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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1284**

In re the Marriage of:
Nathan Winesett, petitioner,
Appellant,

vs.

Heather Winesett,
Respondent.

**Filed April 20, 2020
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-FA-13-894

Nathan S. Winesett, Duluth, Minnesota (pro se appellant)

Diana Bouschor Dodge, Amanda M. Mangan, Johnson, Killen & Seiler, P.A., Duluth,
Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Bjorkman,
Judge.

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

BJORKMAN, Judge

Appellant-father challenges the district court's orders granting respondent-mother's
motion to reduce child support, denying appellant's motion to increase spousal

maintenance, appointing a parenting-time expeditor, and denying appellant's motion for attorney fees. Because the district court did not abuse its discretion, we affirm.

FACTS

In July 2014, the 16-year marriage of appellant Nathan Winesett and respondent Heather Winesett was dissolved based on a stipulated agreement. The parties agreed to share legal and physical custody of their four minor children. At the time of the dissolution, mother earned \$178,000 annually. The parties imputed annual income of \$30,000 to father, who was “nominally employed” but looking for full-time employment as an attorney. Mother agreed to pay father \$3,000 in monthly child support, an upward deviation from the child-support guidelines, and \$1,000 in monthly spousal maintenance. The parties further agreed: “After four years, the Court shall calculate support based on the guidelines for equal parenting time unless the parenting time arrangement is different from the equal time contemplated by this settlement.”

On October 12, 2018, mother moved the district court to decrease her child-support obligation and appoint a parenting-time expeditor. She notified father that a hearing was scheduled for October 26 and his response was due five days before the hearing. *See* Minn. R. Gen. Prac. 303.03(a)(3); *see also* Minn. R. Gen. Prac. 303.03(a)(2) (requiring response raising “new issues” to be filed ten days before hearing).¹ Father requested a continuance, which the district court denied.

¹ The rules of general practice were amended effective January 1, 2020, altering the timelines for motion practice in a family-law proceeding. We cite the version in effect at the time of the parties' motions.

Four days before the hearing, father filed a responsive motion. He asked the district court to deny mother's motion to reduce child support or, in the alternative, to increase her maintenance obligation. He also requested that she be ordered to pay maintenance and child support by automatic withholding and proposed a different parenting-time expeditor. Because father's motion was untimely, the district court permitted mother to respond in writing after the hearing.

The district court granted mother's motion, reducing child support to \$1,334 per month pursuant to the guidelines, and denied father's motion to increase maintenance. The court also appointed a parenting-time expeditor and ordered the parties to share the cost equally. Father requested reconsideration, which the district court denied. Father then moved to vacate or amend the order and sought an award of need-based attorney fees in an unspecified amount. The district court denied the motion in all respects. Father appeals.

D E C I S I O N

As a preliminary matter, father argues that he is entitled to relief because the district court committed procedural error. We disagree. Father forfeited any objection to conducting the October 26 hearing without prior settlement efforts, *see Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002), and the district court did not abuse its discretion by giving mother an opportunity to respond to father's untimely motion to increase spousal maintenance, *see Minn. R. Gen. Prac. 303.03(b)* (providing that the court may take "appropriate action" when a party fails to timely respond to a motion); *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001) (recognizing district court's discretion in

procedural rulings), *review denied* (Minn. Oct. 24, 2001). We therefore turn to father's substantive arguments.

I. The district court did not abuse its discretion by reducing child support and declining to increase spousal maintenance.

A district court may modify an award of child support or spousal maintenance if there has been a substantial change in circumstances that makes the existing award unfair and unreasonable. Minn. Stat. § 518A.39, subd. 2(a) (2018). A district court has broad discretion in its decisions regarding child support and spousal maintenance, and we will not reverse absent a clear abuse of discretion. *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009) (maintenance); *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008) (support). A district court abuses its discretion if it makes clearly erroneous factual findings or misapplies the law. *Johnson v. Johnson*, 902 N.W.2d 79, 84 (Minn. App. 2017); *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006).

