

DA 23-0473

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 144

IN RE THE PARENTING OF:

S.J.W. (born 2014), A Minor Child

LEIGH PALMERI, f/k/a LEIGH KRISE.

Petitioner and Appellee,

and

JEFFERY A. WILLIAMS,

Respondent and Appellant.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Custer, Cause No. DR-2015-69
Honorable Michael B. Hayworth, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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For Appellee:

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John C. Julian, Patrick Quinn, Department of Public Health and Human
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Decided: July 9, 2024

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Jeffery Williams appeals from a July 18, 2023 order of the Sixteenth Judicial District Court approving a modification of child support. The District Court found that Jeffery was voluntarily underemployed and imputed his income to that which he previously made as an OB/GYN physician. The District Court thus calculated his child support payments under the Montana Child Support Guidelines (Guidelines) and ordered Jeffery to pay \$944 per child per month. We affirm.

¶2 We restate the issues on appeal as follows:

Issue One: Whether the District Court abused its discretion by imputing Jeffery's prior income in determining his child support obligations.

Issue Two: Whether the District Court erred in applying relevant statutory and legal authority.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Jeffery was employed as an OB/GYN physician in Miles City, Montana. In 2016, the District Court entered a final parenting plan splitting parenting time of their only child equally, and ordered Jeffery to make monthly child support payments of \$1,110 to Mother following the Guidelines calculations. In October 2019, Mother noticed bruising on S.J.W.'s buttock. Jeffery admitted to spanking S.J.W. in frustration, and the District Court suspended the 50/50 parenting schedule until further notice. Mother took care of S.J.W. full time during this time. Thereafter, Jeffery was ordered to pay \$2,262 per month in child support.

¶4 Jeffery admitted to and was convicted of Partner/Family Member Assault (PFMA) on August 1, 2021, and his physician position was terminated the next day. His annual salary was \$263,843 after taxes. On August 18, Jeffery reported this conviction to the Montana Board of Medical Examiners (Board). In December, the Board moved to initiate disciplinary action against Jeffery. On March 31, 2022, Jeffery voluntarily allowed his medical license to lapse—it was not revoked or suspended by the Board.

¶5 Jeffery made no attempt to seek further employment in the medical field or other work that his scientific and medical expertise qualified him for. Instead, he decided to “leave medicine” and “walk away from healthcare employment.” After allowing his medical license to expire, Jeffery nearly drained his savings and retirement accounts to pursue two business ventures. First, he tried to open a whiskey distillery that never came to fruition. The assets he purchased for the business remain unused. Jeffery then started another business, 406 Freight, which connects cargo and shippers for a brokerage fee. Altogether, Jeffery spent over \$1,000,000—depleting his IRA and investment accounts—for these startups. His freight business began operating in December 2022, and it made approximately \$1,500 in the next six months despite being debt-free, Jeffery’s 40- to 60-hour workweeks, and “thousands” of cold calls to solicit business. If the business survives, Jeffrey hopes to make \$45,000 in three to five years from 406 Freight and \$90,000 in ten years—when S.J.W. is 18.

¶6 On March 31, 2022, the District Court amended the parenting plan again to go back to 50/50 parenting time. On April 7, Jeffery filed a request under § 40-5-272, MCA, for review of his child support obligations with Child Support Services Division (CSSD) to

reflect (1) the loss of his job and (2) the return to 50/50 parenting time. On April 28, CSSD issued a Proposed Modification Notice and Order (Notice) alleging Jeffery owed child support in alternative amounts based on alternative facts. The Notice proposed child support of \$961 a month under the Guidelines if he “*were allowed* to keep and maintain his physician’s license.” (Emphasis added.) If, however, Jeffery’s “physician’s license *were revoked*” and he kept up with his freight brokerage venture, Jeffery would owe \$296 a month under the guidelines. (Emphasis added.)

¶7 On May 13, two months after Jeffery had voluntarily allowed his medical license to expire, Jeffery and the Board stipulated to certain sanctions designed “to rehabilitate Dr. Jeffery Williams,” which required him to undergo evaluations and monitoring, but the Board took no disciplinary action against his medical license, and he was allowed to keep and maintain it.

¶8 Jeffery requested an administrative review hearing of the Notice under § 40-5-277, MCA. On November 2, 2022, after the hearing, the Administrative Law Judge (ALJ) issued a Proposed Order Modifying Court Order (Proposed Order) under § 40-5-277(8), MCA. In its Proposed Order, the ALJ found that Jeffery was voluntarily underemployed and imputed his prior income as a physician under Admin. R. M. 37.62.106 (2022), which states that “[i]t is appropriate to impute income to a parent, subject to the provisions of (6) of this rule, when the parent” is underemployed. It proposed a reduction of Jeffery’s monthly child support obligation to \$944 due to the resumption of 50/50 parenting time but calculated his monthly support under the Guidelines based on his imputed income as a physician.

