STATE OF MINNESOTA
IN COURT OF APPEALS
A10-439

In re the Marriage of:
David A. Solsrud, petitioner,
Respondent,

vs.

Debra O. Solsrud,
Appellant.

Filed December 21, 2010
Affirmed in part, reversed in part, and remanded
Johnson, Chief Judge
Dissenting, Ross, Judge

Kandiyohi County District Court
File No. 34-FA-07-454

Gerald W. Von Korff, Rinke Noonan, St. Cloud, Minnesota (for respondent)

Gregory R. Anderson, Anderson, Larson, Hanson & Saunders, PLLP, Willmar, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Minge, Judge; and Ross, Judge.

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

JOHNSON, Chief Judge

When David A. Solsrud and Debra O. Solsrud divorced in 2008, they stipulated that neither would owe child support to the other. In 2009, the Kandiyohi County District Court modified the judgment of dissolution by ordering Mr. Solsrud to make monthly

child-support payments of $287 to Ms. Solsrud. Both parties appeal. Ms. Solsrud argues primarily that the district court's finding of her gross income is too high; Mr. Solsrud argues that the district court's finding of her gross income is too low. We conclude that the district court erred in only one respect, by not including certain interest income in the calculation of Ms. Solsrud's income. Therefore, we reverse and remand for further proceedings on that issue but otherwise affirm.

FACTS

The parties were married in 2000. Their marriage was dissolved in April 2008 pursuant to a Marital Termination Agreement (MTA). In the MTA, the parties stipulated to joint custody of their two minor children and an equal parenting-time arrangement. They stipulated that Mr. Solsrud, an employee of the State of Minnesota, earned $8,100 per month. They also stipulated that Ms. Solsrud, who was self-employed, was capable of earning a gross monthly income of "at least" $6,500 and received $1,000 per month as a beneficiary of a trust. In light of the equal parenting-time arrangement and "approximately equal" incomes, the parties stipulated that neither of them would owe child support to the other.

In March 2009, Kandiyohi County moved to modify child support. Mr. Solsrud opposed the motion by arguing, among other things, that Ms. Solsrud was voluntarily underemployed. A child support magistrate (CSM) conducted an evidentiary hearing in October 2009, at which the main issue was Ms. Solsrud's financial situation. Ms. Solsrud testified that she previously worked as the director of marketing for Ridgewater College, where she earned an annual salary of $43,000. She left that position in 2002, the year the

parties' first child was born, and began to pursue a number of small business ventures. She testified that, at the time of the hearing, she was working as an owner-operator of a marketing consultant firm. She testified that her ideal hourly rate was $85, but she usually billed between $45 and $65 per hour, only five to ten hours per week, so that her monthly gross income was approximately $1,100.

Ms. Solsrud also testified that she recently liquidated a trust that her parents had established for her benefit and that of her two sisters. Ms. Solsrud testified that, for several years, she received approximately $6,000 per month from the trust. (Her testimony in this regard is contrary to the MTA, which states that she received $1,000 per month from the trust.) After Ms. Solsrud and her sisters liquidated the trust, she received a lump-sum payment of $450,000, most of which she spent on the purchases of a home, furniture, and a vehicle, as well as improvements to the home. She also used approximately $30,000 of the trust proceeds to make a capital contribution to a retail business that she owned. Finally, she testified that she used part of the proceeds of the trust to make an interest-free loan of $49,026 to a friend. The only evidence relating to the liquidated trust was Ms. Solsrud's testimony; neither party submitted any exhibits relating to the trust. The district court did not make any finding as to whether Ms. Solsrud intended to obtain a more favorable child-support order by liquidating the trust.

Ms. Solsrud also testified about two retail businesses she previously owned, Uniquely Knit and Uniquely Knit II. Ms. Solsrud sold both businesses in separate transactions after the divorce. The Uniquely Knit purchase agreement states that the sale price of $43,391 will be paid in monthly installments over 10 years, commencing on

March 15, 2009, at five percent interest for the first three years. The purchase agreement includes a detailed repayment schedule for the first three years. The agreement provides Ms. Solsrud with monthly payments of $460.22 in principal and, by our calculation, an average monthly payment of $160.11 in interest. The Uniquely Knit II purchase agreement states that the sale price of $20,506.02 will be paid over a 10-year period in monthly principal payments of $217.50, with an interest rate of five percent. The agreement states that the parties may reevaluate the terms after one year.

