STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1295

In re the Marriage of:
Mary Melissa Martin, petitioner,
Respondent,

vs.

Kurt Wayne Martin,
Appellant.

Filed June 17, 2008
Affirmed
Halbrooks, Judge

Crow Wing County District Court
File No. 18-F1-01-000250

Mary Melissa Martin, 701 Southwest 6th Street, Brainerd, MN 56401 (pro se respondent)

Kurt Wayne Martin, 109 Second Avenue Northeast, Brainerd, MN 56401 (pro se appellant)

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, 213 Laurel Street, Suite 31, Brainerd, MN 56401 (for Crow Wing County Social Services)

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

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

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to modify his child-support and health-care obligations. Because the record supports the district court's order, we affirm.

FACTS

Appellant Kurt Wayne Martin and respondent Mary Melissa Martin were married in December 1990 and have two children, N.M., 22, and M.M., 15. Before the dissolution judgment, appellant reported his monthly net income as $5,048.02. Based on this income, the district court imposed a temporary child-support obligation on appellant of $1,514 per month. Appellant subsequently advised the district court that his monthly net income had decreased to $4,512.02; the district court subsequently reduced appellant's child-support obligation to $1,353.06 on November 5, 2001. This modification was made retroactive to May 1, 2001. Judgment was entered on November 13, 2002. The issues of legal and physical custody, parenting time, ongoing child support, and child-support arrearages were reserved for trial.

Following trial, the district court issued a supplemental order on May 21, 2003, setting appellant's monthly child-support obligation at $1,375.90 and requiring appellant to pay respondent $15,736.53 in child-support arrearages. In its order, the district court found that appellant "estimates that his current annual net income is in the range of $50,000 – $60,000." The district court averaged the figures provided by appellant and found that based on an "annual net income of $55,000, [appellant's] net monthly income

would be $4,583." At the time of this order, appellant was paying $310 per month for private medical insurance for both children.

On September 21, 2004, the district court ordered a 16.66% reduction in appellant's child-support obligation based on N.M.'s emancipation and the terms of the May 21, 2003 order. This resulted in a child-support obligation of $1,147. In June 2005, appellant moved for a modification of his child-support obligation, claiming a 20% change in his income. The child-support magistrate (CSM) found that it was "impossible to determine [appellant's] actual and net gross income for purposes of the child support as there [was] no way to analyze his receipts, expenses, and deductions for such items as depreciation and use of personal residence for office purposes." Because appellant had not met his statutory burden of proof, the CSM denied his motion.

In April 2004, Crow Wing County filed an order to show cause why appellant should not be held in contempt of court for his failure to comply with his child-support obligation. The district court determined that appellant had an arrearage of $14,232.40 and found him in contempt of court. But the district court stayed imposition of a 180-day jail sentence on the condition that appellant pay his monthly support obligation as well as an additional amount to be applied to the arrearage. When appellant failed to comply with the terms of the stay, Crow Wing County moved to revoke the stayed sentence in August 2005. The district court revoked the stay but allowed appellant to be released upon payment of $6,019 in child-support arrears. Appellant was granted a stay of the jail term while he appealed the district court's decision. This court affirmed the district court's decision in *Martin v. Martin*, No. A06-0300 (Minn. App. Dec. 5, 2006).

Appellant again moved to modify his child support on January 31, 2007. His motion was based on the argument that a substantial change in his gross income warranted a modification of his child-support obligation. The matter came before a CSM on March 12, 2007. Appellant offered his 2006 personal and corporate tax returns as evidence of his current gross yearly income, which the CSM found to be $67,700. Noting that appellant's gross income was $67,108 at the time his child-support obligation was initially set, the CSM found that the change in appellant's income was not "substantial" under the statute. Because the change was a .09% increase, it did not meet the requirement of a 20% change in gross income required for modification of child support. As a result, the CSM denied appellant's motion.

Appellant filed an appeal with the district court on the grounds that the CSM's findings were vague, insufficient, and not supported by the record. The district court reviewed appellant's motion and concluded it was "defective on its face," noting that appellant "did not indicate the evidence or law supporting the requested changes, nor did [appellant] request an order to permit new evidence or to provide a reason that the evidence was not submitted at the prior hearing." Appellant submitted his own affidavit that provided calculations in support of his argument that the CSM's findings were unsupported by the record. But the district court determined that appellant "failed to meet the statutory requirement of a 20% change in his gross income." The district court concluded that there was no error in the CSM's findings and denied appellant's appeal. Appellant also requested that the district court issue an order requiring "each of the parties [to] contribute toward the health care costs of the joint child at a pro rata amount."

