

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0740**

Moslais X. Vue, n/k/a Moslais Michele Xiong, petitioner,
Appellant,

vs.

Khue Vue,
Respondent.

**Filed April 9, 2018
Affirmed
Halbrooks, Judge**

Washington County District Court
File No. 82-FA-12-4043

Moslais Vue, n/k/a Moslais Xiong, St. Paul, Minnesota (pro se appellant)

Khue Vue, Forest Lake, Minnesota (pro se respondent)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's order granting respondent's motion to amend a previously amended child-support order. Appellant argues that the district court (1) erred in its child-support calculation; (2) erred by considering respondent's post-decision motions; and (3) abused its discretion by denying her motion for attorney fees,

costs, and sanctions. Because we conclude that the district court acted within its discretion, we affirm.

FACTS

Appellant-mother Moslais Vue n/k/a Moslais Xiong and respondent-father Khue Vue divorced on November 22, 2013. They have four children together. In the judgment and decree, the district court granted Xiong and Vue joint legal custody of the four children but divided physical custody. Xiong was awarded sole physical custody of the two youngest children, and Vue was awarded sole physical custody of the two oldest children. The district court ordered Vue to pay \$713 in child support to Xiong, offset by Xiong's \$87 in medical and dental support, resulting in Vue paying Xiong \$626 per month in child support. In its calculation, the district court used a single child-support method based on four joint children and equal parenting time.

After the oldest child emancipated, Xiong moved the district court to modify child support because Vue then had sole physical custody of one child while Xiong had sole physical custody of two children. On August 22, 2016, the district court modified the parties' child-support obligation. It first calculated the child support each parent would owe the other, as if there were no other joint children. Xiong's child-support obligation to Vue for one child was \$795. Vue's obligation to Xiong for the two children residing with her was \$1,440. The district court offset these calculations, which resulted in Vue having a net child-support obligation to Xiong of \$645.

On September 8, 2016, Vue filed a motion to correct clerical mistakes in the August 22, 2016 order, contending that Washington County Collections sought to collect \$1,440

from him instead of \$645. On September 27, the district court denied this motion. It stated that there was no clerical mistake in the August 22, 2016 order but advised Vue that he could bring a motion on other grounds.

On September 26, 2016, Xiong filed a motion to amend, requesting that the district court correct clerical errors and arguing that the district court should have calculated child support using one child-support calculation with three joint children—the same method the district court used in the judgment and decree. Vue did not respond to this motion. On January 11, 2017, the district court granted Xiong’s motion to correct clerical errors and her request to have child support calculated by using one child-support calculation. The January 11, 2017 order required Vue to pay Xiong a basic child-support obligation of \$1,683, reduced by Xiong’s net child-support obligation of \$132, resulting in Vue’s net obligation of \$1,551. Xiong was not required to pay any basic support under the terms of the January 11, 2017 order.

On January 31, 2017, Vue filed a motion pursuant to Minn. R. Civ. P. 52.02 and 60.01, requesting (1) the district court to restore the original language in the August 22, 2016 order that used two child-support calculations and offset them; (2) an order correcting a clerical error in the judgment and decree so that child support would be determined using two off-setting calculations; (3) a new trial; or (4) in the alternative, an order reflecting Vue’s updated health-care costs. On April 3, 2017, the district court granted Vue’s motion for amended findings and concluded that the January 11, 2017 order failed to credit Vue for the minor child who resided with him. The district court used two offsetting child-support calculations. Under the April 3, 2017 order, Xiong had a support obligation of

\$795 for the child living with Vue, and Vue had an obligation of \$1,440 for the two children living with Xiong. This resulted in a net obligation for Vue of \$645.

Xiong now appeals the April 3, 2017 order, arguing that the district (1) erred by applying two offsetting child-support calculations; (2) erred by considering Vue's post-judgment motions; and (3) abused its discretion by denying her motion for attorney fees, costs, and sanctions.

DECISION

I.

Xiong argues that the district court improperly calculated child support in the April 3, 2017 order by using two offsetting child-support calculations instead of one, as it did in the judgment and decree. We review a district court's order modifying child support for abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013); *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). We will reverse only if the district court "abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record," *Haefele*, 837 N.W.2d at 708 (quotation omitted), or if it misapplies the law, *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010).

