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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1368**

In re the Marriage of:
Tammy Jo Freilinger,
f/k/a Tammy Jo Logelin,
petitioner,
Respondent,

vs.

Thomas Vincent Logelin,
Appellant.

**Filed May 19, 2009
Affirmed in part, reversed in part, and remanded
Crippen, Judge***

Dakota County District Court
File No. 19-F3-94-014333

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

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant challenges the district court's order modifying his obligation to support the parties' youngest child, who will be 17 in June 2009. Appellant disputes the finding that the child will be incapable of self-support past age 20, and he raises additional questions on several other court findings and conclusions. Because there is sufficient evidence to support the order for continued child support, we affirm in part, but we reverse one detail of a conclusion on future payment of medical-expense reimbursements, and remand for additional findings of fact.

FACTS

Appellant Thomas Logelin and respondent Tammy Freilingner were divorced in an October 1994 judgment and decree, which obligated appellant to pay support for their three children: DFL (22 in June 2009), ARL (20 in September 2009), and TJL (now 16). Unreimbursed medical expenses were to be shared by the parties in proportion to their incomes. It is undisputed that TJL has severe physical disabilities and that he has undergone substantial medical treatment.

In April 2008, respondent moved for an order directing payment of \$12,243.39 in unreimbursed medical expenses, for a determination that support for TJL should continue beyond his 20th birthday, and for other relief. In June, the district court ordered appellant to pay the accumulated medical expenses, designating these as "incurred on behalf of [TJL]," found TJL to be in need of support past age 20, set the support obligation on a per-child basis, and ordered modification of a life-insurance policy to benefit a trust for

TJL. The district court left to the parties the determination of the amount of future support and denied attorney fees requested by both parties.

DECISION

1.

Appellant argues that it was premature for the district court to make any determination that TJL will be incapable of supporting himself past the age of 20. We review an order for continued child support for abuse of discretion. *Hoppenrath v. Cullen*, 383 N.W.2d 394, 397 (Minn. App. 1986). “Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous” Minn. R. Civ. P. 52.01.

Courts have authority to order child support for an individual beyond the age of majority if the child is unable to support himself because of a physical or mental condition. *See McCarthy v. McCarthy*, 301 Minn. 270, 274, 222 N.W.2d 331, 334 (1974); *see also* Minn. Stat. § 518A.26, subd. 5 (2008) (defining for purposes of child support the term “child” as “an individual who, by reason of physical or mental condition, is incapable of self-support”). In *Hoppenrath*, this court held that the district court properly found that appellant’s motion to extend child support was premature where the child was four years old, and there was no abuse of discretion in denying the motion “to extend respondent’s child support obligation to the child past the age of emancipation.” 383 N.W.2d at 397.

The record here includes adequate evidence to support the district court’s conclusion that TJL will be in need of support past the age of 20. TJL is severely

physically disabled, has had numerous surgeries, and there is evidence that he will be undergoing multiple surgeries in the future. Although there are certain situations where an order of continuing support is premature, *see id.*, because TJL's continuing disability is evident, it was appropriate for the district court to order continuing future support.

Appellant argues that the present order wrongfully frees respondent from her burden to prove that TJL needs support past the age of 20. But respondent has met this burden because the record demonstrates that circumstances will not change in the next three years.

2.

Child-support Calculation

Appellant contends that the district court erred when it ordered a modification of child support without making findings and conclusions needed to calculate the amount of support. The court determines child support based on findings on the income of the parties and "other significant evidentiary factors." Minn. Stat. § 518A.37, subd. 1 (2008). As appellant points out, the district court made no findings regarding the parties' income and failed to calculate the amount of child support. Because the parties failed to set support as the district court invited, that determination remains before the district court and we remand for determination of the issue.

Unreimbursed Medical Expenses

Appellant contends that the district court erred in awarding \$12,243.39 in unreimbursed medical and dental expenses because some of the expenses were incurred outside the two-year limitation period, some of the expenses were incurred by another

son after his emancipation, and the supporting documentation was inadequate. The court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Under Minnesota law, “[a] party requesting reimbursement of unreimbursed or uninsured medical expenses must initiate a request to the other party within two years of the date that the requesting party incurred the unreimbursed or uninsured medical expenses.” Minn. Stat. § 518A.41, subd. 17(b) (2008). “A requesting party must mail a written notice of intent to collect the unreimbursed or uninsured medical expenses and a copy of an affidavit of health care expenses to the other party at the other party’s last known address.” *Id.*, subd. 17(c) (2008). “The affidavit of health care expenses must itemize and document the joint child’s unreimbursed or uninsured medical expenses and include copies of all bills, receipts, and insurance company explanations of benefits.” *Id.*, subd. 17(e) (2008).

The parties do not dispute that appellant is responsible for at least some of the unreimbursed medical expenses, but they disagree about the date that the two-year limitation period should start. The district court order contains a conclusion as to the amount of unreimbursed expenses that appellant should pay, but no findings to support the conclusion. There are no findings regarding the date of service to determine the two-year limitation period or how the district court calculated which bills fall within that two-year period. A review of the record does not help to determine the facts, and “[i]t is not within the province of [appellate courts] to determine issues of fact on appeal.” *Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966). Accordingly, we reverse

and remand the order for unreimbursed medical expenses for additional findings and conclusions.

Ten-day Payment Requirement

Appellant finally asserts that the district court erred in ordering him to pay all future unreimbursed medical expenses within ten days of receipt. “An appellate court is not bound by, and need not give deference to, the district court’s decision on a question of law.” *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001).

To recover unreimbursed medical expenses, an individual must provide notice to the other party. Minn. Stat. § 518A.41, subd. 17(c). This “notice must include a statement that the other party has 30 days from the date the notice was mailed to (1) pay in full; (2) agree to a payment schedule; or (3) file a motion requesting a hearing.” *Id.*, subd. 17(d). At oral argument, the parties agreed that all future payments should be made as prescribed by statute. Because the statute provides that a party has 30 days from the date of the notice to pay an unreimbursed medical expense, we reverse and remand for correction of the time for payment stated in the district court’s order.

Affirmed in part, reversed in part, and remanded.