STATE OF MINNESOTA
IN COURT OF APPEALS
A07-980

In re the Marriage of:
Kimberly Anne Sperling, petitioner,
Appellant,

vs.

Mark Clayton Sperling,
Respondent.

Filed April 29, 2008
Reversed and remanded
Stoneburner, Judge

Dakota County District Court
File No. F20313229

John T. Burns, Burns Law Office, 200 American Bank Building, 14300 Nicollet Court, Burnsville, MN 55306 (for appellant)

John R. Hill, Larkin, Hoffman, Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431-1194 (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant mother challenges the district court's order reducing respondent father's child-support obligation and the order denying her motion to amend that order. Because the district court's findings about father's income and child-support obligation are inadequate, we reverse and remand.

FACTS

Appellant Kimberly Anne Sperling (mother) and respondent Mark Clayton Sperling (father) are the parents of three children. In the parties' 2003 dissolution decree, father was ordered to pay child support in the amount of $2,363 per month based on his net monthly income from employment at American Family Mortgage of more than $6,751 per month. Father was also ordered to "provide major medical, hospitalization and dental insurance which is the same or comparable to the insurance he now has in place for the benefit of the minor children." The parties were ordered to share equally the children's uninsured medical costs.

In 2006, father moved for a reduction in child support to $968 per month, explaining in his supporting affidavit that his income as a broker at American Family Mortgage is "100% commission driven and dependent on volume" and that, due to the

economy, both the number of transactions and the commission on each transaction decreased in 2005 and 2006.[1]

Father submitted evidence that in 2006 he had only earned $38,426 through July 31, and he projected that his gross income for 2006 would be $65,565. Using standard deductions and an estimated $12,840 in annual medical/dental insurance costs, father calculated that his 2006 net monthly income would be $2,766, resulting in a guideline child-support obligation of $968. Father asserted that because his employer discontinued its family health insurance option, which had little to no deductible, he was required to obtain coverage for the children elsewhere. Father obtained insurance with coverage similar to the policy formerly provided through his employer, but with a $5,000 deductible. Excluding child-support payments, father claims monthly living expenses of $5,107.

Mother opposed father's motion, asserting that father was misstating and self-limiting his income. Mother's assertion was based on evidence that (1) father's income has averaged $300,000 per year over the past ten years in telecommunications and mortgage banking; (2) father took significant amounts of vacation in the first six months of 2006 during which, she asserted, he was not generating commissions; (3) father has a history of dishonesty and unreported cash transactions, illustrated by his alleged request in 2005 for her to assist him in a tax-evasion scheme by overstating the amount of

[1] Because father moved for modification of child support before January 1, 2007, calculation of child support in this case is governed by Minn. Stat. § 518.551, subd. 5(b) (2004). *See* 2006 Minn. Laws ch. 280, § 44, at 1145 (providing that the provision for calculating support obligations contained in Minn. Stat. § 518A.35 (2006) applies to actions or motions filed after January 1, 2007).

maintenance paid; (4) father has investment income not accounted for in his affidavit; and (5) father has numerous tax deductions not accounted for in his calculations of net monthly income. Mother sought child support based on father's earning history. Mother also moved for an order enforcing the insurance provision in the decree, arguing that insurance with a $5,000 deductible is not "the same or comparable to" the no-deductible coverage provided during the marriage.

By an order filed on January 16, 2007, the district court denied mother's motion regarding insurance based on its implicit finding that because the coverage was the same for the children, the insurance provided by father was the same or comparable to the insurance formerly provided by father's employer. The district court reduced father's monthly child-support obligation to $968 based solely on a "finding" that father had "furnished salary information." The district court also granted father's motion for an order requiring annual review of father's income by a person agreed on by the parties, and recalculation and adjustment of father's child-support obligation "accordingly for the upcoming year in accordance with the threshold requirements for modification."

Mother moved the district court for an amended order to reinstate the child-support obligation contained in the decree and to order father to be responsible for the entire $5,000 health-insurance deductible. Mother requested an evidentiary hearing on the issue of whether father was self-limiting his income and whether father had orally agreed to assume the whole deductible.

By an order filed on April 16, 2007, the district court denied mother's motions. In a memorandum incorporated into the order, the district court stated that it had carefully

reviewed all of the documents submitted for its consideration in connection with the January order, and had re-reviewed those documents in connection with mother's motion. The district court "concluded that it was correct in its initial determination that there was a substantial change in [father's] income warranting a modification of the child support obligation." The district court stated that affidavits submitted by father "firmly establish that whereas [father] was, indeed, earning a very high income in 2003 and 2004, the mortgage industry has declined since that time and [father's] income has declined with it." The district court found that as of the date of the hearing on father's motion to modify child support, father "was on pace to earn gross income of $65,565.00." The district court found that there was no evidence of income manipulation in father's submissions and, without addressing mother's allegations that father was limiting the amount of work performed in 2006, found mother's claim that father is voluntarily underemployed without merit.

The district court did not address mother's assertions that father has income from sources other than American Family Mortgage and that he overstated his tax obligation in calculating his net monthly income. The district court also did not address mother's assertion that the children have increased needs or make any findings regarding the application of the guidelines to father's reduced income. The district court chastised mother for raising the same issue about the health-insurance deductible that it had previously addressed, noting that the impropriety of making the same argument twice almost prompted it to grant father's request for attorney fees. This appeal followed.

