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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1440**

In re the Matter of:
Dennis J. Arvig, petitioner,
Appellant,

vs.

Trudy A. Kawlewski,
Respondent,

County of Wadena,
Intervenor.

**Filed June 17, 2019
Affirmed
Bratvold, Judge**

Wadena County District Court
File No. 80-F1-05-000042

Paul B. Hunt, Karkela, Hunt & Cheshire, PLLP, Perham, Minnesota (for appellant)

Timothy H. Dodd, Detroit Lakes, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant-father challenges the district court's order denying a motion to modify
his child-support obligation, arguing that the court: (1) failed to apply the rebuttable

presumption set out in Minn. Stat. § 518A.39, subd. 2(b)(1) (2018); (2) placed “an undue burden” on him by requiring that he establish his income at the time his support obligation was previously determined; (3) erred by considering whether the existing child-support obligation was a deviation from the child-support guidelines; and (4) erred by accepting the factual findings of the child support magistrate (CSM). Because the district court did not abuse its discretion by denying appellant’s motion to modify, we affirm.

FACTS

Appellant-father Dennis J. Arvig and respondent-mother Trudy A. Kawlewski are the parents of C.T.K., born in 2004. Arvig and Kawlewski never married and share legal custody of C.T.K. Kawlewski has primary physical custody of C.T.K., subject to Arvig’s parenting time. In May 2008, the district court issued findings of fact, conclusions of law, order and an order for judgment, based on the parties’ stipulations, and ordered Arvig to pay \$500 per month for his child-support obligation.

In January 2013, Arvig’s child-support obligation was modified by stipulation of the parties, which is reflected in the CSM’s order (the 2013 order). In the 2013 order, the CSM adopted the parties’ stipulations, stated the disputed facts and claims, found a substantial change in circumstances that made the existing child-support order unreasonable and unfair, and ordered Arvig to pay \$1,000 per month in child support. Two of the factual findings, stipulations and disputes are raised by Arvig in his appeal to this court, so we summarize them here.

First, the CSM found that Arvig was self-employed with Roundtuit, LLC, but did not determine Arvig’s income. Instead, the 2013 order stated that the parties disagreed

about Arvig's income; Arvig asserted that his monthly income was approximately \$5,000, while Kawlewski "allege[d] that [Arvig's] monthly earnings [were] sufficient to entitle her to an award of child support in an amount equal to the maximum allowable under the guidelines."

Second, the CSM also stated that the parties agreed Arvig would pay \$1,000 per month in ongoing child support, but did not determine whether this was a deviation from the child-support guidelines. Instead, the CSM noted that Arvig alleged his obligation was an "upward deviation from the presumptive guidelines," whereas Kawlewski alleged the obligation was a downward deviation.

In December 2017, Arvig moved to modify his child-support obligation.¹ In his affidavit in support of his motion, Arvig averred that there had been a substantial change in circumstances because he was no longer self-employed as a "swing trader" at Roundtuit, LLC, and instead worked at Arvig Enterprises, Inc. as a programmer, resulting in a change in his income. Arvig attested that, while self-employed, he agreed "for child support purposes" that he "would be imputed to earn \$8,000.00 per month" but he never actually earned that amount. Arvig attested that he currently earns \$3,810.40 in gross monthly pay and has no additional sources of income. And Arvig averred that he recently received more parenting time. Arvig concluded that "with [C.T.K.] being in [his] care more often, and in addition to [his] substantial change in gross income, [his] child support should be reduced."

¹ At the time Arvig filed his motion to modify, his child-support obligation was \$1,046 per month due to cost-of-living adjustments.

In March 2018, the CSM conducted a hearing on Arvig's motion and heard testimony from Arvig and Kawlewski. Arvig testified that his inheritance, which he uses to pay bills, is almost exhausted, and that he suffered financial losses from Roundtuit. Arvig also testified that he could not be self-employed as a swing trader because of his increase in parenting time, and, therefore, he is now employed at Arvig Enterprises, a company owned and operated by his family, where he works 40 hours per week earning \$22 per hour. Arvig is a shareholder of Arvig Enterprises. Arvig testified that, based on his calculations, he has at least 45.1% custody of C.T.K. Kawlewski's attorney cross-examined Arvig regarding his other sources of income, the value of his home, and his tax returns. Kawlewski testified that she was employed part time at Perham Health Pharmacy, earning \$13.77 per hour.

