

*This opinion will be unpublished and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
A18-0242**

Eric Joseph Vacko, petitioner,
Appellant,

vs.

Teri Ann Shults,
Respondent,

County of Anoka, Intervenor.

**Filed December 10, 2018
Affirmed
Connolly, Judge**

Anoka County District Court
File No. 02-F6-05-009076

Eric J. Vacko, St. Paul, Minnesota (pro se appellant)

Terri A. Melcher, Fridley, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Stauber, Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his child-support obligation, arguing, pro se, that the district court abused its discretion in including appellant's current wife's income in the calculation of appellant's income, attributing income to appellant when he was receiving public assistance and making appellant responsible for the child's medical support and erred in not modifying appellant's child-support obligation without making the required findings of fact and in adopting the proposed findings submitted by respondent-mother's attorney. Because we see no abuse of discretion and no error in the child-support order, we affirm.

FACTS

Appellant Eric Vacko and respondent Teri Shults had a son, B.V., in 2001. The parties stipulated in 2006 that appellant would pay \$200 per month in child support and would reimburse respondent for half of B.V.'s monthly \$195 health insurance payment and half of his child-care expenses; the Anoka County District Court issued an order reflecting this stipulation.

In 2012, appellant's child-support obligations for B.V. and for another child, L.L., were suspended because appellant was receiving Minnesota Family Investment Program (MFIP) benefits and Temporary Assistance for Needy Families (TANF) benefits.¹ In

¹ As to appellant's child-support obligation for L.L., see *County of Ramsey v. Vacko*, No. A16-1982, 2017 WL 3974400, (Minn. App. Sept. 11, 2017) (concluding that the Ramsey County District Court did not abuse its discretion in denying appellant's motion to modify his child-support obligation for L.L., whose mother had moved to reinstate appellant's child-support obligation for the period of time in which he unlawfully obtained public assistance, i.e., May 2011-March 2015, but erred in finding that appellant did not lawfully

February 2016, appellant entered an *Alford* plea to 11 felony charges including wrongfully obtaining public assistance from May 2011 through March 2015, theft by swindle, and forgery; he was ordered to pay \$141,000 in restitution and sentenced to 180 days in jail.

In April 2016, respondent moved for retroactive child support to April 2012 and for \$2,000 in attorney fees. She was granted a continuance to obtain documents from the Ramsey County Attorney's Office (the RCAO documents) relating to appellant's financial information from the file in appellant's criminal case. In August 2016, the Anoka County District Court ordered the Ramsey County Attorney's office (RCAO) to release appellant's information and granted respondent's request to keep her information confidential because she alleged that appellant had accessed her social media account and her CVS account and threatened her after he received copies of B.V.'s therapy records.

Appellant was incarcerated in October 2016. He filed an appeal from the August 2016 order, which stopped inspection of the RCAO documents; he later withdrew the appeal. The district court reviewed the RCAO documents in camera and disclosed some, but not all, of them to appellant and to respondent's attorney.

In August 2017, the district court granted respondent's request for retroactive child support to May 2012, having found that appellant intentionally misrepresented his income to the district court and was voluntarily underemployed. The district court determined his potential monthly income to be \$2,605 and his share of the child-support expenses to be 61% and ordered him to pay \$334 monthly for child support and \$127 monthly for medical

receive public assistance from April 2015 to March 2016), *review denied* (Minn. Nov. 14, 2017) (*Vacko*).

support. His support obligations were suspended while he was incarcerated from October 2016 to February 2017.

Appellant moved for an order vacating the August 2016 order and the August 2017 order, for amended findings of fact to suspend his child-support obligation from April 2015 through March 2016 pursuant to *Vacko*, and for an order to reopen the record so appellant's doctor could testify as to appellant's inability to work full-time. Following a hearing, the district court in January 2017 denied appellant's motion to vacate the August 2016 and August 2017 orders, to reopen the record, and for amended findings of fact. He now challenges the denial, arguing that the district court abused its discretion in denying his motion to reopen the August 2017 order and in adopting respondent's attorney's proposed findings of fact for the 2016 order.

D E C I S I O N

1. Motion to Reopen the Order

Appellant's motion to reopen the August 2017 order is actually a motion to modify his child-support obligation, which he claimed had been "miscalculated" in the order. The district court has broad discretion to provide for the support of the parties' child. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Determinations of past child support due are also reviewed for an abuse of discretion. *LaChapelle v. Mitten*, 607 N.W.2d 151, 166 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

Appellant argues that his child-support obligation was miscalculated because (A) his wife's student financial aid and other financial information was included; (B) the district court imputed potential income for months during which appellant lawfully

qualified for TANF benefits; (C) appellant was ordered to pay medical support for the child although both he and the child were receiving medical assistance; and (D) instead of reinstating appellant's 2006 child-support obligation of \$200 monthly, the district court raised the obligation to \$334 monthly without making the findings required for a modification of child support.

A. Appellant's Wife's Finances

The RCAO documents include information from bank accounts owned by appellant and his wife that indicated they received substantial income from both businesses and student loans while they were receiving public assistance. Because there was no information as to whether appellant or his wife made the cash deposits or the withdrawals, their information could not be separated. The district court noted in its 2018 order that, although it had issued an order in March 2017 that "provided the parties with an opportunity to present evidence regarding their income," the only information appellant presented was evidence from his doctor regarding his inability to work. In its 2017 order, the district court disagreed with appellant's statement that the RCAO documents did not show periodic gross payments to appellant and found "that the documents submitted by the RCAO and [appellant's] guilty plea to the charges demonstrated that [appellant] intentionally misrepresented his income to [respondent] and this Court" and awarded child support retroactive to 2012 "based on [appellant's] fraud to the Court."

