

*This opinion is nonprecedential except as provided by  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  
A22-0247**

In re the Marriage of:

Kevin Eric Alstrin, petitioner,  
Appellant,

vs.

Allison Lynn Alstrin,  
Respondent,

Carver County,  
Respondent.

**Filed November 21, 2022  
Reversed and remanded  
Cochran, Judge**

Carver County District Court  
File No. 10-FA-11-580

Kevin Alstrin, Excelsior, Minnesota (pro se appellant)

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Minnesota (for respondent Allison Alstrin)

Mark Metz, Carver County Attorney, Jennifer Cooklock, Assistant County Attorney,  
Chaska, Minnesota (for respondent Carver County)

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and  
Hooten, Judge.\*

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

## NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this child-support dispute, appellant-father challenges a district court order granting in part father's motion to modify child support based on changes due to father's unemployment. Father argues that the district court abused its discretion by (1) declining to modify father's child-support obligation while he was unemployed but receiving severance pay and (2) including a "revert back" provision. We reverse and remand.

### FACTS

Appellant Kevin Alstrin (father) and respondent Allison Alstrin (mother) married in 2005 and had three children together. They divorced in 2012. In the stipulated judgment and decree dissolving their marriage, the district court granted mother sole physical custody of the parties' children, granted the parties joint legal custody of the children, established a schedule for shared parenting time, and ordered father to pay child support. Under the terms of the dissolution decree, father was also responsible for providing medical insurance coverage for the children. Since then, the district court has issued several orders modifying child support and/or parenting time. The relevant orders are summarized below.

#### *2019 Child-Support Order*

In January 2019, father filed a motion to modify parenting time and child support, seeking equal parenting time. Mother opposed the motion. In February 2019, the district court filed an order granting father's motion in part by increasing his parenting time from 104 to 120 overnights with the children per year. In its order, the district court adjusted father's child-support obligation downward to reflect father's increase in parenting time.

The district court's order also assumed that father would continue to provide medical insurance coverage for the children through his employer.

#### *2020 Modification of Parenting Time*

In March 2020, the parties agreed through mediation to modify the parenting-time schedule again. After mother later objected to some of the terms of the agreement, father filed a motion to enforce the mediation agreement and modify the parenting-time schedule to further increase his parenting time.

In October 2020, the district court filed an order modifying the parenting-time schedule based on the agreement the parties had reached in mediation. The order increased father's parenting time to 156 overnights with the children per year. The order also stated, as stipulated by the parties, that "[t]he modification of parenting time as outlined in this order[] *in itself* does not create a substantial change of circumstances for modification of the parties' child support obligation." (Emphasis added.) As a result, no change to father's child-support obligation was included in the 2020 stipulated order.

#### *2021 Order Modifying Child Support*

In March 2021, father filed a motion to modify child support based on a substantial change in circumstances after he was laid off from his job. Mother opposed father's motion for several reasons, including that father was provided with 17 weeks of severance pay and because he "unilaterally reduced his contribution to child support" beginning April 1. The district court held a motion hearing in June 2021.

In January 2022, the district court issued findings of fact and an amended order granting father's motion for modification in part. In its amended order, the district court

found that father's unemployment constituted a substantial change in circumstances. The district court also found that the need to modify which parent was responsible for health insurance coverage constituted a substantial change in circumstances. And the district court made the following related factual findings: (1) the parties agreed that, with father's layoff, mother would begin covering the children on her health insurance plan; (2) father received severance pay at the level of his former salary for 17 weeks after he was laid off; (3) after the severance ran out, father began receiving unemployment benefits; (4) the district court was satisfied that father's job search for like-kind employment was in good faith; but (5) father was "capable of finding employment in a position below his prior level" and had not made sufficient efforts to do so.