In April 2018, the CSM denied Arvig's motion and issued written findings of fact, conclusions of law, and an order (April 2018 order). The CSM initially determined that Arvig "works 40 hours per week earning \$22 per hour." But the CSM also found Arvig's credibility was "suspect, to say the least," giving several reasons. First, the CSM also found that Arvig "did not acknowledge as income a \$4,000 dividend he received" from Arvig Enterprises in December 2017, although he testified that he received a dividend annually and it has remained about the same amount for several years. Second, although Arvig testified that Arvig Enterprises was an "S" corporation, he also testified that he did not recall receiving tax information "attributing any of the corporate profit or loss to him." Third, while Arvig claimed that the value of his residence was the amount he paid for it,

he testified that the tax value was “significantly higher” and that he had declined a “substantially higher offer” to buy the property “because he felt it was not high enough.”

Going to the heart of Arvig’s claim, the CSM rejected Arvig’s contention that the 2013 order was “based upon his income being \$8,000 per month.” The CSM gave several reasons: (1) “no income is shown” in the 2013 order; (2) the parties disputed Arvig’s income at the time of the 2013 order, with Arvig claiming about \$5,000 per month and Kawlewski claiming he earned “significantly more”; and (3) the parties’ dispute “was settled by stipulation” in which Arvig “agreed that he would pay” \$1,000 per month. The CSM found that the 2013 order did not describe any income as imputed and did not state whether the support amount was a deviation from the guidelines.

The CSM concluded that Arvig “failed to establish what his income was at the time” of the 2013 order, “failed to meet his burden of proving that his current income is substantially different than it was at the time” of the 2013 order and failed to demonstrate that the 2013 order is unfair or unreasonable. The CSM also found that there “has not been a substantial change in circumstances that renders the existing child support order unreasonable and unfair.”

Arvig moved the district court to review the CSM’s order. After receiving a transcript of the hearing conducted before the CSM, the district court denied Arvig’s motion for review (June 2018 order). The district court initially determined that the CSM’s findings, including its adverse credibility finding, were supported by the record evidence. The district court also found that the 2013 order did not determine Arvig’s income. Additionally, the district court found that, in support of his current motion to modify, Arvig

“offered a single paystub into evidence as documentation of his income” even though it “did not reflect the amount and regularity of overtime hours” worked by Arvig, or “any distributions or income related to any of his ownership interests” in Arvig Enterprises. The district court concluded that Arvig had “failed to demonstrate that his or [Kawlewski’s] financial circumstances had substantially changed since the prior support order,” therefore, the April 2018 order was not erroneous. Arvig appeals.

D E C I S I O N

Arvig argues that the district court “erred in determining that there was no change in the parties’ circumstances that renders the existing child support order unreasonable and unfair.” When a district court affirms a CSM’s decision, the CSM’s decision becomes the decision of the district court and this court reviews the decision of the district court. *See Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). Here, the district court concluded that the CSM did not err in his April 2018 order and the district court ordered that the findings and conclusions of the April 2018 order, “not inconsistent with this [o]rder, remain unchanged and in full force and effect.”

This court reviews the decision whether to modify child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). While a district court has broad discretion in ordering modifications, it abuses its discretion when it acts outside the statutory limits set by the legislature, or when it resolves the matter in a manner “that is against logic and the facts on record.” *Id.* (quotation omitted).

A district court may modify an award of child support if there has been a substantial change in circumstances that makes the existing award unfair and unreasonable. *See*

Minn. Stat. § 518A.39, subd. 2(a) (2018). The circumstances that may warrant modification include a “substantially increased or decreased gross income of an obligor or obligee” and a “substantially increased or decreased need of an obligor or obligee.” *Id.*, subd. 2(a)(1), (2). The party moving to modify child support carries the burden of demonstrating both (1) a substantial change in circumstances and (2) that the change renders the existing child-support award unfair and unreasonable. *Id.*, subd. 2(a); *see also Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (addressing modification of spousal maintenance).

Arvig criticizes the CSM’s decision in four ways, which we address in turn.

A. Rebuttable presumption

Arvig argues that the CSM failed to apply the rebuttable presumption in section 518A.39 “to the undisputed facts in the record.” Under the statute, if the application of the child-support guidelines to the parties’ current circumstances results in a calculated obligation that is at least 20% and \$75 different from the existing support order, then a rebuttable presumption exists that the existing support obligation is unreasonable and unfair, and an irrebuttable presumption exists that there has been a substantial change in circumstances. Minn. Stat. § 518A.39, subd. 2(b)(1); *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009).

