

*This opinion is nonprecedential except as provided by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
A20-1224**

In re the Marriage of:
Tiffany Elizabeth Jean Banerjee, petitioner,
Respondent,

vs.

Animesh Banerjee,
Appellant.

**Filed April 26, 2021
Affirmed
Peterson, Judge***

Hennepin County District Court
File No. 27-FA-14-6900

Rhia Bornmann Spears, Bornmann Family Law PLLC, Minneapolis, Minnesota (for respondent)

Aleksandra Ljubisavljevic, Aleksandra Ljubisavljevic Law Office, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Gaïtas, Judge; and Peterson, Judge.

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

NONPRECEDENTIAL OPINION

PETERSON, Judge

Appellant-father challenges the district court's denial of his motion to modify child support, arguing that the district court erred by failing to consider the parties' equal parenting time and the decrease in his gross income. We affirm.

FACTS

Appellant-father Animesh Banerjee and respondent-mother Tiffany Elizabeth Jean Banerjee were married in 2010 and have one minor child, who was born in 2011. Mother petitioned for dissolution of the marriage in October 2014. A December 2015 judgment and decree of dissolution awarded the parties joint physical custody of the child and awarded mother sole legal custody. Mother received more parenting time than father. In a June 2016 amended judgment and decree, the district court awarded the parties joint physical and joint legal custody of the child and ordered that the parties would have equal parenting time beginning on January 1, 2017. The amended judgment and decree also ordered that father pay mother a net child-support obligation of \$869 per month based on a 10-45% parenting-time adjustment, which reflected the parties' parenting time before January 1, 2017. The district court did not separately determine a child-support obligation that would apply beginning on January 1, 2017, when equal parenting time was to begin.

In June 2020, father moved to modify child support. He alleged that there had been two substantial changes in circumstances since June 2016: (1) a substantial change in the parenting-expense adjustment because the parties had equal parenting time beginning in

2017; and (2) a substantial decrease in his gross income because he lost his job due to the COVID-19 pandemic.

At a hearing on father's motion held before a child-support magistrate (CSM), father testified that he is a software engineer and was self-employed as a contractor, but he had been unemployed since March 31, 2020, when he was laid off because of the COVID-19 pandemic. Father stated that he had received \$234 per week in state unemployment benefits and \$600 per week in federal pandemic unemployment benefits. He said that his state unemployment benefits ended on July 4. He "wasn't exactly sure" when his federal benefits were scheduled to end, but he believed that they would end at the end of July. Father testified that those benefits were his only sources of income. He did not provide any documentation to prove that he was laid off and did not submit any documents regarding his self-employment income.

Mother submitted an affidavit in which she stated that father owned a duplex as rental property and collected rent from the residents. She also testified at the hearing that she had helped father rent the duplex. Father admitted that he owned a duplex, but he denied that he was receiving income from the property. He acknowledged that he did not provide any documentation or records regarding the duplex's finances.

Based on father's testimony, the CSM found that father received \$3,611 per month in state unemployment benefits and federal aid. The CSM also found that father did not submit any documentary evidence about rental income he was receiving from the duplex and that father's actual gross monthly income was unknown.

The CSM denied father's motion to modify child support because father failed to meet his burden of proving a substantial change in circumstances that renders the child-support order unreasonable and unfair. The CSM found that father's claim that the state and federal unemployment benefits are the only income he receives was not credible and concluded that because father "failed to provide information regarding *all* sources of income he may have," his child-support obligation could not be properly calculated. Because father's gross monthly income could not be calculated, the CSM did not address father's argument regarding equal parenting time.

Father moved for a district court judge to review the CSM's order. The district court denied the motion for review and affirmed the CSM's order. Father appeals.

DECISION

When the district court affirms the CSM's decision, the CSM's decision becomes the decision of the district court. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). We review a district court's decision regarding the modification of child support for an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). A district court abuses its discretion when it misapplies the law or its decision is against logic and the facts on record. *Id.*

An order for child support may be modified upon a showing that there has been a substantial change in circumstances that makes the order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2020). The moving party has the burden of demonstrating that there has been a substantial change in circumstances and that the change makes the existing order unreasonable and unfair. *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009).