¶9 Jeffery objected to the imputed income at the District Court. The District Court held a hearing and, on July 18, 2023, issued a Judicial Review Order Approving Modification of Child Support (Order) largely upholding the ALJ’s Proposed Order and expressly “incorporat[ing the Proposed Order] herein as Findings of Fact and Conclusions of Law, except where explicitly contradicted herein.” Jeffery appeals from the imputation of income.

STANDARD OF REVIEW

¶10 In child support modification cases, we review a district court’s findings of fact for clear error and its conclusions of law for correctness. *In re Marriage of Damschen*, 2011 MT 297, ¶ 22, 363 Mont. 19, 265 P.3d 1245. We review a district court’s decision regarding modifications of child support to determine whether the district court abused its discretion. *In re Marriage of Albinger*, 2002 MT 104, ¶ 9, 309 Mont. 437, 47 P.3d 820. A presumption exists in favor of the judgment, and a court will be reversed only upon a clear abuse of discretion. *In re Marriage of Bee*, 2002 MT 49, ¶ 19, 309 Mont. 34, 43 P.3d 903.

DISCUSSION

¶11 Imputed income is income not actually earned by a parent, but which is attributed to a parent for various reasons including underemployment. Admin. R. M. 37.62.106(1) (2022). It is based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. *In re Marriage of Frank*, 2022 MT 179, ¶ 77, 410 Mont. 73, 517 P.3d 188; Admin. R. M. 37.62.101(2) (1998); *see also McDermott-Yeargin v. McDermott*, 2003 MT 283, ¶ 26, 318 Mont. 13, 79 P.3d 245. Underemployment, in pertinent part, means that someone is earning a wage that is

less than the parent has earned in the past, or is qualified to earn, when higher paying jobs are available in the community or the local trade area, for which the parent is qualified. Admin. R. M. 37.62.103(16) (2020).

¶12 *Issue One: Whether the District Court abused its discretion by imputing Jeffery's prior income in determining his child support obligations.*

¶13 Jeffery argues that the District Court abused its discretion by imputing his former income as a physician when it failed to address all the factors listed in Admin. R. M. 37.62.106(3) (2022)¹ and then imputed an unrealistic amount to Jeffery.

¶14 Montana administrative rules provide, and we have long held, that it is appropriate to impute income to a parent based upon his or her capacity and ability to earn when the parent is unemployed or underemployed. *In re Marriage of Bee*, ¶ 22. When appropriate, the amount to impute is based on the following factors:

- (a) the parent's residence and recent work and earnings history;
- (b) the parent's occupational, educational, and professional qualifications;
- (c) existing job opportunities and associated earning levels in the community or the local trade area;
- (d) the parent's age, literacy, health, criminal record, record of seeking work, and other employment barriers;
- (e) the availability of employers willing to hire the parent; and
- (f) other relevant background factors.

Admin. R. M. 37.62.106(3) (2022). "If a past employment position remains available and the parent has the ability to undertake the work, we have said that a court may impute that income to a party." *In re Marriage of Bee*, ¶ 24. Jeffery concedes that he is voluntarily

¹ Jeffery notes that this regulation was promulgated after his hearing but before the ALJ's Proposed Order. He concludes that the regulation was not significantly changed in pertinent part and uses the new language in his briefing. We also discuss the current language.

underemployed but argues that the District Court abused its discretion in choosing to impute his income to the full amount that he was making as a physician based on its analysis of the above factors.

¶15 The District Court did not abuse its discretion in its evaluation of, and the weight given to, the relevant factors. As to the first factor, it is undisputed that Jeffery was recently employed for 11 years as a physician making at least \$263,843 a year in Miles City and had worked as a physician since 2001.²

¶16 Also undisputed are Jeffery's occupational, educational, and professional qualifications under the second factor. The ALJ found, and the District Court explicitly adopted and incorporated, that Jeffery has a B.S. in biology (1995), an M.D. from West Virginia University (2000), and spent five years in residency as an OB/GYN. Further, he has held medical licenses in Washington, California, and Montana. His medical license was not revoked after his conviction and the Board stipulated to conditions designed to rehabilitate him as a doctor. In comparison, Jeffery's educational qualifications for his current venture in freight brokerage are lacking. He has taken three classes totaling a little over three weeks of coursework in owning and operating such a business and is looking for a mentor who can "guide him through the process of starting his business and making it a success." Although his time as a physician taught him many transferrable skills, the District Court found that these skills are generally transferable to many areas of employment.

