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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0616**

In re the Marriage of: Dawn Angela Swenson, f/k/a Dawn Angela Pedri, petitioner,
Respondent,

vs.

Shawn Anthony Pedri,
Appellant,

and

County of Dakota, intervenor,
Respondent.

**Filed December 26, 2017
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19AV-FA-10-644

Dawn A. Swenson, Mendota Heights, Minnesota (pro se respondent)

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appellant)

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Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

In this on-going child-support dispute, appellant-father challenges the district court's most recent modification of his, and respondent-mother's, child-support obligations. We affirm.

FACTS

Appellant-father Shawn Anthony Pedri and respondent-mother Dawn Angela Swenson were married in 2004, and their marriage was dissolved by judgment and decree in 2011. Two children were born to the parents during their marriage: A.P., born in 2006, and L.P., born in 2007. When father and mother divorced, the district court awarded them joint legal and joint physical custody of the children, designating father's home as the children's primary residence. The 2011 dissolution judgment and decree established child-support obligations for both parents. The district court ordered father to pay mother \$939 per month as basic child support, and it ordered mother to pay father \$55 per month for medical support and \$397 per month for child-care support. In 2014, respondent Dakota County, the public authority responsible for enforcing child support, intervened and has remained a party to the case.

Father and mother have litigated a number of issues related to parenting time and child support.¹ In December 2014, the district court decreased mother's child-care support

¹ There have been two other appeals regarding parenting-time and child-support issues since the parties' 2011 judgment and decree. *Swenson v. Pedri*, No. A16-1444 (Minn. App. Sept. 18, 2017); *Swenson v. Pedri*, No. A15-1900 (Minn. App. Sept. 6, 2016).

obligation to \$204.90 per month to reflect a decrease in actual ongoing child-care expenses. In April 2015, a child-support magistrate (CSM) separated mother's medical-support obligation into a \$44-per-month medical obligation and a \$11-per-month dental obligation to address the continued payment of dental expenses.

In April 2016, mother moved to modify child support, requesting that each parent be ordered to pay for his and her own child-care expenses. Father responded with his own motion to modify child support, requesting that mother's medical- and dental-support obligations increase to reflect premium increases and that the county be allowed to increase or decrease the parties' medical- and dental-premium reimbursements based on annual policy increases. Following a hearing in the expedited child-support hearing process,² a CSM ordered each parent to pay for his and her own child-care expenses, increased mother's medical-support obligation to \$64 per month, increased mother's dental-support obligation to \$16 per month, and denied father's request to allow the county to administratively recalculate mother's medical- and dental-support obligations based on increased premiums.

In January 2017, father sought review of the CSM's order, arguing that the CSM made mathematical errors, failed to apply the combined parental income for child support (PICS), improperly determined father's income, erred in finding that there had been a change of circumstances justifying a child-care support modification, and erred by failing to modify mother's medical-support obligation retroactively. The district court ruled for

² Parties may use the expedited child-support hearing process "to establish, modify, and enforce child support." Minn. Stat. § 484.702, subd. 1 (2016).

father in part, remanding for the CSM to calculate the parties' medical-support obligations in accordance with their PICS, using the parties' gross incomes as determined by the CSM. The district court otherwise affirmed the CSM's order. On remand, the CSM increased mother's medical-support obligation to \$89 per month and decreased her dental-support obligation to \$10 per month. Father appeals.

D E C I S I O N

The district court may modify the terms of a child-support order upon a showing of a "substantial change in circumstances" that renders the terms "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a)-(b) (2016). Two circumstances that can justify modification of a child-support order are "a substantial increase or decrease in health care coverage costs" and "the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses." *Id.*, subd. 2(a)(6), (7). The party requesting modification has the burden of establishing a substantial change in circumstances. *Gorz v. Gorz*, 552 N.W.2d 566, 569 (Minn. App. 1996).

The district court reviews a CSM's decision de novo. *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001). If the district court affirms the CSM's decision, the CSM's decision becomes the decision of the district court to the extent it is affirmed. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). This court reviews a district court decision affirming a CSM's order, as well as a CSM's decision that the district court has not reviewed, for abuse of discretion. *Davis*, 631 N.W.2d at 826; see *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000) ("[W]hen reviewing a child support

magistrate's order in an expedited child support process proceeding we will apply the same standard of review that we would apply to the order if it had been issued by a district court judge.”). In doing so, this court defers to the CSM's credibility determinations. See *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (“[A]ppellate courts defer to [district] court credibility determinations.”).

