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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1628**

In re the Marriage of: Margaret M. Flanagan, petitioner,  
Respondent,

vs.

Joseph C. Welch,  
Appellant.

**Filed August 4, 2009  
Affirmed  
Connolly, Judge**

Hennepin County District Court  
File No. 27-FA-06-6397

Margaret M. Flanagan, 7030 Knox Avenue South, Richfield, MN 55423 (pro se respondent)

Joseph Welch, 1300 Powderhorn Terrace, Minneapolis, MN 55407 (pro se for appellant)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**CONNOLLY, Judge**

This appeal arises from a district court order denying appellant's motion to modify his spousal-maintenance and child-support obligations. Because the district court did not

err in its application of Minn. Stat. § 518A.52 (2008), and because the district court did not abuse its discretion when denying appellant's motion, we affirm.

## FACTS

Appellant Joseph C. Welch and respondent Margaret M. Flanagan's marriage was dissolved pursuant to a judgment and decree in June 2007.<sup>1</sup> Approximately six months later, in December 2007, appellant filed a motion to modify his child-support and spousal-maintenance obligations. This motion was denied by the district court. On June 10, 2008, appellant again brought a motion to modify his child-support and spousal-maintenance obligations. This motion was denied by the district court in an order dated July 9, 2008. On appeal, appellant challenges the district court's decision arguing that (1) payments he made to third-parties should be used to offset arrears in his child-support and spousal-maintenance obligations, and (2) he has had a substantial reduction in income that renders his current obligations unreasonable and unfair.

## DECISION

### **I. The district court did not err when it declined to offset appellant's child-support and spousal-maintenance obligations by payments appellant made to third-parties.**

Citing Minn. Stat. § 518A.52, appellant argues that payments he made to third-parties should be used to offset his child-support and spousal-maintenance obligations. "Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court." *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001).

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<sup>1</sup> Both appellant and respondent appear pro se in this appeal.

Appellant is not entitled to an offset. First, appellant has not made overpayments. The alleged overpayments are payments that were made to third-parties. Appellant was not required to make these payments by the judgment and decree. Appellant was required to make child-support and spousal-maintenance payments by the judgment and decree. The judgment and decree did not provide that appellant could make payments to third-parties in lieu of his child-support and spousal-maintenance obligations. Appellant does not allege that he paid more to respondent than the judgment and decree called for; in fact, he acknowledges that he is in arrears. Under these circumstances, appellant has not made any overpayments to respondent.

Appellant's reliance on section 518A.52 is misplaced. *See* Minn. Stat. § 518A.52 (addressing overpayment of "a child support or maintenance obligation"). That section addresses situations where the overpayment occurred because of a "modification or error in the amount owed." Appellant does not allege that overpayments occurred because of a modification to the judgment and decree or that he made excess payments to respondent because of an error in the amount owed. He argues that payments made to third-parties should be treated as payments made to respondent. Section 518A.52 does not address this situation. For these reasons, the district court did not err when it concluded that payments made by appellant to third-parties should not, under Minn. Stat. § 518A.52, offset his child-support and spousal-maintenance arrears.

**II. The district court did not abuse its discretion when it declined to reduce appellant's child-support and spousal-maintenance obligations because of an unsubstantiated claimed reduction in income.**

Appellant argues that his child-support and spousal-maintenance obligations should be reduced because of a claimed reduction in income.

The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A child-support order may be modified after a showing that the obligor's gross income has substantially decreased. Minn. Stat. § 518A.39, subd. 2(a) (2008). A determination of the amount of an obligor's income for the purpose of child support is a finding of fact and will not be altered on appeal unless it is clearly erroneous. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002).

An appellate court reviews a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). "Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous." *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact "shall not be set aside unless clearly erroneous").

The district court did not abuse its discretion when it declined to modify appellant's child-support and spousal-maintenance obligations. In its memorandum, the district court noted that:

[Appellant] has a history in this litigation of being less than forthright about his income. There was some question about the accuracy of [appellant's] income at the time of the

[marriage] dissolution. When [appellant] first brought this motion earlier this year, the Court found ambiguity regarding his true, current income and required verification of that income in the manner required by 518A.28. Currently, [appellant] fails to explain the radical change of his [income<sup>2</sup>] between June 2007 and the present. Therefore, he does not satisfy the legal requirements that permit a judge to make a change in the payments he is obligated to make.

While appellant did submit a number of documents to support his allegations, after reviewing these documents it is still hard to even determine what his claimed monthly income is.<sup>3</sup> Furthermore, appellant has continually lowered his claimed monthly income as his motion to modify his child-support and spousal-maintenance obligations has progressed to this court. This provides additional support for the district court's determination that appellant is, essentially, not credible. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (stating that, on review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses.").

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<sup>2</sup> The district court referred to "expenses" in its memorandum. Given the minimal change in appellant's expenses, and the substantial change in appellant's income, it is clear the district court was referring to the change in appellant's income in its memorandum. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand and affirming the district court where the district court failed to make adequate findings of fact, but "from reading the files, the record, and the court's findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result).

<sup>3</sup> In the June 2007 judgment and decree, appellant was found to have an annual adjusted gross income of \$90,000. In his brief, appellant claims monthly income in 2008 of \$2,240, or \$26,880 per year. Elsewhere, appellant claims "gross receipts" of \$4,120 per month, or \$49,440 per year. But appellant claimed "gross pay" of \$70,000 per year in his motion to modify his child-support and spousal-maintenance obligation.

Although appellant submitted documents supporting his motion, they do not adequately explain, or verify, why his work has been affected to the extent that it allegedly has. The documentation provided to the district court by appellant concerning his income consists mainly of a graph detailing his business income and what appear to be business bids and invoices. However, appellant does not provide any independent verification of this documentation. While appellant does provide some of his business's bank records, these statements appear to contain numerous personal expenses unrelated to his business's operation.

In this case, the district court had the opportunity to examine and weigh the evidence introduced by appellant. After reviewing this evidence and taking into account appellant's history of misrepresenting his income, the district court declined to modify appellant's child-support and spousal-maintenance obligations. Based upon the district court's credibility determination regarding appellant, and appellant's failure to provide verification of his income, we cannot say that the district court abused its discretion when it declined to reduce appellant's child-support and spousal-maintenance obligations because of an unsubstantiated claimed decrease in income.

In a letter filed on July 9, 2009, respondent moves to expedite this appeal. Because we have resolved the appeal, respondent's motion is moot. *See In re Application of Minnegasco, Inc.*, 565 N.W.2d 706, 710 (Minn. 1997) (matter is moot if an event occurs that makes a decision unnecessary).

**Affirmed.**