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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1289**

Geoffrey Stewart Seuberth,
Appellant,

vs.

Kate Elizabeth Nieber, n/k/a Kate Elizabeth Marchbanks,
Respondent,

County of Chisago, intervenor,
Respondent.

**Filed June 30, 2009
Affirmed
Larkin, Judge**

Chisago County District Court
File No. 13-FA-05-2

Geoffrey Stewart Seuberth, 61 Cimarron, Lake Elmo, MN 55042 (pro se appellant)

Kate Elizabeth Marchbanks, 15487 Fish Point Road SE, Prior Lake, MN 55372 (pro se respondent)

Janet Reiter, Chisago County Attorney, 313 North Main Street, Room 373, Center City, MN 55012 (respondent-County of Chisago)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

On appeal after remand in this child-support-modification dispute, pro se appellant claims that the child support magistrate erred by refusing to modify his child-support obligation and by ordering suspension of his driver's license. Because the evidence supports the child support magistrate's findings, and the findings support the conclusions of law, the resulting order denying modification and suspending appellant's driver's license was not an abuse of discretion. Accordingly, we affirm.

FACTS

In July 2006, appellant Geoffrey Stewart Seuberth moved for modification of his child-support obligation, seeking a reduction or suspension based on his claimed medical disability and resulting inability to work. Seuberth's child-support obligations are approximately \$500 per month. After a September 20, 2006 hearing on Seuberth's motion, a child support magistrate (CSM) found that (1) Seuberth was a self-employed roofer; (2) he sought treatment for a back strain in April 2006 and was advised that he could return to work at that time with lifting and standing restrictions; (3) a report from a physician's assistant, dated June 30, 2006, indicated that Seuberth was able to work any number of hours weekly, with no pushing, pulling, or lifting more than 20 pounds; (4) a letter from Seuberth's physical therapist, dated August 29, 2006, stated that he had returned to work but continued to complain of low-back pain and limited activities; and (5) Seuberth argued that he was unable to work because he could not perform roofing activities but had not applied for any other jobs and was voluntarily unemployed. The

CSM also found that “[Seuberth] has not demonstrated any change in his income or earning ability since October [] 2005” when he admitted that he had the ability to earn \$1,211 per month. The CSM denied Seuberth’s motion for modification. At a hearing in February 2007, the CSM suspended Seuberth’s driver’s license based on his failure to comply with an agreed-upon payment plan concerning his child-support arrears.

Seuberth appealed the CSM’s decisions to this court. In an order opinion, we concluded that “the magistrate and parties recognized that the record was incomplete, especially regarding appellant’s injury, his resulting medical condition, and his ability to earn income.” *Seuberth v. Nieber*, Nos. A06-2216, A07-0823 (Minn. App. Feb. 7, 2008). We also noted that the CSM’s rulings against Seuberth were based on his “failure to provide needed evidentiary support for his positions, not a lack of substantive merit to those positions.” *Id.* We concluded that “an informed resolution of [Seuberth’s] motion will require medical and employment-related evidence regarding whether he can continue to work at his job, and, if he cannot, what other employment is available to him.” *Id.* We reversed the CSM’s denial of Seuberth’s modification motion and remanded the case for the CSM to give Seuberth the “added opportunity to provide sufficient evidence to allow the magistrate to address the merits of his motion.” *Id.* We likewise reversed the CSM’s order suspending Seuberth’s driver’s license and remanded the issue to the CSM for reevaluation in light of the decision on Seuberth’s modification motion. *Id.*

On remand, Seuberth provided several documents for the CSM’s review, most of which do not address his ability to work. But Seuberth also provided a handwritten note from Dr. Kent Johnson, dated November 16, 2006, which states that Seuberth “is unable

to work at this time pending evaluation by a specialist.” After reviewing the evidence, the CSM found that Seuberth’s documents failed to demonstrate that he was unable to work at any time prior to the September 2006 hearing. The CSM also found that Seuberth had not applied for any job that does not require heavy lifting. The CSM specifically found that Seuberth’s claims that he is unable to work in any capacity and that he is supported by an ex-wife and girlfriend are not credible. The CSM further found that Seuberth’s “refusal to work in any jobs other than those requiring heavy lifting constitutes voluntary unemployment.”

The CSM concluded that there had not been a substantial change in circumstances at the time of Seuberth’s motion for child-support modification. The CSM denied Seuberth’s motion and suspended Seuberth’s driver’s license. This appeal follows.

