

*This opinion is nonprecedential except as provided by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
A22-0195**

In re the Marriage of:
Amy Joy Kemp, petitioner,
Respondent,

vs.

Michael Edward Kemp,
Appellant.

Filed April 10, 2023
Affirmed in part, reversed in part, and remanded
Worke, Judge

Washington County District Court
File No. 82-FA-18-5256

Sharon R. Markowitz, Sharon S. Beck, Stinson, LLP, Minneapolis, Minnesota (for respondent)

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Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and Worke, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this appeal from a marital dissolution judgment and decree, appellant-father challenges the designation of respondent-mother's residence in Springfield, Illinois, as that of the parties' joint child. Father also challenges the parenting-time schedule set by the

district court. Additionally, he claims that the district court granted the parenting consultant authority beyond the scope of the parties' general agreement to appoint a parenting consultant. Finally, father challenges his obligation to pay "back child support" and claims that the district court erroneously treated it as an arrearage when setting the payment schedule for it.

We reverse the district court's order for father to pay child support accruing before the child's birth. We also reverse the payment schedule for "back child support." We remand for the district court to properly determine when father's child-support obligation began accruing and to set a payment amount for any retroactive child support owed by father. We affirm as to all other issues.

FACTS

Appellant-father Michael Edward Kemp and respondent-mother Amy Joy Kemp are the parents of one child, born in May 2018. The parties learned of mother's pregnancy in September 2017. At the time, they jointly resided at father's apartment in St. Paul, Minnesota. But the same week that they learned of mother's pregnancy, mother received and accepted a job offer with an Illinois employer. In October 2017, mother relocated for work to Springfield, Illinois.

The parties were married in March 2018. Mother began maternity leave soon before the child's birth in Springfield. In June 2018, mother and the child relocated to St. Paul to reside with father at his residence during maternity leave. But mother and the child moved out less than three weeks later. They continued residing elsewhere in Minnesota for several

months. In November 2018, mother returned with the child to reside in Springfield for work.

Mother filed for marital dissolution in Minnesota the same month. Father moved for mother and the child to temporarily reside in Minnesota with all parenting time occurring there pending the proceeding's outcome. Mother moved for the child to temporarily reside with her in Illinois pending the proceeding's outcome. The district court granted mother's motion in January 2019. Throughout the dissolution proceeding, father generally exercised parenting time every other Thursday through Monday, alternating between doing so in Illinois and Minnesota.

The district court held a bench trial beginning in November 2020. Both parties sought sole legal and sole physical custody. Mother sought for the child to reside with her in Springfield, Illinois, whereas father sought for mother to relocate with the child to reside in Minnesota.

In its December 2021 judgment and decree, the district court granted the parties joint legal custody of the child but granted sole physical custody to mother and designated the child's residence with mother in Springfield, Illinois. The district court established a schedule giving father monthly parenting time of "two non-consecutive weekends, Friday afternoon to Monday morning, in Springfield" for five months of the year. For the remaining months, the parenting-time schedule requires mother to bring the child to Minnesota "for one week . . . of parenting time with" father. The schedule will "remain in place until" the child's fifth birthday (May 31, 2023), unless the parties agree to a different schedule "with or without the assistance of [a] [p]arenting [c]onsultant," which the district

court ordered the parties to appoint pursuant to their on-the-record agreement that a parenting consultant is necessary. The district court also ordered father to pay mother \$19,131 in back child support that began accruing on “April 1, 2018.” The court called this support obligation both “back child support” and an “arrearage,” ordering that it “be collected at the statutory rate of 20% of the total arrearage” per month.

This appeal followed. Days later, the district court filed supplemental findings of fact and an order evaluating the evidence presented at trial and the child’s best interests under Minn. Stat. § 518.17, subd. 1(a) (2022).¹ This court accepted jurisdiction to review the supplemental findings of fact and order as part of the December 2021 judgment and decree.

DECISION

Father alleges several errors regarding the district court’s residence decision and the parenting-time schedule. Father also claims that the district court granted the parenting-consultant authority beyond the parties’ general agreement to appoint a parenting consultant. Finally, father challenges his obligation to pay “back child support” and, alternatively, argues that the district court wrongly treated it as an “arrearage” when setting the payment schedule for it. We address these contentions in turn.

