

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A10-1971

A10-1973

A10-1974

Hennepin County,
Respondent,
Devon Emily Arkadie,
Respondent (A10-1971),
Melissa D. Walker, f/k/a Melissa D. Boyd,
Respondent (A10-1973),
Elizabeth R. Meza,
Respondent (A10-1974),

vs.

Frank Sentwali Gardner-Ransom,
Appellant.

Filed August 1, 2011

Affirmed

Stauber, Judge

Hennepin County District Court
File No. 27PAFA091084

Michael O. Freeman, Hennepin County Attorney, Catherine T. Fridgen, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Stephen Sage, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In these consolidated child-support appeals, appellant-father argues that the record does not support the findings of fact regarding his income for child-support purposes, including that he is voluntarily underemployed, that his expenses are being met, and that he has rental income. Because the Child Support Magistrate's (CSM) findings are not clearly erroneous and because it did not abuse its discretion, we affirm.

FACTS

Appellant Frank Sentwali Gardner-Ransom has five children by five different mothers. This consolidated appeal involves child-support orders for three of those children. The first case (A10-1971, "Arkadie") involves appellant's child with respondent Devon Arkadie, daughter K.A., born November 14, 2005. The second case (A10-1973, "Walker") involves appellant's child with respondent Melissa D. Walker, daughter J.G., born January 20, 2000. The third case (A10-1974, "Meza") involves appellant's child with respondent Elizabeth Meza, daughter C.M., born August 23, 2004.

In the Meza case, the CSM originally set a monthly child-support obligation in May 2006, of \$350 plus medical support of \$50. This was a downward deviation from the guideline-support obligation of \$490 in consideration of appellant's financial support of his oldest child who is residing with him. The CSM denied appellant's motion for modification in February 2009, finding that his projected income from self-employment was sufficient to meet the support obligation.

Following the CSM's refusal to modify appellant's maintenance obligation with respect to Meza, the CSM established child support in the Walker case. By order dated April 27, 2009, the CSM set a monthly support obligation of \$470 plus medical support of \$50. The CSM determined that appellant was voluntarily underemployed and had the ability to earn \$47,260 annually based on his employment history. The CSM found that appellant voluntarily terminated his employment with St. Paul Public Schools in February 2007 because he believed his support obligations were too high. In 2006, when the district court originally ordered child support in the Meza case, appellant had been earning a monthly gross income of \$2,922 from this position. Appellant was also doing independent-contract work as an arts educator while he worked for St. Paul Public Schools. Appellant claims he quit his St. Paul Public Schools position to focus solely on his independent contract work. Appellant did not appeal from this order.

In February 2010, appellant was adjudicated the father of the child in the Arkadie case. The CSM set a child-support obligation of \$200 per month in an April 30, 2010 order, pending review of appellant's motions in the other cases.

Appellant moved to modify all three of these support obligations and a consolidated hearing on his motions was set for July 28, 2010. At that hearing, the CSM heard testimony from appellant, Meza, Walker, and Arkadie. Appellant testified that he has three sources of employment. He works as an independent-contractor doing arts education and music performances, part-time for Blake Middle School as a basketball coach, and part-time for Arlington House as a substitute youth counselor. Appellant testified that he had just been informed on July 1, 2010, that he would no longer be

needed at Arlington House because he could not fulfill the hours necessary to remain on staff. Appellant claimed that his arts education business took up most of his time during the school year when Arlington House had a need for substitute youth counselors. He stated that he was working with Arlington House to get back on their schedule during the summer months when he has more availability.

Appellant testified that his independent-contract work is his main source of income. He does this work primarily during the school year, but he also does a few workshops in the summer. His part-time job as a basketball coach pays \$1,700 in total for work that runs from November through March. Appellant earned an hourly wage of \$10 working for Arlington House. Appellant testified that his total gross earnings reported in 2009 were \$26,381. Appellant also earns \$1,300 per month from rental income.

