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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0477**

In re the Marriage of:
Amy Lynn Clifton, petitioner,
Respondent,

vs.

Brandon John Clifton,
Appellant,

County of Anoka, intervenor,
Respondent.

**Filed January 16, 2018
Reversed and remanded
Ross, Judge**

Anoka County District Court
File No. 02-FA-11-268

Anthony C. Palumbo, Anoka County Attorney, Nicholas Jannakos, Assistant County Attorney, Anoka, Minnesota (for respondent)

Amy Clifton, Zimmerman, Minnesota (pro se respondent)

Sean Linnan, Linnan Law Firm, LLC, Sturgeon Bay, Wisconsin (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Brandon and Amy Clifton divorced when they were both unemployed and collecting unemployment benefits, and they stipulated to an order entered by the district court that Brandon had no basic child-support obligation and that neither party's becoming employed would constitute a substantial change in circumstances warranting modification of the obligation. Four years later, Amy had become employed earning roughly 250% more than she was earning before she began receiving unemployment benefits and enough for her to meet her own expenses, while Brandon became employed earning roughly 25% less than he was earning before he began receiving unemployment benefits and not enough for him to meet his own expenses. After the county intervened and moved the district court to modify Brandon's monthly child-support obligation, the district court ordered him to pay \$332 monthly. Because Brandon questioned, but the district court failed to address, whether the parties' employment was a change in circumstances that made the terms of the extant child-support order unreasonable and unfair, the district court abused its discretion and we reverse and remand.

FACTS

Brandon and Amy Clifton dissolved their marriage in October 2012. They had three minor children and stipulated to a basic child-support obligation of \$0 monthly and to dividing child-care costs equally. Both were unemployed, but they contemplated that their unemployment would be temporary and stipulated that "simply gaining employment commensurate with their former employment would not, in itself, trigger a 'substantial

change’ such that it would warrant modification of this support provision.” The “former employment” the parties were referring to had afforded Brandon a gross monthly income of about \$2,900 and Amy a gross monthly income of about \$2,000. The county attorney joined the stipulation, and the district court adopted it into its judgment and decree.

Four years after the judgment and decree, Anoka County filed a Notice of Intervention and Motion to Modify Child Support, based on the fact that the Clifton children received medical assistance. The county requested that the district court set Brandon’s basic support obligation at \$595, his medical support obligation at \$48, and his ongoing child-care support obligation at \$146, and order him to pay 38% of the children’s uninsured and unreimbursed medical expenses. The district court considered the county’s motion.

Amy had secured employment significantly more lucrative than before, resulting in a monthly income of \$4,975. Brandon had secured employment less lucrative than before, resulting in a monthly income of \$2,252. Brandon testified that he had no way to meet any increase in his \$0 child-support obligation and still provide the children with housing and meet his other expenses. The child support magistrate (CSM) essentially agreed, finding that Brandon did not have sufficient income to meet his monthly expenses, even without any increase in child support. The CSM found conversely that Amy’s income exceeded her expenses, even without receiving child-support payments. Brandon argued that continuing the extant \$0 obligation was neither unreasonable nor unfair. In an order that did not make any finding that continuing the \$0 obligation was unreasonable or unfair, the CSM

increased Brandon's total monthly obligation from \$0 to \$332 and ordered him to pay 34% of the children's unreimbursed medical expenses.

Brandon moved for review of the CSM's order, arguing that Amy's increase in income did not constitute a substantial change in circumstances that made his \$0 obligation unreasonable and unfair. Among other things, Brandon argued that the CSM had failed to take into account any impact that Amy's new husband's contribution to her household expenses might have had on her expenses. In an order that did not make any finding that continuing the \$0 obligation was unreasonable or unfair under the circumstances, the district court affirmed the CSM's order. It based its affirmation on the statutory presumption of a substantial change in circumstances arising from the significant increase in Amy's income, saying nothing about why Brandon's showing had not rebutted the presumption about fairness.

Brandon Clifton appeals.

