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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0953**

In re the Marriage of: Nancy Jean Sonnek, petitioner,
Respondent,

vs.

Christopher David Sonnek,
Appellant.

**Filed March 31, 2009
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-F0-03-002278

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Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant argues that the district court abused its discretion by denying his motion
to reduce his child-support obligation. We affirm.

FACTS

The November 2005 judgment dissolving the parties' marriage awarded sole physical custody of their child to respondent Nancy Jean Sonnek. The judgment found the net monthly income of respondent to be \$4,904 and of appellant Christopher David Sonnek to be \$8,735, not including bonuses and stock options. Consistent with the then-applicable child-support guidelines, the judgment set appellant's monthly child-support obligation and contribution to the child's insurance expenses at \$1,743.75 and \$70.44, respectively. The judgment also found the reasonable monthly expenses of appellant, and of respondent and the child, to be \$4,989 and \$5,696, respectively.

In February 2006, appellant took a new, lower-paying job. In January 2007, the new income-shares child-support statute became effective. In January 2008, appellant moved the district court to reduce his child-support obligation. After a hearing, the district court found the gross monthly incomes of appellant and respondent to be \$13,125 and \$7,177, respectively, that these figures reflected "[o]nly the current W-2 (earned) incomes of the parties" and that "[t]he record is inadequate for a finding of each party's actual income." The district court also stated that because "the parties have not deemed it necessary to update their monthly living expenses, the Court draws the inference that their monthly living expenses are essentially unchanged." The district court further noted that the income-shares support calculation would set appellant's monthly child-support obligation at \$1,180, that this amount is more than \$75 and 20% different than appellant's current child-support obligation, and hence that, under Minn. Stat. § 518A.39, subd. 2(b)(1) (2008), the reduction in appellant's income was presumed to be substantial and

there was a rebuttable presumption that appellant's current support obligation was unreasonable and unfair. The district court then denied appellant's motion to reduce his child-support obligation, finding that "[t]he current child support order is neither unreasonable nor unfair[,]" that "[it] has not been shown that [appellant] cannot afford the current child support [obligation,]" and that the \$634 monthly reduction of child support that would result "would be a harsh result for the child, one that is not shown at all to be necessary[,]" and that "[t]o visit such a significant impact upon the child would be unreasonable." Appellant now challenges the denial of his motion.

D E C I S I O N

To obtain a modification of child support, the moving party must show a substantial change in circumstances rendering the existing support obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2008) (requiring substantial change); *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987) (placing the burden on the moving party). If applying the income-shares support calculation to the parties' current circumstances would result in a child-support obligation that is at least 20% and \$75 different than the existing obligation, it is presumed that there has been a substantial change in circumstances, and it is rebuttably presumed that the change renders the existing obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(b)(1). Here, the district court acknowledged that application of the income-shares calculation to the parties' current circumstances would create the statutory presumptions, but it still denied appellant's motion to reduce support. We will not alter a district court's decision regarding whether to modify child support unless the district court has abused its broad

discretion. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). A district court abuses its discretion if it rules in a manner contrary to logic and the facts on the record or if it misapplies the law. *Id.* (contrary to logic and the facts); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (misapplying the law).

We initially note that the district court's findings that it was limited to considering the parties' incomes as recited on their W-2 forms and that the record was otherwise "inadequate for a finding of each party's actual income," show that the district court doubted whether sufficient evidence had been submitted to it to allow it to address appellant's motion. A failure to submit sufficient evidence to support a motion can justify denying that motion. *See, e.g., Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that, "[o]n appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question"), *review denied* (Minn. Nov. 25, 2003); *Taflin v. Taflin*, 366 N.W.2d 315, 319 (Minn. App. 1985) (reciting this rule in the context of child-support modification).

Appellant argues that the district court misapplied the law. He asserts that if a moving party asserts facts creating a rebuttable presumption that the current support obligation is unreasonable and unfair, the nonmoving party must then produce evidence that the obligation is not unreasonable and unfair, and that because respondent did not do so, the district court was required to reduce his support obligation. This argument, however, misreads the statute to limit the evidence that the district court can consider

when determining whether a presumption of unreasonableness and unfairness has been rebutted to only the evidence presented by the nonmoving party. If a statute is unambiguous, “statutory construction is neither necessary nor permitted and we apply the statute’s plain meaning.” *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007); *see also* Minn. Stat. § 645.16 (2008) (stating that if a statute is “clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit”). While Minn. Stat. § 518A.39, subd. 2(b) states that, under certain circumstances, the terms of a support order are “rebuttably presumed” to be unreasonable and unfair, it does not impose a burden of production or persuasion on either party to rebut that presumption, does not require a formal burden-shifting analysis, and does not limit the evidence that the district court can consider when addressing whether the presumption has been rebutted. “[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Terault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Therefore, we decline to read these requirements and limitations into the statute, and we conclude that a district court may determine whether the presumption has been rebutted by any evidence in the record, including evidence presented by the moving party.

Here, consistent with the record, the district court found that appellant has not shown that he cannot afford his current child-support obligation. Even though appellant changed employment since entry of the judgment and his earnings have decreased, his monthly expenses have not increased and the combination of his current \$13,125 monthly

gross income, his \$4,989 in monthly expenses, and his total child-support contribution of \$1,814.19 suggests that he still enjoys a significant monthly surplus.

The district court also found that if appellant's child-support obligation is modified, appellant's current \$1,814.19 total monthly contribution to his child would decrease by \$634, and that the lack of evidence regarding the parties' expenses requires the inference that their expenses had not changed. Thus, despite the fact that his monthly income apparently exceeds his total monthly obligations and the fact that his child's expenses have not decreased, appellant argues that his monthly support contribution should be reduced by 35%. The district court ruled both that such a reduction in support would have a "harsh result for the child" and that, on this record, the reduction sought by appellant "[was] not shown to be at all necessary." Extensive precedent shows a long and unambiguous commitment to the idea that a child's best interests are the court's paramount consideration in addressing child-related questions. *See, e.g., Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995) (stating "[a]s in all matters involving court-established family relationships of children, we begin with reference to our paramount commitment to the best interests of the children."); *Stephens v. Stephens*, 407 N.W.2d 468, 471 (Minn. App. 1987) (stating that "[i]n determining the unfairness issue . . . , the court must consider the needs of the children"). And on the limited record provided here, appellant has not shown that the district court abused its discretion by denying a 35% reduction in his child-support obligation where there was no commensurate reduction in the child's expenses, where that reduction would have a "harsh" result for his child, and where, even before the reduction, appellant has a monthly surplus.

Finally, appellant argues that the district court's failure to modify his child-support obligation results in an unsupported deviation from the support obligation that would be presumptively correct under the income-shares calculation. *See* Minn. Stat. § 518A.43 (2008). But the current obligation was not a deviation from the guidelines under which it was originally set. Further, a limited amount of information was presented to the district court to support appellant's motion to modify his obligation and that information suggests both that the proposed decrease in appellant's obligation would be harsh for the child and that it is not economically necessary for appellant. The district court ruled that appellant's existing support obligation is not unreasonable and unfair under these circumstances. Because the existing obligation is reasonable and fair, modification of appellant's existing support obligation using the income-shares calculation is improper. Thus, the income-shares calculation is currently inapplicable to this case, and appellant's current obligation does not constitute a deviation from the result suggested by the income-shares calculation.

We conclude that the district court's decision is consistent with the law, logic, and the limited facts on this record. Therefore, the district court did not abuse its discretion by denying appellant's motion to reduce his existing child-support obligation. Accordingly, we affirm.

Affirmed.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals