

*This opinion is nonprecedential except as provided by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
A25-1166**

In re the Marriage of:

Cody Allen Gilbert, petitioner,
Respondent,

vs.

Brenda Nicole Gilbert,
Appellant.

**Filed April 13, 2026
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-FA-16-4826

Stacey Keenan, Keenan Law, PLLC, St. Paul, Minnesota (for respondent)

Brenda Nicole Thurber, Northfield, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this family-law dispute, appellant challenges the district court's order denying her requests for custody and parenting-time evaluations and granting respondent's motion for child-support modification, arguing that the district court erred by (1) miscalculating the parties' income and Social Security Disability Insurance (SSDI) and improperly

denying her deviation request as to child support, (2) misapplying the law in denying her motion for a custody evaluation, and (3) failing to address her parenting-time-deprivation claim. We affirm.

FACTS

Appellant Brenda Nicole Thurber and respondent Cody Allen Gilbert were married in July 2013 and have two children together: Child 1, born in 2012, and Child 2, born in 2016. In June 2016, before Child 2 was born, Gilbert petitioned for divorce. In 2019, the district court awarded the parents joint legal and joint physical custody of both children and ordered that parenting time be split between the parties. Thurber had a majority of the parenting time during the school year, and Gilbert had parenting time three weekends per month from Friday to Sunday and on Wednesday or Thursday evenings. The judgment provided that the children would remain enrolled in the Big Lake School District, where Thurber lived with the children. During the summer, Gilbert had a majority of the parenting time and Thurber had parenting time every other weekend from Friday to Sunday and on either Wednesday or Thursday evenings. The district court's judgment reserved child support, did not award spousal maintenance to either party, and awarded each child's monthly SSDI benefits to Thurber.

In September 2020, the parties reached a new parenting-time agreement in mediation that resulted in a "5-2-2-5" schedule, referring to the successive periods of

consecutive days on which the parties would exercise parenting time.¹ The parenting-time schedule also provided that Gilbert would have the children when Thurber had to work instead of placing the children in daycare and that the 5-2-2-5 schedule would be followed during school breaks.

In July 2024, Gilbert moved the district court to amend the parenting-time schedule and award him the children's SSDI benefits instead of Thurber. In a supporting affidavit, Gilbert alleged that Thurber had moved to a location three hours away in 2016, then moved to Big Lake, which was still an hour away from Gilbert's home. Gilbert informed the district court that the children came to live with him in March of 2020 during the COVID-19 pandemic because Thurber continued to work during that time and did not have daycare options. He further alleged that at one point, Thurber moved to Hopkins, where Gilbert lives, but that in October 2023, she moved to Northfield, which is an hour away from his home.

Thurber opposed Gilbert's motion and filed an affidavit in which she asserted that Gilbert threatened and insulted her repeatedly and that Gilbert did not support her relationship with the children. She alleged that, when she moved to Hopkins, Gilbert refused to follow the 5-2-2-5 schedule and would not watch the children while Thurber was at work. Thurber filed copies of several messages that Gilbert sent via the Our Family

¹ In their parenting-time schedule, Thurber had the children on Mondays and Tuesdays while Gilbert had Wednesdays and Thursdays. The parents rotated weekend parenting time from Friday through Sunday each week.

Wizard application² in which he threatened legal action against her, refused to exchange the children with her current husband, and said things like, “Deadbeat mom. Must run in your family,” and, “I hope you’re happy alone. Because after your husband figures out that you’re a gold digger with no work ethic and you’ll cheat on him at the drop of a hat like EVERY other relationship You’ve ever had (or ruined). That’s what you’ll be ALL ALONE.”

Thurber filed another affidavit in which she asserted that she was unable to exercise the 5-2-2-5 schedule with Gilbert because he “refuses to allow [her] to exercise it.” Thurber stated that she moved to Northfield because of the issues with Gilbert and that she wanted the children to live with her so they could attend school near her.

The parties appeared for a motion hearing before a district court referee. In the order following the hearing, signed by the referee and a district court judge, the district court found that the children had been primarily in Gilbert’s care since 2020 and that neither party had sought enforcement of the schedule previously. The district court also noted that the children “have always had the stability of their attendance in Hopkins schools,” even though Thurber had moved locations since the separation. The district court then granted Gilbert a majority of the parenting time and Thurber parenting time on the first three full weekends of each month, one half of each winter break, and all of spring break. The district court also allocated time during the summer months to both parties, alternating weeks

² Our Family Wizard is a website or application that courts often require parties to use when families have difficulty with communication. *Winkowski v. Winkowski*, 989 N.W.2d 302, 306 (Minn. 2023).

between them until school resumes. The district court denied all other motions. Thurber then filed a letter asking the district court for permission to move the district court to reconsider the order. The district court granted her permission to file the motion.

In February 2025, before the district court ruled on Thurber's motion, Gilbert moved the district court for an award of child support because he was now the primary caregiver. Thurber filed a response opposing that request.

In a separate motion, Thurber also alleged parenting-time violations by Gilbert and requested a custody evaluation; however, she did not move for modification of custody or parenting time. In addition, she requested that Gilbert provide "complete financial disclosures, including records of SSDI benefits" and other assets regarding the children. In Thurber's affidavit in support of her separate motion, she alleged that Gilbert "repeatedly denied [her] parenting time" and she provided a timeline of text messages between her and Gilbert to support her claim. The timeline appeared to be created by Thurber and did not include images of their text messages. Thurber submitted images only of text messages between herself and Gilbert's sister discussing Gilbert's finances and saying that his parents financially support him and he "doesn't pay for anything."

The parties appeared again before a district court referee in June 2025. The referee found, and the district court agreed, that since August 2024, the children had spent the majority of their time during the school year living with Gilbert and had alternated weeks with each parent in the summer. The district court's order acknowledged that "[n]o specific motion for modification of custody or parenting time was made at this time" and that Thurber had not established any of the required modification standards set forth in Minn.

Stat. § 518.18 (2024). Regarding child support, the district court found that the parties' circumstances had changed substantially since the previous order and, thus, that modifying child support was warranted. The district court found that Gilbert was receiving \$1,631 in SSDI benefits per month and that the children were receiving \$800 a month in derivative benefits. The district court also found that Thurber was earning \$5,557 per month and paying \$297 each month for the children's medical insurance. Based on the child-support guidelines, the district court calculated that Thurber should pay Gilbert \$893 per month in child support and Gilbert should pay \$89 for the children's medical insurance; therefore, it ordered that Thurber pay Gilbert \$804 a month. The district court also ordered, "All other motions of the parties, not addressed above, are hereby DENIED. All previous orders not inconsistent herewith remain in full effect."

Thurber appeals.

DECISION

When reviewing the arguments of self-represented parties, we provide "some leeway" to the self-represented party who is "attempting to comply with court rules," but the party is not "relieved of the burden of, at least, adequately communicating to the court what it is that he wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). "[T]his court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Thurber is self-represented in this court and elected not to order a transcript of the contested hearing.³ “It is elementary that a party seeking review has a duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors and all matters necessary to consider the questions presented.” *State v. Carlson*, 161 N.W.2d 38, 40 (Minn. 1968). When an appellant fails to provide a transcript, our review is limited to whether the trial court’s conclusions of law are supported by its findings. *Duluth Herald & News Trib. v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (Minn. 1970). An appellant has the burden to provide an adequate record. *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968).

While a transcript would be helpful in discerning exactly what arguments were made before the district court, the record is not so inadequate that the appeal must be dismissed. Thurber’s challenges to the district court’s order are primarily legal. The motions, memoranda, and affidavits of the parties, together with the decision of the district court, provide an adequate record upon which we can decide her challenges insofar as they are to legal, not factual, issues. Thurber argues that the district court erred in granting Gilbert’s request for child support, misapplied the law in denying her motion for a custody evaluation, and erred in denying her motion for redress of parenting-time deprivation. We address each argument in turn.

³ We consider this case on its merits, even though Gilbert did not submit a brief. Minn. R. Civ. App. P. 142.03.

I. The district court did not err in granting Gilbert’s request for child support.

Thurber asserts that the district court made multiple errors in its child-support determination. Thurber argues that the district court misstated both parties’ income and the SSDI benefits when calculating child support and failed to properly address her request for deviation from the child-support guidelines based on financial hardship. For the reasons described below, the district court’s support calculation is affirmed.

If a party challenges a district court’s finding of fact, that party is arguing the finding is clearly erroneous; i.e., that the record lacks the evidence necessary to support that finding. However, without a sufficient record, our review for such challenges is “limited to deciding whether the [district] court’s conclusions of law are supported by the findings.” *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 492 (Minn. App. 1995). We cannot assume error by the district court. *E.g.*, *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*). Thus, when an appellant does not furnish a transcript of an evidentiary hearing that is relevant to findings of fact, we do not review those findings of fact and instead assume that they are correct. Here, Thurber’s claim is forfeited because she did not order a transcript of the hearing for our review. However, even if we were to decide this issue on the merits, we conclude that Thurber’s claim here fails.

A. The district court did not misstate either party’s income or the SSDI benefits when calculating child support.

Thurber challenges the district court’s findings as to the amounts of income and SSDI benefits in determining child support. Thurber argues that district court’s order

“misstated both parties’ income and did not accurately account for the children’s SSDI benefits” and therefore it included an erroneous finding that requires reversal.

The district court must determine a parent’s gross income under Minnesota Statutes section 518A.29 (2024) in setting the basic child-support obligation of the parent. Minn. Stat. § 518A.34(b)(1) (2024); *see also* Minn. Stat. § 518A.37 (2024) (requiring a district court to make written findings in every case in which it computes child-support obligations, including, among other things, a parent’s gross income). Minnesota Statutes section 518A.31 (2024) governs the treatment of SSDI benefits received on behalf of a child. That statute provides that, when calculating a parent’s presumptive child-support obligation, SSDI benefits “provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.” Minn. Stat. § 518A.31(a). We will affirm a district court’s findings on gross income “if those findings have a reasonable basis in fact and are not clearly erroneous.” *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002) (quotation omitted).

Here, the district court determined that “[t]he parties’ circumstances relative to child support have changed substantially since the last order” and that Gilbert now has 241 days of parenting time while Thurber has 124 days. The district court followed the child-support guidelines and attached a completed Child Support Guidelines Worksheet for these parties to its August 19, 2025 order. Contrary to Thurber’s assertion that the district court did not include the SSDI benefits, they are allocated to Gilbert on the first page of the worksheet.

The district court found that Thurber’s monthly income was \$5,557 and Gilbert’s monthly income was \$1,631 in addition to \$800 from the children’s SSDI benefits. The

evidence of income Thurber submitted to the district court reflects varying numbers. In one of her affidavits, Thurber states that she earns \$2,564.80 bi-weekly, but in another affidavit, she states that her monthly income is \$5,553. Thurber's paystubs show that her monthly income for March 2025 was \$5,977.51. Other paystubs show paychecks issued on February 21, 2025, for \$2,947.63, and on April 4, 2025, for \$2,459.77. However, using Thurber's affidavit stating that her bi-weekly income is \$2,564.80, the district court's calculation of a monthly income of \$5,557 is not erroneous.⁴

We further observe that including Gilbert's monthly income as \$1,631 with the children's benefits (\$800 per month) is also not erroneous. The evidence submitted to the district court shows that the children received monthly SSDI benefits in the combined amount of \$796.40 from December 2023 to November 2024 and \$816.20 in December 2024. Gilbert's own SSDI benefits amounted to \$1,631.90 for December 2024.

Because the record supports the district court's determination of income, the district court did not err in its finding of the parties' income or SSDI benefits.

B. The district court did not abuse its discretion when it did not explicitly address Thurber's motion for a deviation from the child-support guidelines.

Thurber argues that the district court abused its discretion by not addressing her request for deviation from the child-support guidelines because she provided evidence that showed she would suffer financial hardship if she was required to pay child support and

⁴ "Gross income may be calculated on either an annual or monthly basis." Minn. Stat. § 518A.29(d). An annual calculation here would be \$2,564.80 times 26 two-week pay periods in a 52-week year, which equals \$66,684.80 per year, and which, when divided by twelve months in a year, would translate to \$5,557.07 monthly.

because the district court failed to make adequate findings pursuant to the factors outlined in Minn. Stat. § 518A.43, subd. 1 (2024).

Whether to modify child support is within the broad discretion of the district court. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017); *see Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013) (stating that, generally, appellate courts review orders modifying child support “for abuse of discretion”). “A district court abuses its discretion when it sets child support in a manner that is against logic and the facts on record or it misapplies the law.” *Shearer*, 891 N.W.2d at 77. Pursuant to Minnesota Statutes section 518A.39 (2024), a court may modify a child-support obligation in certain circumstances, including when there is a showing of “substantially increased or decreased need of an obligor or obligee or the child or children that are the subject of these proceedings.” Minn. Stat. § 518A.39, subd. 2(a)(2). A presumptively appropriate child-support obligation is calculated by application of the child-support guidelines in Minnesota Statutes section 518A.35 (2024); however, the guidelines allow deviation “to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty.” Minn. Stat. § 518A.43, subd. 1 (2024).

Pursuant to section 518A.43, subdivision 1, when determining whether to deviate upward or downward from the presumptive child-support obligation, the district court must take into consideration the following:

(1) all earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518A.29, paragraph (b);

(2) the extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported;

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

(4) whether the child resides in a foreign country for more than one year that has a substantially higher or lower cost of living than this country;

(5) which parent receives the income taxation dependency exemption and the financial benefit the parent receives from it;

(6) the parents' debts as provided in subdivision 2; [and]

(7) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922[.]

Id.

Thurber cites *Gully v. Gully*, 371 N.W.2d 63, 64-65 (Minn. App. 1985), to support her argument that the district court erred by not addressing the factors in section 518A.43, subdivision 1. However, *Gully* did not involve a request for deviation from the guidelines; it instead addresses an appellant's claim that the district court's determination of the respondent's income was erroneous. 371 N.W.2d at 65. We reversed in *Gully* because the district court's income finding "was not supported by sufficient findings." *Id.* at 66. *Gully* thus does not apply here.

Thurber argues that she provided adequate evidence to the district court to support her claim that requiring her to make any child-support payments would cause her financial hardship. In her motion to the district court, Thurber asserted that her annual income is \$66,633 and that her current spouse is a full-time, unpaid caregiver for his mother. She states in her motion that her spouse's income "varies weekly" but does not provide evidence of her spouse's income. Thurber's monthly expenses, including child-related

expenses, totals \$4,839; however, Thurber asserted that she also has significant debt of \$50,404 that causes her financial hardship. Thurber included her credit-card payment amount in her monthly expenses but did not specify if that was the debt to which she referred, and she did not otherwise provide evidence of said debt or how she pays on it. Considering the monthly expenses Thurber reported, including child support and credit-card payments, and subtracting that from her monthly income, the monthly remainder would be \$714.

To support a request for a deviation, “a party who requests departure from the guidelines should provide evidence that would merit deviation.” *Bunge v. Zachman*, 578 N.W.2d 387, 390 (Minn. App. 1998), *rev. denied* (Minn. July 30, 1998); *see also Rouland v. Thorson*, 542 N.W.2d 681, 684 (Minn. App. 1996) (noting that the burden is on the party seeking a downward deviation to demonstrate why a lower support order is necessary); *County of Anoka ex rel. Hassan v. Roba*, 690 N.W.2d 322, 324-25 (Minn. App. 2004) (remanding for additional findings on the appellant’s ability to pay when undisputed evidence showed that the difference between her monthly income and expenses, which included her debt repayments, was \$124 and the proposed child support was \$360).

Thurber did not demonstrate that the district court’s findings show that applying the child-support guidelines would cause her substantial financial hardship and that a deviation was appropriate. The district court correctly calculated Thurber’s income, it received no evidence of a financial hardship, and it properly based its child-support modification decision on a change in circumstances. We discern no error or abuse of discretion by the district court in its child-support decision.

II. The district court did not misapply the law in denying Thurber’s motion for a custody evaluation.

Thurber asserts that the district court misapplied the law when it denied her motion for a custody evaluation because it applied the custody-modification statute, Minn. Stat. § 518.18, instead of the custody-evaluation statute, Minn. Stat. § 518.167 (2024), to her request. She requests that we reverse the district court’s decision and remand for “consideration under § 518.167.”

Custody evaluations are governed by section 518.167, which allows a district court to order a custody evaluation in a contested custody proceeding. The decision whether to order a custody evaluation is discretionary with the district court. *Meyer v. Meyer*, 375 N.W.2d 820, 826 (Minn. App. 1985), *rev. denied* (Minn. Dec. 30, 1985); *see also Breitenfeldt v. Nickles-Breitenfeldt*, No. C3-02-1569, 2003 WL 1908070, at *4 (Minn. App. Apr. 22, 2003) (citing *Meyer* when affirming the district court’s denial of the appellant’s motion for a second custody evaluation).⁵ Therefore, we review the decision whether to order a custody evaluation for an abuse of discretion. *Meyer*, 375 N.W.2d at 826.

