

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0177**

In re the Marriage of:

Daniel Raymond Jacobs,
Respondent,

vs.

Zdenka Irena Fenikova,
Appellant.

**Filed April 5, 2021
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-FA-12-7805

Daniel Raymond Jacobs, Apple Valley, Minnesota (pro se respondent)

Zdenka Irena Fenikova, Orono, Minnesota (pro se appellant)

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Zdenka Irena Fenikova challenges the order of a child-support magistrate
(CSM) regarding her motion to modify respondent Daniel Raymond Jacobs's childcare-

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

support obligation. Although the CSM did increase childcare support as Fenikova requested, Fenikova argues that the increase was insufficient for two reasons. First, she asserts that the CSM improperly imputed income to her under Minn. Stat. § 518A.32, subd. 1 (2020). Second, she argues that the CSM depended on unreliable evidence when calculating Jacobs's gross monthly income. Fenikova makes two additional arguments, one regarding a June 2015 child-support modification order and the other regarding increased childcare costs due to the COVID-19 pandemic. We affirm.

FACTS

The following facts are drawn from the CSM's order modifying childcare support and the modified judgment and decree (J&D) dissolving the parties' marriage.

Fenikova and Jacobs married in 2010, and their marriage was dissolved in 2014. In the J&D, the district court granted Fenikova sole legal and physical custody of the parties' minor twin children. It also ordered Jacobs to pay Fenikova spousal maintenance, general child support, and childcare support. To determine these obligations, the district court determined the parties' incomes. At the time of dissolution, Jacobs was self-employed as president and CEO of Vedalo HD Performance Eyewear. The district court found that his gross monthly income was \$12,000. Fenikova was not employed. The district court imputed to her a gross monthly income of \$1,885—150% of the federal minimum wage.

In 2015, the district court modified Jacobs's child-support obligation after he lost his job at Vedalo. The district court determined that Jacobs had no discernable income and imputed to him a gross monthly income of \$5,000 based on his education, past employment, and earning history. Fenikova was still unemployed, and the district court

again imputed to her a gross monthly income of \$1,885. Finding that there was a substantial change in Jacobs's income, the district court reduced Jacobs's basic child-support obligation to \$727 per month and, because the children were in kindergarten, relieved Jacobs of his previous obligation to pay for two days of preschool childcare per week. The district court ordered that any childcare costs were to be split according to the parties' monthly parental income for determining child support (PICS).

In 2018, the CSM modified Jacobs's childcare-support obligation twice. First, the CSM ordered Jacobs to pay \$42 per month in childcare support. The CSM later increased Jacobs's childcare-support obligation to \$320 per month. By the time of those modifications, Jacobs was employed in his current position as president and primary shareholder of Bald Man Brewing, an S corporation. Jacobs owns 28.2% of the corporation's shares. The CSM found Jacobs's gross monthly income from his salary to be \$12,000. The CSM then added another \$2,472 in gross monthly income based on Jacobs's share of Bald Man Brewing's profits; the CSM determined Jacobs's share of Bald Man Brewing's profits from the business's profit-and-loss statement and, even though Jacobs did not actually receive his share of the profits,¹ included them in his monthly income, citing *Haefele v. Haefele*, 837 N.W.2d 703, 713 (Minn. 2013). Jacobs's total gross monthly income was thus determined to be \$14,472. By this time, Fenikova was working at ICA Foodshelf for an average of 38.35 hours per week, earning \$15 per hour. The CSM found

¹ Jacobs explained that Bald Man Brewing reinvested its profits into the corporation.

that Fenikova’s actual gross monthly income was \$2,493 but imputed a gross monthly income of \$2,860 because Fenikova was not working full-time.

With this background, we turn to the order under review. In 2019, Fenikova moved to modify child support, in particular, childcare support, citing increased childcare costs. The CSM held an evidentiary hearing on the motion in October 2019 and modified Jacobs’s childcare-support obligation, ordering him to pay \$638 per month for childcare.