D E C I S I O N

Seuberth 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 Minn.*, 664 N.W.2d 303, 310 (Minn. 2003) (addressing the scope of appellate review when posttrial motions are not made). 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) (explaining the standard of review for district court orders); *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002) (establishing that the same standard of review applies to decisions of a CSM and the district court). 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. It is an abuse of discretion to draw a “conclusion that is against the logic and the facts on the record.” *Id.* (quoting *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999)). This court will not alter a finding of fact unless the finding is clearly erroneous. Minn. R. Civ. P. 52.01. A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Child support may be modified upon a showing of “substantially increased or decreased earnings of a party.” Minn. Stat. § 518.64, subd. 2(a)(1) (2004).¹ We have held that “[child] support cannot be modified absent findings of *both* substantially changed circumstances *and* that the substantially changed circumstances render the existing support award unreasonable and unfair.” *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). The moving party has the burden of proof in support-

¹ The legislature has since amended the child-support statute, previously codified in chapter 518. The current child-support law is now codified in chapter 518A. Chapter 518A became effective August 1, 2006. Minn. Stat. § 645.02 (2008) (explaining that unless otherwise specified, each law enacted by the legislature takes effect on August 1 following its final enactment). And the new law applies to child-support filings made after January 1, 2007. 2006 Minn. Laws ch. 280, § 44. Seuberth filed his modification motion in July 2006. Therefore, we apply the 2004 version of the child-support statute to appellant’s claims.

modification proceedings. *Johnson v. Johnson*, 304 Minn. 583, 584, 232 N.W.2d 204, 205 (1975).

We have reviewed the evidence submitted by Seuberth in support of his claimed medical disability and inability to work. The evidence supports the CSM's findings of fact, and none of the findings are clearly erroneous. The CSM's finding that Seuberth did not prove that he was unable to work at any time prior to the September 2006 hearing is supported by the evidence. While Seuberth's back injury limited his ability to perform roofing work to some extent, there is no evidence that Seuberth was unable to work in any capacity, including roofing, at the time of his September 2006 modification hearing. And the CSM's findings that Seuberth had not applied for any jobs, refused to work in any jobs that did not require heavy lifting, and was voluntarily unemployed support the CSM's conclusion that there was not a substantial change in circumstances justifying modification of Seuberth's child-support obligations.

The CSM's implicit conclusion that voluntary unemployment does not constitute a substantial change in circumstances that renders an existing child-support award unreasonable and unfair is sound. *See Goff v. Goff*, 388 N.W.2d 28, 30 (Minn. App. 1986) (stating, "[a]lthough decreased earnings of the obligor is a basis for modification, an obligor cannot rely on the election to terminate employment to justify a decreased support obligation"). And while the CSM did not explicitly impute income to Seuberth, that is the practical effect of the CSM's decision to maintain Seuberth's current child-support obligations where the CSM found that Seuberth was voluntarily unemployed and had not demonstrated any change in his income or earning ability of \$1,211 per month.

Imputation of income consistent with Seuberth's earning ability was proper. Minn. Stat. § 518.551, subd. 5b(d) (2004) (stating that "[i]f the court finds that a parent is voluntarily unemployed or underemployed . . . support shall be calculated based on determination of imputed income"); *Goff*, 388 N.W.2d at 30 (stating that "[a] court may disregard any inability to pay that is voluntary on the part of the obligor, and may look to the obligor's earning capacity rather than actual earnings").

Seuberth devotes much attention to explaining the history and nature of his injury, medical treatment and corresponding medical expenses, and how his injury affects his ability to work as an independent contractor providing roofing services. Seuberth argues that the CSM's review of his supporting evidence on remand was cursory. In particular, Seuberth emphasizes the handwritten note from Dr. Johnson, which states that Seuberth "is unable to work at this time pending evaluation by a specialist." The record evidence indicates that Dr. Johnson's note was based on a report prepared by the doctor on the same date. Dr. Johnson's report states that Seuberth works as a roofer and advises against Seuberth working in his current capacity pending further evaluation by a specialist. When the note is considered in the context of the corresponding report, the note does show that the CSM clearly erred in refusing to find that Seuberth could not work in any capacity.

Seuberth also challenges the CSM's order affirming suspension of his driver's license. A CSM may direct the commissioner of public safety to suspend the driver's license of a child-support obligor who is in arrears "in an amount equal to or greater than three times the obligor's total monthly support . . . payments" and who is "not in

compliance with a written payment agreement pursuant to section 518.553.” