STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0493

In re the Marriage of:
Leah Grace Staquet, petitioner,
Respondent,

vs.

Paul John Staquet,
Appellant,

and

Pennington County,
Intervenor.

Filed April 1, 2008
Reversed in part and appeal dismissed in part
Connolly, Judge

Pennington County District Court
File No. 57F5-05-462

Michael L. Jorgenson, Charlson & Jorgenson, P.A., 119 West Second Street, P.O. Box 506, Thief River Falls, MN 56701 (for respondent)

Paul John Staquet, 607 Markley Avenue South, Thief River Falls, MN 56701 (pro se appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant-father filed a notice of appeal challenging the order of the child support magistrate granting father's motion for modification of his child-support obligation. However, father failed to brief any issues related to that order, or raise any issues which are properly before this court. Accordingly his appeal is dismissed. Respondent-mother, by a notice of review, challenges the same order of the CSM granting appellant-father's motion for modification of child support. Because the child support magistrate abused his discretion in granting the motion, we reverse.

FACTS

The parties were married in February, 1999. In 2005, the parties agreed to begin marital dissolution proceedings. A child support magistrate (CSM) issued a temporary order establishing appellant-father's (father) child-support obligation while the dissolution was pending. The district court incorporated the award of child support granted in the temporary order in its findings of fact, conclusions of law, order for judgment, and judgment and decree for the marital dissolution. In October, 2006, father, through counsel, moved for amended findings of fact, conclusions of law, and order for judgment, or, in the alternative, for a new trial. Father argued that the CSM and the district court had erred in calculating his income for the purposes of awarding child support.[1] Acting pro se, father also moved for modification of the child-support award at

[1] This motion made no mention that father was receiving disability pay. Father argued that the CSM had improperly imputed per diem pay to him as income.

the same hearing. In this motion, father argued that he began receiving disability pay in July, 2006, thereby decreasing his income and entitling him to a modification of the child-support award.

Father included a copy of a paystub reflecting disability pay in the amount of $1,300 per pay period as supporting documentation for his motion for modification before the district court. The district court had this paystub before it when it considered both of father's motions on October 16, 2006. On November 7, 2006, the district court issued its order on father's motion for amended findings of fact, conclusions of law, order for judgment, and judgment or, in the alternative, for a new trial. The district court amended its findings regarding father's income. Based upon the amended findings, father's monthly child-support payment was lowered to $826. In a separate order filed December 7, 2006, the district court denied father's motion to modify child support. In its memorandum attached to the December 7, 2006 order, the district court stated that father had not met his burden of proof to show a disability, as the only evidence he presented was his own statements about his inability to work; no documentation of any diagnoses or affidavits from medical or psychological professionals were produced.

On January 26, 2007, father moved the CSM for a modification of the district court's December 7, 2006 order denying his request for modification. Father argued the same grounds for modification and alleged the same disability that he alleged at the hearing before the district court. The CSM granted this motion and issued findings of fact, conclusions of law, and an order modifying father's child-support obligation. The CSM found that father was receiving disability payments of $2,600 per month and was

not voluntarily underemployed. The CSM ordered father to make child-support payments in the amount of $408 per month.

Father filed a notice of appeal challenging an earlier order of the district court and the amount of arrearages owed. Respondent-mother (mother) filed a notice of review of the CSM's February 22, 2007 order.

D E C I S I O N

I. Did the child support magistrate abuse its discretion in modifying father's child-support obligation?

Mother directly appeals the decision of the CSM, without having sought review by the district court. Minn. R. Gen. Pract. 378.01. "On appeal from a final order by a CSM, our review is limited to determining whether the evidence supports the findings of fact and whether the findings support the conclusions of law and judgment." *County of Anoka ex rel. Hassan v. Roba*, 690 N.W.2d 322, 324 (Minn. App. 2004). This court can also review substantive legal issues properly raised in the district court. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minnesota*, 664 N.W.2d 303, 310 (Minn. 2003) (stating that no motion for reconsideration by the district court is required for an appellate court to have jurisdiction to review substantive legal issues). In conducting this limited review, we view the record in the light most favorable to the CSM's findings and defer to the CSM's credibility determinations. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (establishing standard for reviewing district court); *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002) (establishing standard of review for CSM's decision is the same as for district court's decision). The

decision to accept or reject evidence of an obligor's income rests within the CSM's sound discretion. *See Nelson v. Nelson*, 291 Minn. 496, 497, 189 N.W.2d 413, 415 (1971) (evidentiary weight and witness credibility are province of the fact-finder). We will reverse a CSM's order regarding child-support modification only if we conclude that the decision was an abuse of discretion. *Ludwigson*, 642 N.W.2d at 445. Mother argues that the CSM abused its discretion when it granted father's motion for modification of child support in its February 22, 2007 order, after a substantially similar motion was denied by the district court in December, 2006. We agree.

