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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0442

In re the Matter of:
State of Minnesota, County of Carver, ex rel. Lori J. Schuman, petitioner,
Respondent,

vs.

Daniel L. Revsbech,
Appellant.

Filed April 22, 2008
Affirmed
Schellhas, Judge

Carver County District Court
File No. F4-02-1645

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Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant-father seeks reversal of an order in which the district court interpreted ambiguous language in its prior order, concluding that the prior order did not modify medical-support and childcare-support arrearages. Because the district court's interpretation of the ambiguous language in its prior order is not clearly erroneous, we affirm.

FACTS

This case involves the consolidation of two actions between the same parties: one for child support and one for custody and parenting time. The child-support action was commenced by Carver County (the county) on behalf of respondent-mother Lori J. Schuman. In the child-support action, on October 11, 2002, a child support magistrate (CSM) filed an order that established ongoing child support, medical support, and childcare support; determined child-support and medical-support arrearages; and granted two separate judgments for arrearages, $32,150 for child support and $1,050 for medical support. The CSM acknowledged the separate custody and parenting-time action, and provided that the October 11, 2002 order "shall be reviewable by the district court in conjunction with the custody and [parenting-time] matter and may be modified retroactively if the court deems appropriate."

Appellant-father Daniel L. Revsbech brought a motion for review of the CSM's October 11, 2002 order, and also brought a motion for modification of support. On

August 18, 2003, the CSM resolved these motions with two orders, one that addressed father's motions for review and modification (CSM review/modification order), and one that replaced the CSM's October 11, 2002 order (CSM replacement order). The CSM replacement order provides for ongoing child support, medical support, and childcare support, and includes a recalculation of the previous judgment amounts for arrearages as follows: $31,625 for child support and $1,050 for medical support. The CSM replacement order also provides that the district court could modify the terms of the order in the custody and parenting-time action.[1]

On March 1, 2005, after a trial in the parties' custody and parenting-time action, the district court filed a decree. The district court awarded the parties joint legal and joint physical custody; recalculated ongoing support under the *Hortis/Valento* formula; recalculated child-support arrearages; and ordered ongoing medical support and childcare support. The court described the past child support awarded and acknowledged the judgments granted for past medical support and childcare support. The district court noted that the CSM replacement order included a provision that it was reviewable by the district court and modifiable as the district court deemed appropriate. The district court also noted the father's first appeal; quoted from this court's order that characterized the

[1] Father challenged both the CSM review/modification order and CSM replacement order in an appeal to this court. We dismissed the appeal because neither the CSM review/modification order nor the CSM replacement order was a final order; rather, both were temporary support orders because mother had only temporary physical custody at the time of the appeal, and the custody action was unresolved. After we dismissed the appeal, the district court consolidated the child-support action and custody and parenting-time action.

CSM review/modification order and CSM replacement order as temporary; and made findings regarding errors made by the CSM. The court modified father's monthly obligation for child support retroactively for the period from July 2002 through February 2005, and sought additional information about the amount father had paid up to that point to enable the court to recalculate a total figure for child-support arrearages. The court eliminated ongoing child support, set medical support in the amount of 40% of the cost of medical and dental insurance and 40% of the costs not covered by insurance, and childcare support in the amount of 40% of childcare costs. The court ordered that child support would commence on March 1, 2005, but did not specify the commencement date for father's payment of medical support and childcare support.

The decree does not refer to medical-support or childcare-support arrearages accruing since August 18, 2003, the date of the CSM replacement order.

On March 3, 2005, the county advised the district court in correspondence that "nothing in the [decree] makes any changes to the past child support awarded to the [mother] prior to July 1, 2002, as well as to the past child care and medical support costs." The county included with its correspondence charts showing amounts due and paid by father on his obligations. Disputing the county's interpretation of the decree, father brought a motion for correction of a clerical error under Minn. R. Civ. P. 60.02. In his motion, father did not mention the county's position on past medical support and childcare support. On April 13, 2005, the district court filed an amended decree modifying retroactive support. The amended decree does not refer to medical-support or childcare-support arrearages set forth in the CSM replacement order.

