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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1198**

Antoinette Kafui Totimeh, petitioner,
Respondent,

vs.

Clement Olervey Totimeh,
Appellant

**Filed July 9, 2018
Affirmed in part and reversed in part
Worke, Judge**

Dakota County District Court
File No. 19-FX-06-008973

Jordan N. Feis, Eckberg Lammers, P.C., Stillwater, Minnesota (for respondent)

Erik F. Hansen, Elizabeth M. Cadem, Burns & Hansen, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by modifying his child-support obligation, denying his request to alternate the child-dependency tax exemption between the parties, and modifying the parties' property settlement. We affirm the district

court's decisions concerning the modification of child support and the dependency tax exemption but we reverse modification of the property settlement.

FACTS

The parties, appellant-father Clement Olervey Totimeh (father) and respondent-mother Antoinette Kafui Totimeh (mother), dissolved their marriage in 2007. Mother and father have a minor child who has significant developmental and physical disabilities that require frequent care. The only unresolved issue at the parties' 2007 dissolution was whether they would alternate claiming a child-dependency tax exemption for the child. The district court awarded this exemption permanently to mother and granted her sole physical custody of child, created a parenting-time schedule for father, and required father to pay permanent monthly child support. The district court ordered, as an additional property settlement, that mother pay father the sum of \$4,189.48 within 60 days from the filing of the dissolution judgment and decree. Mother would refinance the homestead to pay this additional amount. The decree was silent about any interest accruing on this amount.

In December, 2014, mother requested a child-support modification. The child-support magistrate granted the request and increased father's child-support obligation due, in part, to father's increased income. The magistrate also found that under the terms of the 2007 dissolution decree, father was "awarded less than 10% of the parenting time," which meant that he was not entitled to a statutory deduction in his child-support obligation. However, the magistrate found that father was entitled to a reduction in his obligation

because of two nonjoint children under his care, although father testified that he was still “in the process of becoming legally responsible for them.”

In February, 2017, father requested a decrease in his child-support obligation due to changed circumstances, a request for both parties to alternate who could claim the child-dependency tax exemption, and a request that mother make the property settlement¹ with accrued interest. In that same action, mother requested an increase in child support—including an upward deviation from the child-support guidelines. At the hearing on these motions, father informed the district court that he was just offered a job in Connecticut, which he accepted.

The district court granted mother’s request and increased father’s child-support obligation. The district court also found that father was no longer entitled to a reduction in child support for his nonjoint children because father failed to submit proof that he was legally responsible for them or that they would reside with him in Connecticut.

Additionally, the district court denied father’s request to alternate the child-dependency tax exemption between the parties. The court determined that mother was responsible for the additional property settlement, but concluded that the “statutory interest rate” was a burden on mother and retroactively reduced the interest rate to 1%. Father appeals.

¹ Throughout the 2017 proceeding and in their arguments to this court, the parties refer to the additional property settlement as an equalizer payment. Under the terms of the stipulated judgment and decree, the phrase used by the parties was “additional property settlement,” and we will continue to use this phrase in our discussion.

DECISION

Father raises seven claims on appeal. Father's first five claims relate to his argument that the district court abused its discretion by modifying his child-support obligation because the court (1) improperly calculated his income, (2) failed to accurately measure his parenting-time percentage, (3) declined to apply a deduction for nonjoint children, (4) failed to make statutory findings supporting a modification, and (5) impermissibly deviated from the child-support guidelines. Additionally, father argues that the district court abused its discretion by (6) declining to split the federal child-dependency tax exemption between the parties, and (7) lowering the interest rate on mother's equalizer payment.

We first address father's arguments concerning the district court's child-support modification. The decision to modify child support is within the broad discretion of the district court. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). The district court abuses its discretion if its decision is based on a misapplication of the law or is contrary to the facts or logic. *Id.*

Calculation of father's income

The district court calculated father's monthly income by using his two W-2 forms from 2016. However, on the day of the modification hearing, father informed both the court and his attorney that he had accepted an employment offer for a job in Connecticut. Father's attorney gave an estimate of what father's new income might be, but admitted there was "no verification of that." Father argues that the court should have used his new salary to compute his income instead of his previous-year's tax forms.