But the district court concluded that the request had not been raised to the CSM and was therefore not properly before the district court. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by denying his motion to modify his child-support obligation. Appellant contends that his child-support obligation should be modified based on Minn. Stat. § 518A.39, subd. 2(b)(5) (2006), because he has had a 20% change in his gross income since his child-support obligation was set in 2003 and that the CSM's determination that he has only had a .09% change in income is unsupported by the record.

On appeal from a CSM's order, the district court conducts a de novo review of the order and the record. *Blonigen v. Blonigen*, 621 N.W.2d 276, 280 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). When reviewing a district court's decision regarding child support, this court will not reverse absent an abuse of discretion. *Kuronen v. Kuronen*, 499 N.W.2d 51, 51 (Minn. App. 1993), *review denied* (Minn. June 22, 1993). When the district court affirms the CSM's order, the CSM's decision becomes the decision of the district court. *Cf. Blonigen*, 621 N.W.2d at 280 (stating that in performing a review of a CSM's ruling, findings of the CSM that are not approved or modified by the district court do not become part of the district court's decision).

In issuing its 2003 order establishing appellant's child-support obligation, the district court had limited information regarding appellant's income due to appellant's failure to file tax returns in 2001 and 2002. Although appellant had a reported taxable income of $148,000 in 2000, he testified that his annual net income in 2003 was in the

"range of" $50,000 to $60,000. The district court accepted appellant's testimony and averaged the two figures to establish appellant's child-support obligation. But the district court did not make a finding that conclusively established appellant's yearly income in its order.

Despite the lack of an explicit finding in the district court's 2003 order, the CSM found that appellant had an income of $67,108 "[a]t the time of setting of support" in 2003. The district court also included the $67,108 amount in its findings. While appellant now argues that this finding lacks support in the record, appellant's own earlier submission to the district court is the support in the record for the district court's finding.

With his June 2005 motion to modify his child-support obligation, appellant filed an affidavit in support of his argument that his income had changed since child support was set in 2003. In that affidavit, appellant provided a W-2 statement with the $67,108 amount that the CSM determined was appellant's income at the time his child-support obligation was set. Appellant argued for modification of his child support based on that W-2 and refused to produce any other evidence of his income. As a result, the record supports the district court's finding of appellant's income at the time child support was set. Although the district court did not identify the source of this finding in its order, we are not required to reverse merely because the district court could have provided more detail. *See Martens v. Martens*, 211 Minn. 369, 371, 1 N.W.2d 356, 358 (1941) (stating, in the context of the district court's denial of a motion for amended findings, that an appellate court is not required to reverse a nonspecific finding "simply because the decision below might well have gone into more detail").

Even assuming that the record lacks clear support for the district court's finding, appellant has failed to meet his burden to show that a modification of his child support is justified. On appeal, "'error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it.'" *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (quoting *Midway Ctr. Assoc. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975)), *review denied* (Minn. Oct. 31, 1997). Appellant argues his subsequently submitted affidavit shows the error by the district court. But the district court stated regarding the affidavit:

> [appellant] goes to great lengths to show that his monthly child support obligation payment should be substantially lower based on his calculations "per statute." However, [appellant] bears the burden of proof to show that his gross income has increased or decreased by 20% or more. Minn. Stat. § 518A.39, subd. 2(b)(5) [(2006)]. Because the [CSM] found that [appellant's] gross annual income increased . . . less than .09% . . . [appellant] failed to meet the statutory requirement of a 20% change in his gross income.

While the district court made no explicit finding regarding the credibility of appellant's affidavit, there is an implicit rejection of credibility in the district court's refusal to modify the findings of the CSM. When reviewing credibility determinations, we defer to the district court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Lacking any credible support to contradict the findings of the district court, appellant fails to meet his burden to demonstrate the district court's abuse of discretion.

Appellant also argues that the district court abused its discretion by refusing to modify his health-care obligation. Appellant contends that the district court should have

ordered each of the parties to contribute to the health-care costs of their minor child at a pro-rata amount. In his motion to the CSM to modify child support, appellant checked a box on a standard notice-of-motion form marked "[e]stablishing medical support."

The district court concluded that the matter was "not before the [CSM] and therefore is not properly before [this] Court." We agree with the district court and will not consider this matter on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Although appellant checked a box on the notice-of-motion form, there is no other evidence in the record that he raised the issue of a "pro rata amount" of health-care support before the CSM. Simply checking a box on a standard form does not conclusively establish that the issue was raised below. It is the appellant's responsibility to provide a transcript, and without a more substantial record that demonstrates that appellant raised this issue to the CSM, we cannot properly review this issue. *Eichinger v. Wicker Enters., Inc.*, 389 N.W.2d 759, 761 (Minn. App. 1986), *review denied* (Minn. Aug. 27, 1986).

Affirmed.