

*This opinion is nonprecedential except as provided by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
A22-1097**

State of Minnesota, County of St Louis,
Petitioner,

Joshua D. Price, petitioner,
Respondent,

vs.

Jennie Bissell,
Appellant.

**Filed April 24, 2023
Reversed and remanded
Segal, Chief Judge**

St. Louis County District Court
File No. 69DU-FA-21-64

Joshua D. Price, Morristown, Tennessee (pro se respondent)

Jennie Bissell, Duluth, Minnesota (pro se appellant)

Considered and decided by Reilly, Presiding Judge; Segal, Chief Judge; and Florey,
Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this child-support dispute, appellant-mother argues that the record does not support the child support magistrate's finding that respondent-father is not voluntarily unemployed under Minn. Stat. § 518A.32, subd. 3(2) (2022). We reverse and remand.

FACTS

Appellant-mother Jennie Bissell and respondent-father Joshua D. Price were married in June 2008 and have one minor child, born in August 2012. During the parties' marriage, father was a member of the United States Coast Guard on active duty and subject to deployment. In January 2019, the parties and the child were living in the State of Washington. While father was on deployment to Antarctica, mother decided that she and the child would leave Washington and relocate to Duluth. Mother and the child have resided in Minnesota since, and records indicate that the official date of the parties' separation was January 18, 2019.

In February 2020, the parties' marriage was dissolved by a judgment and decree issued by a court in Washington. At that time, the parties agreed to a parenting-time plan, which was approved by the Washington court. Pursuant to the parenting-time plan, the parties were awarded joint decision-making authority and mother was named custodian of the child subject to father's parenting time.¹ Father was awarded parenting time during the

¹ Washington law uses the terms "parenting time" and "decision making" instead of "physical custody" and "legal custody." The parties' joint decision-making authority encompasses decisions relating to the child's education, medical care, participation in extracurricular activities, and ability to do things such as get married or join the military

child's winter and spring school breaks on an alternating basis with mother, and eight weeks during the summer. The parties also agreed on a child-support order that was similarly approved by the Washington court. Finally, the Washington court ordered father to pay mother approximately \$1,217 per month in child support based on his net monthly income of \$8,459 from his employment with the Coast Guard.

Father sought a transfer to a Coast Guard duty station in Minnesota to be closer to the child, but was not successful. He then retired from the Coast Guard in September 2020 and began receiving a retirement benefit, a portion of which was awarded to mother. Father's monthly retirement benefit was significantly lower than his previous monthly income while working full-time.² As a result, respondent County of St. Louis (the county) moved to modify child support,³ and a child support magistrate (CSM) in Minnesota issued an order modifying father's child-support obligation in April 2021. The CSM determined that father's monthly income was \$3,810 for child-support purposes, that mother was voluntarily unemployed and therefore it was appropriate to impute income in the amount

prior to the age of 18. It is therefore comparable to an award of joint legal custody under Minnesota law. *See* Minn. Stat. § 518.003, subd. 3 (2022) (“‘Joint legal custody’ means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education, health care, and religious training.”)

² Father's income for child-support purposes was \$8,459 per month while he was working full-time and his retirement benefit is \$3,304 per month—a reduction of \$5,155 per month.

³ The county's motion indicates that it was filed at the request of a social-services department in Tennessee, where father moved after retiring from the Coast Guard. It therefore appears that father sought assistance in modifying child support from his local social-services department, and that department then requested that the county file the motion in district court in Minnesota.

of \$1,819 per month, and reduced father's child-support payment from \$1,217 to \$589 per month. Mother did not request review of or appeal that order.

In June 2021, the district court issued an order modifying the parties' parenting-time schedule. Following retirement, father moved back to his home state of Tennessee, but the district court found that father was willing and able to travel to Minnesota to exercise parenting time. Accordingly, the district court awarded father one week of parenting time per month in Duluth during the school year, maintained father's award of eight weeks of parenting time during the summer, and made slight modifications related to school breaks and holidays. Mother did not appeal that order.