Father assigns multiple errors to the decisions of the CSM, as affirmed by the district court. We address each in turn.³

I.

Father contends that the district court “should have granted [his] request for retroactive reimbursement of [mother's] 23% responsibility of the minor children's medical and dental premiums given that [father] had attempted unsuccessfully on multiple occasions to have [mother] report to court ordered arbitration prior to” requesting retroactive reimbursement.

A modification of support or maintenance

may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the public authority . . . unless the court adopts an alternative effective date under paragraph (l).

Minn. Stat. § 518A.39, subd. 2(e) (Supp. 2015) (*italics added*). Subdivision 2(l) provides that “[t]he court may select an alternative effective date for a maintenance or support order

³ Although father appeals from the CSM's order on remand, father appears to challenge that decision only to the extent that it is based on the portions of the CSM's order that were affirmed by the district court.

if the parties enter into a binding agreement for an alternative effective date.” Minn. Stat. § 518A.39, subd. 2(l) (Supp. 2015).

Because the parties did not agree to an alternative effective date, the exception in subdivision 2(l) does not apply. Father was therefore entitled to retroactive reimbursement dating back only to June 1, 2016, the date father served his motion for modification. The district court ordered that mother reimburse father for her share of the children’s medical and dental premiums back to that date, consistent with Minn. Stat. § 518A.39, subd. 2(e). The district court did not abuse its discretion in doing so.

II.

Father contends that the district court “should have used the 2017 monthly medical premiums to modify the medical support obligation of [mother] when [father] had indicated at the hearing that he had received a notice of annual increase and the new (higher) 2017 rate would take effect within 30 days.”

At the motion hearing before the CSM, father advised the CSM that a notice of increase for 2017 premiums had been mailed to father, and the CSM confirmed with mother that she had received a copy of that notice. However, father did not provide evidence regarding the amount of the increase. Because the amount of the 2017 premium increase was unknown when the CSM issued her order, the CSM could not have based mother’s medical-support obligation on the increased premium.

Father apparently became aware of the amount of the 2017 premium before he moved for review of the CSM’s order, because his motion states that the 2017 monthly medical premium had increased to \$499.20. On a motion to review a CSM’s order, a party

may request an order authorizing the party to submit new evidence. Minn. R. Gen. Pract. 377.03, subd. 2(e). “[T]he parties shall not submit any new evidence unless the . . . district court judge, upon written or oral notice to all parties, requests additional evidence.” Minn. R. Gen. Pract. 377.09, subd. 4; *see also id.*, subd. 3 (stating that the review by the district court shall be based upon the CSM’s decision, any exhibits and affidavits filed, and a record of the relevant hearing). Father did not request authorization to submit new evidence regarding the amount of the 2017 premium, and the district court did not request such evidence. The district court therefore did not err by declining to consider evidence regarding the 2017 premium, and it did not abuse its discretion by not basing its decision on that premium.

III.

Father contends that the district court erred in its determination of his income for the purpose of calculating mother’s medical-support obligation.

Unless otherwise agreed to by the parties and approved by the court, the court must order that the cost of health care coverage and all unreimbursed and uninsured medical expenses under the health plan be divided between the obligor and obligee based on their proportionate share of the parties’ combined monthly PICS. The amount allocated for medical support is considered child support

Minn. Stat. § 518A.41, subd. 5(a) (2016).

To calculate a parent’s PICS, a district court or CSM must determine the parent’s gross income and then subtract a credit for the parent’s nonjoint children, if any. Minn.

Stat. § 518A.34(b)(2) (2014);⁴ *see also Merrick v. Merrick*, 440 N.W.2d 142, 146 (Minn. App. 1989) (“Current net income must be determined for purposes of setting child support.”). Findings regarding a parent’s income will be affirmed on appeal if those findings have a reasonable basis in fact and are not clearly erroneous. *State ex rel. Rimolde v. Tinker*, 601 N.W.2d 468, 470 (Minn. App. 1999).

In its initial order, the CSM determined that father’s income for the “twelve month period of October 1, 2015 through September 2016 total[ed] \$133,672.00.” The CSM calculated mother’s medical-support obligation by multiplying the overall percentage increase in premiums by mother’s existing medical-support obligation and adding that sum to the amount of mother’s existing medical-support obligation.

