STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0726

In re the Marriage of: Heather Dawn Woods,
n/k/a Heather Dawn Andrews, petitioner,
Appellant,

vs.

Christian Michael Woods,
Respondent.

Filed February 10, 2009
Affirmed
Peterson, Judge

Otter Tail County District Court
File No. 56-FA-07-3072

Robert O. Blatti, Lakes Area Law Center, 702 Lake Avenue North, P.O. Box 829, Battle Lake, MN 56515 (for appellant)

Ronald Resnik, 6300 Shingle Creek Parkway, Suite 165, Brooklyn Center, MN 55430 (for respondent)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

PETERSON, Judge

On appeal in this child-support-modification dispute, appellant-mother argues that the district court erred by (1) modifying respondent-father's support obligation when his

motion was served within the moratorium period of Minn. Stat. § 518A.39, subd. 2(j) (Supp. 2007); (2) modifying the parties' stipulated health-insurance provision without adequate findings of fact; and (3) declining to award mother conduct-based attorney fees. We affirm.

FACTS

The parties' marriage was dissolved by a stipulated judgment and decree entered June 24, 1996. The parties have two children together, C.M.W., born in 1990, and B.M.W., born in 1992. The dissolution judgment granted primary physical custody of both children to appellant-mother Heather Dawn Woods, n/k/a Heather Dawn Anderson, and required respondent-father Christian Michael Woods to pay $750 per month for child support. At the time of the dissolution, mother was employed as a receptionist, earning a net monthly income of $1,150, and father was employed as a systems analyst, earning a net monthly income of $2,413. As a result of cost-of-living adjustments and a modification of child support, effective November 1, 2004, father's child-support obligation was increased to $1,432.43.

In August 2006, father moved from Minnesota to Kansas City, Missouri, which resulted in a reduction in his income. In April 2007, father moved to modify child support. Mother filed a motion to transfer venue from Washington County to Otter Tail County on grounds that neither party resided in Washington County and the children had been residing primarily with mother in Otter Tail County for the preceding five years. Mother alleges that the parties stipulated to the venue change but due to father's failure to finalize the stipulation, she had to re-serve her motion and appear at a hearing on it.

Following a hearing at which father did not appear, the Washington County District Court ordered venue transferred to Otter Tail County.

After venue was transferred, mother filed a responsive motion and countermotion in Otter Tail County District Court, seeking a cost-of-living increase in child support, judgment for child-support arrears and unreimbursed medical expenses, automatic income withholding, and attorney fees. In support of her motion, mother submitted a financial affidavit showing that she earned no income from employment.

Following a hearing, by order filed February 26, 2008, the district court found that after father's job in Minnesota changed, which required him to work overnight shifts and allowed him less time to spend with his family, father took advantage of an opportunity to relocate to Kansas City to take a lower-paying job that he found more professionally challenging and rewarding. The district court found that father's gross monthly income was $5,422 and that his parental income for determining child support (PICS) was $4,763. The district court found that mother was unemployed and had no earnings. Based on mother's earning history and the absence of evidence that she was unable to be employed full time, the district court found that mother's potential monthly income was $1,521 and that her PICS was $1,375.

Pursuant to the guidelines, the district court found that father's percentage contribution was 78%, resulting in a basic child-support obligation of $1,107 per month. The district court reduced that amount by $53 per month to reflect mother's 22% contribution toward dependent health and dental coverage and ordered father to pay

$1,054 per month for child support. The district court denied mother attorney fees. This appeal followed.

D E C I S I O N

I.

Mother argues that the district court erred by modifying child support when father's motion was served within the moratorium period of Minn. Stat. § 518A.39, subd. 2(j) (Supp. 2007). Generally, appellate courts will consider only those issues that the record shows were presented to and considered by the district court in deciding the matter before it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Also, a party is generally bound on appeal by the theory or theories upon which an issue was tried. *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 390 (Minn. 1992). Thus, a party may not "obtain review by raising the same general issue litigated below but under a different theory." *Thiele*, 425 N.W.2d at 582.

At oral argument, mother's counsel stated that the issue of the application of the moratorium period in Minn. Stat. § 518A.39, subd. 2(j), to this case was raised before the district court. But the documents submitted to the district court by mother in connection with father's motion to modify child support and mother's responsive motion and countermotion do not refer to Minn. Stat. § 518A.39, subd. 2(j). In the memorandum of law that mother submitted to the district court, mother opposed father's motion on the theory that he submitted insufficient evidence to support a downward modification of child support; she did not address the application of the moratorium period in Minn. Stat. § 518A.39, subd. 2(j). A transcript of the motion hearing was not provided to this court.

