

*This opinion is nonprecedential except as provided by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
A24-1136**

In re the Marriage of:

Brian Wayne Kusie, petitioner,
Appellant,

vs.

Stephanie Louise Kusie,
Respondent.

**Filed August 18, 2025
Affirmed
Schmidt, Judge**

Hennepin County District Court
File No. 27-FA-13-3318

Brian W. Kusie, Andover, Minnesota (pro se appellant)

Gillian J. Blomquist, Wermerskirchen & Blomquist, LLC, Wayzata, Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Brian Wayne Kusie challenges a series of district court rulings that stem from motions to modify the terms of his divorce decree with respondent Stephanie Louise Kusie. Because the district court exercised its authority properly, we affirm.

FACTS

The parties divorced in 2014 and have two children: a daughter born in 2007 and a son born in 2010. The divorce-decree imposed child-support obligations on appellant and awarded the parties joint legal and physical custody, with a set parenting time schedule.

Appellant has filed multiple motions since the divorce decree to modify child support, all of which the district court denied. In May 2023, appellant again moved to modify child support. In an affidavit in support of his motion, appellant stated that he had been unemployed for almost three months and had not been able to secure a new job. Appellant explained that he relies on contract work for income and struggles “during times of employment to pay down the debt accrued during employment gaps.” Appellant argued that respondent “had a significant increase in her income” after becoming “the owner of a [driver’s] education company which she inherited at no cost to herself.”

Respondent opposed the motion to modify child support. Respondent also filed motions for conduct-based attorney fees, to modify parenting time, and for leave to file a motion to declare appellant a frivolous litigant. Respondent filed an affidavit in which she characterized appellant’s lack of employment as voluntary, disputed how he characterized her finances, and described difficulties between appellant and the two children. Respondent provided a 2022 tax return showing that her adjusted gross annual income was \$19,626. Respondent’s attorney filed an affidavit attesting that respondent had incurred \$2,496 in legal fees to respond to appellant’s motion.

Appellant opposed respondent’s motions. Appellant provided an affidavit in which he disputed how respondent characterized his unemployment, questioned how she

described his relationship with the children, and stated that she had provided an incomplete picture of her income. Regarding his motion to modify child support, appellant provided his 2022 tax return, which displayed an adjusted gross annual income of \$138,661. He also provided a screenshot of his email account showing that he had applied for jobs.

The district court denied appellant's motion to modify child support. The court reasoned that appellant had not shown a substantial change in circumstances because "[t]he history of this matter . . . establishes that [appellant's] work often includes gaps in employment" and the court had previously accounted for "intermittent unemployment" in calculating child support. In imputing income, the district court found that appellant was voluntarily underemployed under Minnesota Statutes section 518A.32 (2024), noting that the screenshots of his email did not offer "substantive proof of [his] employment search" and that he failed to demonstrate "a bona fide career change that outweighs the adverse effect of [his] diminished income on the child." Minn. Stat. § 518A.32, subd. 3(2).

The district court granted respondent's motion for conduct-based attorney fees. The district court emphasized that appellant had brought three previous motions to modify child support based on the same argument: "[T]hat his employment contract ended and he [was] unemployed." As the district court already acknowledged, appellant's "work includes brief periods of unemployment," which the court considered in its past orders. Because appellant continually brought the same motion based on the same argument, the district court determined that he "contributed to the length and expense of this proceeding."

The district court also granted respondent leave to file a motion to declare appellant a frivolous litigant. Afterward, respondent sent the court correspondence regarding her

motion to declare appellant a frivolous litigant. Respondent wrote that because the court had already denied appellant's motion to modify child support, respondent could not request that appellant withdraw the motion to satisfy the rule 9 safe-harbor provision. Minn. R. Gen. Prac. 9.01. After a hearing on the matter, the district court filed an order determining that the rule 9 issue was moot. The court reasoned that it had already denied appellant's motion to modify parenting time, and therefore, it had already denied the motion that prompted respondent's effort to declare appellant a frivolous litigant.

The district court later filed an order granting respondent's motion to modify parenting time. The court evaluated the best interests of the children and modified appellant's parenting time to every Wednesday and alternating weekends. The district court explained that this was "a minor change" to parenting time, which would be easier logistically for the parties than the prior arrangement. The court acknowledged that appellant would have four overnights every 14 days rather than five overnights.

This appeal followed.

DECISION

Appellant argues that the district court: (1) abused its discretion by denying his motion to modify child support; (2) abused its discretion by granting respondent's motion for conduct-based attorney fees; (3) violated his due process rights because of procedural irregularities and a lack of notice regarding respondent's effort to declare him a frivolous litigant; (4) abused its discretion by granting respondent's motion to modify parenting time; and (5) violated his son's due process rights by not soliciting his preferences on parenting time. We address each argument in turn.

