

*This opinion is nonprecedential except as provided by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
A20-1439**

In re the Marriage of:
Carrie Ann Roth, petitioner,
Respondent,

vs.

David Arthur Roth,
Appellant,

Washington County Community Services, intervenor,
Respondent.

**Filed January 10, 2022
Affirmed
Johnson, Judge**

Washington County District Court
File No. 82-FA-16-669

Robert J. Polski, St. Paul, Minnesota (for respondent)

Sean P. Stokes, Law Offices of Sean P. Stokes, P.L.L.C., Stillwater, Minnesota (for
appellant)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

David Arthur Roth moved to modify the amount of the monthly child-support
payment he makes to his former wife, Carrie Ann Roth. He introduced evidence that, at

the time of the dissolution, his gross income was less than the amount to which he then stipulated. He also introduced evidence that his current gross income is much less than the amount to which he had stipulated. The district court found that his gross income is the same as the amount to which he stipulated at the time of the dissolution. The district court also found that Carrie's gross income had decreased to a nominal amount. The district court denied David's motion. We conclude that the district court did not clearly err in its findings of fact concerning the parties' respective incomes. Therefore, we affirm.

FACTS

The parties were married in May 2002. They have two children: twins who were born in October 2007. Carrie petitioned for dissolution of the marriage in July 2015. The parties agreed to a stipulated dissolution decree in July 2017. The district court approved the stipulation and filed a judgment and decree in August 2017.

In the decree, the district court awarded each party joint legal and joint physical custody of the children and ordered equal parenting time. The parties agreed that David's gross income as a self-employed realtor was \$106,000 per year (or \$8,833 per month). The parties agreed that Carrie was unemployed and that her only source of income was non-taxable disability benefits of \$4,441 per month (or \$53,292 per year). Both parties waived their respective interests in spousal maintenance. The parties agreed that David would pay Carrie basic child support of \$1,000 per month and medical support of \$160 per month, and the district court ordered support in those amounts.

In April 2020, David moved to modify the award of basic child support and medical support. He initially represented himself using forms provided by the court. In an

accompanying affidavit, David stated that, at the time of the dissolution, he had not completed or filed several years of income-tax returns. He stated further that he recently had completed and filed five years of income-tax returns and had discovered that his gross income was and is lower than he previously believed. Specifically, he stated that his gross income is \$3,659 per month (or \$43,908 per year) rather than the previously stipulated amount of \$8,833 per month (or \$106,000 per year). He also stated that his monthly expenses are \$9,796. In support of his motion, David submitted his individual and business income-tax returns for the years 2013 to 2019. David's individual tax returns show that his gross income between 2013 and 2016 (the four years prior to the dissolution) averaged \$44,525, which is less than half of the amount stated in the decree.

The matter was referred to a child support magistrate, who presided over an evidentiary hearing on two days in June and August of 2020. The only witnesses were Carrie and David. Carrie, who was represented by an attorney at the hearing, testified that she had been receiving workers' compensation benefits but that they were terminated in July 2020 and that her monthly income at the time of the hearing was only \$20. She also testified that, because of physical limitations arising from on-the-job injuries, her previous employer was unable to accommodate her work restrictions, and she expected that no other employer would hire her for the same type of work.

David, who was represented by an attorney at the hearing, was cross-examined extensively about his income-tax returns but was unable to explain them. He testified that the tax returns were prepared by an accountant whom he had retained for that purpose. David also was cross-examined about his ability to pay monthly expenses of \$9,796 with

an income of less than half that amount. David responded by testifying that he was drawing on his savings.

In September 2020, the magistrate filed an order denying David's motion to modify child support. The magistrate found that David's gross income is \$106,000 per year, the same amount to which he had stipulated in 2017. The magistrate found that Carrie's gross income is \$20 per month (or \$240 per year) based on her testimony at the hearing. The district court stated that it had "not been provided with any evidence to indicate [Carrie] is voluntarily unemployed at this time." The district court completed a child-support guidelines worksheet, which indicated a basic child-support payment of \$911 per month. The district court reasoned that, because \$911 is within 20 percent of \$1,000, there has not been a substantial change in circumstances and, thus, there is no justification for a modification. David appeals.

DECISION

David argues that the magistrate erred by denying his motion to modify child support on the ground that the magistrate clearly erred in finding his gross income and clearly erred in finding Carrie's gross income.