Based on these findings, the district court concluded that father's child-support obligation should vary over three discrete time periods. First, the district court ordered father's basic support obligation to remain the same as it was under the 2019 child-support order (\$1,704 per month) for the time during which he received severance pay, adjusting only his medical support obligation to reflect the change in the children's health insurance. Second, the district court ordered a significant reduction in father's child-support obligation for the first three months that he remained unemployed after his severance ran out—setting the amount at \$197 per month (\$127 in basic support and \$70 in medical support). Third, the district court ordered an increase in father's child-support obligation starting in October 2021 to \$979 per month (\$865 in basic support and \$114 in medical support), based on its finding that father could find a new job "in a position below his prior [job-classification] level." The district court also ordered that father's child-support

obligation would “revert back to the previously ordered amount” once father’s monthly income reattained the level on which the 2019 child-support order was based. The district court denied father’s request for reconsideration.

Father appeals.

## DECISION

Father challenges the district court order modifying his child-support obligation. We review district court orders modifying child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). And we review district court decisions regarding medical insurance coverage for an abuse of discretion. *Casper v. Casper*, 593 N.W.2d 709, 714 (Minn. App. 1999). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

### *Minnesota’s Child-Support Framework*

Before we address father’s specific arguments regarding the modification of his child-support obligation, we begin our analysis with an overview of the statutory provisions governing child support. Under Minnesota law, “child support” refers to the aggregate amount a district court may order a parent to pay in a dissolution proceeding for the continuing “care, support and education of any child of the marriage.” Minn. Stat. § 518A.26, subd. 20(1) (2020). That aggregate amount includes three separate categories of support: basic support, child-care support, and medical support. *Id.* Minnesota’s child-support guidelines set forth the procedure for calculating a parent’s

presumptive child-support obligation. Minn. Stat. §§ 518A.34-.35 (2020); *see also* Minn. Stat. § 518A.34(f) (“The court shall determine each parent’s total child support obligation by adding together each parent’s basic support, child care support, and health care coverage obligations as provided in this section.”). If a district court deviates from the presumptive child-support obligation calculated under the guidelines, it must make written findings that state, among other things, the reasons for the deviation and how the deviation serves the best interests of the child(ren). Minn. Stat. § 518A.37, subd. 2(4)-(5) (2020).

A district court may modify an existing child-support order if the moving party shows that a substantial change in circumstances has occurred that makes the terms of an existing order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2020). The modification statute lists eight types of changes that can qualify for modification, including a substantial change in the obligor’s income and a change in the availability of appropriate health insurance coverage for the child(ren). *Id.* The moving party has the burden of proving both 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).

The modification statute also provides for a presumption that a substantial change in circumstances has occurred and a rebuttable presumption that the change renders the terms of an existing support order unreasonable and unfair in some cases. Minn. Stat. § 518A.39, subd. 2(b) (2020). These presumptions are triggered if the application of the child-support guidelines to the parties’ current circumstances results in a calculated child-support order that is at least 20% and at least \$75 per month higher or lower than the

existing support order. *Id.*, subd. 2(b)(1). The same presumptions are triggered if the health insurance coverage that an existing support order requires a parent to provide is no longer available. *Id.*, subd. 2(b)(3). If the presumptions are triggered, the burden then shifts to the other parent to show that the terms of the existing child-support order are not unreasonable or unfair. *Id.*, subd. 2(b).

*Substantial Changes and 2022 Modification of Child Support*

As noted above, the district court found that two substantial changes in circumstances had occurred since it issued the prior child-support order in 2019 that necessitated modification of the prior child-support order. Namely, father had become unemployed and, as a result, there was a need to modify which parent would be responsible for the children's health insurance coverage going forward. Based on these findings, the district court modified the prior child-support order for three discrete periods of time: the severance period (from April through June 2021), the three months immediately following the severance period (from July through September 2021), and the period of time from October 1, 2021 onward. The district court also ordered that father's "[child] support shall revert back" to the 2019 amount once his income reached its prior level.