Arvig argues that he “clearly demonstrated” the parties’ change in circumstances and “a 20% / \$75 difference” when the existing child-support guidelines are applied. Arvig cites the CSM’s finding that Arvig “was earning \$22.00 per hour, and working full-time (40 hours per week)” and claims that the CSM added a “potential income of another

\$286.00 per month to Arvig for a total gross monthly income of \$4,096.” Arvig asserts that his income “result[s] in a calculated court order that is at least 20 percent and at least \$75.00 per month higher or lower than the existing support order.” *See* Minn. Stat. § 518A.39, subd. 2(b)(1).

We disagree. Despite having the burden of proof, Arvig failed to provide sufficient credible evidence of his income. A party moving to modify child support must provide supporting documents, including “a financial affidavit, disclosing all sources of gross income.” *See* Minn. Stat. § 518A.28(a) (2018) (“The financial affidavit . . . [is to include,] but [is] not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed.”). During the hearing, Arvig submitted one paystub from Arvig Enterprises, dated March 16, 2018. Arvig testified that he “[o]ccasionally” receives overtime pay, but the single paystub did “not reflect the amount and regularity of overtime hours worked.” On cross-examination, Arvig testified that he receives other income that is not reflected in the paystub from Arvig Enterprises. First, Arvig has an inheritance, which he testified is being depleted, but is not “gone,” and he uses the inheritance to “mak[e] ends meet.” Second, Arvig testified that he receives a \$4,000 dividend from Arvig Enterprises at the end of each year. Neither his inheritance nor his dividend income was included in Arvig’s affidavit supporting his motion to modify.

Kawlewski contends that “until the level of [Arvig’s] income can be accurately assessed, it is not possible to determine that the statutory presumptions would apply.” We agree. Arvig failed to provide the CSM with sufficient credible evidence of his income. Thus, the CSM did not err by refusing to apply the rebuttable presumption in section

518A39, subdivision 2(b)(1).² See *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that “a party cannot complain about a district court’s failure to rule in [that party’s] 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).

B. Undue burden to prove prior income

Arvig argues that the CSM placed “an undue burden” on him to establish his income at the time of the 2013 order. Minnesota law supports the CSM’s consideration of Arvig’s income at the time of the 2013 order. Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties’ circumstances at the time the support obligation was last set with the parties’ circumstances at the time of the motion to modify. See *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (“Unless a support order provides a baseline for future modification motions by reciting the parties’ then-existing circumstances, the

² Arvig appears to contend that the case information sheet filed by Wadena County (the county), including the child-support guidelines worksheet, “demonstrated the parties’ change in circumstances.” It is true that the county filed a case information sheet including a child-support guidelines worksheet, which calculated Arvig’s support obligation to be \$554, based on income of \$3,810. The CSM’s awareness of the county’s role is reflected in its finding in the April 2018 order that Kawlewski had applied for nonpublic assistance child-support services, therefore, the county “has a pecuniary interest, as well as an interest in the welfare of the child,” citing Minn. Stat. § 518A.49 (2016). But the county’s worksheet appears to be based on the same evidence that Arvig submitted to the CSM, a single paystub. Based on the CSM’s determination that Arvig failed to provide sufficient credible evidence of a substantial change in circumstances, it appears that the CSM considered, and rejected, the county’s worksheet as evidence of Arvig’s income. See *Fraser v. Fraser*, 702 N.W.2d 283, 292 (Minn. App. 2005) (noting that a district court implicitly rejected an argument it did not address), *review denied* (Minn. Oct. 18, 2005).

litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified.”).

Here, the 2013 order did not determine Arvig’s income. Arvig makes conclusory statements that his “employment and earnings ha[ve] changed substantially,” but he did not provide the CSM with evidence to support his claim. Without evidence of Arvig’s 2013 income, the CSM could not determine whether his circumstances had substantially changed in 2018. In short, the CSM did not hold Arvig to an undue burden by requiring him to submit evidence of his income at the time of the 2013 order. Rather, the CSM correctly concluded that Arvig failed to meet his burden to prove his income at the time of the motion and the baseline circumstances at the time of the 2013 order. *Id.*; *see also Hecker*, 568 N.W.2d at 709 (noting that a stipulated maintenance award identifies “baseline circumstances” against which future allegations of changed circumstances will be measured); *Eisenschenk*, 668 N.W.2d at 243.