In October 2009, the CSM granted the motion to modify child support. The CSM found that Ms. Solsrud was voluntarily underemployed, that her potential monthly income is $6,500, and, thus, that her gross income is $6,500. The CSM also found that Mr. Solsrud's gross monthly income is $8,786. The CSM applied the child-support guidelines and concluded that Mr. Solsrud owes $287 per month in child support. Both parties moved for review of the CSM's order, but the CSM denied both motions. Neither party requested review of the CSM's order by a district court judge.

Ms. Solsrud seeks review of the CSM's order by way of a notice of appeal. Mr. Solsrud seeks review of the CSM's order by way of a notice of related appeal. *See* Minn. R. Civ. App. P. 103.02, subd. 2.

D E C I S I O N

Both parties challenge the district court's modification of the 2008 judgment with respect to child support. A district court may modify an existing child-support obligation if the moving party shows that either the obligor or obligee has experienced a change in financial circumstances due to, for example, a change in gross income, need, or cost of

living. Minn. Stat. § 518A.39, subd. 2(a) (2008). A district court may order modification based on a substantial change in any one of eight identified financial circumstances relating to either the obligor or the obligee. *See id.* In the alternative, a district court may presume a substantial change in circumstances and order modification if a new application of the child-support guidelines to the parties' present circumstances results in a significantly different child-support obligation. *Id.*, subd. 2(b)(1). More specifically, if a new calculation of child support results in an obligation that is at least 20 percent, and at least $75, higher or lower than the prior child-support order, there arises an irrebuttable presumption that a substantial change in circumstances has occurred. *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009) (discussing relationship between subdivisions 2(a) and 2(b) of section 518A.39). In addition, if the 20-percent and $75 differences are established, there arises a rebuttable presumption that the current child-support order is unfair and unreasonable. Minn. Stat. § 518A.39, subd. 2(b). The moving party bears the burden of showing both a substantial change in circumstances and the resulting unreasonableness and unfairness of the existing child-support order. *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002).

A district court has broad discretion in ruling on motions to modify child-support orders. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). We will reverse an order modifying a child-support obligation if the district court abused its discretion by resolving the matter in a manner "that is against the logic and the facts on [the] record." *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999) (alteration in original) (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)). We apply the same standard of review to an

order issued by a CSM as we apply to an order issued by a district court judge. *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000).

I. Application of Modification Standard

Ms. Solsrud first argues that the district court erred by applying the statutory test for modification of a child-support obligation rather than setting child support as an original matter. Ms. Solsrud argues that the district court should not have applied the modification test because the April 2008 dissolution judgment did not contain any findings concerning the parties' income and expenses. Ms. Solsrud's argument implicates the district court's interpretation of a statute, which is a question of law to which we apply a *de novo* standard of review. *Rooney v. Rooney*, 782 N.W.2d 572, 575 (Minn. App. 2010).

Ms. Solsrud's argument appears to assume that the district court's finding of a substantial change in circumstances was based on section 518A.39, subdivision 2(a), which requires a showing of one of eight types of changes in circumstances, including income, need, or cost of living. But the district court did not base its modification decision on subdivision 2(a). Rather, the district court found a substantial change in circumstances pursuant to section 518A.39, subdivision 2(b)(1), which requires only a certain degree of difference between the existing child-support obligation and the obligation that is generated by a new calculation conducted pursuant to the applicable formula. The district court's new calculation resulted in a child-support obligation of $287; that amount is more than $75 higher than the prior child-support order, which was $0, and the difference between $287 and $0 is more than 20 percent of $287. Because

the district court found that these numerical thresholds were met, the district court applied the irrebuttable presumption of a substantial change in circumstances and the rebuttable presumption that the existing obligation was unreasonable and unfair. *See Rose*, 765 N.W.2d at 145. Accordingly, it was unnecessary for the district court to refer to the April 2008 judgment or to consider the details of the parties' prior finances.

Thus, the district court did not err by applying the standard for modifying an existing child-support obligation. Furthermore, Ms. Solsrud has failed to explain how she was prejudiced by the district court's application of the modification standard. If the district court had applied the child-support formula in the first instance, that calculation would have led to the same result: $287. *See* Minn. Stat. § 518A.34(b) (2008).