To determine the existence and amount of a basic child-support obligation, a district court must determine the gross income of each parent. Minn. Stat. §§ 518A.29, .34(a), (b)(1) (2020). Gross income includes income from self-employment, Minn. Stat. § 518A.29(a), which "is defined as gross receipts . . . minus ordinary and necessary expenses required for self-employment or business operation," Minn. Stat. § 518A.30 (2020). "The person seeking to deduct an expense . . . has the burden of proving, if

challenged, that the expense is ordinary and necessary.” *Id.* After finding gross income, the district court must refer to statutory guidelines to determine the presumptively appropriate amount of basic child support and must calculate each parent’s proportional share of that amount. Minn. Stat. § 518A.35, subd. 2 (2020). The district court also must consider certain statutory factors to determine whether to deviate from the presumptive child-support obligation. Minn. Stat. § 518A.43 (2020); *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). This court applies a clear-error standard of review to a district court’s findings of fact concerning gross income for child-support purposes. *Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984); *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002).

A district court may modify an existing child-support obligation if the moving party shows that either party has experienced a substantial change in circumstances that makes the existing obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2020). If a new application of the child-support guidelines would result in a child-support obligation that is at least 20 percent more or less and at least \$75 more or less than the amount of the existing obligation, an irrebuttable presumption of a substantial change in circumstances arises. *Id.*, § 518A.39, subd. 2(b)(1); *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009). The moving party bears the burden of showing both a substantial change in circumstances and that any substantial change makes the existing obligation unreasonable and unfair. *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002). This court applies an abuse-of-discretion standard of review to a district court’s

determination as to whether there has been a substantial change in circumstances. *Id.* at 481.

A. David's Gross Income

David first argues that the magistrate clearly erred by finding that his gross income is \$8,833 per month (or \$106,000 per year).

The magistrate, after reviewing David's evidence, found as follows:

The court does not believe that it has been provided with credible testimony and documentation as to [David]'s actual income. [David] was not able to provide details as to many of the entries on his tax returns and he appears to be earning income comparable to what he earned at the time of the August 16, 2017 order when he asserted that his income was \$106,000 per year. [David] is paying household living expenses of \$9,700 per month and, although not determinative, this is also an indication that he is earning income far in excess of that set forth on his tax returns.

David contends that the magistrate erred by disregarding his tax returns even though no other evidence was introduced to contradict them. David also contends that the magistrate erred by essentially drawing an adverse inference against David because he did not understand how the accountant had prepared the returns and because the magistrate did not understand the tax returns. In response, Carrie contends that the magistrate's finding of David's gross income is based on a credibility determination, which this court should review with deference.¹

¹ Carrie does not argue that, even if David could prove that his gross income at the time of the dissolution actually was less than the finding of gross income in the decree, David nonetheless is bound by the finding in the decree (which, in this case, reflected the parties' stipulation). Accordingly, for purposes of this opinion, we assume without deciding that a party may establish a substantial change in circumstances under section

In a child-support case, parties are required by statute to disclose “all sources of gross income,” including “relevant supporting documentation.” Minn. Stat. § 518A.28(a) (2020). A party’s income-tax returns are not conclusive evidence of the person’s income. *Stephenson v. Stephenson*, 104 N.W.2d 517, 518-19 (Minn. 1960); *Otte v. Otte*, 368 N.W.2d 293, 297 (Minn. App. 1985). Rather, income-tax returns “are evidence of [a party]’s income and may be considered by the court along with other evidence in the record in making its determination” of gross income. *Stephenson*, 104 N.W.2d at 519. Furthermore, this court has recognized “the opportunity for a self-employed person to support himself yet report a negligible net income.” *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984). For example, in *Gully v. Gully*, 371 N.W.2d 63 (Minn. App. 1985), we stated, “Respondent’s practice of deducting these expenses for tax purposes did not preclude the family court from attributing these items to respondent for purposes of determining the proper level of child support.” *Id.* at 65.

In this case, the magistrate found that David had not provided “credible testimony and documentation” concerning his gross income. The magistrate’s order does not explain in detail why David’s evidence was lacking in credibility. The magistrate may have believed that the tax returns were not reliable because they indicated to the magistrate that, for 2016 and 2017, David’s business expenses equaled his business revenues. In cross-examination, Carrie’s attorney asked David to explain how that could be true, and David

518A.39 by proving that his or her gross income has not actually changed but that the prior finding of gross income in the dissolution decree was incorrect.

was unable to explain.² The magistrate also may have been concerned about the lack of detail concerning David's business expenses. In cross-examination, Carrie's attorney asked David to explain how he could have incurred business expenses of approximately \$162,000 and whether he had provided his accountant with receipts for all such expenses. Again, David was unable to explain. We note that the tax returns include the total amounts of business expenses by category for some years but not for other years. The magistrate also may have mistrusted the tax returns because of the amounts of some business expenses. For example, the magistrate expressed doubt during the hearing as to whether David actually drove his vehicle 56,000 miles for business purposes in 2019 so as to justify mileage expenses of approximately \$28,000.