The district court determined that the CSM erred by using the percentage increase to determine mother’s medical-support obligation and instructed the CSM to “calculate the parties’ medical support obligations in accordance with the parties’ respective PICS” based upon the parties’ incomes as determined by the CSM. On remand, the CSM used \$133,672 as father’s income, determined mother’s income was \$2,667 per month, and concluded that father and mother had 81% and 19% shares of combined PICS respectively. In doing so, the CSM increased father’s PICS share, which had previously been 77%, and decreased mother’s PICS share, which had previously been 23%. The CSM used the new PICS shares

⁴ Minn. Stat. § 518A.34 was amended in 2016. 2016 Minn. Laws, ch. 189, art. 15, § 18, at 1117-19. The modification to this section becomes effective August 1, 2018. *Id.* We therefore cite to the 2014 version of this statute.

to calculate the amount of mother's medical-support obligation after the 2016 premium increase.

Father argues that the district court erred by finding his income to be \$133,672, which was higher than the district court's previous findings regarding his income. As we understand his argument, it has two parts. First, father argues that the district court abused its discretion by modifying father's income "when there was no motion before the court to do so; there was no change in circumstance that justified a change in income, and the exact same facts had previously been presented to the same magistrate and the court concluded that no change in circumstance had taken place." Father argues that because he still has the same employer and "not one aspect of his employment has changed," there has been no change in circumstances justifying a modification of his income. In sum, father appears to argue that the district court was not authorized to determine his current income.

Unless the parties otherwise agree, a child's medical expenses are divided between them "based on their proportionate share of the parties' combined monthly PICS" to determine a parent's medical-support obligation. Minn. Stat. § 518A.41, subd. 5a. The parties' PICS, in turn, derive from each party's gross income. Minn. Stat. § 518A.34(b)(2). Again, father moved the district court to increase mother's medical- and dental-support obligations, and the district court granted that request. The district court had to determine the parties' current incomes to calculate mother's new medical- and dental-support obligations. Father's suggestion that the district court was unauthorized to determine his current income despite father's request that the district court increase mother's medical- and dental-support obligations is meritless.

Second, father argues that the district court's finding overstates his income. Father notes that he worked full-time at a "\$62.00/hourly rate," and in the judgment and decree the district court determined his income to be \$104,458 after accounting for holiday, vacation, and unpaid time off, because father is "an effective 1099 employee and therefore receives a 19% deduction of his hourly rate to account for said full-time equivalent benefits."⁵ Father asserts that his employment has not changed and that his income is subject to the 19% reduction reflected in the judgment and decree, because he is an hourly employee.

In the current proceedings, the district court found that father has "an average gross monthly income of \$11,139.00 based on the DEED [(Department of Employment and Economic Development)] information for the twelve month period of October 1, 2015 through September 2016 totaling \$133,672.00" and that "[t]his is the only information available to the court regarding [father's] income." Father correctly argues that the DEED information was not the only information available to the CSM regarding his income. The county filed employment-verification responses for mother and father before the motion hearing. Father's employment-verification response identifies his hourly rate of pay as \$62 and states that he works an average of 40 hours per pay period for an approximate weekly

⁵ In its 2011 judgment and decree, the district court found that father's gross income was \$104,458. The district court explained that "[t]he imputation of [father's] yearly gross income is based upon the fact that [father] is paid hourly, effectively a 1099 employee of his company. To account for holiday, vacation and unpaid time off that [father] does not enjoy as an hourly employee [father's employer] uses a standard 19% deduction of hourly rates to convert hourly employees to salary."

pay rate of \$2,480. Assuming 52 weeks in a year, this amounts to a yearly pay rate of about \$128,960.

The DEED wage summary is largely consistent with the employment-verification response regarding father's income. The DEED wage summary reports that father worked a total of 2,156 hours from October 2015 through September 2016 and received gross wages of \$133,672, which indicates an hourly rate of \$62. The only material difference between the DEED wage summary and the employment-verification response is the number of hours father worked, which may reflect the fact that the employment-verification response reports "Average hours per pay period" and an "Average Gross Income per Pay Period," and not actual hours worked over a specific period of time, whereas the DEED wage summary reports actual hours worked. Importantly, neither document contains the 19% reduction used to calculate father's income in the judgment and decree.

In arguing that he is entitled to an income determination that includes the 19% reduction, father also argues that his income, as determined in the judgment and decree, was previously relied on by the same CSM in the underlying proceeding in three contexts: (1) an April 2015 child-support order, (2) a May 2015 affidavit regarding child-support filed by the county, and (3) a June 2015 order regarding a request for a cost-of-living increase.

