the district court to make such findings. The district court may, in its discretion, reopen the record.

Reversed and remanded.