Minn. Stat. § 518A.35 (2016) provides guidelines for determining a parent's presumptively applicable basic child-support obligation. *Haefele*, 837 N.W.2d at 708. "The basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents." Minn. Stat. § 518A.35, subd. 1(b). The district court must then apply a parenting-time adjustment that reflects the presumption that a parent pays for

costs incurred for the child while exercising parenting time. Minn. Stat. § 518A.36, subd. 1(a) (2016). Every child-support order must “specify the percentage of parenting time granted to or presumed for each parent.” *Id.* To calculate parenting time, a district court determines “the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order averaged over a two-year period.” *Id.* “The child-support obligation calculated using this process establishes a rebuttable presumption.” *Haefele*, 837 N.W.2d at 708 (quotation omitted).

In the April 3, 2017 order, the district court first determined the parties’ child-support obligations by applying the guidelines for the parties’ combined incomes and number of joint children as required by Minn. Stat. § 518A.35, subd. 1. It then adjusted the amount to account for Vue’s parenting time of 10-45% under Minn. Stat. § 518A.36, subd. 1(a). The district court determined that this would result in Vue having a net presumptive child-support obligation of \$1,551.

But this presumptive obligation only serves as a starting point for the child-support analysis. *Haefele*, 837 N.W.2d at 708. “In the exercise of its discretion, the district court may depart from the guidelines in appropriate cases . . . based on other facts or considerations that suggest that the guidelines do not accurately represent the amount of the child-support obligation for which a parent should be responsible.” *Id.* If the district court deviates from the presumptive child-support obligation, the district court must make written findings stating each parent’s gross income, each parent’s parental income for child support (PICS), the amount of the presumptive child-support obligation, the reasons for

deviation, and how the deviation serves the best interests of the child. Minn. Stat. § 518A.37, subd. 2 (2016); *Haefele*, 837 N.W.2d at 708-09.

Here, the district court deviated from the child-support guidelines and made written findings under Minn. Stat. § 518A.37, subd. 2. In its order, the district court found each parent's income and PICS and the presumptive child-support obligation. The district court also articulated its reason for deviating from the presumptive obligation when it noted that Vue does not get credit for the one joint child who lives with him under the January 11, 2017 order's calculation. The district court also relied on Minn. Stat. § 518A.36, subd. 1(a), which presumes that a parent is responsible for and incurs the costs of caring for the child while exercising parenting time, to conclude that "both parties should be given credit for any child that resides with him or her." It reasoned that "the only way to accurately credit [Vue] for the second eldest child, who resides with [Vue], is to do two separate calculations. This is especially important because, since the emancipation of the parties' eldest child, the custody arrangement no longer results in equal parenting time." The district court concluded that for fairness reasons, "the January 11, 2017 child support calculation was erroneous because it failed to credit [Vue] for the one minor child who resides with him. The proper calculation in this split custody setting would utilize two offsetting child support worksheets."

The unique facts and circumstances of this custody arrangement provide a basis for the district court to deviate from the presumptive calculation. Vue would not get credit for the child who lives with him if the district court applied one calculation. And the district court satisfied the requirement under Minn. Stat. § 518A.37, subd. 2, to make written

findings explaining its reasoning. Therefore, we conclude that the district court acted within its discretion because “the guidelines do not accurately represent the amount of the child-support obligation for which a parent should be responsible” in this case. *Haefele*, 837 N.W.2d at 714.

Xiong also contends that the district court erred by applying Minn. Stat. § 518A.34(c)(1) (2016) (effective August 1, 2018) to determine that it should use two offsetting child-support calculations. But this assertion mischaracterizes the district court’s use of section 518A.34(c)(1). The district court explicitly stated that the 2018 version of the statute was not in effect and was not binding in this instance. Instead, it used the statute as persuasive authority to support the exercise of its discretion to deviate from the presumptive child-support guidelines based on the unique circumstances of this case. This use of the statute not yet in effect was not an abuse of the district court’s discretion.

II.

Xiong argues that the district court improperly granted Vue’s post-judgment motions to amend the January 11, 2017 order and re-calculate child support. Xiong first contends that the district court exceeded its authority under Minn. R. Civ. P. 60.01 to correct a clerical mistake because it did not simply correct a clerical error in the judgment, it re-calculated child support in order to correct a judicial error.