On appeal, father challenges two aspects of the support-modification order: the severance-period obligation and the "revert back" provision. We conclude that both challenges have merit.

**I. The district court abused its discretion in setting father's child-support obligation during the severance period.**

Father first challenges the district court's decision regarding the severance period. He argues that the district court abused its discretion in determining the amount of his child-support obligation for the severance period because the district court failed to recalculate his child-support obligation under the statutory guidelines and, as a result, failed to account for the changes that had occurred since the prior child-support order was issued in 2019.

With respect to the severance period, the district court found that father's income had increased from \$11,447 per month to \$13,332 per month since the prior child-support order and that mother's income had remained essentially the same. Based on these findings, the district court determined that it was "non-sensical to decrease the prior award during [the severance] period." The district court stated that it "could conceivably *increase* [father's] support *based on the prior findings and order*," but it declined to do so "given [father's] impending unemployment." (Emphasis added.) Instead, the district court ordered father's basic support obligation to "remain as previously ordered" until his severance pay ran out. The district court also ordered a separate amount added to father's arrears based on mother's coverage of the children's health insurance during the severance period.

Father argues that by ordering his child-support obligation to "remain as previously ordered" for the severance period, the district court effectively set his child-support obligation for the severance period at a level "which greatly exceeded the threshold for

being considered unfair and unreasonable” under the statutory guidelines. Father does not dispute that his income increased after his support obligation was calculated for the prior child-support order. But he asserts that the district court still ordered an obligation “higher than it should have” under the child-support guidelines because the district court failed to consider changes in other factors, such as the increase in father’s parenting time since the prior order was issued, that would have resulted in a net *decrease* in his child-support obligation under the guidelines. *See* Minn. Stat. §§ 518A.34-.36 (2020). On that basis, father argues that the district court’s decision with respect to the severance period was an abuse of discretion.

For several reasons, we agree that the district court abused its discretion with respect to the severance period. First, the circumstances at issue here triggered the presumption that a substantial change in circumstances occurred *and* the rebuttable presumption that the change rendered the prior child-support order unfair and unreasonable. Those presumptions arose because father had been providing medical insurance coverage for the children through his employer, but his layoff required mother to take over that coverage. Because the prior child-support order required father to provide medical insurance for the children, the need to move the children to mother’s health insurance plan meets the statutory requirement for modification that triggers both presumptions under Minn. Stat. § 518A.39, subd 2(b)(3).<sup>1</sup> And there was *no* finding by the district court that the

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<sup>1</sup> Father argues that these presumptions were also triggered by Minn. Stat. § 518A.39, subd. 2(b)(1), under which the same presumptions arise if application of the child-support guidelines to the parties’ current circumstances results in a calculated child-support obligation at least 20% and \$75 per month higher or lower than the existing child-support

rebuttable presumption that the substantial change in circumstances rendered the prior child-support order unfair and unreasonable had been rebutted. Therefore, father established grounds for modification starting with the severance period.

Second, a district court is required to set an obligor's basic support obligation at the presumptively appropriate amount identified by applying the guidelines process unless the district court identifies a reason to deviate from that amount. *See* Minn. Stat. § 518A.43 (2020) (listing factors that may justify deviation from the presumptive support obligation); Minn. Stat. § 518A.37, subd. 2 (2020) (listing the written findings that must accompany a decision to deviate from the presumptive support obligation); *Hoppenrath v. Cullen*, 383 N.W.2d 394, 396 (Minn. App. 1986) (stating that “[i]f cause for modification [of support] is shown, the [district] court must apply the statutory guidelines [calculation of support based on Minn. Stat. § 518A.34] unless it makes express findings of fact justifying [a] deviation”). Here, the district court's order reflects that the district court did not comply with that requirement. In other words, the district court's order reflects that it did not set father's child-support obligation for the severance period based on a recalculation of that obligation under the statutory guidelines applicable to the parties' circumstances during