In January 2022, the county again moved to modify child support. Following a hearing, the CSM issued an order further reducing father's monthly child-support obligation. The CSM found that father's monthly income was \$3,304 for child-support purposes based on the income he received from his retirement benefit. Father was not employed and did not have any additional sources of income. Mother was also unemployed, but the CSM found that she was able to work and imputed income in the amount of \$2,589. Based on the imputed income and the portion of father's retirement benefit that mother received each month, the CSM found that mother's monthly income was \$3,319 for child-support purposes. Based on these determinations, the CSM reduced father's support obligation to \$357 per month.⁴

⁴ The CSM determined that father's basic child-support obligation was \$383 per month, but offset that by \$26 based on mother's monthly medical-support obligation, for a net support obligation of \$357 per month.

Mother subsequently requested review of the CSM's order by a district court judge. A district court judge reviewed the CSM's order and determined that the CSM did not err in calculating mother's income, but remanded the matter to the CSM to determine "whether [father] is voluntarily un- or underemployed and should therefore have potential income imputed to him." Following a hearing, the CSM issued an order finding that father was not voluntarily unemployed and therefore should not have potential income imputed to him. Mother appealed from the CSM's order.

DECISION

On appeal from a CSM's order that has not been reviewed by the district court, this court uses the same standard to review issues as would be applied if the order had been issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). "Whether a parent is voluntarily unemployed is a finding of fact, which we review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). But the application of a child-support statute is a question of law, which this court reviews de novo. *Branch v. Branch*, 632 N.W.2d 261, 263 (Minn. App. 2001).

Mother argues that the CSM misapplied Minn. Stat. § 518A.32 (2022) when determining father's child-support obligation. When calculating child support:

If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support *must* be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

Minn. Stat. § 518A.32, subd. 1 (emphasis added). But the statute identifies certain exceptions to finding that a parent is voluntarily unemployed or underemployed. As relevant here:

A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:

....

(2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child[.]

Id., subd. 3(2).

The CSM determined that father was not “voluntarily unemployed” because his retirement from the Coast Guard constituted a “bona fide career change.” *Id.* The CSM observed that father “was essentially left with two choices after not being able to transfer duty stations—either remain in the military and not see the joint child or maintain a significant relationship, or retire and relocate to be near the child.” The CSM noted that father “chose the latter” and that the decision “allows [father] to actively maintain a significant relationship with the child, a decision that is in [the child’s] best interest.”

Mother argues that the CSM misapplied the statutory exception and we agree. While father’s decision to leave the Coast Guard might be justified by his desire to be able to parent his child, that does not mean that his “career change” excuses him from engaging in any other employment. Father was only 47 years old at the time of the hearing and is years away from a normal retirement age and, as noted above, even though he receives a monthly retirement benefit, it is less than half of his full-time income.

The CSM’s order reflects that the CSM contemplated two and only two possibilities for father—remain in the Coast Guard or retire and be unemployed. Given father’s age and ability to continue to work, it appears that the CSM failed to consider the possibility that father could obtain employment in a new career. This is despite the evidence in the record that father has had some employment since leaving the Coast Guard and father’s testimony that he is looking for other at least part-time employment.⁵

We therefore conclude that the CSM erred in its application of Minn. Stat. § 518A.32. The fact that father had a legitimate reason for retiring from the Coast Guard does not end the analysis of whether the resulting unemployment is part of a “bona fide career change” under Minn. Stat. § 518A.32, subd. 3(2). The statute recognizes both voluntary unemployment and underemployment, and the record indicates that father was both able to work and was actually looking for employment on at least a part-time basis. Thus, while the record supports that father had a good-faith reason to retire from the Coast Guard, the record does not support that father is excused from any obligation to obtain new employment because of his decision to move to be closer to the child. *See Putz v. Putz*, 645 N.W.2d 343, 353-54 (Minn. 2002) (reversing and remanding for a CSM to reconsider child support and “stress[ing] . . . the importance of having findings of fact” that demonstrate the CSM considered “all relevant factors” (quotation omitted)). We therefore

⁵ Notably, the CSM found that father’s “current unemployment, *at least in part*, represents a bona fide career change.” (Emphasis added.) This suggests that the CSM recognized that the move to be closer to the child was not the lone factor contributing to father’s lack of employment.

reverse and remand to the CSM to reconsider whether additional income should be imputed to father.

Reversed and remanded.