

*This opinion is nonprecedential except as provided by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**

A22-1061

A22-1261

In re the Marriage of: Heather Grace Robbins, petitioner,
Respondent,

vs.

Jeremy Jay Robbins,
Appellant,
and
Washington County,
Respondent.

Filed April 17, 2023

Affirmed

Larson, Judge

Washington County District Court
File No. 82-FA-16-2441

Heather Grace Robbins, Lake Elmo, Minnesota (pro se respondent)

John M. Jerabek, Tuft, Lach & Jerabek, P.L.L.C., Maplewood, Minnesota (for appellant)

Kevin Magnuson, Washington County Attorney, Abigail C. Maurish, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Jeremy Jay Robbins (father) challenges the district court's decision denying his motion to modify parenting time and child support and awarding need-based attorney fees to respondent Heather Grace Robbins (mother). Because the district court did not abuse its discretion when it denied father's motion and ordered need-based attorney fees, we affirm.

FACTS¹

The parties were married in 2004 and have four joint minor children. The two youngest children have significant special needs. One child is nonverbal, and both have significant cognitive delays. Neither child will be independent or self-supporting.

In May 2016, mother petitioned the district court to dissolve the parties' marriage. The district court entered its stipulated findings of fact, conclusions of law, order for judgment, and judgment and decree (J&D) in December 2016. The district court ordered joint legal and joint physical custody of the parties' children.

With respect to child support, the parties stipulated that father's "gross income for purposes of calculating child support [was] approximately \$300,000 per year, or \$25,000 per month." And mother's gross income for child-support purposes was \$12,000 per year, or \$1,000 per month.² Based on the parties' stipulations, the parties agreed that father's presumptive child-support obligation would be \$3,428 per month. *See* Minn. Stat.

¹ The parties stipulated to the following facts on appeal.

² Wife's income is based on husband's monthly \$1,000 spousal-maintenance payment.

§ 518A.34 (2016). But because the parties' two youngest children have significant needs, father agreed to an upward deviation from the presumptively appropriate guideline child-support obligation. *See* Minn. Stat. § 518A.43, subd. 1 (2016). Thus, the parties stipulated, and the district court ordered, that father make monthly \$6,000 child-support payments and an additional \$10,000 child-care payment annually.³ Father agreed to maintain medical and dental insurance for the parties' four children, as well as to pay 100% of the children's unreimbursed medical and dental expenses.

Regarding parenting time, the parties stipulated, and the district court awarded, mother parenting time with the children on weekdays and one of every four weekends. Father received parenting time with the children three of every four weekends from Friday at 5:00 p.m. through Monday morning at 7:30 a.m. and six weeknights per month, including overnights.⁴

As relevant to this appeal, in December 2020, father moved the district court to modify the parenting-time schedule and child support. Father asked the district court to modify the parenting-time schedule to every Friday at 5:00 p.m. until Monday at 9:30 a.m. Father also sought to dramatically decrease his child-support obligation and terminate his child-care-support obligation.

³The J&D expressly stated, "[Father] shall, in addition to his obligations set forth herein, pay to [mother] additional child support of \$10,000 in two equal installments . . . every year provided [father]'s gross annual income is greater than \$250,000 and [mother] is not earning more than \$100,000, is remarried or cohabitating."

⁴ The J&D also established a holiday and vacation schedule.

The district court held a hearing. After the hearing, the district court issued an order denying father's motions and awarding mother need-based attorney fees, even though she did not seek this relief. In compliance with the order, mother submitted supporting affidavits regarding attorney fees associated with these proceedings. The district court subsequently ordered father to pay mother \$27,955.50 in need-based attorney fees.

Father appeals.

DECISION

Father challenges the district court's decision to deny his motion to modify parenting time and child support, and to award mother need-based attorney fees. We review the district court's ultimate decision on these issues for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013) (child-support modification); *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (parenting-time modification); *Muschik v. Conner-Muschik*, 920 N.W.2d 215, 225 (Minn. App. 2018) (need-based attorney fees). "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). We review a district court's factual determinations underlying these issues for clear error. *Haefele*, 837 N.W.2d at 708; *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978); *Muschik*, 920 N.W.2d at 225. When applying the clear-error standard, we view the evidence in the light most favorable to the district court's findings and do not reweigh the evidence or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see also Bayer v. Bayer*, 979 N.W.2d 507, 513

(Minn. App. 2022) (citing *Kenney* in a family law appeal). “We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *Kenney*, 963 N.W.2d at 221 (quotation omitted). We review father’s arguments in turn below.

I.

Father first challenges the district court’s decision to deny his motion to modify parenting time. Section 518.175 of the Minnesota Statutes governs a motion to modify a parenting-time schedule. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018); Minn. Stat. § 518.175 (2022). As relevant here, Minn. Stat. § 518.175, subd. 5(b), provides:

If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child’s primary residence. Consideration of a child’s best interest includes a child’s changing developmental needs.

The moving party bears the burden to establish the proposed modification is in the best interests of the children. *See Griffen*, 267 N.W.2d at 735 (stating that the party seeking to modify a previous order has the burden to establish that the proposed modification is in the child’s best interests).

Father argues the district court legally erred when it denied his motion to modify the parenting-time schedule because it failed to apply the best-interests factors found in Minn. Stat. § 518.17 (2022). Father contends that the appropriate remedy is to remand to the district court to properly apply the best-interest factors. We review this issue *de novo*. *Hansen*, 908 N.W.2d at 596.

In *Hansen*, the supreme court held that “Minn. Stat. § 518.17 applies to the creation and *initial* approval of parenting plans, but Minn. Stat. § 518.175 . . . governs parenting time modifications.” *Id.* There, the supreme court interpreted Minn. Stat. § 518.175, subd. 8, which provides that “[t]he court may allow additional parenting time to a parent to provide child care while the other parent is working if this arrangement is reasonable and in the best interests of the child, *as defined in section 518.17, subdivision 1.*” *Id.* at 594, 597 (emphasis added).⁵ The supreme court held that while Minn. Stat. § 518.175, subd. 8, required the district court to apply the Minn. Stat. § 518.17, subd. 1 definition, it did not compel the district court to make “detailed findings” on each factor. *Id.* at 598. Thus, the supreme court discerned that a district court need only consider “the *relevant* best-interest factors,” when applying Minn. Stat. § 518.175, subd. 8. *Id.* at 599.

Since *Hansen*, we have been reticent to extend the supreme court’s holding that the district court must apply the Minn. Stat. § 518.17 best-interest factors to Minn. Stat. § 518.175, subd. 5(b). *See Guardia v. Mattson*, No. A19-1692, 2020 WL 3172836, at *6-7 (Minn. App. June 15, 2020).⁶ We have noted that unlike Minn. Stat. § 518.175, subd. 8, Minn. Stat. § 518.175, subd. 5(b), does not explicitly reference the definition in Minn. Stat. § 518.17, subd. 1.⁷ *Id.* We also observed that the *Hansen* court specifically limited its

⁵ *Hansen* interpreted the 2016 statutes. The relevant statutory language has not changed since *Hansen*.

⁶ *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

⁷ *Guardia* interpreted the 2018 statutes. The relevant statutory language has not changed since *Guardia*.

analysis to Minn. Stat. § 518.175, subd. 8. *Id.*; *see also Hansen*, 908 N.W.2d at 597 (concluding that this court’s reliance on Minn. Stat. § 518.175, subd. 5 was “misplaced” because Minn. Stat. § 518.175, subd. 8 “is specific to requests for ‘additional parenting time . . . to provide child care while the other parent is working’”). Instead, we have applied the more general rule that a “district court must make sufficient findings to enable appellate review.” *Guardia*, 2020 WL 3172836, at *7 (quoting *Hansen*, 908 N.W.2d at 597 n.2).

In keeping with our prior decisions, we do not discern that the district court legally erred when it did not explicitly apply the best-interest factors in Minn. Stat. § 518.17 to father’s Minn. Stat. § 518.175, subd. 5 motion. Instead, the district court applied the appropriate legal standard, assessing whether the parenting-time modification served “the best interest of the minor child.”

The district court’s findings further show that it evaluated the children’s best interests when it denied the motion. The district court explicitly cited the parties’ competing affidavits regarding the impact a change in parenting time would have on the children. The district court credited mother’s affidavit, indicating that the current parenting-time schedule was in the best interests of the children because it minimized transitions between homes, allowed the children one weekend a month with mother, and prevented a breakdown in the coparenting arrangement. We conclude that these findings are sufficient to enable appellate review, and we discern no clear error in the district court’s findings. Therefore, we affirm the district court’s decision to deny father’s motion to modify parenting time.

Father also argues the district court committed clear error when it calculated parenting time for the purpose of calculating child support. But father premises his argument on the schedule he proposed in his motion to modify parenting time, not on the parenting-time schedule set forth in the J&D. Because we affirm the district court's decision not to modify the parenting-time schedule, there is no parenting-time based reason to modify child support. And to the extent father argues that the district court should have modified child-support obligations based on an alternate parenting-time schedule the parties followed from 2018 to 2021, "a district court must use the court-ordered amounts of parenting time, not the amounts of parenting time actually being exercised" to calculate child support. *Nelson v. Nelson*, 983 N.W.2d 923, 929 (Minn. App. 2022). Therefore, the district court's finding that there was not a parenting-time based reason to modify child support was not clearly erroneous.