I. The district court did not abuse its discretion by denying appellant’s motion to modify child support.

Appellant argues that the district court abused its discretion by denying his motion to modify child support. A district court may modify child support if the moving party shows that the terms of child support are “unreasonable and unfair” because of “substantially increased or decreased gross income of an obligor or obligee.” Minn. Stat. § 518A.39, subd. 2(a)(1) (2024). We review rulings on motions to modify child support for an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). “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); *see Grogg v. Rech*, 968 N.W.2d 45, 53 (Minn. App. 2021) (using this standard in an appeal challenging a district court’s decision regarding whether to modify child support). We review legal questions de novo, *see In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015), and will only set aside findings of fact if they are clearly erroneous, *Kammueler v. Kammueler*, 672 N.W.2d 594, 597 (Minn. App. 2003), *rev. denied* (Minn. Mar. 16, 2004).

A. The district court did not abuse its discretion by determining that the cumulative impacts of the unemployment did not require modification.

Appellant first argues that the district court abused its discretion by failing to determine that the cumulative impact of his periods of unemployment reduced his ability to pay child support. We have used the phrase “cumulative changes” in the context of situations where, like here, a district court rules on a motion to modify child support after denying an earlier motion to modify. *See Phillips v. Phillips*, 472 N.W.2d 677, 680 (Minn.

App. 1991). In such situations, if a court finds an incremental change, it must “examine the cumulative changes since the order setting the support level.” *Id.* A court then must determine whether the cumulative changes warrant modification. *Id.*

Here, the district court’s decision was consistent with caselaw. The court evaluated the parties’ broader history and determined that the appellant’s lack of employment did not represent a substantial change in circumstances. The district court’s analysis was not contrary to the law and its findings were not clearly erroneous.

B. The district court did not abuse its discretion by denying appellant’s motion despite appellant’s representation that respondent had not fully disclosed her income.

Appellant next argues that the district court abused its discretion when it denied his motion because respondent did not fully disclose her income. Appellant contends that respondent failed to provide information about her “inherited business interests.”

When a district court rules on child-support motions, the parties shall file “a financial affidavit, disclosing all sources of gross income.” Minn. Stat. § 518A.28(a) (2024). Documentation of earnings or income includes “relevant copies of each parent’s most recent federal tax returns . . . and all other documents evidencing earnings or income as received that provide verification for the financial affidavit.” *Id.* The court may also “consider credible evidence from one party” that the other party’s financial affidavit “is false or inaccurate.” *Id.* (c) (2024).

Here, respondent provided a 2022 tax return showing that her adjusted gross annual income was \$19,626. In her affidavit, respondent denied an increase in her income above what existed at the outset of the original decree. Appellant argued that respondent provided

an incomplete picture of her income because she inherited a business. However, within its discretion, the district court rejected appellant's argument that respondent's financial disclosures were incomplete. *See id.* (providing that a "court may consider credible evidence" questioning a financial affidavit). We discern no abuse of discretion.

C. The district court did not clearly err by finding that appellant was voluntarily underemployed.

Appellant further argues that the district court erroneously determined that he was voluntarily underemployed. Minn. Stat. § 518A.32, subds. 1, 3. Appellant also contends that the district court's failure to account for his job-search efforts resulted in the court erroneously imputing his income.

"If a parent is voluntarily . . . underemployed, . . . child support must be calculated based on a determination of potential income." *Id.*, subd. 1. When determining potential income "it is rebuttably presumed that a parent can be gainfully employed on a full-time basis." *Id.* A parent is not voluntarily underemployed if, for among other reasons, the underemployment is due to "a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child." *Id.*, subd. 3(2). "Whether a parent is voluntarily [underemployed] is a finding of fact, which we review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

Here, the district court found that appellant was voluntarily underemployed because (1) he had not provided any evidence of his job search other than a screenshot of his email account, which contained no information about the types of jobs to which he applied or any follow-up on his applications; and (2) appellant had not demonstrated that he was

making a “bona fide career change that outweighs the adverse effect of [his] diminished income on the child.” These findings are supported by the record. The district court did not clearly err when it determined that appellant was voluntarily underemployed.

II. The district court did not abuse its discretion by awarding attorney fees.

Appellant argues the district court abused its discretion by awarding conduct-based attorney fees. A district court may award “fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1a (2024). The “court must make findings to explain an award of conduct-based attorney fees.” *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007). We review a decision to award conduct-based attorney fees for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

Here, the district court made findings to explain its rationale for awarding conduct-based attorney fees. The district court found that appellant had, on three previous occasions, moved to modify child support “based on the same [argument]—that his employment contract ended.” The court noted that all three prior requests ended “with the same results.” The district court concluded that appellant’s “attempt to continually bring motions to modify based on the same argument, knowing the same result he has previously gotten, have contributed to the length and expense of the proceeding.” Because these findings are supported by the record, we conclude the district court did not abuse its discretion by awarding respondent conduct-based attorney fees.