The April 2015 order recognized that "[a]t the time of the [judgment and decree]" the father's "total monthly income was \$8,704.00 based on \$104,458.00 per year income from [his employer]" and used a PICS percentage based on that income. But the order also

found that “[father’s] monthly income is \$10,525.00 based on the DEED information filed by the County [regarding] the period October 1, 2013 through September of 2014 showing income of \$126,294.00 for this period of time.” Notably, the CSM did not apply the 19% reduction when determining father’s income in April 2015.

The May 2015 affidavit from the county acknowledged that father’s gross income in the judgment and decree was an “adjusted gross income after a 19% deduction.” But it also stated that father “had a total gross income of \$126,418.00 in 2011; total gross income of \$132,184.00 in 2012; total gross income of \$131,409.00 in 2013 and total gross income of \$128,526.00 in 2014.” These amounts do not reflect the 19% reduction noted in the judgment and decree.

Lastly, as to the June 2015 order, although the CSM found that father’s income had not increased since 2012 for the purpose of a cost-of-living increase, she also found that father’s yearly income was \$132,184 in 2012 and \$128,526 in 2014. Once again, the CSM did not apply the 19% reduction when determining father’s 2012 and 2014 incomes.

In sum, even though the district court used a 19% reduction when calculating father’s income for the purposes of the judgment and decree, the judgment and decree does not say whether the reduction would be used in future income calculations, much less that it must be used. Since that time, the CSM in the underlying proceeding has determined father’s income without using the 19% reduction. Under the circumstances, we are not persuaded that the district court abused its discretion by not applying a 19% reduction when determining father’s current income.

This court's review of findings regarding a parent's income is limited; we consider whether the findings have a reasonable basis in fact and are not clearly erroneous. See *Rimolde*, 601 N.W.2d at 470. Although the CSM mistakenly stated that the DEED information was "the only information available to the court regarding [father's] income," the determination of father's gross income based on the DEED information had a reasonable basis in fact and it is largely consistent with other documents in the record regarding father's income. The district court's finding regarding father's current income is not clearly erroneous.

IV.

Father contends that the district court erred in granting mother's request to modify her child-care support obligation. Specifically, father argues that the district court should not have considered the motion because the district court had previously denied a similar motion, that the resulting order is impermissible under Minn. Stat. § 518A.40 (2016), that the record does not show a substantial change in circumstances justifying modification, and that the district court should not have modified mother's child-care support obligation because the existing order allowed father to maintain employment and was in the best interests of the children. We address each argument in turn.

Authority to Modify Mother's Child-Care Support Obligation

Father notes that mother had previously moved to modify her child-care support obligation in November 2014 and that the district court found that father's ongoing child-care expenses were reasonable. Father contends that, because the district court had already

decided the issue, the CSM erred by allowing mother to once again move to reduce her obligation.

“The authority of a child support magistrate with respect to establishing, modifying, and enforcing child support in the expedited child support process is comparable to the authority of a district court judge to establish, modify, and enforce child support in a proceeding conducted outside the expedited child support process.” *Brazinsky*, 610 N.W.2d at 710. Minn. Stat. § 518A.39, subd. 2(a), allows the district court to modify a child-support order when a party establishes a substantial change in circumstances. Mother alleged a substantial change in circumstances in her motion to modify, arguing that there had been a “substantial decrease [in] child care expenses.” The CSM was therefore authorized to consider the motion.

Application of Minn. Stat. § 518A.40

“To determine the presumptive child support obligation of a parent, the court shall follow the procedure set forth in [Minn. Stat. § 518A.34].” Minn. Stat. § 518A.34(a) (2014). That procedure requires the district court to, among other things, “determine the child care support obligation for the obligor as provided in section 518A.40.” Minn. Stat. § 518A.34(d) (2014). Under Minn. Stat. § 518A.40, subd. 1, “[u]nless otherwise agreed to by the parties and approved by the court, the court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parties’ combined monthly PICS.” The amount of child-care costs to be divided between the obligor and obligee “is the total amount received by the child care provider from the obligee and any public agency for the

joint child or children.” Minn. Stat. § 518A.40, subd. 1. Further, the child-care support obligation ordered by the court “must be based on actual child care expenses.” Minn. Stat. § 518A.39, subd. 7 (2016). Here, the district court neither found the “actual child care expenses” of the joint children, nor apportioned those undetermined expenses between the parties. Instead, it ordered each party to pay the child-care expenses associated with their parenting of the children. Father argues that, under Minn. Stat. § 518A.40, this is error.