D E C I S I O N

Mother argues that the district court's finding as to father's anticipated gross income is clearly erroneous, and the district court abused its discretion in concluding that father met his burden of establishing a basis for a reduction of child support. A district court's discretionary decision to modify child support will be altered on appeal only if it "reach[ed] a clearly erroneous resolution that is against logic and the facts on record." *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

Modification requires a showing that a substantial change in circumstances renders the terms of the existing child-support order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2006). The party requesting modification has the burden of proving that his or her circumstances have substantially changed since the time of the dissolution, or since the award was last modified. *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987). "If the moving party shows such a change in circumstances, the [district] court must then consider statutory factors to determine whether the change has made the order unreasonable and unfair." *Witeli v. Witeli*, 392 N.W.2d 756, 758 (Minn. App. 1986).

In this case, the district court failed to make any findings in the January 2007 order reducing child support. In the April 2007 order, the district court summarily concluded that a substantial change in circumstances occurred, but did not find that the original support obligation was unreasonable and unfair. There is a rebuttable presumption that an existing support order is unreasonable or unfair if "the gross income of an obligor or obligee has decreased by at least 20 percent through no fault or choice of the party."

Minn. Stat. § 518A.39, subd. 2(b)(5) (2006). The district court implicitly found that father's income evidence is complete and correct and that the presumption applies.

But mother argued to the district court that father is manipulating his income, based primarily on her assertions that (1) father's average income over the past ten years has never been less than $300,000; (2) father has not reduced his expensive lifestyle; (3) father has the ability to earn more money than he claims he would earn in 2006; and (4) father has the ability to hide income. Mother also argued that father failed to account for income from sources other than employment and misstated his tax obligation. The record and the findings are insufficient for us to adequately review the district court's determination of father's net monthly income and the record is devoid of any indication that the district court considered whether, given the circumstances of all of the parties, the reduction of father's monthly support obligation to $968.00 is appropriate.

When modifying child support, the district court is statutorily mandated to apply the applicable statutory child-support guidelines. Minn. Stat. § 518A.39, subd. 2(d)(1) (2006) (referencing calculations in section 518A.35, which because of its January 1, 2007 effective date, makes section 518.551 the applicable guidelines in this case). The district court did not make findings under the guideline statute. Instead the court merely adopted, without explanation, father's calculation of his net monthly income and child-support obligation. The district court did not consider whether a deviation from guideline support might be appropriate in light of mother's assertion that the needs of the children increased, or whether father should have anticipated and planned for the potential downturn in his earnings. *See Johnson v. Johnson*, 533 N.W.2d 859, 865 (Minn. App.

1995) (stating that the district court must evaluate "the custodial parent's circumstances, the obligor's circumstances, and those of the children"). Independent review of the record by this court is improper where it is unclear whether the district court considered statutory factors. *Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986).

Children may have to share in economic hardship that the family would have encountered had their parents not divorced. In this case, however, the record as a whole demonstrates that father has long anticipated and planned for a downturn in income from the mortgage business, and has been able to maintain his lifestyle despite the downturn, even as he seeks to drastically reduce his child-support obligation. Because the record and findings are inadequate to permit appellate review of the district court's order modifying child support, we reverse the modification of father's child-support obligation and remand for the required findings on the statutory factors. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding maintenance-determination order where district court's findings did not demonstrate that it considered relevant statutory factors); *Bormann v. Bormann*, 644 N.W.2d 478, 482 (Minn. App. 2002) (remanding support-modification order for adequate findings).

Mother also argues that the district court "should have held an evidentiary hearing" on the issue of whether father is manipulating his income. But the district court "need not hold an evidentiary hearing on a motion for modification of maintenance or support." Minn. Stat. § 518A.39, subd. 2(g) (2006). The district court did not err in denying mother's request for an evidentiary hearing, but on remand, the district court may, in its discretion, reopen the record and/or conduct an evidentiary hearing.

Mother next argues that the district court erred by allowing father to meet his insurance obligation by obtaining a policy with a $5,000 deductible. Mother asserts that because of the increased deductible, the coverage father has obtained is not "the same or comparable" to the insurance provided during the marriage. We agree.

If a provision in a dissolution decree is ambiguous, a district court may construe or clarify it. *Stieler v. Stieler*, 244 Minn. 312, 318-19, 70 N.W.2d 127, 131 (1955). The meaning of an ambiguous judgment provision is a fact question reviewed under a clearly-erroneous standard. *Landwehr v. Landwehr*, 380 N.W.2d 136, 139-40 (Minn. App. 1985). In this case, the provision is not ambiguous, and the district court's finding that father has complied with the provision is clearly erroneous. Father is to provide insurance coverage, and the decree does not permit him to shift a significant cost of coverage to mother. We therefore reverse the district court's finding that the high-deductible policy is the same or comparable to the no-deductible policy, and remand for the district court to enforce the requirement that father provide insurance consistent with the obligation he agreed to in the stipulated decree.

Mother also disputes the propriety of the district court's order giving a third party the authority to adjust father's support obligation annually. The district court has discretion to require father to provide annual income information to mother as a logical effort to keep mother informed of father's future income changes. *See Guyer v. Guyer*, 587 N.W.2d 856, 858 (Minn. App. 1999) (stating that the district court may properly mandate disclosure of income records "given the court's continuing jurisdiction to fulfill the purpose of the child support laws and the court's concern in anticipating the future in

an orderly fashion, and avoiding repeated motions and a repeated discovery process"). And the district court has discretion to require the parties to engage in appropriate alternative dispute resolution (ADR) prior to seeking relief from the district court. *See* Minn. R. Gen. Pract. 310.02 (providing that "the [district] court may order ADR under Rule 114 in matters involving post-decree relief"). The district court stated that the provision was designed to limit further litigation between the parties, and we are not critical of that goal. But the district court cannot abdicate its statutory responsibility as the final arbiter of support determinations. We therefore reverse paragraph two of the January 16, 2007 order. On remand, the district court may require the parties to participate in ADR processes provided for in the rules of court.

Reversed and remanded.