II. Ms. Solsrud's Potential Income

Ms. Solsrud next argues that the district court erred by considering her potential income when determining her gross income for purposes of the child-support calculation. Her argument has two parts. First, she argues that the district court erred by finding that she is voluntarily underemployed. Second, she argues that the district court erred by relying on the MTA to find that her potential monthly income is $6,500.

The calculation of a child-support obligation requires a determination of each parent's gross income. Minn. Stat. § 518A.34(b)(1). In the child-support context, "gross income includes any form of periodic payment to an individual, including . . . potential income under section 518A.32." Minn. Stat. § 518A.29(a) (2008). If a parent is voluntarily underemployed, the court "must" determine the parent's potential income in order to calculate child support. Minn. Stat. § 518A.32, subd. 1 (2008).

A. Voluntary Underemployment

Ms. Solsrud argues that the district court erred by finding that she is voluntarily underemployed. Whether a parent is voluntarily underemployed is a finding of fact, to which we apply a clear-error standard of review. *See Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

The district court found that Ms. Solsrud is "college educated and has significant prior employment history." The district court found that she previously earned $43,000 annually at Ridgewater College. The district court found that Ms. Solsrud does not have any health issues that prevent her from working on a full-time basis. The district court found that she "exhausted" the proceeds of the liquidated trust. The district court also found that she sold her two knitting stores. The district court stated that Ms. Solsrud was not credible when she testified that she earns only $1,100 per month, despite working full-time and billing clients as much as $85 per hour. The district court found that some of Ms. Solsrud's business expenses were excessive and essentially concluded that she was underreporting her income. Consequently, the district court determined that Ms. Solsrud was voluntarily underemployed.

The evidence in the record supports the district court's finding of underemployment. The amount of income to which Ms. Solsrud testified is quite low in comparison to her prior position of employment. Her purported income is also quite low in comparison to her standard hourly rate and the number of hours in a typical business day, even considering that she was caring for the parties' children. In addition, the district court's finding rests largely on a credibility determination, and as a practical

matter, we cannot question that determination. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Thus, the district court did not clearly err by finding that Ms. Solsrud is voluntarily underemployed.

B. Finding of Potential Income

Ms. Solsrud next argues that the district court erred when calculating her gross income by finding that her potential monthly income is as high as $6,500. She argues that the district court should have relied on her stated income of $1,100 per month when determining her gross income.

As stated above, if a parent is voluntarily underemployed, the court must determine the parent's potential income in order to calculate child support. Minn. Stat. § 518A.32, subd. 1 (2008). One method of determining potential income is to consider "the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earning levels in the community." *Id.*, subd. 2(1) (2008). A person's potential income may be added to income that the person actually receives in order to calculate gross income. *Welsh*, 775 N.W.2d at 369. We apply a clear-error standard of review to a district court's findings of gross income for purposes of determining a child-support obligation. *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009); *Brazinsky*, 610 N.W.2d at 710.

Ms. Solsrud argues that the district court erred by relying on the parties' MTA. The parties stipulated in the MTA that Ms. Solsrud "has the ability to earn a monthly gross income of at least $6,500.00. . . . [and] also receives income from a family trust

entitled 'Osborne Family Partnership' which is currently $1,000.00 per month." Ms. Solsrud asserts that this part of the MTA is incorrect; she claims that her monthly gross income at that time was only $1,000 and that her income from the trust was $6,500. In short, she contends that the two numbers were inadvertently switched in 2008.

Regardless whether the MTA was accurate, the district court did not err by relying on it. A stipulation or marital termination agreement represents a "voluntary acquiescence in an equitable settlement," and its terms generally should not be altered. *Claybaugh v. Claybaugh*, 312 N.W.2d 447, 449 (Minn. 1981). If the MTA mistakenly stated Ms. Solsrud's income, the appropriate recourse would have been an appeal from the April 2008 dissolution judgment. But Ms. Solsrud may not challenge the accuracy of the MTA in this modification proceeding. *See Englund v. Englund*, 352 N.W.2d 800, 803 (Minn. App. 1984) (rejecting attempt to modify child support by attacking initial child-support order). We note that both Ms. Solsrud and Mr. Solsrud were represented by counsel during the dissolution proceedings, and the MTA has the appearance of being prepared by counsel. Thus, the district court did not err by relying on the MTA's statement that, in April 2008, Ms. Solsrud's monthly earned income was $6,500.