Father argues that he demonstrated one change in circumstances because the parties have equal parenting time, which is not reflected in the child-support order, and a second change in circumstances because he is no longer employed and his income has been dramatically reduced.

Equal Parenting Time

Father contends that the district court abused its discretion by failing to consider that he and mother currently have equal parenting time, which began in 2017. His argument appears to refer to the parenting-expense adjustment that applies when calculating child support. The parenting-expense adjustment is based on the presumption that parents incur costs for caring for a child when they exercise parenting time. Minn. Stat. § 518A.36, subd. 1(a) (2020). Accordingly, when determining child support, courts must account for the amount of each parent's parenting time. Minn. Stat. § 518A.34(b)(6) (2020); *see* Minn. Stat. § 518A.36, subd. 2 (2020) (setting forth formula for calculating parenting-expense adjustment based on parenting time).

When the application of the child-support guidelines “to the current circumstances of the parties 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,” a presumption arises that there has been a substantial change in circumstances and a rebuttable presumption arises that the existing order is unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(b)(1) (2020). Father argues that because he and mother now have equal parenting time, “applying the child-support guidelines to the changed circumstances of equal parenting time would result

in a child-support obligation that is at least 20 percent less than the extant obligation,” and, therefore, it is presumed that there has been a substantial change in circumstances.

Father correctly notes that the CSM did not apply the parenting-expense adjustment. But the CSM’s failure to do so was not error. Even if equal parenting time was a substantial change in circumstances, the CSM could not determine father’s child-support obligation because the first step when calculating child support is to determine gross income, and father did not present sufficient evidence to determine his gross income.

Substantial Decrease in Gross Income

A substantial decrease in the obligor’s gross income is a substantial change in circumstances that can justify a modification of child support. Minn. Stat. § 518A.39, subd. 2(a)(1). Father alleged that his income decreased substantially because he was laid off due to the COVID-19 pandemic. On appeal, father argues that his state and federal unemployment benefits were his only source of income, and the district court failed to consider that those benefits would end in July 2020.

When the district court affirms the CSM’s decision, the CSM’s decision becomes the decision of the district court. *Kilpatrick*, 673 N.W.2d at 530 n.2. “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) (quotations omitted), *review denied* (Minn. Dec. 15, 2015).

[W]e review the district court’s factual findings for clear error. That is, we examine the record to see if there is reasonable evidence in the record to support the court’s findings. And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to

the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made.

Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013) (quotations and citations omitted). Also, this court defers to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The district court found that father received state and federal unemployment benefits. But the court also found that, because father did not provide any information regarding his rental property, other than his testimony, he had additional income that he did not disclose. The district court therefore concluded that father's gross monthly income was unknown and his child-support obligation could not be properly calculated.

When calculating each parent's child-support obligation, the court must first determine each parent's gross income. Minn. Stat. § 518A.34(b) (2020). Gross income includes "any form of periodic payment to an individual." Minn. Stat. § 518A.29(a) (2020); *see* Minn. Stat. § 518A.30 (2020) (addressing income from self-employment or operation of a business).

At the motion hearing, father admitted that he owned a duplex. Mother testified that father had rented the duplex and that she had helped him find tenants. Although father testified that he was no longer receiving rent payments for the duplex, he did not present any additional evidence regarding rental income from the duplex. Because we must defer to the district court's credibility determinations, and father did not present any evidence that substantiated his testimony that he was not receiving income from the duplex that he

owned, there is no basis for us to conclude that the finding that father did not disclose his entire income is clearly erroneous.

Father also appears to argue that his gross income was substantially decreased even if rental income is considered. This argument fails, however, because father did not submit any evidence that the district court found credible regarding the amount of his rental income. Because the record supports the finding that father failed to disclose all of his sources of income, the district court did not abuse its discretion by determining that father failed to meet his burden of demonstrating that there was a substantial change in circumstances that makes the 2016 child-support order unreasonable and unfair.

Affirmed.