¹ In 2022, the legislature amended section 518.17, subdivision 1(a)(2), to include consideration of a child’s “developmental disability.” 2022 Minn. Laws Reg. Sess. ch. 98, art. 8, § 35, at 713. The amendment does not affect this appeal because neither party has asserted, and there is no indication from the record, that the child has a developmental disability.

Residence and parenting time

District courts have “broad discretion” to determine “issues of custody and residence.” *Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009). District courts also have “broad discretion in determining parenting-time issues.” *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). This court will not reverse on these issues unless the district court abused its discretion. *Id.*; *Schisel*, 762 N.W.2d at 270.

“A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a [discretionary] decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted); *cf. Eustathiades v. Bowman*, 695 N.W.2d 395, 397 (Minn. App. 2005) (stating that “[w]hether to modify [child] support is discretionary with the district court” and is reviewed under the “logic and the facts on record” standard). Factual findings are reviewed for clear error. Minn. R. Civ. P. 52.01. Factual findings are not clearly erroneous if reasonable evidence supports them. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in a family-law appeal); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (discussing clear-error standard). Application of law to the facts is reviewed de novo. *In re Welfare of the Child. of M.A.H.*, 839 N.W.2d 730, 746 (Minn. App. 2013).

Sufficiency of best-interests findings regarding residence

Father contends that the district court made insufficiently detailed best-interests findings and insufficiently explained how its findings affected its residence decision. “In

evaluating the best interests of the child for purposes of determining issues of custody and parenting time, the [district] court must consider and evaluate all relevant factors, including” 12 factors set forth by statute. Minn. Stat. § 518.17, subd. 1(a). “The court must make detailed findings on each of the factors . . . and explain how each factor led to its conclusions and to the determination of custody and parenting time.” *Id.*, subd. 1(b)(1) (2022). The purposes of these findings are to “(1) assure consideration of the statutory factors . . . ; (2) facilitate appellate review . . . ; and (3) satisfy the parties that” the district court “carefully and fairly considered” its decision. *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976).

Father asserts that the district court’s best-interests findings do not sufficiently “reflect the impact” of residing in Springfield, Illinois. Father also asserts that the district court did not sufficiently “draw [a] nexus” between its findings and its residence decision. Father is correct that a child’s “residence”—which includes the geographic “place” where the child lives—is part of the “custody” decision and must serve the child’s best interests. *See* Minn. Stat. §§ 518.003, subd. 3(c) (defining “[p]hysical custody and residence” as “the routine daily care and control and the residence of the child”), .17, subd. 3(a)(2), (3) (requiring district court “in a dissolution . . . proceeding” to determine “physical custody and residence” by considering child’s best interests) (2022); *Schisel*, 762 N.W.2d at 269-70 (noting that reading “‘residence’ to include ‘place’ is borne out by the custody definitions”). “A proposed change of residence bears directly on several of the best-interests factors in section 518.17.” *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000) (concluding that district court did not abuse

discretion by granting parent physical custody conditioned on residing in Minnesota after granting parent temporary permission to move with child out of state “for employment reasons”).

The district court here found itself in what it considered “the nearly impossible position of . . . craft[ing] a custody and parenting[-]time schedule that will work for this family.” Despite this, the district court made more than adequate best-interests findings, explaining in well-reasoned detail how those findings supported its residence decision. Regarding the child’s physical, emotional, and other needs, the district court noted “the sober and stable lifestyle” that mother has established since moving to Illinois. The district court also noted that if mother’s job “is as flexible as she has represented, . . . she should be prepared to spend more . . . time in Minnesota, while [the child] is spending time with her father.” As a result, the court found that “[t]o uproot [the child][] at this point, and require [mother] to establish a new career, residence, and support system in Minnesota, would not be in [the child’s] best interest.”