In challenging the district court's child-support decision, father first contends the district court erred by finding that mother's monthly gross income is \$15,833 because she also earns bonus pay. This argument is unavailing. Gross income includes "any form of periodic payment to an individual." Minn. Stat. § 518A.29 (2018). Bonuses may be included in calculating gross income, but only if they are regular, dependable forms of payment. *See Haasken v. Haasken*, 396 N.W.2d 253, 261 (Minn. App. 1986) (concluding irregular annual bonuses ranging from \$0 to \$9,000 did not constitute income); *Desrosier v. Desrosier*, 551 N.W.2d 507, 508-09 (Minn. App. 1996) (concluding annual bonuses ranging from \$7,000 to \$17,000 constituted income). That is not the case here.

Mother attested that she earns \$15,833 per month in the affidavit she submitted with her motion. And she provided her three most recent tax returns, reflecting annual gross income of between approximately \$180,000 and \$190,000, and her four most recent paystubs, reflecting an hourly rate of \$91.35. Father asserts that mother's October 2018 paystub mandates a finding of gross income of \$203,864 because it included bonus pay and reflected year-to-date earnings that extrapolate to that amount for the year. We are not persuaded. The financial information available to the court reflects overall that mother earns approximately \$190,000 annually with some possibility but no guarantee of additional income in the form of bonuses. On this record, the district court did not clearly err by finding mother earns monthly gross income of \$15,833.

Father next argues that modification is not warranted because the parties' financial circumstances "have not substantially changed" since they agreed that \$3,000 in monthly child support was in the children's best interests. But as the district court noted, the parties' agreement expressly permits the court to modify child support to the guidelines amount after four years. In essence, the parties agreed that the passage of four years is itself a material change in circumstances, after which an upward deviation from the guidelines is no longer in the children's best interests.

Moreover, that agreement is consistent with the governing statute. A substantial change in circumstances is presumed if the application of the child-support guidelines to the parties' current circumstances "results in a calculated court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order." Minn. Stat. § 518A.39, subd. 2(b)(1) (2018); *see also Frank-Bretwisch v. Ryan*, 741 N.W.2d 910,

914 (Minn. App. 2007) (recognizing that where the support obligation sought to be modified was a deviation from the guidelines amount, the change in circumstances necessary to justify modifying support to the guidelines amount “is limited at best”). As the district court found, application of the guidelines, based on the parties’ current income and their equal parenting time, calls for mother to pay monthly child support of \$1,334. Because that is less than half of the current support order, the district court did not abuse its discretion by modifying child support.

Finally, father contends that the district court erred by setting child support at the guidelines level without making findings regarding the children’s best interests. But it was not required to do so. A court must consider various factors in determining whether to deviate from the presumptive child-support obligation. Minn. Stat. § 518A.43, subd. 1 (2018) (listing general factors). It is required to make findings regarding the children’s best interests only if it deviates. Minn. Stat. § 518A.37, subd. 1 (2018). Because the district court set support at the rebuttably appropriate guidelines amount, the district court did not abuse its discretion by failing to make express findings regarding the children’s best interests.

We are likewise unpersuaded that the district court abused its discretion by denying father’s motion to increase spousal maintenance. Father asserts that the reduction in child support to a guidelines level is a change in his circumstances that makes the amount of spousal maintenance unfair. The district court found otherwise because (1) father “remains underemployed” and (2) the stipulated agreement expressly contemplates a reduction in

child support after four years but unchanged spousal maintenance and continued equal parenting time. The record supports both aspects of the district court's decision.

First, the record supports the district court's finding that father is "underemployed." At the time of the dissolution, father agreed to seek full-time employment as an attorney, and the parties agreed to impute to him \$30,000 in annual income. Father now works as an attorney at his parents' Florida law firm, earning \$30,000 per year. He attested that he was unable to obtain local employment or a higher paying position. But mother presented evidence that entry-level legal jobs are available in Minnesota, and pay more than \$53,000. The district court did not clearly err in finding that, to the extent father needs more income than the \$30,000 he currently earns, he is underemployed.