Subsequent to the filing of the amended decree, father brought a motion for amended findings and/or a new trial. The district court resolved this motion with an order filed September 6, 2005. In the September 6, 2005 order, the district court vacated the amended decree and made new findings to replace some of the findings in the decree. In the September 6, 2005 order, the district court awarded retroactive child support in the amount of $1,120 per month, commencing August 1, 2000 and ending February 28, 2005, determined that child-support arrearages for the period totaled $14,291.79, and reduced the judgment granted by the CSM for child-support arrearages in the amount of $31,625 to $14,291.79. The court, relying on the *Hortis/Valento* formula, eliminated ongoing child support, commencing March 1, 2005. Finally, the court stayed interest on the child-support arrearages conditioned on father making timely monthly payments of $250 on arrearages.

The September 6, 2005 order does not refer to medical support or childcare-support arrearages accruing since August 18, 2003, the date of the CSM replacement order.

Shortly after the district court issued its September 6, 2005 order, father received a letter from the county setting forth the county's interpretation of the district court's final orders. The county modified father's child-support arrearages but because no modifications were set forth in the district court's final orders, the county refused to modify arrearages for medical support and childcare support. Eleven months later, father brought a motion before the district court to correct a clerical error under Minn. R. Civ. P. 60.01, asking the court to order the county to correct its records to remove medical-

support and childcare-support arrearages that accrued before the district court's final orders. The district court denied father's motion in an order filed December 26, 2006. The court interpreted the district court's final orders as modifying only child-support arrearages, not medical-support and childcare-support arrearages, and ruled that the medical-support and childcare-support arrearages did not merge into the district court's final orders.

Father seeks review of the December 26, 2006 order. The primary issue in this appeal is whether father owes medical-support and childcare-support arrearages arising out of the CSM replacement order and accruing since the date of its issuance, August 18, 2003.[2] Because the court's final findings and conclusions are found in both the decree and the September 6, 2005 order, we examine the provisions of both orders in this appeal.

Father argues not only that any arrearages for medical support and childcare support that accrued after August 18, 2003, merged into the district court's subsequent orders, but also that the judgments modified in the CSM's replacement order merged and his court-ordered obligation to pay medical support and child support merged. Father

[2] In its subsequent orders, the district court did not make a specific finding about the amount of father's arrearages for medical or childcare support. Father claims he was sent an income-withholding order, dated March 3, 2005, that reflected that he was not in arrears for medical or childcare support. The county claims that the withholding order only reflected monthly amounts to be withheld, not total balances of arrearages. The county also argues that at the time of the withholding order, only amounts for child-support arrearages were being withheld. Father appears to concede that some arrearages accrued prior to the district court's issuance of its orders, but argues that any arrearages merged into the district court's orders, along with his obligation to make payments for medical and childcare support. The issue before us is whether the arrearages and/or obligations merged into the district court's subsequent orders. For purposes of this appeal, we do not address the exact amount of arrearages.

argues the district court erred in finding that the arrearages remained outstanding, and argues that he was denied due process because he did not have notice and an opportunity to litigate the claim for arrears.

D E C I S I O N

Father challenges the December 26, 2006 order in which the district court denied his motion that he characterized as a Rule 60.01 motion to correct a clerical error. A clerical error is a mistake apparent upon the face of the record, capable of correction by reference to the record only, which is usually a mistake in the clerical work of transcribing the record and is "usually one of form." *Wilson v. City of Fergus Falls*, 181 Minn. 329, 332, 232 N.W. 322, 323 (1930) *quoted in Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). But here, father did not request that the district court correct a clerical-type error, he requested that the court resolve the county's "error" in interpretation of the district court's final orders. The district court resolved the dispute by interpreting its final orders to mean that the medical-support and childcare-support arrearages are outstanding because the district court's final orders do not specifically modify the amount of arrearages.