With respect to the child’s medical needs, the district court considered that the child “has been seeing the same [medical and dental] providers since she was a newborn and has come to like and trust” them, that father may communicate with them, and that there was “nothing in the record regarding what” providers “would be available . . . if [the child] were to reside in Minnesota.” The district court also found that “Springfield is a safe and more laid-back community than the Twin Cities” and that both communities “have much to offer in the areas of education, parks, arts, and cultural opportunities.” Moreover, the court found that “if [the child] were to reside in Minnesota, [mother] would become the ‘visiting

parent,” and that father “ha[s] the ability to move to Illinois if he want[s] to expand his role as parent.” The district court explained that the child “should not be required to bear the burden of maximizing parenting time with either parent” until a parent moves, and that the parenting-time schedule takes this and other “variables” and “logistics” into account. The court also noted how father “has bonded with [the child] despite geographic challenges.” And the district court found that, in any event, father’s “proposal that [the child] reside in Minnesota was not in keeping with the arrangement that the parties had contemplated before their separation.”

Finally, the district court weighed each best-interests factor as “neutral” or “favor[ing]” mother to varying degrees. This and the district court’s written findings and explanation regarding residence were more than sufficient against the backdrop of the parties’ competing residence positions to accomplish the purposes of written findings. *See Rosenfeld*, 249 N.W.2d at 171.

Father also claims that the district court insufficiently considered the court-appointed custody evaluator’s opinion that it would be in the child’s best interests for the parties to live closer to each other. But at trial, when asked if it would be in the child’s best interests “to remain in Illinois[,]” the custody evaluator answered that she “d[id]n’t know.” Thus, it does not appear that the district court’s residence decision conflicted with the custody evaluator’s recommendations.

Even if the district court’s residence decision and the custody evaluator’s recommendations conflicted, a district court may reject such recommendations if it “provide[s] detailed findings that examine the same factors the custody study raised.” *See*

Rogge v. Rogge, 509 N.W.2d 163, 166 (Minn. App. 1993), *rev. denied* (Minn. Jan. 28, 1994). Here, the custody evaluator based her recommendations on her evaluation of the best-interests factors in section 518.17, subdivision 1(a). And as discussed, the district court made sufficiently “detailed findings that examined the same factors” to determine the child’s residence. *See id.* This included acknowledgment that, while a close relationship with each parent is in the child’s best interests, forcing mother and the child to relocate to Minnesota is not. As a result, the district court’s findings and explanation regarding residence were sufficient under section 518.17, subdivision 1(b)(1).

Alleged prejudice from temporary order regarding residence

A district court “may grant a temporary order” for “custody and parenting time” “pending the final disposition of the proceeding[.]” Minn. Stat. § 518.131, subd. 1(a) (2022). But a temporary order “[s]hall not prejudice the rights of the parties or the child . . . to be . . . adjudicated” later “in the proceeding.” *Id.*, subd. 9(a) (2022). Here, in its final residence decision, the district court relied on circumstances resulting from the child’s life in Illinois like her “medical providers” and general “roots” there. Father argues that relying on these circumstances prejudiced him in violation of section 518.131, subdivision 9(a), because they were “a direct result of the district court’s January 2019 temporary order” permitting mother to reside with the child in Illinois pending final dissolution. For three reasons, we conclude that any prejudice to father within the meaning of section 518.131, subdivision 9(a), does not warrant reversal.

First is the delay in the final residence decision here. As discussed, district courts must base decisions regarding child custody—with which the child’s residence is