Second, the stipulated agreement did not require the district court to modify spousal maintenance. Under the stipulation, the parties agreed that, during the first four years after the dissolution, "the amount of maintenance and child support are so tied together that it would be inequitable to modify one without review of the other." Father contends this provision indicates that a change in child support now requires reconsideration of spousal maintenance. But, unlike with child support, the parties did not contemplate a change in spousal maintenance after four years. To the contrary, after four years, the parties no longer agree that child support should exceed the guidelines level, and no longer agree that spousal maintenance is "tied" to child support. Because father did not demonstrate that reducing

child support makes the agreed-upon amount of spousal maintenance unfair, the district court did not abuse its discretion by denying his motion to increase spousal maintenance.²

II. The district court did not abuse its discretion by appointing a parenting-time expeditor and requiring the parties to share the cost equally.

“A ‘parenting time expeditor’ is a neutral person authorized to use a mediation-arbitration process to resolve parenting time disputes.” Minn. Stat. § 518.1751, subd. 1b(c) (2018). A district court may appoint an expeditor upon either party’s motion. *Id.*, subd. 1 (2018). If the parties do not agree on an expeditor, the court shall select one from an approved roster. *Id.*, subd. 2(a), (b) (2018). On appeal, we review the decision to appoint a parenting-time expeditor for an abuse of discretion. *Nolte v. Mehrens*, 648 N.W.2d 727, 731-32 (Minn. App. 2002) (noting district court’s discretion in parenting-time matters).

Mother and father both asked the district court to appoint an expeditor, each proposing a different person to fill that role. The court appointed a different expeditor from the approved roster. Father contends the district court abused its discretion because it did not follow the statutory process for when parties disagree—providing a roster of approved expeditors to the parties, requiring them to exchange the names of three potential expeditors to try and agree on one, and only if that fails selecting one or two expeditors. Minn. Stat. § 518.1751, subd. 2(b). But even if that is true, father has not demonstrated resulting prejudice. *Braith*, 632 N.W.2d at 724 (discerning no prejudice from district court

² Father also argues that the district court erred by denying his request to have mother pay maintenance and support by automatic withholding. Because he did not provide the district court any authority for this request, and he identifies none on appeal, we deem this argument forfeited. *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002), *review denied* (Minn. Oct. 15, 2002).

“omitt[ing] a required step” in appointing expeditor). Since each party had an opportunity to state an expeditor preference and father identifies no reason to doubt the suitability of the appointed expeditor, we conclude that any error in the appointment process was harmless. See Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

A district court has discretion to “apportion the fees of the expeditor among the parties, with each party bearing the portion of fees that the court determines is just and equitable under the circumstances.” Minn. Stat. § 518.1751, subd. 2a (2018). Father contends it was an abuse of discretion to require him to pay half, rather than his income-proportionate share. We disagree. While the parties have disparate incomes, they share equal parenting time and both requested a parenting-time expeditor. The district court did not abuse its broad discretion in ordering the parties to split the expeditor’s fees.

III. The district court did not abuse its discretion by denying father’s request for attorney fees.

A district court shall award attorney fees if it finds that (1) the fees are “necessary for the good faith assertion of the party’s rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding,” (2) the party from whom fees are sought has the means to pay them, and (3) the party seeking fees “does not have the means to pay them.” Minn. Stat. § 518.14, subd. 1 (2018). The party seeking fees has the burden of proving all three factors. *Phillips v. LaPlante*, 823 N.W.2d 903, 907 (Minn. App. 2012). The district court has discretion to determine whether the moving party has met that burden. *Kielley v. Kielley*, 674 N.W.2d 770, 780 (Minn. App. 2004).

Father sought an award of need-based fees, asserting that the reduction in child support will cause him “hardship.” He contends the district court abused its discretion by denying his request without explanation. We are not persuaded. While express findings facilitate our review, the district court’s decisions plainly reflect its determination that father failed to demonstrate that he lacks “the means” to pay his attorney fees. *Cf. Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001) (reasoning that a lack of specific findings “is not fatal” to a need-based fee award where review of the order “reasonably implies” that the court considered the relevant factors and the court was familiar with the parties’ circumstances (quotation omitted)). The district court expressly rejected father’s contention that the reduction in child support leaves him in need, finding that he is able to make up the difference by obtaining higher paying employment. As such, even if father does not currently have the funds to pay his attorney, he has “the means” to acquire those funds. On this record, we discern no abuse of discretion in the district court’s denial of father’s request for need-based attorney fees.

Affirmed.