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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0677**

Ramsey County,  
Appellant,

Holly L. Wagner,  
Respondent,

vs.

Josef P. Mehle, III,  
Respondent.

**Filed April 29, 2008  
Reversed and remanded  
Poritsky, Judge\***

Ramsey County District Court  
File No. FX-06-1492

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Josef P. Mehle, III, 1586 Reaney Avenue, St. Paul, MN 55106 (pro se respondent)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and  
Poritsky, Judge.

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

## UNPUBLISHED OPINION

**PORITSKY**, Judge

Appellant Ramsey County challenges the district court's setting of respondent-father Josef Mehle's various child-support obligations at amounts below the amounts called for by the child-support guidelines. The county argues that the obligations as set by the court lack both adequate support in the record and sufficient explanatory findings of fact. We reverse and remand.

### FACTS

Mother Holly Wagner and father Josef Mehle, who have never been married, had a child. When they separated, mother retained custody of the child and later received public assistance. After the parties each signed a Recognition of Parentage regarding the child, Ramsey County sought to set father's prospective and past support obligations. The Child Support Magistrate (CSM) set father's prospective monthly support obligation at the sub-guideline amount of \$350, directed father to reimburse the state the sub-guideline amount of \$4,600 for the public assistance paid to mother from September 1, 2004 through October 31, 2006, and did not award mother any back support. The county sought district-court review of the CSM's ruling. The district court made non-substantive alterations to the CSM's order, but otherwise affirmed the CSM. The county appeals.

### DECISION

When a district court affirms a CSM's ruling, the CSM's ruling becomes the ruling of the district court, and an appellate court reviews the CSM's decision, to the extent it was affirmed by the district court, as if it were made by the district court. *See*

*Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004) (stating that “[o]n appeal from an order deciding a motion for review, this court reviews the order from which the appeal is taken . . . and, to the extent the reviewer of the CSM’s original decision affirms the CSM’s original decision, that original decision becomes the decision of the reviewer”). District courts have broad discretion when setting child support. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997).

## I.

The county challenges the district court’s setting of father’s prospective child support obligation at a sub-guideline amount. In parentage proceedings, support is set under chapter 518. Minn. Stat. § 257.66, subd. 3 (2004). Under chapter 518, there is a rebuttable presumption that the support obligation calculated under the child-support guidelines is applicable in “all cases.” Minn. Stat. § 518.551, subd. 5(i) (2004).

Where, as here, a child-support recipient has assigned her right to receive support to the public agency, the obligor’s support obligation may be set below the guideline amount “only” if the district court “specifically” finds that the failure to deviate downward from the guideline amount would impose an “extreme hardship” on the obligor. *Id.*, subd. 5(i), (j) (2004). Here, the district court set father’s prospective support obligation below the guideline amount based on a finding that not deviating downward would be “an undue hardship” on father.

On review of the CSM's order in district court, the county did not argue that it was error for the CSM to apply a standard of undue hardship, rather than the statutory standard of extreme hardship. The county did, however, make that argument to this court. But when questioned at oral argument about the propriety of raising an argument that was not presented to the district court, the county withdrew the argument. Therefore, our decision will not turn on the issue of whether the district court's use of *undue hardship* was or was not error. Instead, we will proceed to determine whether the district court's order supports setting father's prospective child-support obligation below the guideline amount.<sup>1</sup>

In explaining its setting of support below the guideline amount, the district court found that father's net monthly income for child-support purposes is \$1,749, that he has monthly living expenses of \$2,515, and that these expenses "cover [father], the current spouse/companion, her child, and one subsequent child." The county argues that the district court erred in using the expenses of father's new household to justify setting his prospective support obligation below the guideline amount.