intertwined—on the child’s best interests. *See* Minn. Stat. §§ 518.003, subd. 3(c), .17, subds. 1, 3(a)(2), (3); *Schisel*, 762 N.W.2d at 269-70. In cases when there is lengthy delay in the final custody decision due to litigation, custody-related circumstances arising because of the delay have been at least “relevant” if not “crucial” to the child’s best interests—even when an erroneous ruling contributes to the delay through reversal and remand. *Sefkow v. Sefkow*, 427 N.W.2d 203, 211-12 (Minn. 1988) (reversing this court’s ruling that district court could not consider post-separation evidence in determining custody, stating that “events of the past four and one-half years” of litigation were “not only relevant” but were “crucial in determining the child’s best interests”); *Mize v. Kendall*, 621 N.W.2d 804, 809 n.6 (Minn. App. 2001) (noting in dicta that even though “bonding and attachment were attributable to the length of the proceedings[,]” “[i]t is a necessary reality that child-custody litigation includes . . . delay” (citing *Sefkow*, 427 N.W.2d at 212)), *rev. denied* (Minn. Mar. 27, 2001); *Wopata v. Wopata*, 498 N.W.2d 478, 483 (Minn. App. 1993) (reversing district court’s custody decision and concluding that remand was necessary in part due to lack of record evidence of “events that ha[d] affected . . . the lives of the . . . children during the inappropriately lengthy passage of time” since “record . . . closed two years” earlier and district court “issu[ed] . . . original decree”); *Heard v. Heard*, 353 N.W.2d 157, 162 (Minn. App. 1984) (reversing custody award based on clearly erroneous findings and instructing district court on remand to consider and receive any evidence on “events since trial”).

Here, the parties permanently separated in July 2018, commenced this heavily litigated proceeding in November 2018, received a temporary decision on custody and

residence in January 2019, and did not receive a final decision on custody and residence until December 2021. This delay is well over that anticipated by Minnesota’s “strong policy . . . supporting prompt determination of child[-]custody matters.” *Johnson v. Johnson*, 363 N.W.2d 355, 357 (Minn. App. 1985), *rev. denied* (Minn. May 6, 1985). And the Illinois-related circumstances at issue were important to the child’s best interests.

Second, even if we assume that considering these circumstances prejudiced father within the meaning of section 518.131, subdivision 9(a), ignoring them would have significantly prejudiced the child’s best interests in the same way. *See Black’s Law Dictionary* 1428 (11th ed. 2019) (defining “prejudice” in this context as “[d]amage or detriment to one’s legal rights or claims”); *The American Heritage Dictionary of the English Language* 1389-90 (5th ed. 2011) (defining “prejudice” as “[d]etriment or harm caused to a person, especially in a legal case”). And “[w]hen a district court is deciding a custody dispute, a child’s best interests [are] the court’s paramount commitment.” *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019); *see also Frank-Bretwisch v. Ryan*, 741 N.W.2d 910, 916 (Minn. App. 2007) (first citing *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995); and then citing *Flint v. Flint*, 65 N.W. 272, 273 (Minn. 1895)) (relying on “[a]n extensive line of precedent show[ing] long and unambiguous judicial commitment to the precept that a child’s best interests are the court[’]s paramount consideration in addressing child-related questions” and “outweigh” parental statutory rights).

Therefore, we cannot agree that section 518.131, subdivision 9(a), absolutely prohibits district courts from incidentally causing prejudice to a parent by considering facts

arising from a temporary order to further the child’s best interests. Indeed, the statute’s terms prohibit causing prejudice to “the rights of the parties *or the child* . . . to be . . . adjudicated” later “in the proceeding.” Minn. Stat. § 518.131, subd. 9(a) (emphasis added). Yet we find no applicable statutory definition of “prejudice” to limit how causally attenuated a prejudicial fact may be from a temporary order while still being prohibited from consideration.

Third, any prejudice to father was minimal against the alternative prejudice to the child’s best interests. Specifically, the district court substantially considered factors beyond the child’s rootedness in Illinois when designating her residence there. And father has not argued that any finding underlying those other factors was clearly erroneous.

We emphasize that we do not define “prejudice” under section 518.131, subdivision 9(a). We merely conclude that the district court did not reversibly prejudice father given (1) the length of the delay between the parties’ separation, the commencement of the proceeding, the temporary order, and the final residence decision; (2) the primacy of the child’s best interests and the importance to them of circumstances arising after the temporary order here; and (3) any prejudice to father being minimal compared to the alternative prejudice to the child’s best interests.

