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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1212**

Donna Sue Kelly, f/k/a Donna Sue Jesperson, petitioner,  
Respondent,

vs.

Robert Levi Jesperson,  
Appellant.

**Filed April 20, 2010  
Reversed and remanded.  
Stauber, Judge**

Hennepin County District Court  
File No. 27FA000226390

Donna Sue Kelly, Watertown, Minnesota (pro se respondent)

Sandra K. Kensy, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and  
Randall, Judge.\*

**UNPUBLISHED OPINION**

**STAUBER**, Judge

Appellant argues that the district court abused its discretion by denying his motion to reduce his child-support obligation. Because the district court failed to adequately address appellant's financial circumstances, we reverse and remand.

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

## **FACTS**

The stipulated 1998 judgment dissolving the marriage of appellant Robert Levi Jesperson and respondent Donna Sue Kelly awarded respondent physical custody of the parties' two minor children, and, based on appellant's monthly income of \$3,333, set his monthly child-support obligation at \$1,000. Shortly before the dissolution, appellant and a partner had co-founded SkyCom, Inc., to supply sales representatives and services to other businesses. Appellant is employed by SkyCom and owns 50% of the corporation. At the time of the dissolution, SkyCom had gross revenue of about \$876,000. In 1999, SkyCom secured a large contract with AT&T and, by 2003, its revenue was about \$13.59 million. As a result, appellant's income increased and, in 2006, the district court adopted the parties' stipulation to increase appellant's support obligation to \$2,092.50, the then-maximum guideline support obligation.

In 2009, appellant moved to reduce his support obligation, claiming reduced income. To support his motion, he submitted detailed affidavits and tax records for 2007 and 2008 indicating that his monthly income had declined from about \$61,000 at the time of the 2006 stipulation to less than \$3,300 in 2008. Appellant attributed the reduction of his income to a 90% decline in SkyCom's revenue due to AT&T abruptly terminating its contract with SkyCom. Appellant also asserted that SkyCom had attempted to mitigate the revenue loss, but was unsuccessful due the deteriorating economy. Appellant further asserted that before 2008, SkyCom was experiencing a net-operating loss and that the 2009 losses were expected to be substantial. Appellant also claimed investment losses in two other business ventures.

Respondent disputed appellant's financial assertions, stating that, in 2007, appellant bought a \$1.7 million home and that he improved it in 2008, including landscaping and installing an inside elevator. Respondent also questioned the accuracy of appellant's financial assertions by noting that, because appellant is essentially self-employed, he "can obviously pay himself whatever he chooses." Respondent provided no documentary support for her assertions.

At the hearing, appellant provided un rebutted testimony about the sale of his prior home and the purchase of his new home, that his current wife paid for the landscaping from her separate funds, and that the cost of the elevator was paid for with funds provided by his physically disabled mother-in-law, who had recently moved into the home.

After the hearing, the district court denied appellant's motion, ruling that appellant had not shown a substantial change in circumstances. In doing so, the court found that appellant's evidence of reduced income was not credible because it could not be reconciled with appellant's "lavish" lifestyle suggested by appellant's claim of \$13,705 in monthly expenses, including \$2,000 per month for food and entertainment. The court also discredited appellant's testimony that he did not pay for the landscaping and elevator, and stated that it was "skeptical" of the appellant's financial information because his "self-employment status permits him the opportunity to significantly control what information makes it to his tax returns and how his income is calculated." The court concluded that it was not in the children's best interests to reduce appellant's support obligation. Appellant now challenges the denial of his motion.

## DECISION

A court may modify a child-support obligation if a party shows substantially reduced income of the obligor rendering the existing support obligation unreasonable and unfair. *See* Minn. Stat. § 518A.39, subd. 2(a)(1) (2008); *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). Whether to modify support is discretionary with the district court, and its decision will be reversed on appeal if it misapplied the law or resolved the matter in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). Here, appellant argues that denial of his motion was an abuse of the district court’s discretion because, in denying the motion, the district court refused to consider appellant’s affidavits, tax returns, and other financial evidence, which he claims show a substantial reduction in his gross income.