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order. To determine whether this requirement has been met, the relevant amount for comparison is the obligor's *total* child-support obligation, not their *basic* support obligation. Minn. Stat. §§ 518A.34-.35; *see also* *Cnty. of Grant v. Koser*, 809 N.W.2d 237, 242 (Minn. App. 2012) (explaining that the support statutes contemplate “including all adjustments made to the guidelines ‘basic support’ amount” when determining whether the presumptions apply), *abrogated on other grounds by In re Dakota Cnty.*, 809 N.W.2d 905, 911 (Minn. 2015). Here, therefore, applying the child-support guidelines to the circumstances existing during the severance period does not meet the 20% requirement. Instead, as father acknowledges, the change to father's total presumptive child-support obligation was approximately 18%.

that period. Nor did the district court provide findings to support a deviation from the guidelines. Instead, the district court retained the prior child-support obligation for the severance period based on findings in the prior child-support order and the circumstances existing in 2019.

Third, and relatedly, the district court abused its discretion because it did not account for the intervening change to the parties' parenting-time split—one of the statutory factors affecting the guidelines calculation. *See* Minn. Stat. § 518A.36, subd. 1(a) (explaining the “parenting expense adjustment” made to the basic support calculation based on parenting time). Specifically, in retaining the prior basic support level set in the 2019 order, the district court looked only to the changes in the parties' incomes and failed to consider the increase in father's parenting time from 120 overnights in February 2019 to 156 overnights in October 2020. An accurate recalculation of father's total presumptive support obligation under the statutory guidelines for the severance period—considering the subsequent increase in his salary, the change in parenting time established in October 2020, and the change in health insurance prompted by father's unemployment—produces a total presumptive support obligation of \$1,366 per month, a significant decrease from the \$1,704 (minus \$42 in medical support owed by mother) per month required by the prior child-support order. *See* Minn. Stat. § 518A.35 (setting forth the guideline used to calculate basic support); Minn. Stat. § 518A.36 (requiring every child-support order to “specify the percentage of parenting time granted to or presumed for each parent” and setting forth the formula used to incorporate this percentage into the calculation of a parent's basic support obligation). The district court therefore deviated from father's

presumptive child-support obligation under the guidelines by deciding not to modify his existing support obligation during the severance period. The district court also did not make the requisite findings to explain this deviation under Minn. Stat. § 518A.37, subd. 2. Accordingly, we conclude that the district court's decision with respect to father's child-support obligation for the severance period was an abuse of discretion.

We are not persuaded otherwise by mother's argument that the district court was precluded by the October 2020 order from factoring the parenting-time increase into its calculation of father's child-support obligation for the 2021 severance period. Mother bases her argument on the provision in the October 2020 order that states: "The modification of parenting time as outlined in this order[] *in itself* does not create a substantial change of circumstances for modification of the parties' child support obligation." (Emphasis added.) Father argues that, although he agreed not to seek modification of support based on the parenting-time change at that time, the stipulation "did not preclude a child support modification to be made in the future given the existence of other substantial changes in circumstances." We agree.

The language of the stipulated provision makes clear that the October 2020 order's modification of parenting time did not "*in itself*" create a substantial change of circumstances justifying a modification of child support *at that time*. (Emphasis added.) But the language of the provision does not preclude the district court from incorporating the parenting-time change in any future modification of child support triggered by a new substantial change in circumstances. And while "a stipulation is one factor to be considered in modification motions, child support relates to nonbargainable interests of children and

is less subject to restraint by stipulation than are other . . . matters.”  
*O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004) (quotation omitted).

Here, the district court found that new and independent changes in circumstances occurred when father lost his job and mother had to take over the children's medical insurance coverage. The district court therefore should have considered and incorporated the October 2020 change in parenting time, as required by the child-support guidelines, when it calculated father's support obligation for the severance period. *See* Minn. Stat. § 518A.36.