Minnesota law provides that, “[i]n contested custody proceedings, and in other custody proceedings if a parent or the child’s custodian requests, the court may order an investigation and report concerning custodial arrangements for the child.” Minn. Stat. § 518.167, subd. 1. This statute explicitly ties the availability of custody evaluations to

⁵ Nonprecedential opinions are not binding authority but may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

custody proceedings, indicating that an evaluation is a tool that is available within a proceeding rather than a standalone request.

In *Richardson v. Richardson*, one of the parties appealed a district court's denial of their requests for a custody evaluation, an evidentiary hearing, and custody modification. No. C6-02-1002, 2003 WL 105378, at *6 (Minn. App. Jan. 14, 2003). This court determined that the appellant did not provide adequate proof to the district court that custody modification was warranted, and we affirmed that decision. *Id.* at *8. In addition, we viewed the district court's denial of custody modification to include a denial of the request for a custody evaluation. The reasoning in *Richardson* is persuasive and consistent with our conclusion that there is no independent right to a custody investigation and report because, even when a custody investigation and report is properly sought, whether to order one is discretionary with the district court.

“[T]he court shall not modify a prior custody order or a parenting plan provision . . . unless it finds . . . that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child.” Minn. Stat. § 518.18(d) (governing the district court's modification of an existing child custody order). “Under section 518.18(d), the district court must first determine whether the party seeking to modify the custody arrangement has made a prima facie case by alleging facts that, if true, would provide sufficient grounds for modification.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022); *see also Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017); *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981). To grant a motion to modify physical custody, a “district court must find (1) that a change

has occurred in the circumstances of the child or the parties, (2) that the modification is necessary to serve the best interests of the child, and (3) that one of five bases listed in the statute has been established.” *Bayer v. Bayer*, 979 N.W.2d 507, 510 (Minn. App. 2022) (quotations omitted). If, however, the movant fails to make a prima facie case to modify custody, the district court is “require[d] . . . to deny [the] motion.” *Nice-Petersen*, 310 N.W.2d at 472. Because Thurber did not move for or present any evidence in support of a custody modification, the district court did not err by denying her motion for a custody evaluation. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (noting a party fails to make a prima facie case to modify custody if that party’s allegations are unsupported by competent evidence).

III. The district court did not abuse its discretion in denying Thurber’s motion seeking compensatory parenting time.

Thurber argues that “Minn. Stat. § 518.175, subd. 6, requires the district court to address allegations of parenting-time deprivation” and that, “[i]f deprivation is found, the court must award compensatory parenting time.” Thurber asserts that, because her motion showed “repeated denial of her court-ordered parenting time,” the district court should have addressed her claim and that “failing to decide a properly filed motion constitutes legal error.”

Minnesota Statutes section 518.175 (2024) establishes how parenting time is awarded and enforced, including modification of orders for parenting time and remedies for failure to follow a court’s orders for custody or parenting time. *See* Minn. Stat. § 518.175, subds. 5-6. “Appellate courts recognize that a district court has broad discretion

to decide parenting-time questions and will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by relying on findings of fact that are not supported by the record.” *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014) (citations omitted).

Thurber contends that, because the district court did not mention her parenting-time-deprivation claim in its order, it erred by failing to apply section 518.175, subdivision 6, and leaving her statutory claim unresolved. First, we cannot assume that a district court erred by failing to address a motion. *See Loth*, 35 N.W.2d at 546 (stating that this court cannot assume a district court erred). Second, the district court addressed Thurber’s parenting-time-deprivation motion when it stated, “All other motions of the parties, not addressed above, are hereby DENIED.”

Furthermore, to obtain relief on appeal, an appellant must show that they were prejudiced by the ruling. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Loth*, 35 N.W.2d at 546; *Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (ignoring error when prejudice was de minimis).

Thurber did not identify any particular prejudice to her from the district court’s denial, and because she did not order transcripts of the hearings, we discern no error or prejudice based on our limited review. We further observe that the documents admitted at the hearing do not include any actual messages of conversations between her and Gilbert and no proof she was actually denied parenting time. Although one exhibit includes messages from Gilbert regarding parenting time from Our Family Wizard, these messages occurred before the current custody agreement was in place.

We do not assume error in the district court's denial of Thurber's motion, and because Thurber has not shown the prejudicial effect of this ruling, she has not shown that she is entitled to relief on appeal.

Affirmed.