Father moved for modification of child support before the district court on October 16, 2006. The district court issued its order denying father's motion on December 7, 2006. Relying on *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002) (holding that the moving party has the burden of proving that the existing child-support order should be modified), the district court said:

> In this case [father] alleges that he has suffered a reduction in income because stress and depression from his marriage dissolution prevent him from working as a pilot. He has not, however, provided the Court with an affidavit from either a medical doctor or psychologist confirming his disability. [Father]'s evidence was limited to his statement that he has stopped working because the stress from his divorce might cause him to make a mistake while flying and jeopardize the lives of passengers. . . . The evidence presented by [father] does not satisfy his burden of proof. If the court were to hold otherwise, any obligor could avoid paying child support by stating that the stress he or she is under prevents him or her from working. The law requires more than this to satisfy the burden of proof for modifying a child support order.

Less than two months after the district court issued its decision denying father's motion for modification, father moved for modification, this time before the CSM. A child-support order may be modified upon a showing of a substantial change in circumstances that makes the existing order unreasonable and unfair. Minn. Stat. § 518.64, subd. 2 (2004)[2]. The burden of proof is on the party moving for modification. *Bormann*, 644 N.W.2d at 481. Father based his motion before the CSM on the same argument that he made to the district court. Specifically, father argued that he had become disabled, that he had a reduced income as a result, and that his living expenses had changed.

Mother argues that father effectively appealed the district court's denial of his motion for modification to the CSM. She argues that there was no change in circumstances between the December 7, 2006 order denying modification and when father filed his January 26, 2007 motion for modification with the CSM, and that when the magistrate reached a different conclusion than did the district court judge on the same arguments and evidence, the magistrate effectively overruled the district court. We agree.

The CSM apparently relied upon paystubs produced by father that he is receiving disability pay to conclude that father is, in fact, disabled and not voluntarily underemployed. The CSM specifically said, "I'm hesitant at this point in time, to go very deep into [the issue of whether father is actually disabled], because somehow, somebody

[2] As the change of circumstances occurred in July, 2006, the 2004 version of the statute is the proper version to apply. Minn. Stat. § 518A.39, subd. 2(j) (2006).

has determined him to be dis, disabled. He qualifies for a disability income and you don't qualify for a disability generally unless you've proven your disability." Father made references on the record that he provided the district court with documentation to establish his disability, but no such documentation is in the record before this court.

Father presented no evidence to the CSM of a change in circumstances between the district court's December 7, 2006 order denying his motion for modification and his motion for modification to the CSM. Rather, father argued the same change in circumstances that he argued at the October, 2006 hearing. Further, it is apparent that the same evidentiary problem exists in father's motion to the CSM as was present in his motion to the district court. The record contains no evidence produced by father to satisfy the burden of proof the district court found he failed to meet. The CSM appears to take father's assertion of disability on faith because he is receiving disability pay, relying on father's paystubs as proof of father's disability. However, a copy of father's paystub was included with the materials that father submitted to the district court in his earlier motion for modification. The district court found that this evidence did not satisfy father's burden of proof. The CSM abused its discretion when it granted father's motion for modification in the absence of new evidence.[3]

[3] Because the parties do not address either res judicata or collateral estoppel, we do not do so either. *Cf. Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only issues and theories presented to and considered by the district court). We note, however, that while the applicability of these doctrines to family matters may be limited, the underlying idea that once a question has been litigated it should not be relitigated absent unusual circumstances, does apply to family matters. *See Loo v. Loo*, 520 N.W.2d 740, 743-44 & n.1 (Minn. 1994) (noting that the availability and application of res judicata and collateral estoppels in family matters is limited, but

Because we conclude that the CSM's order must be reversed, we need not address mother's remaining arguments.

II. Has appellant-father raised any issues which require relief by this court?

Father's brief raises multiple issues. However, he has failed to raise any issues which are properly before this court for consideration.

The majority of father's brief is devoted to arguing that this court should engage in review of a previously dismissed appeal. This appeal was dismissed as untimely by order of this court on April 24, 2007. "No petition for rehearing shall be allowed in the Court of Appeals." Minn. R. Civ. App. P. 140.01. This issue is not properly before this court. As a result, father's appeal for reversal of the $10,000 judgment fails.

Father's argument regarding parenting time is not properly before this court. Father has not filed a notice of appeal challenging an order addressing the issue of parenting time. Minn. R. Civ. App. P. 104.01. Moreover, on this record, we decline to address the parenting-time question under Minn. R. Civ. App. P. 103.04.

Father's next argument, that this court should reverse the original temporary order issued by the CSM on November 21, 2005, is not properly before the court. "Temporary

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that "the underlying principle that an adjudication on the merits of an issue is conclusive, and should not be relitigated, clearly applies[,]" and discussing the applicability of law of the case, res judicata, and collateral estoppel to family matters); *Phillips v. Phillips*, 472 N.W.2d 677, 680 (Minn. App. 1991) (stating that "[a] question of changed circumstances, once litigated, may not be retried," but also noting that when modification is sought after denial of a motion to modify, "the first question is whether the change since the denied motion has been significant enough that it might, because of its incremental effect, require the trial court to examine the cumulative changes since the order setting the support level").

relief orders are unappealable." *Korf v. Korf*, 553 N.W.2d 706, 709 n.1 (Minn. App. 1996.)

Father has failed to raise any issues which merit relief by this court. Accordingly, father's direct appeal is dismissed.

Reversed in part and appeal dismissed in part.