The remainder of Ms. Solsrud's challenge to the district court's finding that she has a potential monthly income of $6,500 goes to issues of credibility. Ms. Solsrud contends that the district court's finding is inconsistent with her 2008 tax return, which states that she earned $12,340 in income. But the district court essentially found that Ms. Solsrud's testimony and exhibits were not credible. The district court explained its view of Ms. Solsrud's evidence by referring to this court's prior statement that "the

opportunity for a self-employed person to support himself yet report a negligible net income is too well known to require exposition." *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984). The district court's determination of potential income finds support in the evidence of her employment history, the stipulation in the MTA, and her current business, which are factors listed in the applicable statute. *See* Minn. Stat. § 518A.32, subd. 2(1) (stating that the district court may consider "employment potential, recent work history, and occupational qualifications"). Thus, the district court did not clearly err by determining that Ms. Solsrud's potential income was $6,500.

III. Ms. Solsrud's Gross Income

Mr. Solsrud argues that the district court erred by finding that Ms. Solsrud's gross monthly income is only $6,500. More specifically, he argues that the district court should have found her gross income to be higher in light of two additional payments streams: first, the payments Ms. Solsrud receives from the sale of her two businesses; second, the payments that she had previously received, but no longer receives, from the liquidated trust.

A. Sale of Businesses

Mr. Solsrud contends that the district court erred when calculating Ms. Solsrud's potential gross income by not including monthly payments that Ms. Solsrud receives pursuant to contracts from the sale of her two knitting businesses. For child-support purposes, gross income does not include principal payments on a contract for deed but does include interest on the principal. *Beltz v. Beltz*, 466 N.W.2d 765, 767 (Minn. App. 1991), *review denied* (Minn. Apr. 29 & May 23, 1991). The district court erred by

excluding from Ms. Solsrud's income the portions of the sale-of-business payments that constitute interest, although it properly excluded the portions that are principal. Therefore, we reverse on this issue and remand so that the district court may include interest income in the calculation of Ms. Solsrud's gross income. The district court may, in its discretion, permit the parties to introduce additional evidence on that factual issue. *See Lee v. Lee*, 459 N.W.2d 365, 370 (Minn. App. 1990), *review denied* (Minn. Oct. 18, 1990).

B. Liquidated Trust

Mr. Solsrud also contends that the district court erred when calculating Ms. Solsrud's gross income by not including monthly payments that Ms. Solsrud previously received from the trust, which she no longer receives because she and her two sisters liquidated the trust in 2008.

For child-support purposes, gross income means "any form of periodic payment to an individual." Minn. Stat. § 518A.29(a). We interpret this definition to include only those payments a person actually receives and to not include any payment that a person could receive but does not receive. *See id.* The exception to this general rule is potential income. But potential income may be included in gross income only pursuant to section 518A.32, and section 518A.32 limits potential income to income that could be derived from employment. This is so for two reasons. First, section 518A.32 is triggered only if a district court finds that "a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis." Minn. Stat. § 518A.32, subd. 1. Second, the three methods of determining potential income all refer to employment-based income:

(1) "the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications," (2) the parent's receipt of "unemployment compensation or workers' compensation," and (3) "the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher." *Id.*, subd. 2. It appears that the child-support statutes consider a person's potential income only to the extent that it is potential *earned* income, which may be obtained through employment; it appears that the child-support statutes do *not* allow consideration of a person's potential *unearned* income, which may be obtained by means other than employment.[1] Mr. Solsrud has not cited any caselaw contrary to this interpretation of the child-support statutes, and we are not aware of any such caselaw.

Thus, when calculating Ms. Solsrud's gross income, the district court did not err by excluding monthly trust payments that Ms. Solsrud previously received but no longer receives.

Affirmed in part, reversed in part, and remanded.