In its order, the CSM determined Jacobs’s gross annual income to be \$137,260. In reaching this amount, the CSM evaluated Jacobs’s 2018 and 2019 gross annual incomes. First, the CSM took Jacobs’s annual gross salary of \$144,001 and deducted \$6,058—his share of Bald Man Brewing’s projected losses in 2019—for a projected 2019 gross annual income of \$137,943. Second, the CSM looked at the gross annual income listed on Jacobs’s 2018 tax return, which listed his gross annual income as \$137,260. The CSM determined that the income listed on Jacobs’s 2018 tax return was a “more complete reflection” of his income because any additional losses at Bald Man Brewing in 2019 were speculative. Thus, the CSM relied on Jacobs’s 2018 income tax return and determined that Jacobs had a gross monthly income of \$11,438.

At the time of the evidentiary hearing, Fenikova was working at FirstService Residential, earning \$15 per hour and working an average of 32 hours per week for a gross monthly income of \$2,080. She had recently been laid off from her job at Urban Arts Academy, where she earned \$21.15 per hour and worked 40 hours per week. The CSM imputed an additional \$520 in gross monthly income to Fenikova based on the statutory presumption that she could work 40 hours per week. *See* Minn. Stat. § 518A.32, subd. 1.

Thus, the CSM determined Fenikova's gross monthly income to be \$2,600 and found that this sum was in line with Fenikova's overall earning history.

Fenikova sought review of the CSM's order by the district court. The district court affirmed the CSM, with the exception of one nonsubstantive change.²

Fenikova appeals.³

DECISION

Fenikova seeks review of the district court's affirmance of the CSM's 2019 order modifying child support. When a district court affirms a CSM's ruling, the CSM's ruling becomes the ruling of the district court, and we review the CSM's decision as if it were made by the district court. *Welsh v. Welsh*, 775 N.W.2d 364, 366 (Minn. App. 2009). Whether to modify child support is within the broad discretion of the district court, and we review orders modifying child support for abuse of that discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017); *see Haefele*, 837 N.W.2d at 708. A district court abuses its discretion if its decision is based on a misapplication of the law, contradicts the facts, or is contrary to logic. *Shearer*, 891 N.W.2d at 77.

² The district court corrected one misidentification of Fenikova as the petitioner instead of the respondent in the dissolution proceeding.

³ Jacobs did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

I. The district court did not err by imputing income to Fenikova.

Fenikova first argues that the CSM should not have imputed any income to her because of her work history during her transition into the workforce. Minn. Stat. § 518A.32, subd. 1, states:

If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

We review a district court’s factual finding that a parent is voluntarily underemployed for clear error. *Welsh*, 775 N.W.2d at 370.

The CSM found that Fenikova was underemployed based on the number of hours she worked per week. This finding is supported by the record. The statute defines full-time employment as 40 hours of work per week. Minn. Stat. § 518A.32, subd. 1. At the evidentiary hearing, Fenikova testified that she was working 32 hours per week. Fenikova stated that she was unsure if working 40 hours per week was possible at her current job. Fenikova also submitted several paystubs from her employer, FirstService Residential, which showed that she worked between 15 and 23 hours per week. Finally, Fenikova submitted a proposed work schedule, in which she indicated that she could only commit to part-time work. Thus, there is evidence in the record supporting the CSM’s finding that Fenikova was voluntarily underemployed.

Fenikova also challenges the amount of income imputed to her. But an assignment of error in a brief based on “mere assertion” and not supported by argument or authority is

forfeited “unless prejudicial error is obvious on mere inspection.” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017). Because Fenikova does not state how the CSM improperly calculated her imputed income, and no prejudicial error is “obvious on mere inspection,” she forfeits her argument regarding the amount of income the CSM imputed to her. *Id.*

II. The district court did not err by not requesting additional evidence of Jacobs’s gross monthly income.

Fenikova next argues that the evidence proving Jacobs’s 2018 income and Bald Man Brewing’s losses is not credible and insufficient for determining Jacobs’s income. If Jacobs disclosed additional financial records to the district court, Fenikova argues, his gross monthly income would be higher. This argument is unavailing.