² When David's attorney objected to this line of questioning, the magistrate overruled the objection and stated, "I am looking at it also and I had the same questions as I was reviewing it. . . . So somebody's going to have to explain that. I mean, if it's not him it has to be an accountant I need to understand it somehow and I'm not understanding it." Our review of the 2016 tax returns indicates that David's business, Dave Roth Inc., an S corporation, had revenue of \$143,277, paid David a salary of \$27,000, and incurred \$87,724 in other business expenses, resulting in a corporate profit of \$28,553, which was distributed to David by a K-1 form. David's individual tax return corresponds by showing that he received a salary of \$27,000 and a distribution of corporate profit of \$28,553, resulting in total income of \$55,553. He also attached a Schedule C, which shows that he had no profit or loss from his business because the business had gross receipts of \$143,277 and total expenses of \$143,277. As the supreme court has explained in this context, an S corporation is "subject to a pass-through taxation system, under which [corporate] earnings are not taxed at the corporate level" but, rather, "are deemed to pass through directly to the shareholders . . . and are reported on the shareholders' individual tax returns." *Haefele*, 837 N.W.2d at 705 (citing I.R.C. §§ 1363(a)-(b), 1366(a)-(b)). We too are unable to determine whether David's income-tax returns were properly completed. David could have presented additional evidence, such as the testimony of his tax accountant, to explain his tax returns and thereby ensure that his gross income was accurately determined.

In any event, the magistrate clearly was skeptical of David's income-tax returns because they did not correspond to his self-disclosed expenses. During the hearing, the magistrate asked David how he was able to pay almost \$10,000 in monthly expenses if he had only \$5,000 per month in gross income. David answered that he had been living in part on his savings. The magistrate's order states that David "was not able to credibly explain how he is able to pay almost \$9,700 of monthly living expenses from monthly income of \$4,999." The magistrate's order is consistent with the dissolution decree, which indicates that David had no more than a nominal amount of savings in 2017, only three years before his motion to modify. For these and other reasons, the evidentiary record provided the magistrate with several valid reasons for making a finding of David's gross income that differs from the income reflected on his income-tax returns.

Thus, the district court did not clearly err by finding that David's gross income is \$8,833 per month (or \$106,000 per year).

B. Carrie's Gross Income

David also argues that, for two reasons, the magistrate clearly erred by finding that Carrie's gross income is only \$20 per month (or \$240 per year).

David first contends that the magistrate erred on the ground that Carrie did not comply with the statute that requires parties to disclose all sources of income and relevant supporting documentation. *See* Minn. Stat. § 518A.28(a). In response, Carrie contends that she has no such documentation because she has almost no income. Carrie testified that she is unemployed and has not been employed since April 2019. The magistrate made findings that conform to her testimony, which indicates that he found her testimony to be

credible. We generally defer to a district court's credibility determinations. *See Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

David also contends that the magistrate erred by finding that Carrie is not voluntarily unemployed and by not making a finding of her potential income. But David does not cite any evidence to contradict Carrie's testimony that she is unemployed because of physical limitations arising from on-the-job injuries. David was the only other witness at the hearing, and he did not testify about whether Carrie has the potential to be employed. A party is not considered voluntarily unemployed if she is unemployed because she is physically incapacitated. Minn. Stat. § 518A.32, subd. 3(3) (2020). The magistrate specifically found that Carrie is unemployed because of physical injuries, and that finding is supported by Carrie's testimony. In the absence of a finding that Carrie is voluntarily unemployed, the magistrate was not required to make a finding of her potential income. *See Minn. Stat. § 518A.32, subd. 1* (2020); *Welsh v. Welsh*, 775 N.W.2d 364, 369-71 (Minn. App. 2009).

Thus, the district court did not err by finding that Carrie's gross income is not more than \$20 per month (or \$240 per year).

In sum, the district court did not err by denying David's motion to modify child support on the ground that there has not been a substantial change in circumstances.

Affirmed.

A handwritten signature in black ink, appearing to read "Matthew Johnson", written in a cursive style.