The CSM issued orders for all three cases on the same day. In determining whether there was a change in circumstances which would necessitate a modification, the CSM referred back to the April 27, 2009 order in the Walker case in which a different CSM found that appellant was voluntarily underemployed. The CSM found that appellant continued to be voluntarily underemployed since terminating his employment with St. Paul Public Schools and continued to have an earning capacity of \$3,938 per month. The CSM also found that appellant's monthly expenses are currently being met. The CSM therefore concluded that appellant failed to meet his burden of establishing that a substantial change of circumstances had occurred since the last support order. In the Walker case, appellant was ordered to continue paying a monthly support obligation of

\$470. In the Arkadie case, the CSM set an ongoing support obligation of \$510 per month based on the same findings. In the Meza case, because the plaintiff-mother stipulated to a reduction, the CSM granted appellant's motion in part and reduced the obligation to \$250 per month.

Appellant filed notices of appeal in all three cases. This court issued an order consolidating the appeals.

D E C I S I O N

On appeal from a CSM's order which has not been reviewed by the district court, this court uses the same standard to review issues as would be applied if the order had been issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009); *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). A district court has broad discretion in modifying child-support orders. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). An appellate court will reverse a district court's order regarding child support only if the district court "abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record." *Id.*

Modification of a child-support order requires a showing that a substantial change in circumstances renders the terms of the existing child-support order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2010). The party requesting modification has the burden of proving that circumstances have substantially changed since the last support order. *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987).

Appellant argues that the CSM abused her discretion by refusing to modify his support obligations. Appellant contends that the refusal to modify was an abuse of

discretion because several of the CSM's findings with respect to appellant's financial circumstances were clearly erroneous, including that he is voluntarily underemployed, that his expenses are being met, and that he has rental income.

I. Appellant continues to be voluntarily underemployed

“If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.” Minn. Stat. § 518A.32, subd. 1 (2010). “[I]t is rebuttably presumed that a parent can be gainfully employed on a full-time basis.” *Id.* A person's potential income may be added to income that the person actually receives in order to calculate gross income. *Welsh v. Welsh*, 775 N.W.2d 364, 369 (Minn. App. 2009). “Whether a parent is voluntarily unemployed is a finding of fact, which we review for clear error.” *Id.* at 370.

The CSM's finding with respect to appellant's underemployment is as follows:

The prior order determined that [appellant's] voluntary termination and later claim of reduction of income was self-created, unjustified, and constituted a voluntary underemployment. This fact has not changed. [Appellant] continues to be voluntarily underemployed and continues to have the ability to earn as determined earlier an annual income of \$47,260.

Appellant argues that this finding is clearly erroneous because he made a prudent decision to quit his job with Saint Paul Schools and because he does not have the capacity to earn \$47,000 per year. The thrust of this argument is that the voluntary underemployment finding is clearly erroneous. However, a CSM made this finding in April 2009, when ongoing child support was established in the Walker case. Appellant

did not appeal from this order. Although appellant now attempts to argue that this finding was reached in error, the April 2009 order is not before us. *See Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370–71, 147 N.W.2d 100, 103 (1996) (stating that “[e]ven though the decision of the trial court in the first order maybe have been wrong, if it is an appealable order it is still final after the time for appeal has expired”); *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) (citing *Dieseth* in family law appeal).

The order from which appellant appeals addressed only appellant’s motions for modification. Therefore, the issue before the CSM was whether a substantial change in circumstances rendered the existing child-support obligations unreasonable or unfair. *See* Minn. Stat. § 518A.39, subd. 2. Appellant had the burden of establishing a substantial change of circumstances. *See Johnson*, 406 N.W.2d at 616. Based on the evidence and testimony presented to the CSM, the CSM’s finding that appellant failed to meet this burden was not clearly erroneous.

Appellant testified at the hearing that he had an annual salary of approximately \$38,000 or \$39,000 in his final year of employment with St. Paul Schools. Appellant was also pursuing his independent-contract work as an arts educator during the time he worked for St. Paul Schools. He testified that he quit the St. Paul Schools position because it was contingent on continued grant funding and he was told the grant funding was coming to an end. He stated that “there was no guarantee that I was going to be employed as soon as that grant cycle ended.” In his supporting affidavit, appellant also stated that he quit his position with St. Paul Schools to focus solely on his arts-education

business because it “was a full-time job that was not subject to any grant approvals [and] paid a comparable amount of money.”