The statutory mechanism for addressing father's subsequent child is Minn. Stat. § 518.551, subd. 5f (2004). In setting the presumptively appropriate guideline figure, the

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<sup>1</sup> But because we are remanding this case for further proceedings, we note that the district court "may not deviate downward from the child support guidelines unless the court specifically finds that the failure to deviate downwards would impose *an extreme hardship* upon the obligor." Minn. Stat. § 518.551, subd. 5(i), (j) (emphasis added). *See Clark v. Clark*, 642 N.W.2d 459, 465-66 (Minn. App. 2002) (remanding the denial of a motion to reopen a judgment for application of the correct standard where the denial was based on use of the wrong standard); *see also Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007) (applying *Clark* where the district court used the wrong standard regarding sanctions in a marital dissolution).

statute provides: “The needs of subsequent children shall not be factored into a support guidelines calculation . . . .” *Id.* For the court to deviate from the guidelines figure, the statute requires that the court make specific findings. *See id.*, subd.5f (1)-(4). The district court did not apply this statute, did not make the findings that would allow the statute’s application, and did not explain why the statute was not applied. Nor did the district court explain why the expenses on which it based father’s sub-guideline prospective support obligation included expenses attributable to the prior child of father’s fiancée, who is not father’s child and to whom father has no legal relationship.

The county also argues that the district court’s findings are otherwise inadequate to support a deviation from the guideline support obligation. If support is set at a non-guideline amount, the court is required to specifically address the criteria in Minn. Stat. § 518.551, subd. 5(c) (2004) and how the deviation serves the best interests of the child. Minn. Stat. § 518.551, subd. 5(i). The district court’s findings do not address these factors. Nor do they address how the deviation served the child’s best interests, other than to make the conclusory assertion that the deviation was in the child’s best interests “as it allows more resources to meet [father’s] needs but also allows regular payment.” A support obligation which deviates from the guideline amount but which is unsupported by adequate findings requires a remand. *Kahn v. Tronnier*, 547 N.W.2d 425, 429 (Minn. App. 1996), *review denied* (Minn. July 10, 1996).

The district court’s ruling on father’s sub-guideline prospective support obligation is reversed and remanded to the district court for further proceedings.

## II.

Regarding the reimbursement of public assistance previously paid to or on behalf of a child or a child's custodian, a support obligor

is liable for the amount of public assistance . . . furnished to and for the benefit of the child, including any assistance furnished for the benefit of the caretaker of the child, which the parent has had the ability to pay. Ability to pay must be determined according to chapter 518.

Minn. Stat. § 256.87, subd. 1 (2004). The parent's liability for these amounts is generally limited to the two years preceding the commencement of the action. *Id.* A Recognition of Parentage is a basis for "establishing a child support obligation which may include up to two years immediately preceding the commencement of the action . . . as provided under section 257.66, subdivision 3[.]" Minn. Stat. § 257.75, subd. 3(1) (2004); *see* Minn. Stat. § 257.66, subd. 3 (stating that support in parentage proceedings is set under chapter 518).

Here, the county sought public-assistance reimbursement of \$6,446 and an additional \$5,362 for past support for mother, making the assertion that these were the guideline amounts for these obligations. Father did not dispute these amounts. The district court, however, awarded the county a judgment for \$4,600 in reimbursement and did not award mother anything. The county argues that the district court failed to make sufficient findings to justify sub-guideline obligations for reimbursement and past support.

This court has stated:

Under Minn. Stat. § 256.87 (2002), the county may seek reimbursement of public assistance benefits and ongoing support from a parent who has the ability to pay. Ability to pay is determined according to the child support guidelines. Any deviation from the guidelines must be supported by written findings that address, among other factors, the earnings, income, and resources of the parent. When child support payments are assigned to a public agency, as here, a court may not deviate downward [. . .] unless the court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor. The burden is on the party seeking a deviation to demonstrate why a lower support order is necessary.

*County of Anoka ex rel. Hassan v. Roba*, 690 N.W.2d 322, 325 (Minn. App. 2004) (citations and quotation marks omitted). Here, the district court made no findings explaining its deviations from the guideline amount for reimbursement. Nor did it make findings explaining its deviation from the guideline amount for past support. Therefore, a remand is appropriate for the district court to readdress the proper amounts of reimbursement and back support.

At oral argument before this court, the county candidly admitted that no support was due from father for the months of July, August, September, and October 2006. We appreciate the county's candor on this point and, on remand, the district court shall exclude these months from its calculations.

With respect to both issues before this court, on remand the district court shall have discretion to reopen the record, if it deems it necessary to do so.

**Reversed and remanded.**