III. The district court did not violate appellant's due process rights regarding respondent's effort to declare him a frivolous litigant.

Appellant contends the district court violated his due process rights based on procedural defects underlying respondent's effort to declare him a frivolous litigant. Specifically, appellant argues that he did not receive proper notice of a hearing. Whether a party has been deprived of procedural due process is a legal question that we review de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

We are unable to identify from the record whether appellant raised his due process challenge in district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.”) (quotation omitted); *Morehouse v. Comm’r of Pub. Safety*, 911 N.W.2d 503, 505 n.3 (Minn. 2018) (declining to address due process challenge that appellant raised for the first time on appeal). But even if appellant had preserved the issue, his arguments are unavailing.

In the due-process analysis, we “identify whether the government has deprived the individual of a protected life, liberty, or property interest.” *Sawh*, 823 N.W.2d at 632. Here, appellant has not shown that the district court deprived him of a protected right. As such, “no process [was] due.” *Id.* After the hearing, the district court determined that the rule 9 issue was moot. Therefore, any procedural defects underlying respondent's effort to declare him a frivolous litigant—including any lack of notice about the hearing—did not harm appellant. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error). Appellant's due process claim fails.

IV. The district court did not abuse its discretion by granting respondent’s motion to modify parenting time.

Appellant argues the district court abused its discretion by modifying his parenting time. We review a ruling on a motion to modify parenting time for an abuse of discretion. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002).

Appellant contends that the district court’s decision did not analyze the best interests of the children. However, the district court’s order shows a thorough analysis of the children’s best interests, and its analysis was not contrary to logic and the facts on record. We discern no abuse of discretion.

Appellant also argues the district court restricted his parenting time without making the required statutory findings. By statute, a district court cannot “*restrict* parenting time unless it finds” one of two statutory factors have been met. Minn. Stat. § 518.175, subd. 5(c) (2024) (emphasis added). However, a reduction in parenting time does not necessarily constitute a “restriction” on parenting time. *Compare Danielson v. Danielson*, 393 N.W.2d 405, 407 (Minn. App. 1986) (holding a reduction in parenting time was not a restriction), *with Clark v. Clark*, 346 N.W.2d 383, 385-86 (Minn. App. 1984) (holding a reduction of parenting time did constitute a restriction), *rev. denied* (Minn. June 12, 1984). “To determine whether a reduction in parenting time constitutes a restriction or modification, the court should consider the reasons for the changes as well as the amount of the reduction.” *Suleski v. Rupe*, 855 N.W.2d 330, 336-37 (Minn App. 2014) (quotation omitted).

Here, Kusie argues that the district court's reduction in parenting time constituted a "restriction" because the court reduced his parenting time from five overnights every 14 days to four overnights. We are unpersuaded. In *Suleski*, the amount of a comparable reduction in parenting time was not substantial enough to create a "restriction." *See id.* at 337. Appellant cites no authority that requires subdivision 5(c) findings for the modification that the district court ordered. The district court did not abuse its discretion in its order modifying parenting time.

V. The district court did not violate the son's due process rights.

Appellant also argues that the district court violated the son's due process rights by not allowing him "to express his reasonable preferences or participate in the trial process." Whether a person's due process rights have been violated is a question of law that we review de novo. *Sawh*, 823 N.W.2d at 632.

We are unable to identify whether appellant raised this due process challenge in district court. *See Thiele*, 425 N.W.2d at 582. We also question whether appellant may raise his son's due process rights in this proceeding. *See In re Conservatorship of Riebel*, 625 N.W.2d 480, 481 (Minn. 2001) ("[A] person who is not a licensed attorney may represent themselves in court, [but] may not represent others.").

Appellant also provides no legal authority establishing that a child has a due process right to express preferences regarding parenting time during a modification proceeding. To the contrary, the rules governing modification suggest otherwise. *See* Minn. Gen. R. Prac. 303.03(d)(7) ("Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. No child under the age

of fourteen years old will be allowed to testify without prior written notice to the other party and court approval.”). And the statutory language of the best-interests factors allows, but does not require, a district court to consider a child’s preferences. *See* Minn. Stat. § 518.17, subd. 1(a)(3) (2024) (stating that “the reasonable preferences of [a] child” is a relevant factor in evaluating the child’s best interests “*if* the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference”) (emphasis added). Thus, the district court did not violate the son’s due process rights by not giving the son an opportunity to express his preferences.

Affirmed.