While appellant argues correctly that his child-support obligation should not involve his wife's financial information, see Minn. Stat. § 518A.29(f) (2016) (noting that "gross income" for support purposes does not include the income of the parties' spouses), he failed

to provide the court with any other information, such as tax reports, from which to deduce appellant's financial situation. The district court therefore did not abuse its discretion in using the information provided as the basis for imputing an income to appellant. See *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (noting that a party cannot complain about a district court's failure to rule in the party's favor when the party failed to provide evidence that would have allowed the district court to fully address the question), *review denied* (Minn. Nov. 25, 2003).

B. Imputed Income from April 2015 to March 2016

In his notice of motion and amended motion dated ten days after the release of *Vacko*, appellant sought an order suspending his child-support obligation in this case from April 2015 to March 2016. *Vacko* rejected appellant's other arguments but concluded that "the district court clearly erred in finding that [appellant] did not lawfully receive TANF benefits from April 2015 to March 2016 and in reinstating his child-support and arrears obligations from that time period." *Vacko*, 2017 WL 3974400 at *7.

The district court did not make any findings as to why it found that [appellant] had unlawfully received TANF benefits from April 2015 to March 2016. . . . Absent evidence showing unlawful receipt of TANF benefits during this period, the 2012 order entitled [him] to suspension of his child-support and arrears obligations from April 2015 to March 2016.

If the district court had found that [appellant] had committed fraud on the court in 2012, it would have had the option of reopening the entirety of the 2012 order to ensure enforcement of [his] child-support and arrears obligations from April 2015 to March 2016. [Respondent and Ramsey C]ounty, however, decided not to reopen the 2012 order because, according to [respondent's] trial attorney, fraud on the court "is a much higher standard," "would be a much more complex solution," and would have required discovery. [Respondent]

and [Ramsey] county decided to present this case as a motion to reinstate [appellant's] child-support and arrears obligations, which, while a simpler solution, limits their recourse to circumstances in which [appellant] did not lawfully receive public assistance.

Id. at *6 (citation omitted).

The district court distinguished *Vacko*:

The [district] court in [that] case made no finding of fraud so the Court of Appeals concluded it was error for the district court to find that [appellant] did not ‘lawfully’ receive benefits from April 2015 to March 2016. This case is distinguishable from [*Vacko*] in that the Court [here] found fraud in its August 2, 2017 Order.

The district court’s August 2017 order based its award of child support retroactive to May 1, 2012, on “[appellant’s] fraud to the Court” and concluded that “[respondent] has met her burden of proof to demonstrate that [appellant] intentionally misled both her and this Court regarding the amount of his income since April 2012.” There was no abuse of discretion in awarding child support from April 2015 to March 2016.

C. Medical Support

The child-support-guidelines worksheet appended to the district court’s order states that the monthly cost of healthcare insurance for B.V., paid through respondent’s employer, is \$209, of which appellant’s share, 61%, is \$127. Appellant argues that, because he receives medical assistance himself, he may not be ordered to contribute to B.V.’s medical coverage, but he provides no legal support for this argument. Issues not briefed on appeal

are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Thus, appellant has waived this issue.²

D. Failure to Make Findings

Child support may be modified if the district court finds that there has been a substantial change in circumstances that renders the existing order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2016). There is a presumption of substantial change if the calculated child support is at least 20% and at least \$75 per month higher or lower than the current support order. Minn. Stat. § 518A.39, subd. 2(b)(1) (2016). The current support order, made in 2006, is \$200 monthly; the district court’s findings that appellant’s imputed income was \$2,605. and his child-support obligation was \$334 create a presumption of substantial change. Because this presumption is unrebutted, we will not reverse the district court for not making formal findings on this point.

There is no merit to appellant’s challenges to the August 2017 order.

2. Adoption of Proposed Findings

Appellant also argues that the district court abused its discretion in adopting respondent’s proposed findings of fact for the August 2016 order. It is not clear that appellant ever raised his objection to the adoption of respondent’s proposed findings to the

² Appellant also objects that the district court based its finding that respondent pays \$209 for healthcare for B.V. on her attorney’s brief, not on a document showing the amount. In the August 2017 order, the district court states that appellant is liable for 61% of the amounts that respondent paid to maintain medical insurance for B.V. from May 2012 through August 2017, but that respondent “must file proof of these amounts before the Court will incorporate it [i.e., the amount paid for the insurance] into this Order.” Thus, the district court addressed appellant’s objection in its order.

district court, which precludes its being raised on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1982) (holding that this court will generally address only matters presented to and considered by the district court).

Moreover, appellant dismissed his own appeal of that order and moved to reopen the order almost 13 months after it was filed, violating Minn. Stat. § 518.145, subd. 2(3) (2016) (providing that a motion to reopen for fraud must be brought within a reasonable time or not more than a year after the order). His appeal is based on his view that the district court's adoption of respondent's attorney's proposed findings of fact entitles him to new findings. But adopting one party's findings is not reversible error per se. *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993).

Finally, the district court noted that appellant's motion to amend the findings "constitutes a reargument of his prior motion so it is proper to treat it as a motion to reconsider" and therefore likely to be granted only in the absence of intervening legal developments or if the earlier decision is palpably wrong. *See Minn. R. Gen. Pract.* 115.11 advisory comm. cmt.

There is no basis to vacate or reverse the district court's orders.

Affirmed.