We question whether this issue is properly before us. Generally, appellate courts address only those questions that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Although father asserted a violation of Minn. Stat. § 518A.40 in the proceedings before the CSM, he did not assert a violation of that statute in his motion for review by the district court. Instead, father argued that because “[t]here has been no change in circumstance regarding the parties’ employment,” mother’s “child care obligation should be left unchanged and not be made \$0.00.” Because father did not argue that the CSM’s failure to apply Minn. Stat. § 518A.40 was error, the issue was not presented to and considered by the district court and is thus not properly before this court.

Even if we were to address the question, however, we would not grant father relief on this record for the reasons that follow. Mother alleged that father had been making certain child care payments for the children “during the children’s school calendar year,” that father had not provided mother with documentation of any child-care expenses since January 2016, and that during the summer of 2015, mother had paid for all child-care costs incurred on her parenting days while simultaneously paying her child-care support

obligation. Father submitted an affidavit objecting to mother's request that "each parent pay for their own child care needs," but he did not provide evidence regarding his actual child-care expenses, and he does not point to any evidence in the record establishing that amount.

Unsurprisingly, the CSM stated at hearing that she "had no evidence of the cost of child care." Although the CSM acknowledged in her order that father testified that he had paid for certain child-care expenses, the CSM also found that father "failed to show that the cost of child care is only for the days that he actually needs child care" and noted that "[mother] must only contribute to the cost of child care for the days that child care is actually needed." Consistent with father's failure to submit the information necessary to make the statutory findings and apportionment, the CSM ultimately ruled that "[b]ecause [mother] is now working and also requires child care on the days the joint children are with her, it now makes sense to have each parent pay for their own child care needs."

We recognize that the modification of mother's child-care support obligation deviates from the process of Minn. Stat. § 518A.40. But to apply Minn. Stat. § 518A.40, the district court must find and apportion the amount of the relevant child-care expenses. Father failed to provide the district court with the evidence necessary to let it find and apportion those expenses. We will not grant father relief on appeal based on the district court's failure to make the findings and apportionment set out in Minn. Stat. § 518A.40 when it was father who made it impossible for the district court to do so. See *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in [his] 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); *see also Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (citing this aspect of *Eisenschenk* when refusing to grant relief on appeal to the nonmoving party in a child-support dispute when it was the nonmoving party who failed to provide evidence of the relevant expenses). Under these circumstances, we conclude that the district court did not abuse its discretion by ordering each parent to be responsible for his and her own child-care expenses.

Substantial Change in Circumstances

Father argues that the district court erred in finding that a substantial change in circumstances justified modification of mother’s child-care support obligation. The CSM found that “[t]here has been a substantial change in circumstances that renders the existing child support order unreasonable and unfair . . . as [mother] is now working five days per week and incurring her own child care expenses.” The CSM noted that mother testified “that she works every day/ 5 days per week,” mother’s “employment situation has clearly changed,” and that mother “is now working and also requires child care on the days the joint children are with her.” Although the CSM did not expressly find mother’s testimony regarding her full-time work schedule credible, the finding that mother “is now working five days per week” implies that the CSM found that testimony credible. We defer to that implicit credibility determination. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that “district court’s findings implicitly indicate[d] that the district court found [a party’s] testimony credible” and deferring to that credibility determination).

Father argues that “there was no information regarding [mother’s] income from wages or her self-employment income available to” the CSM, that an affidavit filed by a county child-support officer establishes that mother does not make sufficient income to be working full-time, and that mother could not explain at the motion hearing “how or where she was working full-time.” Father’s suggestion that mother’s testimony did not adequately support her assertion that she was working full-time is unavailing given this court’s deference to the CSM’s implicit determination that mother’s testimony was credible. Father has not shown that the district court erred in finding a substantial change in circumstances.

Impact of Modification of Mother’s Child-Care Support Obligation

Finally, father argues that the district court erred in modifying mother’s child-care support obligation “given that the child care expense incurred by [father] allows him to maintain employment and was in the best interest of the minor children.” Father contends that his “employment is predicated on child care for the children and the child support that is being provided to [mother] is based on that employment.” Father’s legal argument on this point is not well developed. Moreover, father did not provide evidence suggesting that he will not be able to maintain his employment if he has to pay for his own child-care expenses. This argument, like the others, does not persuade us that the district court’s modification of mother’s child-care support obligation was an abuse of discretion.

Affirmed.