The district court stated that it was “skeptical” of appellant’s financial evidence because appellant had “significant [] control” over “what information makes it to his tax returns and how his income is calculated.” Generally, appellate courts defer to district-court credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) (stating that conflicts in the evidence, even though presented in affidavits, are to be resolved by the district court). The district court also found the un rebutted testimony regarding the source of the funds for appellant’s home, the landscaping, and the elevator to be not credible. And under appropriate circumstances, the district court is entitled to do so. *See Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) (stating that a fact-finder “is not required to accept even uncontradicted testimony if the surrounding facts and

circumstances afford reasonable grounds for doubting its credibility”). The problem here is that the sole basis for the district court’s doubts appears to be what it perceived as an irreconcilable disparity between appellant’s claimed income and what it found to be the “lavish” lifestyle represented by his \$13,705 in claimed monthly expenses.

The intuitive appeal of the district court’s inference of irreconcilability is undeniable. On the peculiar facts of this case, however, the record submitted to this court is insufficiently specific to allow us to affirm the inferred irreconcilability. Specifically, the credibility determinations are apparently based on the district court’s assumption that all of the \$13,705 in monthly expenses claimed by appellant are either attributable solely to appellant, or paid for solely by appellant, or both. But the affidavit appellant submitted to support his motion was a judicial-branch-approved, fill-in-the-blank form with instructions. The instructions for the portion of the form addressing expenses state that if the party moving to modify child support “remarried,” the party should include the “total . . . household expenses.” Having remarried, appellant complied with these instructions and included the monthly expenses of himself, his current wife, his disabled mother-in-law, and a child in arriving at the \$13,705 total. Later, in the same blank-form affidavit, appellant checked the box “no one” in response to the query: “The following people help me pay current monthly expenses.” While appellant’s affidavit could be read to say that he is paying all of the expenses of his current household, the extent to which these expenses were attributable to appellant’s current wife, his mother in law, or another source, is not addressed in the form affidavit. And the district court did not otherwise attempt to apportion those among the three persons apparently having incomes in that

household. Thus, while we are *very* aware of the district court's greatly superior position to address question of fact, and particularly of credibility, we cannot say that, on this record, that the inference of an irreconcilable disparity between appellant's income and the expenses of his entire household justifies disregarding his financial information.

Alternatively stated: The lack of credibility inferred by the district court fails to account for the fact that appellant is not responsible for generating all of the expenses cited by the district court, and it is not clear whether or to what extent equity would require those expenses to be attributable to, and paid by, others earning an income in that household.

Also, while not dispositive, tax returns are often used when addressing questions of income. *Stephenson v. Stephenson*, 258 Minn. 435, 436–37, 104 N.W.2d 517, 519 (1960). Here appellant's 2007 and 2008 tax returns were professionally prepared and their content was not challenged by respondent in any specific manner. The district court correctly noted that self-employed persons have the opportunity to control the information in their tax returns and affect the calculation of income. *See e.g., Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984). Here, however, the district court did not identify a reason for believing that appellant took illicit advantage of this opportunity other than the disparity between his claimed income and household expenses. Similarly, without findings unrelated to the inferred income-expense disparity, the district court also discredited appellant's detailed explanation of SkyCom's poor financial condition and his efforts to keep it viable during the current economic downturn.

Because the district court's decision to deny modification was based on its finding that the evidence offered to establish appellant's current income could not be reconciled with the monthly expenses of his household and because that finding is not based on an accurate understanding of appellant's expenses, we reverse and remand for the district court to reconsider appellant's motion in light of his actual expenses and his income. Whether to reopen the record on remand shall be discretionary with the district court.

**Reversed and remanded.**