² Jeffery's Form 1040 showed salaries and wages for 2021 of \$378,443. Jeffery testified at the hearing that he did not know where this number came from as he had never made that much.

¶17 Regarding the remaining factors, evidence at the hearing showed that there was an open position for an OB/GYN in Miles City, three in Billings, and four more throughout the state. Jeffery testified that it would be very difficult to get hired while the Board was deciding what to do with his medical license and that an employer would not want him if he was going to lose his license: “I anticipated losing my license and that is the primary reason that the Holy Rosary fired me.” The court found that Jeffery’s assertions of unemployability were unsupported based on his own admissions that he had not applied for any available jobs throughout the state or in nearby Billings once the Board decided not to revoke or suspend his medical license. This was not clear error.

¶18 The opening in Miles City was with his old employer, and Jeffery asserts they would not hire him back given the prior termination and the stipulations on his license. Jeffery testified that he wanted to remain in Miles City to be near his son and thus could not reasonably be expected to apply to any positions outside of Miles City. However, S.J.W.’s mother works as a nurse in Billings and, notwithstanding this commute, the parents have been able to maintain a 50/50 parenting schedule. Even if the record showed that Jeffery was ineligible to be rehired at his former position in Miles City, his voluntary inaction on other comparable jobs in the area favors the District Court’s reasoning below. Jeffery maintains that the stipulations on his medical license make him unemployable in the medical field, yet he was able to find and maintain a job in Montana notwithstanding stipulations on his Washington and California medical licenses. Further, his testimony that he does not want to work in medicine anymore undercuts his arguments.

¶19 Additionally, the District Court found that, although Jeffery thought that a freight brokerage was his most “practical” option, “there are opportunities for employment that are far more ‘practical’ in terms of consistency of income and return on investment.” For example, even if Jeffery was precluded from employment at his prior job after the Board declined to revoke his medical license, he never attempted to obtain another available telemedicine or physician job. If he did not desire to work with patients anymore, there was also record evidence about available positions that he was qualified for based on his medical background and education such as a nursing instructor, medical laboratory work, or work as an EMT or paramedic. Even outside of medicine, testimony showed that unskilled jobs were consistently paying more in the area than he hopes to make in the next five years. Jeffery’s prior testimony (while he was still trying to get his distillery off the ground) that he was “work[ing] in an area where I am going to need -- actually I’m going to need [child] support from [Mother]” further undercuts his arguments that these businesses will be able to support S.J.W. as he is growing up.

¶20 Jeffery is of working age in the prime of his career as a physician. There is no question that Jeffery is literate. There are no record facts of health complications that would prevent him from working full time in his prior profession or, if he does not wish to continue as a physician, another career that parallels his education, skills, training, and knowledge. His record of seeking work is nonexistent except for two startups—one of which failed after hundreds of thousands of dollars in investment from his retirement and investment accounts. The other startup, also after hundreds of thousands of dollars in startup costs, made \$1,500 in six months before expenses were considered. Jeffery’s expert

estimated this business—if it is successful—*may* reach \$75,000 in net income by the time S.J.W. turns 18 and Jeffery approaches standard retirement age.

¶21 The only employment barrier that Jeffery points to is his criminal record. Jeffery argues that his conviction for PFMA makes him unemployable in the medical field. The District Court did not err in not giving that testimony much weight. Besides Jeffery’s own testimony, the record demonstrates that he is still readily employable if he wanted to continue in medicine. The Board did not suspend, revoke, or otherwise restrict his medical license. Instead, it took steps to rehabilitate him as a doctor. *See* § 37-3-203(2), MCA. It was Jeffery’s voluntary choice to let his medical license lapse. Jeffery was able to find employment previously with other stipulations on his medical licenses. Moreover, because Jeffery has refused to apply to any jobs in his field, the District Court could not know whether he is truly unemployable.

¶22 Finally, Jeffery argues that the court should have taken into consideration that being a doctor caused him stress and misery. However, the court took into account that, if he did not want to return to his position as an OB/GYN physician, “[m]any employment opportunities are available in the Miles City area are roles Mr. Williams is capable of performing that provide a consistent monthly income that does not require hundreds of thousands of dollars in capital expenditures, extensive additional training, or a return to medical practice.” Further, Jeffery testified that he has never had a passion for medicine and has been miserable since medical school. Nevertheless, he continued in the work for more than 15 years, making more than a quarter of a million dollars a year. He also testified that although not being in medicine anymore helped him control himself better than he did

before, a lot of the progress he has made in that regard came from learning to identify, understand, respond to, and control his emotions through counseling and classes.