This evidence goes only to whether the initial finding of voluntary underemployment in the 2009 order in the Walker case was erroneous. But again, appellant did not appeal from the 2009 order, and the appropriateness of that decision was not the issue before the CSM in the 2010 modification cases. Appellant offered little evidence to carry his burden of showing that a substantial change of circumstances occurred since the last support order. Appellant even appeared to concede that there has been little change in his employment situation. He testified that although his self-employment income “took a small drop with the economy taking a downturn,” his earnings have largely stayed the same and he does not anticipate any significant increase or decrease in the future. He stated that he believes his earnings from self-employment are “going to hold steady.”

The only evidence supporting a substantial change since the last order is a letter from a supervisor stating that the grant used to fund the St. Paul Schools program appellant worked for had expired as of August 31, 2009, and the program discontinued. But appellant quit this employment in February of 2007—two-and-a-half years before the grant expired. Further, although appellant states that he would have lost his job when the grant expired, the only evidence supporting this claim is appellant’s own assertions and beliefs. A factfinder is not required to believe even uncontradicted evidence, especially if the record provides reasonable grounds for doubting its credibility. *Costello v. Johnson*, 265 Minn. 204, 211, 121 N.W.2d 70, 76 (1963); *Gellert v. Eginton*, 770 N.W.2d 190, 196

(Minn. App. 2009); *see Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987) (applying this idea in family-law appeal). On this record, we conclude that the CSM was not required to accept appellant's assertions on this point at face value.

We conclude that the record supports the CSM's finding that appellant failed to prove that a substantial change in circumstances occurred since the last order.

Accordingly, the CSM's finding that appellant continues to be voluntarily underemployed is not clearly erroneous.

II. Appellant is able to meet his expenses

The CSM stated in her order that "[appellant's] monthly expenses are \$3,743 and are currently being met." Appellant contends that this finding is clearly erroneous.

In support of his motion to modify his child support obligations, appellant provided a worksheet detailing his expenses, which he estimated to be \$3,743 a month, and his income, which he estimated to be \$2,198.42 per month. He also provided a letter from a bank notifying him of the bank's intent to foreclose on a property he owned. Appellant testified at trial that "[a] lot of stuff isn't getting paid."

We conclude that the record fully supports the district court's finding that appellant is able to meet his expenses. After careful review of appellant's financial records, including his most recent tax returns, we agree that appellant has sufficient income to support himself. Although appellant contends that the CSM's finding was clearly erroneous based on the evidence he provided, it is evident that the CSM did not believe appellant's testimony. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (deferring to a district court's implicit credibility determination).

III. Appellant's rental income

Appellant owns a multi-unit home and has two tenants from whom he receives a total of \$1,300 per month in rent. Appellant argues that the CSM erred by including the \$1,300 in his income. He contends that because he pays a monthly mortgage payment of \$1,925 and only receives \$1,300 per month in rental income, he receives no income from the property but instead has \$625 per month in expenses. We disagree.

A district court's determination of a party's income for purposes of child support will be affirmed on appeal if it has a reasonable basis in fact and is not clearly erroneous. *State ex rel. Rimolde v. Tinker*, 601 N.W.2d 468, 470 (Minn. App. 1999). But whether a source of funds is considered to be income for child-support purposes is a legal question reviewed de novo. *Sherburne Cnty. Soc. Servs. ex rel. Schafer v. Riedle*, 481 N.W.2d 111, 112 (Minn. App. 1992).

Minn. Stat. § 518A.29(a) (2010) provides that "gross income includes *any form of* periodic payment to an individual." (Emphasis added.) Appellant offers no legal support for his argument that he has no rental income because the rental payments are insufficient to cover his mortgage. Given the plain language of the statute, the CSM did not err by finding that appellant had rental income. Furthermore, because the CSM concluded that appellant failed to meet his burden of establishing that a substantial change of circumstances occurred since the last support order, the CSM was not required to recalculate appellant's income. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (stating in maintenance-modification context that failure to show substantially

changed circumstances precludes modification, therefore district court need not make findings regarding any other statutory factors).

Affirmed.