“A court’s determination of income must be based in fact and will stand unless clearly erroneous.” *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Dec. 15, 2015). A court’s finding is clearly erroneous if we are “left with the definite and firm conviction that a mistake has been made.” *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted). When determining whether the district court’s findings are clearly erroneous, we defer to the district court’s credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Here, the CSM's finding that Jacobs's gross monthly income is \$11,438 is supported by the record. Jacobs submitted his 2018 income tax return,⁴ a profit-and-loss statement for Bald Man Brewing covering January to August 2019, a balance sheet for Bald Man Brewing covering January to August 2019, and several paystubs.

In determining Jacobs's expected 2019 gross annual income, the CSM used the paystubs and records from Bald Man Brewing. The paystubs show that Jacobs earns a bi-weekly salary of \$5,538.50, which the CSM used in calculating his expected 2019 salary of \$144,001. The profit-and-loss statement from Bald Man Brewing states that the corporation lost \$14,323.28 between January and August 2019, and the corporation's balance sheet confirms this loss. The CSM used this \$14,323 figure to determine Jacobs's anticipated share of the corporation's losses and, taking that share into account, estimated Jacobs' gross annual income as \$137,943 in 2019.

Even so, the CSM determined that Jacobs's expected 2019 gross annual income was "projected" and therefore did not use this sum when evaluating the motion to modify childcare support. Instead, the CSM used Jacobs's 2018 reported income of \$137,260, as listed in Jacobs's 2018 income tax return. This figure translates to a gross monthly income of \$11,438. Because the CSM's determination of Jacobs's gross monthly income is supported by the record, Fenikova's argument that the CSM erred in calculating Jacobs's income fails. *See Newstrand*, 869 N.W.2d at 685.

⁴ Fenikova asserts that this income tax return is suspect as it is missing its K-1 schedule. The CSM evaluated Jacobs's 2018 income tax return and found it to be credible, a determination to which we defer. *See Sefkow*, 427 N.W.2d at 210.

Fenikova also argues that the evidence supporting the CSM’s determination is not credible. She argues that, because Jacobs’s new romantic partner does bookkeeping for Bald Man Brewing, the financial records are suspect. But, by relying on them in its order, the CSM implicitly found the records submitted by Jacobs to be credible, and we defer to that determination. *See Sefkow*, 427 N.W.2d at 210; *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that “district court’s findings implicitly indicate[d]” that it found certain evidence credible). Because the CSM determined that Jacobs’s 2018 income tax return was credible, Fenikova’s argument fails.

Thus, Fenikova’s argument that the CSM improperly relied on Jacobs’s financial records when determining his gross monthly income fails.⁵

III. Fenikova’s other arguments fail.

Fenikova makes two other arguments in passing. We find neither persuasive.

First, Fenikova complains of the 2015 order modifying child-support, which reduced Jacobs’s basic child-support obligation and eliminated Jacobs’s childcare-support obligation. But, to the extent that Fenikova seeks to challenge the 2015 order, her attempt is untimely because notice of filing of the 2015 order modifying child support was served on both parties and more than 60 days have passed since Fenikova received notice of filing of that order. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (establishing 60-day appeal period).

⁵ Fenikova also argues that Jacobs’s stipulated gross monthly income from the 2013 J&D should apply. In modifying Jacobs’ childcare-support obligations, the district court found that Jacobs’s income had changed “substantially.” *See* Minn. Stat. § 518A.39, subd. 2(a)(1) (2020). Thus, the income stipulated to in the J&D does not affect this appeal.

Second, Fenikova argues that the COVID-19 pandemic has increased her childcare costs, warranting an increase in childcare support. But, because the CSM adjudicated Fenikova's motion in 2019—before the pandemic—any impact that the COVID-19 pandemic has had on the couple's childcare costs is outside of the record in this appeal and therefore fails. *See* Minn. R. Civ. App. P. 110.01 (defining the record on appeal).

Affirmed.