¶23 Depending on the circumstances, it can be appropriate for a district court to impute a prior income that a parent no longer makes. *See, e.g., McDermott*, ¶ 25. In *McDermott*, Cheryl was terminated from her position as a trust officer. The district court found that she could find other work in the financial world despite market conditions that made searching for such a position difficult and her lack of college education. *McDermott*, ¶ 24. Instead, she made a conscious choice to pursue a new line of work and opened an interior design business which was not profitable in the first year, but which was expected to be in the second year. We agreed with the district court that personal lifestyle and career choices might not always serve as satisfactory reasons to reduce support obligations and affirmed its imputation of the salary she was previously earning as a trust officer. *McDermott*, ¶ 26. Cheryl asked us then, and Jeffery asks us now, to view their change in circumstances too narrowly. *McDermott*, ¶ 27.

¶24 Jeffery asks us to only look at his misdemeanor conviction and termination from employment and conclude that the only option left available to him was to deplete his investment and retirement accounts to open two businesses that might make him \$45,000 a year in three to five years if successful. Of course, we “recognize a parent’s right to attempt to improve his or her financial position, even if doing so results in a temporary decrease in present income.” *In re Marriage of Bee*, ¶ 23. But here, Jeffery asks us to acknowledge that he voluntarily left a highly-skilled field to start a business that will hopefully make him less than one-third of his prior salary, and if he is “lucky” will net him

more than that. Jeffery did not apply or in any way attempt to find a position for which he was qualified, or which would immediately start paying him \$45,000 or more without over \$1,000,000 in startup costs. Jeffery made a personal and voluntary choice to completely leave a field in which he had decades of experience and training. We cannot now say that the District Court abused its discretion in choosing to impute Jeffery's prior income under the Guidelines when it was not given any reasonable alternative that would provide for S.J.W.'s current needs rather than a hopeful future inheritance.

¶25 *Issue Two: Whether the District Court erred in applying relevant statutory and legal authority.*

¶26 Jeffery argues that the District Court erred as a matter of law by not adopting CSSD's alternate recommendation of \$296 a month if he gave up his medical license and continued as a freight broker. Jeffery frames this argument as a misapplication of Admin. R. M. 37.62.106(3) (2022), the administrative guidelines for determining income to be imputed. Neither the ALJ nor the District Court have a duty to follow the recommendations of the Notice. Instead, their responsibility is to follow the Guidelines. Section 40-5-277(3), MCA ("The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases The amount determined *under the guidelines* is presumed to be an adequate and reasonable award" (emphasis added)); § 40-4-204(3)(a), MCA (same for district court). The Guidelines provide for imputing income and Jeffery does not argue that the District Court's calculation is inaccurate given the imputed income.

¶27 Additionally, CSSD’s alternate recommendation for imputing an income of a more established freight broker was not, as Jeffery frames it, based on his voluntary actions to give up his medical license. Instead, this alternate scenario was proposed by CSSD only if his license was revoked. If he “were allowed to keep and maintain his physician’s license,” CSSD recommended that he pay \$961 a month. The Board allowed him to keep and maintain his medical license provided he complied with efforts for rehabilitation as a doctor. By Jeffery’s own admissions in briefing, he voluntarily withdrew from medicine and by definition “he is underemployed” under the Guidelines. *See* Admin. R. M. 37.62.103(16).

¶28 Jeffery next argues that the District Court failed to apply Admin. R. M. 37.62.108 (2012).³ This Rule is used to determine income for a self-employed parent. *McDermott*,

¶ 23. A district court need not project future income for a self-employed parent under Admin. R. M. 37.62.108 (2012) if it finds that the parent’s former income should be imputed. *McDermott*, ¶ 24; *cf. In re Marriage of Clyatt*, 267 Mont. 119, 122, 882 P.2d 503, 505 (1994).

¶29 Jeffery concedes that he is voluntarily underemployed. And, as noted above, imputing his income was appropriate. We review district court conclusions of law for correctness. *In re Marriage of Damschen*, ¶ 22. This argument does not establish a misapplication of the law.

³ Jeffery also argues the court erred in applying the § 40-5-601(8), MCA, contempt standard in its order. It is clear from reading the order that the court did not apply this standard. Instead, the court briefly discusses a “pending” contempt proceeding which, as the court clearly noted, “will be addressed through forthcoming proceedings.”

CONCLUSION

¶30 The District Court’s imputation of Jeffery’s prior income as a physician when he voluntarily left medicine to open a business outside of his knowledge, training, and experience, where he—at best—hopes to make one-third of his prior salary by the time his child turns 18 and he nears retirement age is upheld. There was not a clear abuse of discretion, and the presumption in favor of the District Court judgment applies.

¶31 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ JIM RICE