Presumption of 25% parenting time

Additionally, father contends that the district court provided faulty reasons for ruling that mother rebutted the presumption that father would receive “a minimum of 25[%] of the parenting time” under Minn. Stat. § 518.175, subd. 1(g) (2022). The district court must “demonstrate an awareness and application of the 25% presumption when the issue

is appropriately raised and the court awards less than 25% parenting time.” *Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010). To do this, “the district court must identify both its decision . . . as well as the underlying reason(s) for that decision.” *Id.* But the presumption “does not restrict the bases for reducing parenting time.” *Id.* at 218. District courts have “broad discretion” and “flexibility in weighing the evidence and the presumption” when its “reasons relate[] to the child’s best interests and considerations of what is feasible given the circumstances of the parties.” *Id.* at 218-19.

Here, the district court stated that “many factors support[ed]” awarding father less than 25% of the parenting time. One such factor was the child’s age, who was at the time “only” three years old. The district court also considered “the parties[’] reside[n]ces in . . . different states with eight hours of travel time between them; the time off required to allow parenting time to happen; and the[n] [-]ongoing concerns regarding the [COVID-19] pandemic.” The record supports each of these concerns, as the custody evaluator explained in her initial report that too much travel “will likely become stressful for th[e] very young child,” which relates to the child’s best interests. And father does not dispute that more parenting time would require more time off from work, which at least relates to what is feasible given the parties’ circumstances. The custody evaluator also noted in her final report that “[t]he COVID-19 pandemic ha[d] disrupted [father’s] parenting time” and that “both parents share[d] concern regarding the child traveling to and from St. Paul” during the pandemic. This relates to both the child’s safety as part of her best interests, as well as what is feasible given the parties’ circumstances. Moreover, the district court explained that it “envision[ed]” father’s “parenting time . . . increas[ing] over time,” such as through

“expanding [father]’s parenting time during the summer,” “ultimately allowing for a minimum of 25[%].”

The above reasoning did not depend on a misapplication of law or clear error and did not contradict logic or the facts on record; therefore, the district court did not abuse its discretion by ruling the 25% presumption rebutted. *See Woolsey*, 975 N.W.2d at 506; *Hagen*, 783 N.W.2d at 215.

Specificity of parenting-time schedule

Father also claims that the parenting-time schedule set by the district court is insufficiently “specific” under Minn. Stat. § 518.175, subd. 1(e) (2022). Even if the schedule lacks specificity, the specificity requirement does not apply when the district court “reserve[s] a determination as to the future establishment or expansion of a parent’s parenting time.” Minn. Stat. § 518.175, subd. 1(a), (e) (2022). Here, the district court gave the schedule an expiration date and directed the parties, with “the assistance of a parenting consultant,” to create “a different schedule that does not interrupt [the child]’s school schedule.” The district court additionally stated that it “envision[ed] that [father]’s parenting time will increase over time,” as discussed, and that father’s current amount of overnight and vacation parenting time “should be considered a minimum.” We read these statements to imply that the district court reserved a future determination as to expanding father’s parenting time if the parties cannot agree on a parenting schedule. *Cf. Kremer v. Kremer*, 827 N.W.2d 454, 462 (Minn. App. 2013) (stating that “although the district court did not specifically address the effect of mother’s relocation . . . consideration of mother’s location is implicit in the district court’s analysis of the best-interests factors”), *rev. denied*

(Minn. Apr. 16, 2013); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (holding that “district court’s findings implicitly indicate[d] that [it] found . . . testimony credible”). Therefore, the specificity requirement does not apply to the parenting-time schedule set by the district court.

Even so, father asserts that the parenting-time schedule is defective because it does not specify “what standard will govern” any later motion to modify parenting time. We disagree. First, the current parenting-time schedule from the dissolution judgment is the “baseline” for any future motion to modify parenting time because that schedule is within “the last permanent and final order setting parenting time.” *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009).