Clerical errors are mistakes capable of being corrected by reference to the record only and are usually mistakes of form. *Egge v. Egge*, 361 N.W.2d 485, 488 (Minn. App. 1985). A clerical error “cannot reasonably be attributed to the exercise of judicial consideration or discretion.” *Wilson v. City of Fergus Falls*, 181 Minn. 329, 332, 232 N.W.

322, 323 (1930). If the district court concluded that it could apply a new child-support calculation pursuant to a rule 60.01 motion to correct clerical errors, Xiong’s argument would have merit. But here, Vue brought his motion under Minn. R. Civ. P. 60.01 *and* 52.02. Rule 52.02 allows the district court to “amend its findings or make additional findings, and . . . amend the judgment accordingly if judgment has been entered.”

In its order, the district court did not grant Vue’s motion under rule 60.01, but instead granted it under rule 52.02. The district court stated that “[Vue] brings a Motion for Amended Findings of the January 11, 2017 Order,” and the district court’s memorandum of law repeatedly notes that Vue brought his motion under rule 52.02. Because the district court granted Vue’s motion for amended findings under rule 52.02, we conclude that the district court’s decision was not a correction of a clerical error under rule 60.01 as Xiong contends.

Xiong next argues that the district court erred by granting Vue’s motion to amend the January 11, 2017 order because the order had already been amended pursuant to rule 52.02. We review a district court’s decision on a motion to amend under rule 52.02 for an abuse of discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006). “[T]he purpose of a motion to amend conclusions is to permit the trial court a review of its own exercise of discretion.” *Stroh v. Stroh*, 383 N.W.2d 402, 407 (Minn. App. 1986).

Xiong cites no authority to support her argument that the district court abused its discretion by granting a motion to amend an order that had already been amended pursuant to Minn. R. Civ. P. 52.02. “An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be

considered on appeal unless prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971). The plain language of rule 52.02 and rule 59.03 states that a district court may amend its findings so long as the party files the motion within 30 days after the hearing. *See* Minn. R. Civ. P. 52.02; *see also* Minn. R. Civ. P. 59.03 (stating that a party has 30 days after the filing of a decision or order to file a notice of motion to amend findings). Vue satisfied the 30-day requirement when he filed his motion to amend the January 11, 2017 order on January 31, 2017. Therefore, the district court did not abuse its discretion by granting Vue’s motion to amend the January 11, 2017 order.

III.

Xiong argues the district court abused its discretion by denying her motion for attorney fees, costs, and sanctions under Minn. R. Civ. P. 11.02. We review a district court’s decision to impose rule 11 sanctions for an abuse of discretion. *State Bank of Young Am. v. Fabel*, 530 N.W.2d 858, 863 (Minn. App. 1995). In order to provide the district court with flexibility to accomplish rule 11’s policy goals, this court must affirm the district court’s decision to deny sanctions in the absence of an abuse of discretion. *Peterson v. Hinz*, 605 N.W.2d 414, 417 (Minn. App. 2000). Rule 11.02 states that an attorney must not submit a pleading or motion “for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” A district court should construe rule 11 “somewhat narrowly as it is preferable that some sanctionable conduct escape discipline rather than causing the deterrence of legitimate or arguably legitimate claims.” *Fabel*, 530 N.W.2d at 863 (quotation omitted).

Xiong contends that the district court should have imposed sanctions on Vue and his attorney because they unreasonably contributed to the length and expense of the case by failing to respond to her March and September 2016 motions to amend. But at a hearing on Vue's motion to amend, Vue's attorney explained that Vue did not respond to the September 2016 motion because he miscommunicated with his attorney. Finding the attorney's explanation to be credible, the district court denied Xiong's motion. Xiong now contends that Vue's miscommunication with his attorney did not justify his failure to respond, and the district court therefore abused its discretion by denying her motion for attorney fees, costs, and sanctions. Xiong does not cite to any legal authority or evidence in the record to support her assertion, and nothing in the record demonstrates that Vue or his attorney submitted a pleading or motion to the district court "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Minn. R. Civ. P. 11.02(a). Therefore, the district court properly exercised its discretion by denying Xiong's motion for attorney fees, costs, and sanctions.

Affirmed.