The parties have “a duty to supply financial information” to the district court for calculating child-support obligation. *Spooner v. Spooner*, 410 N.W.2d 412, 413 (Minn. App. 1987). “Failure to do so justifies adverse inferences.” *Id.* Here, father failed to supply any corroborating evidence about his new income and did not meet his duty to supply the district court with the financial information it required. In the absence of this information, the district court reasonably looked to father’s recent income to compute his child-support obligation. This was not clearly erroneous, and we conclude that the district court’s use of father’s 2016 income was not an abuse of discretion.

Father’s parenting-expense adjustment

A parent paying child support is entitled to an adjustment in support if that parent has 10% or more of the overall parenting time. Minn. Stat. § 518A.36, subd. 2 (2016). Father claims that the original parenting-expense schedule allotted him more than 10% parenting time, and therefore, he is entitled to an adjustment in his child-support obligation.

Father’s parenting-time calculation does not necessarily meet the 10% requirement. For example, the dissolution decree granted father parenting time of two days each month, alternating legal holidays, the entire weekend if a legal holiday fell on a Friday or Monday, alternating the child’s birthdays and father’s day. If we consider a year where father does not have the child for her birthday and only two legal holidays fall on a Monday or Friday—which would entitle him to the entire weekend with the child—father would only have 34 days of parenting time for the year—below the 10% threshold.

Further, in the 2014 modification order, the magistrate found that the original dissolution decree awarded father “less than 10% of the parenting time, therefore no

parenting time expense adjustment is used.” Because father sought modification on this issue, it is his burden to show that the present circumstances justify the modification. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Father did not meet his burden of showing that the current schedule allots him at least 10% parenting time, and we conclude that the district court did not abuse its discretion in denying him a parenting-expense adjustment.

Father’s nonjoint-child deduction

Father argues that the district court should have applied a deduction to his child support for his two nonjoint children from a different relationship. When a parent is “legally responsible for a nonjoint child,” the parent is entitled to a deduction for this obligation if the nonjoint child “primarily resides” in the household of that parent, and the parent is not required to pay child support for the nonjoint child to the nonjoint child’s other parent or a “legal custodian” of the nonjoint child under a previously-existing child-support order. Minn. Stat. § 518A.33 (2016).

The district court declined to grant father a nonjoint-child deduction for two reasons. First, the district court found that the record “lacks any documentation or sufficient proof that [father] is legally responsible for the two non-joint children.” Father provided an affidavit to the district court stating that he co-parents two nonjoint children with their mother and they reside with him “on average 50% of the time.” And at the 2014 modification hearing, father testified that he was “in the process of becoming legally responsible” for his two nonjoint children. But there is no other evidence corroborating

these claims or resolving whether father actually became legally responsible for these children.

The second reason the district court declined to extend the deduction was father's impending move to Connecticut. "Section 518A.33 requires that the two non-joint children primarily reside with [father]," the court explained. "In light of [father]'s move to Connecticut, the Court has not been presented with sufficient information to make a finding that the two non-joint children will primarily reside with [father]." The court also noted that these nonjoint children were not listed on father's medical and dental insurance information provided to the court.

Father claims that the district court made no inquiry into whether the nonjoint children would continue to reside with him after he moved to Connecticut. But as the party seeking a child-support modification, it is father's burden to show circumstances justifying that modification. *Goldman*, 748 N.W.2d at 284. Father failed to meet his burden and we conclude the district court did not abuse its discretion by declining to apply the nonjoint-child deduction.

Statutory findings for child-support modification

Father claims that when the district court granted mother's request to increase child support, it failed to make the necessary findings required by Minn. Stat. § 518A.39 (2016). Under the statute, "[a] child-support order may be modified upon a showing of a substantial change in circumstances that makes the order 'unreasonable and unfair.'" *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009) (quoting Minn. Stat. § 518A.39, subd. 2). The statute lists factors that may support modification, but the list is not exhaustive and even

meeting just one of these factors may justify a modification. *Id.* at 146 (stating that a substantial change in circumstances can be shown by a substantial increase or decrease in the gross income of an obligor or obligee) (quoting Minn. Stat. § 518A.39, subd. 2(a)).

