STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2113

In re the Marriage of:
Laurie Ann Albrecht, petitioner,
Respondent,

vs.

Douglas Alan Albrecht,
Appellant.

Filed November 9, 2010
Remanded
Halbrooks, Judge

Houston County District Court
File No. 28-FA-07-873

Laurie Ann Albrecht, Houston, Minnesota (pro se respondent)

Thomas M. Manion, Jr., Manion & Wheelock, PLLP, Lanesboro, Minnesota (for appellant)

Suzanne M. Bublitz, Houston County Attorney, Caledonia, Minnesota (for respondent Houston County)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to modify his child-support obligation. Because we conclude that the district court erred by not making findings concerning whether appellant demonstrated a substantial change in circumstances that renders his existing child-support obligation unreasonable and unfair, we remand.

FACTS

Appellant Douglas Alan Albrecht and respondent Laurie Ann Albrecht divorced in October 2008, and entered into a stipulation that encompassed many of the terms of the dissolution. The resulting stipulated judgment and decree contained the following language:

> [Appellant] is self-employed at D&L Lawn/Snow Plowing Service, which provides snowplowing and lawn mowing services, and earns therefrom an approximate gross monthly income of $3,750.00. [Appellant] acknowledges that [he] is presently capable of earning up to $50,000 annually and agrees to utilize an imputed gross income of $45,000.00, regardless of [appellant]'s actual income from his current employment.

The parties were granted joint legal custody of their three children, with respondent receiving sole physical custody and appellant receiving liberal parenting time. Appellant was ordered to pay respondent $987 per month, $800 of which was designated as child support. Appellant was also ordered to contribute 42% of the deductible and noninsured health expenses for the children. Judgment was entered October 21, 2008.

Eight months later, appellant moved to modify his child-support obligation. In his attached affidavit, appellant explained that "[d]ue to [the] current economy the available work at Winona Heat and Vent[1] has significantly decreased. Very few hours per month have become available to work. [D&L] is seasonal and dependent on weather condition and retention of current contracts." Appellant stated that he was then making $3,358 per month and had unsuccessfully applied for a number of jobs. He concluded that "it has become obvious that I am just not able to pay this amount of child support each month." Appellant also sought a reduction in his percentage of the children's insurance expenses.

Following a hearing, the child-support magistrate (CSM) denied appellant's motion to modify his child-support obligation. The CSM found that

> [t]he most recent support order issued in this case is dated October 21, 2008. At the time of that order, [appellant] was required to pay child support of $800 per month. This order specifically provided . . . [that] "[appellant] is self-employed at [D&L], which provides snowplowing and lawn mowing services, and earns therefrom an approximate gross monthly income of $3,750. [Appellant] acknowledges that [he] is presently capable of earning up to $50,000 annually, and agrees to utilize an imputed gross income of $45,000 regardless of [appellant]'s actual income from his current employment."

The CSM also found that appellant "knew at the time he entered into the agreement . . . that his employment would vary based on season and also based on annual snowfall. In addition, [appellant] testified that he was doing some work for people, but not charging them." The CSM therefore concluded that appellant had not demonstrated a substantial

[1] This employment was not discussed in the portion of the dissolution judgment that addressed appellant's income. But appellant stated in his affidavit that he had this position as early as August 2007.

change in circumstances that rendered his child-support obligation unfair under Minn. Stat. § 518A.36, subd. 2(b) (2008).

Appellant moved the district court for review of the CSM's order, arguing that the income information that he submitted with his motion "showed a drastic reduction in income, compared to the 'imputed gross income of $45,000' stated in the decree of dissolution." The district court denied appellant's motion in a September 2009 order without holding a hearing. The district court concluded that "[t]he evidence supports the [CSM]'s findings, and the findings support the conclusions of law." This appeal follows.

D E C I S I O N

A party may move to modify an existing child-support obligation under Minn. Stat. § 518A.39 (2008). Modification requires a showing of (1) a substantial change in circumstances that (2) renders the existing support obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a). As the moving party, appellant bears the burden of proof on these elements. *See Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002) (stating that the moving party bears the burden of proof in a child-support-modification proceeding). When a district court affirms a CSM's ruling, the CSM's ruling becomes the ruling of the district court, and an appellate court reviews the district court's ruling. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004).

The district court denied appellant's motion on the ground that he had agreed to an imputed income of $45,000, regardless of his actual income from his current employment. Based on that premise alone and without making any findings concerning appellant's current income, the district court concluded that appellant had not

demonstrated a change of circumstances that caused his current obligation to be unreasonable and unfair.

This court has held that "the existence of a stipulation does not bar later consideration of whether a change in circumstances warrants modification." *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004) (quotation omitted). Instead, the stipulation provides the baseline from which to identify whether there has been a substantial change in circumstances. *Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (noting this principle in the spousal-maintenance context). A stipulation is simply one factor to be considered, as child-support "relates to the nonbargainable interests of children." *O'Donnell*, 678 N.W.2d at 475 (quotation omitted); *see also Simmons v. Simmons*, 486 N.W.2d 788, 791-92 (Minn. App. 1992) (noting that the welfare of children takes precedence over any stipulated provision in a dissolution judgment).

Here, the district court concluded that appellant failed to meet the modification standard based only on the fact that he previously agreed that a fair representation of his annual income was $45,000. But the fact that appellant stipulated to an imputed income of $45,000 in the dissolution judgment does not bar future consideration of whether modification of his child-support obligation is warranted. Because this stipulation cannot be the only ground upon which a motion to modify a child-support obligation can be determined, it was an abuse of discretion for the district court to deny appellant's motion on this basis alone. Without findings regarding appellant's current financial information that he submitted in support of his motion, we are unable to review whether appellant has demonstrated a substantial change in circumstances that renders his existing child-support

obligation unreasonable and unfair. We therefore remand to allow the district court to make factual findings.

Remanded.