D E C I S I O N

Brandon challenges the district court's order modifying his child-support obligation from \$0 to \$332 each month. We will affirm the district court's child-support modification order unless the order reflects an abuse of the district court's discretion. *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004). The district court has discretion to modify a child-support obligation if there has been a substantial change in circumstances that makes the terms of the current support order unreasonable and unfair. See Minn. Stat. § 518A.39, subd. 2. (2016).

The Cliftons’ circumstances had substantially changed since the time of their dissolution judgment. “It is presumed that there has been a substantial change in circumstances . . . if the current support order is less than \$75” and applying the statutory child-support guidelines to the current circumstances “results in a calculated court order that is at least 20 percent per month higher or lower” than the obligation under the extant order. Minn. Stat. § 518A.39, subd. 2(b)(1). Without dispute, applying the child-support guidelines to the changed circumstances would result in a child-support obligation that is at least 20 percent higher than the extant obligation. The district court therefore correctly reasoned that, “In this case the presumption applies.”

Brandon argues that the stipulation in the divorce decree prevented the district court from modifying his support obligation. The argument is unconvincing. The parties had stipulated only that “simply gaining employment commensurate with their former employment would not, in itself, trigger a ‘substantial change’” in circumstances warranting modification. The stipulation did not purport to foreclose the possibility that either party’s increase in earnings would be so substantial that it would trigger the statutory presumption of a substantial change in circumstances. And nothing in the stipulation prevented the district court from entertaining a motion to modify the support obligation under those circumstances.

We think that the critical issue presented to the district court, and the next question Brandon raises on appeal, is whether the change in circumstances was not only substantial but also made it unreasonable and unfair for the district court to leave Brandon’s original obligation of \$0 in place. Neither the CSM nor the district court included any finding on

this issue, and neither included any analysis from which we might discern that they considered it. Although a change in circumstances is irrebuttably presumed from a significant difference in a guidelines calculation of child support, that change leads only to a *rebuttable* presumption that leaving the extant obligation in place is also unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(b). The statute therefore allows a party the opportunity to rebut the presumption. And Brandon's briefing to the CSM and to the district court included various circumstances from which one might conclude that he has rebutted the presumption that leaving the original obligation in place would be unreasonable and unfair. Among other things, he argued that, because it was Amy's significantly increased income and his decreased income that triggered the substantial change in circumstances, the change was not a circumstance that made his original obligation of \$0 unreasonable or unfair. He implied that the parties' contemplation of reemployment bears on the presumption of unreasonableness and unfairness. He also emphasized that Amy could meet her expenses without receiving child support while he could not meet his own expenses even without paying child support; that imposing the extra obligation on him would make it difficult or impossible for him to maintain housing for the children during his parenting time; that Amy had nearly doubled her alleged expenses to \$6,385 in just five years while his expenses increased only slightly; and that Amy's expenses increased by her voluntary decision to add four new children to her family since the divorce.

We have repeatedly held that a trial court's failure to expressly consider whether a substantial change in circumstances makes the extant order unreasonable and unfair compels a remand. *Videen v. Peters*, 438 N.W.2d 721, 723 (Minn. App. 1989); *Ruona v.*

Ruona, 390 N.W.2d 459, 461 (Minn. App. 1986); *Bodmer v. Pattie*, 383 N.W.2d 14, 17 (Minn. App. 1986). And this duty to make the finding has remained unchanged after the legislature added the presumption in 1992. *Compare Welsh v. Welsh*, 775 N.W.2d 364, 371 (Minn. App. 2009) (“On remand, the district court shall also reconsider whether there is a substantial change in circumstances rendering father’s child-support obligation unreasonable and unfair.”), *with Allan v. Allan*, 509 N.W.2d 593, 596 (Minn. App. 1993) (“To support a modification of child support, the district court is required to make specific findings on the factors listed in Minn. Stat. § 518.64, subd. 2 [(1992)].”)

We reverse the district court’s order and remand the case for the district court to address whether Brandon has rebutted the presumption that the change in circumstances renders his original child-support obligation unreasonable and unfair. We offer no opinion about whether the district court should reopen the record to make its necessary findings and conclusions on this issue.

Reversed and remanded.