The district court increased father’s child-support obligation because it found that father’s gross monthly income increased from \$6,666.40 in 2014 to \$9,025 in 2017 and the significant amount of “training and experience [that] is required to adequately care for the minor child in light of [the child’s] established disabilities.” Father’s increased income is sufficient to show a substantial change in circumstances warranting modification. Because this finding supports the modification, the district court’s decision was neither a misapplication of law nor contrary to the facts or logic, and was therefore not an abuse of discretion.

Deviation from the child-support guidelines

Father argues the district court abused its discretion by deviating upward from the child-support guidelines. Minnesota’s child-support guidelines use a parent’s gross income as a starting-point for calculating the correct level of support. *Haefele v. Haefele*, 837 N.W.2d 703, 714 (Minn. 2013). But courts have the discretion to deviate from these guidelines “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.* (citing Minn. Stat. § 518A.43 (2012)). The statute lists factors a court must take into account when deciding whether a deviation is warranted. Minn. Stat. § 518A.43, subd. 1. If a court decides a deviation is warranted, it must make written

findings stating the reasons for the deviation and why this deviation serves the best interests of the child. *In re Dakota Cty.*, 866 N.W.2d 905, 911 (Minn. 2015).

The district court justified the deviation based on father’s increased income, “the standard of living the child would enjoy with two contributing co-parents,” and the “extraordinary needs of the minor child.” This included findings that mother often enlists the services of personal care assistance to help manage the child’s disabilities, and that she is often forced to exhaust all of her vacation time taking the child to medical appointments and emergency-room visits—the burden of which would be lessened in a two-parent household. These written findings convince us that the district court considered the necessary factors and concluded that a deviation was in the child’s best interests. For this reason, the district court’s deviation was not an abuse of its discretion.²

Child-dependency tax exemption

The district court denied father’s request to alternate the federal child-dependency tax exemption between the parties. Father claims this was an abuse of the court’s discretion. District courts “may allocate income tax dependency exemptions for a child.” Minn. Stat. § 518A.38, subd. 7 (2016). To qualify for the exemption, federal law requires that the parent-taxpayer “must maintain a household that is a qualifying child’s principal

² Father also argues that the deviation violates Minn. Stat. § 571.922 (2016), which prohibits any judgment from garnishing a certain percentage of the debtor’s disposable earnings. However, the statute prohibits garnishments in child-support judgments between 50%-55%, which is more than what the judgment—including the deviation—garnished from father.

place of abode for more than one-half of the taxable year.” *Hansen v. Todnem*, 891 N.W.2d 51, 61 (Minn. App. 2017), *aff’d on other grounds*, 908 N.W.2d 592 (Minn. 2018).

The parties’ 2007 dissolution permanently awarded mother the dependency exemption. After denying father’s request to alternate the exemption in the current case, the district court found that the exemption was awarded to mother because it was “intended for the primary caregiver.” “Nothing has changed in terms of who the primary giver is or who should benefit from the dependency exemption,” the district court found.

Father argues the district court should have analyzed the required factors under the exemption statute before denying his request. Although the exemption statute contains factors the district court is required to consider, it also states that “[a] party with less than ten percent of court-ordered parenting time shall not be entitled to receive a dependency exemption except by agreement of the parties.” Minn. Stat. § 518A.38, subd. 7(d). As previously noted, father failed to show that the dissolution decree allotted him 10% or more parenting time, and therefore, he is not entitled to receive the dependency exemption under statute.

Additional property settlement

The original dissolution decree ordered mother to pay father a property settlement according to the following terms: “Within sixty (60) days from the filing of this Judgment and Decree, [mother] shall refinance her homestead and pay [father] his additional property settlement.” The dissolution decree did not impose an interest rate on this payment. The parties in their argument here and in the district court focus entirely on the district court’s decision to modify the interest rate accruing on the additional property settlement. But

there was no interest imposed on this property settlement and therefore, no interest rate to modify. Because the district court relied on a mistake of fact, we reverse its decision on this issue.

We affirm the district court's decisions concerning the modification of child support and the dependency tax exemption but we reverse modification of the property settlement.

Affirmed in part and reversed in part.