C. Deviation from the child-support guidelines

Arvig contends that the CSM erred by “speculating whether Minn. Stat. § 518A.43 applied to the existing order.” Specifically, Arvig objects to the CSM’s reasoning that “if the amount of [Arvig’s] prior child support obligation was an upward deviation from the guidelines, [Arvig] has failed to prove the conditions justifying a deviation no longer exist.” Arvig contends that the CSM’s analysis placed “an undue burden” on him.

Minnesota’s child-support guidelines use a parent’s gross income as a starting point for calculating the correct level of support. *Haefele*, 837 N.W.2d at 714. But courts have

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.* (citations omitted). Section 518A.43 lists factors a court must take into account when deciding whether a deviation is warranted. Minn. Stat. § 518A.43, subd. 1 (2018). If a district court decides a deviation from the guidelines is warranted, it must make written findings stating the reasons for the deviation. *See In re Dakota Cty.*, 866 N.W.2d 905, 911 (Minn. 2015).

Arvig correctly points out that the 2013 order did not determine whether his child-support obligation was a deviation from the guidelines. Arvig argues that he should not have to “fight a ghost” and show that the deviation is no longer necessary, because it had “no bearing on the present matter.” We reject Arvig’s argument for two reasons.

First, the existence of a prior deviation is relevant. At the time of the 2013 order, Arvig claimed that the stipulated support amount was an upward deviation from the guidelines. As Kawlewski points out in her brief to this court, “had [the prior obligation] been an upward departure, as [Arvig] had alleged, the magistrate was correct in asking the question whether the grounds for deviating were still relevant.” In fact, the statute explicitly states that the court “must take into consideration the . . . factors in setting *or modifying* child support.” Minn. Stat. § 518A.43, subd. 1 (emphasis added).

Second, the CSM’s statement about the existence of a deviation in the 2013 order underscores Arvig’s burden to show a substantial change in circumstances. *See Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002) (stating that the party seeking modification carries the burden in “support-modification proceedings”). The CSM is

simply stating that “if” the prior obligation was an upward deviation, then Arvig failed to show that the deviation is no longer necessary, and thus, has not provided grounds to modify. Thus, the CSM’s statement regarding the existence of a deviation is not an abuse of discretion.

D. CSM’s factual findings

Arvig makes two general objections to the CSM’s factual findings. First, Arvig asserts the CSM was biased against him by finding his credibility “suspect,” as demonstrated by the CSM’s questions to Arvig, which he contends were “customary . . . for an opposing counsel,” yet the CSM did not question Kawlewski. As a preliminary matter, Arvig waived any issue of bias by failing to present it to the district court. *See Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (“[T]he issue of bias was not presented to the district court and we decline to address the issue.”), *review denied* (Minn. Oct. 24, 2001); *see generally Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts generally address only those questions previously presented to and considered by the district court).

And, even if Arvig had raised the issue, appellant courts defer to district court credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Moreover, this record does not reflect any bias on the part of the CSM. A CSM “may ask questions of witnesses when needed to ensure sufficient evidence to make the required findings.” Minn. R. Gen. Prac. 364.13 (role of child support magistrate). Because Arvig did not provide sufficient evidence to establish his income, the CSM acted well within his discretion when inquiring about Arvig’s salary and other income.

Second, Arvig argues that the CSM abused his discretion because he “made no inquiries into Kawlewski’s expenses or income” and did not “set any income for Kawlewski.” The CSM did not make specific findings regarding Kawlewski’s income. We conclude that the 2018 order sufficiently indicated that the CSM considered all the evidence and rejected Arvig’s claim of a substantial change in circumstances, therefore, more detailed findings were not required. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (holding that failure to show substantially changed circumstances precludes modification of spousal maintenance, therefore district court need not make findings regarding other statutory factors). If Arvig sought to establish that Kawlewski’s increase in income was sufficient to render the existing award unfair and unreasonable, then it was his burden to offer this evidence at the hearing.

In sum, we hold that the CSM did not abuse his discretion by denying Arvig’s motion to modify his child-support obligation.

Affirmed.