Second, section 518.175, subdivision 1(a), specifies that when, as here, the district court reserves a future parenting-time determination, “the best[-]interest standard set forth in subdivision 5, paragraph (a), shall be applied to a subsequent motion to . . . expand parenting time.” Anomalously, subdivision 5(a) does not contain any best-interests standard and requires only that “the number of overnights or overnight equivalents” be ascertainable from the parenting plan or parenting-time order. *See* Minn. Stat. § 518.175, subd. 5(a) (2022). But subdivision 5(b) requires the district court to “modify . . . an order granting or denying parenting time, if the modification would not change the child’s primary residence.” *Id.*, subd. 5(b) (2022). The legislature placed this provision in subdivision 5(a) when it enacted subdivision 1(a)’s provision permitting the district court to reserve a future parenting-time determination and referencing subdivision 5(a)’s best-interests standard. 2014 Minn. Laws ch. 197, § 2, at 414-15. Later, the legislature moved

subdivision 5’s best-interests standard to its current place in subdivision 5(b) but did not amend subdivision 1(a)’s reference to this standard accordingly. 2016 Minn. Laws ch. 189, art. 15, § 16, at 1116.

“When two or more amendments to the same provision of law are enacted at . . . different sessions, one amendment overlooking and making no reference to the other . . . , the amendments shall be construed together, if possible, and effect be given to each.” Minn. Stat. § 645.33 (2022). Here, when the legislature moved section 518.175, subdivision 5(a) to subdivision 5(b) in 2016, it apparently overlooked, and did not reference, its 2014 amendment to section 518.175, subdivision 1(a), permitting the district court to reserve a future parenting-time determination and referencing the best-interests standard in subdivision 5(a). Construing these amendments together and to give effect to subdivision 1(a)’s reference to subdivision 5(a)’s best-interests standard, we conclude that this reference in fact incorporates the best-interests standard in subdivision 5(b).² That standard governs any future motion to modify parenting time in this matter. Therefore, to the extent that specificity is required in the parenting-time schedule set by the district court, that schedule suffices. The district court did not abuse its discretion by setting that schedule.

Scope of parenting-consultant agreement

Father claims that the district court “shift[ed] the responsibility for future parenting time onto” a parenting consultant beyond the scope of the parties’ general agreement to

² We recently reached the same conclusion in another nonprecedential opinion. *Bono v. Hedberg*, No. A20-0283, 2020 WL 6391290, at *4-5 (Minn. App. Nov. 2, 2020).

appoint a parenting consultant. Generally, a district court “cannot . . . impose conditions on the parties to which they did not stipulate.” *Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000). Whether the final dissolution judgment unambiguously did that here by granting the parenting consultant power beyond the scope of the parties’ agreement “is a legal question.” *See Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005).

Father concedes that he and mother “agreed in principle to the idea of a parenting consultant” but claims that they did not agree on the parenting consultant’s powers. However, after father filed this appeal, the parties stipulated to the parenting consultant’s “scope of authority” to include the powers that father claims the district court granted. Notwithstanding, the unambiguous terms of the dissolution judgment do not grant the parenting consultant any more than advisory authority. The district court merely ordered a procedure for the parties to appoint a parenting consultant, noting in its factual findings that the parties “agreed to use a [p]arenting [c]onsultant to decide ongoing parenting[-]time disputes . . . and to review the parties’ parenting[-]time schedule.” And the district court’s parenting-time order specifies that “any directive from a [p]arenting [c]onsultant” will bind the parties only if they “clear[ly] and explicit[ly]” agree “to be bound by such a directive.” The district court did not grant the parenting consultant authority beyond the scope of the parties’ agreement.

Child support

Finally, father challenges the district court’s order for him to pay “back child support” accruing before mother filed for dissolution, before the parties separated, and before the child’s birth. He also claims that the district court erred by ordering him to pay

back child support at “20% of the total arrearage” per month. “The [district] court has broad discretion in determining child[-]support obligations and its decision will not be reversed absent an abuse of that discretion.” *Korf v. Korf*, 553 N.W.2d 706, 708 (Minn. App. 1996).

Child support for time before dissolution filing, before separation, and before the child’s birth

In *Korf*, we held that the district court may award “retroactive child support . . . as part of the final [dissolution] decree.” *Id.* at 710. In that context, “the district court is free to apply the” general rule “that a parent’s child[-]support responsibilities begin at the child’s birth.” *Id.* (quotation omitted). “[T]he [district] court may consider all payments made by the obligor since . . . the separation and address all of the parties’ concerns in a single action . . . with full consideration of all the facts and circumstances.” *Id.* at 710-11 (quotation omitted).

