STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0719

In re the Marriage of:
Kristi Rae Pawlak, petitioner,
Appellant,

vs.

Steven Vincent Pawlak,
Respondent.

Filed April 5, 2021
Reversed and remanded
Worke, Judge

Hennepin County District Court
File No. 27-FA-17-5810

Ben M. Henschel, Susan A. Daudelin, Henschel Moberg, P.A., Minneapolis, Minnesota (for appellant)

Jason C. Brown, Brown Law Offices, P.A., Champlin, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-mother argues that the district court abused its discretion by denying her motion to modify child support by (1) omitting respondent-father's business income from his gross income, (2) incorrectly determining the range of father's corporate distributions, and (3) excluding these distributions from father's gross income because they are inconsistent. We reverse and remand.

FACTS

Appellant-mother Kristi Rae Pawlak and respondent-father Steven Vincent Pawlak dissolved their marriage by stipulated judgment in 2017. The stipulated judgment stated that father's $7,291 monthly gross income obligated him to pay $1,322 in monthly child support under the statute, but that the parties stipulated to an upward departure, increasing father's support obligation to $1,500. Father's gross income was based on his salary and not his ownership interest in three businesses. Mother moved to amend the judgment and decree to "reflect [father]'s actual income." In her accompanying affidavit, she stated, "[Father] is a partial owner of three businesses: P&F Partners, LLC, P&F Machining, Inc., and P&F Properties, Inc. Findings of Fact XV of the Judgment and Decree provides for purposes of calculating child support, [father]'s gross income was $87,500. I do not believe this is accurate."

The district court denied mother's motion to amend child support. The district court found father's monthly income to be $8,423, and stated,

> [Mother] argued [father]'s [monthly] income was $30,146 instead of $8,423 due to him having 20% ownership in P&F. The [c]ourt does not find [father] to be a corporate officer of the company; therefore, he cannot make financial decisions nor control corporate distributions. . . . Additionally, distributions vary from each year from $0-$10,963. The [c]ourt cannot add additional income for the distributions as it is not consistent, and the [c]ourt does not consider this income to be a bonus.

Mother moved to amend the findings, requesting the district court to credit father's business income, which she argued "averaged $228,086 per year over the past three years." Mother's claim focused only on father's joint ownership of P&F Machining.

The district court denied mother's motion to amend child support. The district court stated, "Upon further review, the [c]ourt finds there to be no changes to the parties' income or submissions that would require adjusting the child support calculations . . . ." This appeal followed.

DECISION

Mother argues that the district court incorrectly calculated father's gross income by considering only his salary, rather than including his 20% ownership of P&F Machining Inc.

Appellate courts review orders modifying child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). District courts abuse this "broad discretion" by resolving the matter in a manner "that is against logic and the facts on record." *Id.*

The first step in determining a parent's presumptive child-support obligation is to determine the gross income of each parent. Minn. Stat. § 518A.34(b)(1) (2020). Gross income includes "self-employment income." Minn. Stat. § 518A.29(a) (2020). This includes income from "joint ownership of a . . . closely held corporation," and is defined as "gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30 (2020).

Section 518A.30 applies in determining a parent's income from joint ownership of a closely held subchapter S-corporation. *Haefele*, 837 N.W.2d at 711.

The district court did not include funds father received based on his joint ownership of P&F in calculating father's gross income because it did "not find [father] to be a corporate officer of the company; therefore, he cannot make financial decisions nor control corporate distributions." We reject this analysis. In *Haefele*, the mother had interests in a closely held business but had no control over the amounts those businesses distributed to their owners. *Id.* at 705-06. In an attempt to expand, the businesses retained much of the earnings attributable to their owners and distributed only the amounts necessary for the owners to pay the taxes on their shares of the total earnings. *Id.* at 706. Thus, in *Haefele*, the mother received only a fraction of the amounts attributable to her interests in the business under the gross-receipts-minus-cost-of-goods-sold-and-ordinary-and-necessary-expenses formula set out in Minn. Stat. § 518A.30, and almost none of the amounts distributed were actually available for support purposes because they were needed to pay the taxes on the earnings attributable to the mother. *See id.* Despite these facts, the supreme court ruled that, under Minn. Stat. § 518A.30, both the undistributed earnings attributable to mother, and the amounts distributed to her for purposes of paying taxes, should have been included in her gross income. *Id.* at 712-13. The supreme court then remanded the case for the district court to make the required findings of fact. *Id.* at 714. In doing so, the supreme court noted that in its discretion, "the district court may depart from the guidelines in appropriate cases based on the unavailability of money included in gross income." *Id.*

Here, we conclude that the district court abused its discretion by not applying the procedure outlined in Minn. Stat. § 518A.30 and *Haefele* when calculating father's "gross income."

Father argues that the district court did not abuse its discretion because *Haefele* permits the district court to make a downward deviation. Father is correct about the possibility of a deviation, but *Haefele* also requires the district court to first conduct the gross-income analysis before deviating. *See id.* at 713-14 (stating that remand was necessary even though district court did not abuse its discretion by excluding tax payments from gross income because deducting ordinary and necessary expenses is only part of analysis). Further, Minn. Stat. § 518A.37, subd. 2 (2020) states,

> If the court deviates from the presumptive child support obligation . . . , the court must make written findings that state:
> (1) each parent's gross income;
> (2) each parent's PICS;
> (3) the amount of the child support obligation computed under section 518A.34;
> (4) the reasons for the deviation; and
> (5) how the deviation serves the best interests of the child.

The district court neither stated that it was deviating nor made these required findings. Father's argument lacks merit. On remand, the district court may make written deviations as it sees appropriate, but it must support any deviation with the required findings of fact. The district court may reopen the record at its discretion for further financial information from the parties.

Mother also argues that the district court abused its discretion by concluding that father's corporate distributions ranged from $0-$10,963 and by not including the distributions in father's gross income because they were inconsistent. But as previously mentioned, *Haefele* held that distributions are not the correct method for determining income from joint ownership of an S-corporation. *Id.* at 714. We reverse the district court's order and remand for the district court to make findings in accordance with Minn. Stat. § 518A.30, and, if necessary, on any deviation it might deed appropriate in this case.

Reversed and remanded.