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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0679

In re the Marriage of:
Rachel Ann Wexler, f/k/a Rachel Gerr, petitioner,
Appellant,

vs.

Darrin Anthony Gerr,
Respondent,

County of Dakota, intervenor,
Respondent.

Filed February 4, 2019
Affirmed
Ross, Judge

Dakota County District Court
File No. 19-F1-02-013034

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Rachel Wexler moved the district court to retroactively modify the child support she was collecting from her former husband, Darrin Gerr, after learning that Gerr had failed to provide the court with accurate income information about funds he received from his former employer. The district court partially granted and partially denied Wexler's motion. She appeals, arguing that the district court misapplied the doctrine of fraud on the court by assigning to her the burden to prove Gerr's actual income in support of her fraud claim. Because the district court properly assigned the burden, we affirm.

FACTS

Rachel Wexler and Darrin Gerr divorced in 2002. This appeal arises in the aftermath of two motions for modification of child support—one in 2010 and the other in 2011. In 2010, Gerr moved to decrease his child-support obligation because he was no longer employed and unable to find work. The district court granted his motion. In 2011, Wexler moved to modify child support, arguing that Gerr had been dishonest about his employment and income. The district court found that Gerr was voluntarily unemployed and that he could earn $3,000 a month. The district court granted Wexler's motion, increasing Gerr's child-support obligation.

In 2014, Wexler again moved to modify child support, arguing that Gerr had committed fraud on the court during both the 2010 and 2011 child-support modification proceedings. She alleged that, before Gerr filed his 2010 motion, he began working at Good Look Ink Inc., but not as a volunteer as he had represented; he was given so-called loans

"off the books." The total Gerr received was $150,000, and when he and Good Look Ink separated, the company forgave the loans. Wexler argued that the money Gerr received from Good Look Ink constituted undisclosed income and that, by concealing it from the court, Gerr had committed fraud on the court.

The district court found that the "loan" to Gerr was essentially income and that, by failing to disclose the arrangement during the 2010 and 2011 modification proceedings, Gerr had misled Wexler and the court. The district court found that Gerr's monthly income was underestimated by $1,867 in the 2010 modification, resulting in an unfair child-support obligation. But the district court found that Gerr's income was not so severely underestimated as to constitute a gross unfairness in obligation resulting from the 2011 modification order.

Wexler appeals.

D E C I S I O N

Wexler argues that the district court erred by denying her motion to retroactively modify the 2011 child-support obligation. Generally a party cannot move to reopen a family-court decision more than a year after it has been entered. Minn. Stat. § 518.145, subd. 2 (2018). But a party can move to reopen the decision if there has been fraud on the court. *Id.*; *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989). Wexler argues that Gerr committed fraud on the court by failing to disclose income. A party commits fraud on the court when he materially misrepresents or fails to disclose information, misleading the court and opposing counsel and causing a grossly unfair child-support determination. *See Maranda*, 449 N.W.2d at 165 (defining fraud on the court in a marriage dissolution);

Sanborn v. Sanborn, 503 N.W.2d 499, 502 (Minn. App. 1993) (applying the *Maranda* standard to a child-support determination), *review denied* (Minn. Sept. 21, 1993). The primary issue on appeal is whether the district court properly applied the third factor—gross unfairness.

Wexler argues that the district court erred in its gross-unfairness assessment by shouldering her with the burden to prove that Gerr had committed fraud. The argument fails. The moving party bears the burden of establishing fraud on the court. *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). Wexler was the moving party. The district court therefore did not err by placing the burden of proof on her.

Wexler challenges this result by emphasizing that child-support cases differ from other fraud-on-the-court cases in that parties in child-support actions are statutorily obligated to provide accurate information about their incomes. It is true that the statutory child-support-modification process requires parties to make income disclosures. Minn. Stat. § 518A.28(a) (2018). But nothing in that scheme purports to move the burden away from the moving party who alleges fraud on the court. Parties in child-support proceedings, like parties in other court proceedings, must be truthful in their factual representations to the court. But the burden falls to the accuser alleging a breach of that duty.

The district court did not abuse its discretion by failing to find that Gerr had committed fraud on the court as it concerns the 2011 child-support modification. A district court does not abuse its discretion if the record contains evidence to support its decision. *Thompson*, 739 N.W.2d at 428. Wexler attempted to show that Gerr had additional income by submitting bank statements attributable to both Gerr and entities associated with him,

including Good Look Ink. She also highlighted Gerr's cars, his townhome, and his gambling habit as evidence of additional hidden income. But she acknowledged that she lacked evidence of any additional loans to Gerr and that he did not appear to withdraw any funds from Good Look Ink's bank account. This acknowledgment, as well as testimony from Gerr credited by the district court regarding his gambling habits, supports the court's decision not to impute any income to Gerr in addition to the $150,000 "loan." And although there was a discrepancy between what Gerr would likely have been obligated to pay and what he actually was obligated to pay in the 2011 order, the district court concluded that the discrepancy was not so unfair a difference as to require vacating the order given the timing of the request, the economic parity of the parties, and the costs incurred by all. The district court supported its conclusion with reason and evidence in the record. Given the discretion afforded to the district court in this fairness determination, we will not disturb its decision.

Wexler argues in the alternative that the district court erred by not using its equitable discretion to cure the harm caused by Gerr's failure to report his income accurately. But the district court did not find the resulting discrepancy to be sufficiently unfair to revisit the 2011 decision, and so we have no reason to suspect that it would have reached any different conclusion assessing fairness under a different label. We cannot say that the district court abused its discretion.

Affirmed.