Interpretation of District Court's Final Orders

A district court may interpret a prior order if it finds it is ambiguous. *Stieler v. Stieler*, 244 Minn. 312, 319, 70 N.W.2d 127, 131 (1955) (a district court may construe or clarify a judgment or order that is "ambiguous or uncertain upon its face").[3] The district

[3] Though *Stieler* is a dissolution case addressing dissolution judgments, it has provided the standard for interpretation of judgments and orders in other contexts and is considered

court's decision on the question of ambiguity is a question of law. *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). As a question of law, it is subject to de novo review on appeal. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n,* 358 N.W.2d 639, 642 (Minn. 1984). The interpretation itself is treated like a factual finding, and is reviewed on appeal for clear error. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005) (citing *Landwehr v. Landwehr*, 380 N.W.2d 136, 139-40 (Minn. App. 1985)). This court is mindful that when a district court interprets its own prior order, its interpretation has "great weight." *Mikoda v. Mikoda*, 413 N.W.2d 238, 242 (Minn. App. 1987), *review denied* (Minn. Dec. 22, 1987).

The district court's interpretation in this case was appropriate because the district court's final orders were ambiguous. An order is ambiguous and may be clarified by the tribunal which issued it, if the order is "of doubtful meaning or open to diverse constructions." *Stieler*, 244 Minn. at 319, 70 N.W.2d at 131. Here, the parties' reasonable and different interpretations of the district court's final orders demonstrate that the district court's final orders were "open to diverse constructions." Father interpreted the district court's final orders to mean that all arrearages not included in the district court's final orders were eliminated; the county read the district court's final orders to mean that arrearages not specifically modified in the orders were unchanged and remained outstanding. The omission of medical support and childcare support in the

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"[t]he leading case on a court's inherent authority to interpret or clarify an order." *Gray v. Farmland Indus., Inc.*, 529 N.W.2d 514, 516 (Minn. App. 1995) (citing *Stieler* as establishing district court's authority to interpret prior judgments in a case involving a settlement for injuries), *review denied* (Minn. June 14, 1995).

district court's final orders created an ambiguity which led to the parties' contradictory interpretations.

The district court's interpretation of the district court's final orders was not clearly erroneous. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). "If there is reasonable evidence to support the trial court's findings of fact, a reviewing court should not disturb those findings." *Id.* Here, the court interpreted the district court's final orders to mean that medical-support and childcare-support arrearages were unmodified. This interpretation was based on the fact that the modifications to the CSM replacement order were calculated explicitly and those calculations did not reflect any consideration of the medical-support and childcare-support arrearages. Applying the standard in *Fletcher*, we determine that these findings are "reasonable evidence" in favor of the district court's interpretation and this court is not left with a "definite and firm conviction that a mistake has been made." *See Fletcher*, 589 N.W.2d at 101 (stating standard). The findings will therefore not be disturbed.

Merger

Father claims that as a matter of law, the medical-support and childcare-support arrearages merged into the district court's final orders. This argument was not presented to the district court, and the district court's decision does not refer to, or appear to rely on, rules related to merger. "A reviewing court must generally consider 'only those issues that the record shows were presented and considered by the trial court in deciding the

matter before it.'" *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quoting *Thayer v. Am. Fin. Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982)). Under *Thiele*, a party ordinarily cannot raise a new issue on appeal, or raise the same general issue raised below, but address it with a new theory. *Id.* But in the interests of justice this court can consider issues not presented and considered by the district court. Minn. R. Civ. App. P. 103.04. Because the parties have briefed the issue extensively and their positions are in such conflict regarding the application of rules and law related to merger, in the interests of justice, we address the issue pursuant to rule 103.04.

The question of whether arrearages merge into an order is one of law. A question of law is subject to de novo review on appeal. *Frost-Benco*, 358 N.W.2d at 642.

Father presents two arguments in support of his claim that any arrearages merged into the district court's final orders as a matter of law: 1) that arrearages merged under Minn. Stat. § 518.131; and 2) that legal precedent in the area of temporary maintenance indicates temporary awards merge into final orders.

Father argues that the CSM replacement order was like a temporary order under Minn. Stat. § 518.131, subds. 1, 5 (2006). Under Minn. Stat. § 518.131, subd. 1, a district court may, upon request of either party, issue a temporary order in "a proceeding brought for custody, dissolution, or legal separation, or for disposition of property, maintenance, or child support following the dissolution." Minn. Stat. § 518.131, subd. 1. A "temporary order" under Minn. Stat. § 518.131 shall continue until "the earlier of its amendment or vacation, dismissal of the main action or entry of a final decree of dissolution or legal separation." Minn. Stat. § 518.131, subd. 5. But the CSM

replacement order was not a temporary order within the meaning of section 518.131. The CSM replacement order was not issued in a "custody, dissolution, or legal separation" action and was not issued upon a request for temporary relief, nor did it make any provision for temporary support. Rather, the CSM replacement order was entered in a child-support action that was later consolidated with a custody and parenting-time action. The CSM replacement order set ongoing child support, medical support, and childcare support and provided that the district court could review and modify it. The CSM replacement order was not a "temporary order" under Minn. Stat. § 518.131; it was an order that would remain in effect unless and until modified by the district court. Because the CSM replacement order was not "temporary" within the meaning of § 518.131, its terms did not merge into the final district court orders.

Father cites *Trutnau v. Trutnau*, 221 Minn. 462, 464, 22 N.W.2d 321, 322 (1946), as support for his merger argument, interpreting the case to stand for the proposition that "all grants of temporary relief arising from prior orders of the court become merged in the judgment." *Trutnau* is inapposite to father's position. *Trutnau* recites the rule that temporary alimony (now called spousal maintenance) awarded by a court in a prior order merges into a final dissolution judgment. *Trutnau* relied on *Richardson v. Richardson*, 218 Minn. 42, 44, 15 N.W.2d 127, 128 (1944), which stated that the purpose of temporary alimony is to provide support during the pendency of litigation that will sort out property rights. In *dicta*, the *Trutnau* court said that the purpose of temporary alimony suggests that it is not intended to survive the final adjudication of the property

rights. *Trutnau* and *Richardson* only address temporary alimony and rely specifically on its purpose.

Here, neither the issuance of an order for temporary maintenance nor a similar order is before us. The orders before us are for the child support, medical support and childcare support awarded in the CSM review/modification order and CSM replacement order and such orders are not analogous to orders for temporary alimony under *Trutnau* or *Richardson*. Neither *Trutnau* nor *Richardson* supports father's position that the support orders at issue in this case merged into the district court's final orders.

Because father presents no authority to support his position that arrearages for the support of a child arising out of a CSM order automatically merge into a subsequent district court order, this court will not disturb the district court's order determining that father's arrearages did not merge and remain outstanding.

Due Process

Father argues that he was denied due process by the district court's finding in the December 26, 2006 order that arrearages were not modified in the district court's final orders.

Procedural due process requires notice and a meaningful opportunity to be heard before a litigant can be deprived of a protected property interest. *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 304 (Minn. App. 2007) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976) (stating that due process requires notice and opportunity to be heard)). Father has a property interest in the money he pays for child support. *Machacek v. Voss*, 361 N.W.2d 861, 863 (Minn. 1985). Before a litigant can be

deprived of a protected interest, due process requires that the litigant have an opportunity to be heard and present the litigant's case. *State v. Sax*, 231 Minn. 1, 17-18, 42 N.W.2d 680, 690 (1950) (deciding that a parent had to be provided with the opportunity to present her case before child support could be determined). To determine whether father was denied due process, we must determine whether father had notice of the claim and an opportunity to be heard on that claim before he was deprived of his property through judicial resolution of the claim against him.

The claim at issue is the claim for medical and childcare support. This claim was resolved against him, and an ongoing obligation for medical support and childcare support was established in the CSM replacement order. The CSM replacement order was established after full litigation of the claim, in which father had counsel, and presented arguments and facts to support his arguments. Father had both notice of the claim and an opportunity to litigate the claim before the obligation was judicially established. Thus, the district court's resolution of father's claimed medical-support and childcare-support arrearages did not deprive father of his property without due process.

Father seems to view the district court's order of December 26, 2006, as the order that requires him to pay the arrearages. That view is incorrect. The December 26, 2006 order merely states that the CSM replacement order was not modified by the district court's final orders. The order under which father owed the medical support and childcare support during the period in question is the CSM replacement order.

This court notes that not only did father have notice and an opportunity to be heard before the claim was resolved against him, he also had a second opportunity to litigate the

issue de novo in the district court proceedings. No order that would retroactively modify medical support and childcare support was requested by father in the district court proceedings. Appropriately, where no retroactive modification was requested, none was granted. Father was not denied due process, which does not require more than the opportunity to fully litigate the same claim twice.

Affirmed.