For these reasons, we conclude that the district court abused its discretion by deciding not to modify father's child-support obligation for the severance period, and thereby effectively deviating from father's presumptive support obligation under the child-support guidelines without making the necessary findings to explain that deviation.

**II. The district court abused its discretion by ordering father's future support obligation to “revert back” to the prior amount once father reattained his prior income level.**

In addition to challenging the child-support obligation for the severance period, father also challenges the “revert back” provision of the modification order. Under the terms of the order, father's child-support obligation was reduced after the severance period expired. The order further provides that once father reattains his 2019 income level, his child-support obligation shall “revert back to the previously ordered amount.”

Father argues that the district court abused its discretion by including the “revert back” provision in the modification order. Father asserts that it was improper for the district court to determine his future support obligation based solely on reattainment of a

prior income level “because it is never possible to know for certain that all other variables [will] remain the same as those documented at the time the [2019] order was originally set.” We agree.

We find father’s argument persuasive for two key reasons. First, as discussed above, we conclude that the stipulated provision in the October 2020 order—which stated that the change in parenting time alone was not a substantial change in circumstances justifying modification of support at that time—does not preclude the district court from considering the parenting-time change in a recalculation of child support following a new substantial change in circumstances. And making that recalculation using the parties’ existing parenting-time split produces a presumptive child-support obligation that is substantially lower than the amount the district court ordered through its reversion provision.

Second, when father reattains his prior income level, elements of the support calculation other than parenting time may also differ from what they were in the past. These differences could affect father’s presumptive child-support obligation under the statutory guidelines. *See* Minn. Stat. §§ 518A.34-.35. For example, the district court cannot know—and the reversion provision therefore cannot account for—father’s exact future income, mother’s exact future income, any future adjustments to the parenting-time split, whether and at what cost health insurance will be available to father, and any other potential substantial changes in circumstances that would affect the future support obligation. Accordingly, we conclude that the district court abused its discretion by

ordering father's child-support obligation to revert to the amount specified in the prior child-support order once his income reached its prior level.

We are not persuaded otherwise by mother's argument that "a temporary reduction in support until father returned to his prior earnings level was prudent and equitable but [did] not mandate a total modification of support." To support that argument, mother relies on *Anderson v. Anderson*, 421 N.W.2d 410 (Minn. App. 1988). That case concerned a district court's "pattern of permitting appellant to temporarily reduce his support payments during times of economic adversity while accumulating arrearages . . . deferred until a later hearing." *Anderson*, 421 N.W.2d at 412 (emphasis omitted). This court determined in *Anderson* that a six-month reduction in a support payment was not a modification of the support obligation within the meaning of the modification statute. *Id.* *Anderson* is inapposite. Here, the district court explicitly modified father's child-support obligation for a period of time until father returned to his prior earnings level and did not order any increase in arrears based on that reduction.

### *Conclusion*

In sum, we conclude that the district court abused its discretion in setting father's child-support obligation during the severance period because its decision amounted to a deviation from the child-support guidelines without the necessary findings to support that deviation. We further conclude that the district court abused its discretion by ordering father's child-support obligation to "revert back" to the amount specified in the prior child-support order once his income reached its prior level. We therefore reverse and remand to the district court to reevaluate father's child-support obligation for the relevant

periods in a manner consistent with this opinion. In doing so, the district court may reopen the record as necessary.

We note that father filed, and then voluntarily withdrew, another motion to modify child support while this appeal was pending. In that motion, father indicated that he is reemployed and that his income now exceeds the level used to calculate his support obligation for the 2019 child-support order. Given this latest change in circumstances, the district court has discretion on remand to modify support effective as of the date of that motion to modify support. *See Kemp v. Kemp*, 608 N.W.2d 916, 920-21 (Minn. App. 2000) (holding that a district court has the discretion to set an effective date for modification of spousal maintenance that post-dates the filing of the motion).

**Reversed and remanded.**