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[1]We note that a district court has discretion to deviate from the presumptive child-support obligation and set a different amount. Minn. Stat. § 518A.37, subd. 2 (2008); *see also O'Donnell v. O'Donnell*, 678 N.W.2d 471, 477 (Minn. App. 2004) (affirming stipulated deviation). A district court must consider various factors before deviating, including "all earnings, income, circumstances, and resources of each parent." Minn. Stat. § 518A.43, subd 1 (2008). When deviating, a district court must make written findings that state, among other things, the reasons for the deviation and how the deviation serves the best interests of the child. Minn. Stat. § 518A.37, subd. 2; *see also Schlichting v. Paulus*, 632 N.W.2d 790, 793 (Minn. App. 2001). In this case, the district court could have deviated downward from Mr. Solsrud's presumptive child-support obligation to account for Ms. Solsrud's decision to liquidate the trust. But Mr. Solsrud did not ask the district court to deviate, and Mr. Solsrud does not argue on appeal that the district court erred by not deviating.

ROSS, Judge (dissenting)

Must there be an express statute that prohibits one parent from cashing out her share of a large trust fund, pocketing that cash, and then obtaining a court ordered increase in child-support payments because of the need that results from her suddenly lost (or, more accurately, her suddenly relocated) income stream? The majority cannot find support in the child-support statutes to *prohibit* this basis for the district court's ordering of increased child-support payments. So it affirms. But I cannot find support in the statutes to *allow* it. So I dissent.

I do not agree with the majority's reasoning and conclusion in section III.B. of its opinion. I am persuaded by David Solsrud's contention that Debra Solsrud artificially created any substantial change in her circumstances by simply reorganizing her substantial wealth. According to the evidence, Debra Solsrud diverted her two recognized income streams into immediately available cash when she sold her businesses and terminated her family trust. She testified that she had received $6,000 monthly from the trust and that after extinguishing the trust she received a $450,000 lump-sum payout. The majority states as a general rule that gross income "include[s] only those payments actually received," and does not include "any payment that a person could receive but does not receive," citing Minn. Stat. § 518A.29(a). It then reasons that because David Solsrud has not cited to any caselaw that defines Debra Solsrud's reconstituted trust income as "potential income," the district court appropriately increased his child-support obligation to Debra Solsrud. I do not agree with the majority's characterization or application of the general rule of income, and I would put the burden on the obligee

seeking to increase her payments to demonstrate that the district court is statutorily authorized to grant her a windfall, rather than to put the burden on the obligor to demonstrate that the district court is not.

The general rule is that gross income is exhaustive, including every conceivable source. The statute describes gross income in the broadest possible terms, meaning "*any* form of periodic payment to an individual." Minn. Stat. § 518A.29(a) (emphasis added). The general rule has several limited exceptions and exclusions. *Id*. So "*any*" periodic payment that is not expressly excluded or deducted is "gross income." And without dispute, under the parties' marital termination agreement, Debra Solsrud "receive[d] regular *income*" from her family trust, and that income is not the subject of any statutory exclusion or deduction.

The legislature specifically assured us that one parent could not artificially limit her income simply by converting it into a pool of available funds. It did so by neutralizing the traditional elections in the form of income redirection that a parent might make to intentionally or incidentally create the illusion of a reduction in income. So, for example, one cannot avoid the designation of "income" by electing a "benefit plan that allows an employee to pay for a benefit or expense using pretax dollars" like "flexible spending plans and health savings accounts," or by electing to contribute "to pensions, 401–K, IRA, or other retirement benefits." *Id*. In other words, one parent cannot secure a child-support windfall from the other parent simply by electing to convert her "salaries, wages, commissions, or other compensation paid by third parties" into a fund for her own present or future use. *Id*. The public policy underlying this limitation seems obvious: the

legislature does not authorize courts to increase one parent's child-support obligation as a result of the other parent's neutral financial reorganization.

The majority is correct that the legislature has not yet expressly acted to prevent a parent from securing a greater child-support obligation from the other by essentially accelerating all her future multiple income payments into a single, massive trust-fund payment. But we face the lack of statutory authority for such a child-support windfall, the apparent inequity of it, and the clear spirit of the statutes that have expressly prohibited other equally obvious and less-shocking similar inequities. I would therefore hold that a district court abuses its discretion if it orders an increase in child support in this circumstance without accounting for the neutral financial effect of the parent's personal choice to reorganize her wealth by converting a steady income stream into a ready cash pool.