For these reasons, we affirm the district court's decision to deny father's motion to modify parenting time.

II.

Father next challenges the district court's decision to deny his motion to modify child support. Under Minn. Stat § 518A.39, subd. 2(a) (2022), a district court may modify a child-support order upon a showing of a substantial change in circumstances that makes the order "unreasonable and unfair." The statute lists eight changes that can qualify for modification, including a substantial increase in the gross income of the obligee—here, mother. Minn. Stat § 518A.39, subd. 2(a)(1). "The party who moves to modify an existing child-support order has the burden of demonstrating both a substantial change in

circumstances and the unfairness and unreasonableness of the order because of the change.” *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009).

Father argues the district court abused its discretion when it denied his request to modify his child-support obligation because a substantial change in circumstances occurred when mother enrolled the two youngest children in the Minnesota Department of Human Services’ developmental disability waiver (DD waiver). According to father, the district court clearly erred when it found the \$35,000 per year mother receives from the DD waiver to provide the children medical care constitutes need-based public assistance, not gross income. *See* Minn. Stat. § 518A.29(a), (h) (2022) (“Gross income does not include . . . other forms of public assistance based on need.”).⁸

We are not persuaded that the district court abused its discretion when it decided the youngest children’s enrollment in the DD waiver did not constitute a substantial change in circumstances. In the stipulated judgment, the parties agreed that, for the purpose of seeking a modification in child support, a “substantial change” to mother’s income occurs when her annual income exceeds \$100,000. Here, as the district court noted, even if the \$35,000 per year mother receives from the DD waiver were considered income, mother’s income would increase from \$12,000 per year to \$47,000 per year. Thus, mother’s annual

⁸ Father also argues that maintaining the current child-support obligation is unreasonable or unfair because father must pay an additional \$9,936.09 a year for the youngest children’s enrollment in the DD waiver. But as the district court correctly noted, the state provides the DD waiver program to individuals based on medical need. And under the J&D, father agreed to pay for all medical costs. Thus, the district court’s finding that father incurring this medical cost has no bearing on father’s child-support obligation is not clearly erroneous.

income would still be \$53,000 short of the “substantial change” requirement both parties agreed to in the stipulated judgment.

For this reason, the district court did not abuse its discretion when it found father failed to carry his burden to show a substantial change had occurred such that it would be unreasonable or unfair to maintain father’s current child-support obligations. *Rose*, 765 N.W.2d at 145. We therefore affirm the district court.

III.

Father challenges the district court’s decision to award mother need-based attorney fees sua sponte. In an action under chapters 518 or 518A, the district court shall award need-based attorney fees if it finds

(1) that the fees are necessary for the good faith assertion of the party’s rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2022).

Father argues the district court abused its discretion when it awarded need-based attorney fees without mother first making a motion. We are not persuaded. Father cites to no caselaw, and we are aware of none, that prohibits a district court from awarding need-based fees in this manner. And, under the unique facts in this case, we are not inclined to reverse the district court solely on the ground that mother did not first make a motion.

Further, even if the district court's decision was an abuse of discretion, based on "the files, the record, and the court's findings," if we were to remand on this point, "the [district] court would undoubtedly" grant mother's motion for need-based attorney fees. *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand a custody-modification case for further findings when "on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result); Minn. R. Civ. P. 61 (requiring that harmless error be disregarded).

Finally, father argues the district court clearly erred when it found mother is unable to pay her legal fees under Minn. Stat. § 518.14, subd. 1. "Conclusory findings on the statutory factors do not adequately support a fee award." *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001). But failure to make specific findings is not fatal to an award "where review of the order reasonably implies that the district court considered the relevant factors and where the district court was familiar with the history of the case and had access to the parties' financial records." *Id.* (quotation omitted).

Here, the district court specifically found (1) father brought a motion to substantially reduce his support obligation; (2) both parties submitted information regarding their financial circumstances that showed a "significant discrepancy in incomes"; and (3) mother remains eligible for medical assistance. Based on these findings, the district court concluded that mother had an "inadequate cash flow" and father "has the means to pay [mother]'s attorney fees." We discern no clear error in the district court's findings. The record supports both the district court's findings that mother lacks the means to pay her attorney fees and illustrates the district court's familiarity with the parties in this case.

For these reasons, we affirm the district court's decision to award need-based attorney fees to mother.

Affirmed.