The "appellant has the burden of providing an adequate record for appeal." *Custom Farm Servs., Inc. v. Collins*, 306 Minn. 571, 572, 238 N.W.2d 608, 609 (1976). The record includes transcripts that are "deemed necessary" for review of the case. Minn. R. Civ. App. P. 110.02, subd. 1(a). Because the record provided to this court does not show that the moratorium issue was raised before the district court, we decline to address the issue on appeal.

II.

The district court has broad discretion in determining whether to modify child support. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). On appeal, we will not alter that decision absent an abuse of discretion. *Id.* A district court abuses its discretion if it resolves the matter in a manner that is against logic and the facts on the record. *Id.*

Child support may be modified if a moving party establishes that a substantial change in circumstances has rendered the existing child-support obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2008). If application of the child-support guidelines to the parties' current circumstances results in a guideline child-support obligation at least 20% and $75 different from the existing child-support obligation, it is presumed that there has been a substantial change in circumstances, and there is a rebuttable presumption that the existing child-support obligation is unreasonable and unfair. *Id.*, subd. 2(b)(1).

Mother argues that the district court provided no findings of fact or conclusions of law that show this court the reason the district court modified the allocation of the cost

of dependent health-insurance coverage from being father's sole responsibility to making mother responsible for 22% of the cost. But the district court found:

> 11. [Father's] gross monthly income is $5,422. [Father] has two non-joint children in the household. After granting [father] a reduction for two non-joint children in the amount of $659, [father's] parental income for determining child support (PICS) is $4,763.
>
> 12. [Mother's] potential income is $1,521 per month. [Mother] is entitled for a deduction for one non-joint child in the household in the amount of $146. [Mother's] parental income for determining child support (PICS) is $1,375.
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> 13. The percentage contribution of [father] pursuant to the guidelines is 78%. The percentage contribution of [mother] is 22%. [Father's] basic child support obligation under the guidelines is $1,107 per month.
>
> 14. Pursuant to the guidelines, [father's] pro rata share of health care coverage is $136 per month and dental coverage is $68 per month. [Mother's] pro rata share of health care coverage is $38 per month and dental coverage is $15 per month, for a total medical support obligation of $53 per month. Under the guidelines, the shared uninsured and/or unreimbursed medical expenses are 78% for [father] and 22% for [mother].

Based on these findings, the district court concluded that "[Father's] child support obligation is $1,107 per month. The obligation shall be adjusted downward by $53, representing [mother's] pro rata share of health and dental insurance costs. Therefore, [father's] new obligation, effective May 1, 2007, is $1,054 per month." These findings and conclusion fully explain to this court the reason why the district court modified the allocation of the cost of dependent health-insurance coverage from being father's sole responsibility to making mother responsible for 22% of the cost.

Mother argues that because the district court failed to find any change in circumstances relevant to the allocation of dependent health-insurance coverage, the district court abused its discretion in modifying the allocation. But the district court found:

> The terms of an order respecting child support may be modified upon a showing of a substantially decreased income of an obligor that makes the terms of the previous order unreasonable and unfair. The terms of the current support order shall be rebuttably presumed to be unreasonable and unfair if the application of the child support guidelines in Section 518A.35 to the current circumstances of the parties results in a calculated court order that is at least 20% and at least $75 per month higher or lower than the current support order. The Court has applied the facts of this case to the child support guidelines . . . . The resulting child support obligation of [father] . . . is $1,107 per month, without adjustment for medical support. This results in an obligation under the guidelines that is $262.43 less than the current obligation. It also represents a 23% reduction. The court finds that [father's] earnings are substantially decreased and as a result, the previous order is unreasonable and unfair.

Mother cites no authority that requires the district court to find a separate change in circumstances that makes the allocation of dependent health-insurance coverage unreasonable and unfair before modifying the allocation. The district court's finding that father's earnings have substantially decreased, and, as a result, the previous child-support order is unreasonable and unfair is sufficient to support the district court's allocation of insurance costs according to Minn. Stat. § 518A.41, subd. 5 (2008).

III.

A district court may award conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1 (2008). An award of fees "rests almost entirely within the discretion of

the [district] court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999).

Mother sought both need-based and conduct-based attorney fees before the district court but challenges only the denial of conduct-based fees on appeal. Mother argues that father's failure to respond to correspondence about the venue change resulted in "fruitless follow-up letters" and in her having to re-serve and re-file the motion to change venue. The district court found:

> [Father's] motion has been pursued in good faith based upon a reduction in income. [Father] filed his motion in Washington County, which was the county where the original divorce decree was granted. Filing in Washington County was required rather than optional. Venue was changed to Otter Tail County for the convenience of [mother].

Although mother's counsel filed an affidavit of attorney fees, it does not indicate the amount of fees incurred by mother as a result of father's conduct. The district court's findings indicate that it balanced father's failure to respond to mother's correspondence against the convenience to mother of the venue change. Under these circumstances, we cannot conclude that the district court abused its discretion in denying conduct-based fees.

Affirmed.