Here, the district court subtracted “all child[-]support payments [father] paid” during the back-child-support period from what it found that he would have paid during that period under the child-support guidelines. The district court imposed the difference as back child support. This reasoning is sufficient to order child support accruing before mother filed for dissolution given that the *Korf* court held it sufficient that the district court “implicitly considered. . . retroactive child support.” *Id.* at 711. And *Korf* did not limit the district court’s discretion to order retroactive child support for time when the parties were not “separated.” *Korf* permits consideration of “all of the facts and circumstances” and merely involved a discernible “separat[ion] on or about June 1, 1992.” *Id.* at 708, 711

(quotation omitted). As this case shows, the time of “separation” can be ambiguous. Mother and the child resided in Springfield for over a month before residing with father for a sliver of the child-support period found by the district court.

As discussed further below, the district court erroneously suggested that any retroactive child support was past due by referring to it as “back child support” to be “collected” as an “arrearage.” But using imprecise language was harmless in determining when child support began accruing because the district court could permissibly order retroactive child support. *See id.* at 711 n.3 (citing Minn. R. Civ. P. 61) (disregarding error in finding father “in arrears” as harmless in that case). Therefore, the district court did not abuse its discretion by ordering father to pay child support accruing before mother filed for dissolution, before the parties “separated,” and after the child’s birth.

But the district court purportedly ordered father to pay mother back child support beginning to accrue on April 1, 2018. It is not clear whether the district court actually intended to order child support accruing that far back when the district court’s factual findings indicate that it calculated child support as beginning to accrue on May 23, 2018. Regardless, the district court erroneously calculated child support as beginning to accrue before the child’s birth on May 31, 2018.

Under other circumstances, we might decline to reverse the district court’s potentially de minimis miscalculation. *See Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009). But as discussed further below, a remand is necessary for the district court to reconsider the payment schedule for any retroactive child support owed by father because a retroactive child-support obligation is not necessarily an “arrearage.” We therefore

reverse the district court’s calculation of child support as beginning to accrue before the child’s birth. On remand, the district court should reconsider when father’s child-support obligation began accruing and his resulting obligation.

Payment schedule

Father challenges the payment schedule for “back child support,” arguing that the district court erroneously identified his back-child-support obligation as an “arrearage.” We agree. The district court ordered father to pay a “total monthly support obligation” progressing over time from \$1,725 to \$1,773. The district court separately ordered that \$19,131 in “back child support” “be collected” from father at what the district court identified as “the statutory rate of 20% of the total arrearage” per month. *But cf.* Minn. Stat. §§ 518A.53, subd. 10, .60(e) (2022) (suggesting that statutory rate for collecting arrears is 20% of monthly support obligation, not of arrearage). While the district court did not cite which statute(s) it relied on, it apparently relied on child-support-collection provisions that apply only to “arrearage[s].” *See* Minn. Stat. §§ 518A.53, subd. 10, .60(e). This was error. Father “could not have been in arrears . . . because he was never given an opportunity to pay” retroactive child support under an existing “support order.” *See* Minn. Stat. § 518A.26, subd. 3 (2022) (defining “[a]rrears”); *County of Nicollet v. Haakenson*, 497 N.W.2d 611, 616 (Minn. App. 1993).

We therefore reverse the back-child-support payment schedule set by the district court and remand. On remand, the district court should set a payment schedule for any retroactive child support owed by father under the child-support guidelines or in deviation therefrom after appropriate findings. *See* Minn. Stat. §§ 518A.35, subd. 1(a) (“The

guideline in this section is a rebuttable presumption and shall be used in any judicial . . . proceeding to establish or modify a support obligation under this chapter.”), .37, subd. 2 (requiring additional written findings to support deviation from child-support guidelines) (2022). Because we are remanding on this point, we express no opinion on what the payment amount and schedule should be. Nor do we decide whether the district court may or must reconsider father’s child-support payment schedule as a whole to conform with or permissibly deviate from the child-support guidelines.

Affirmed in part, reversed in part, and remanded.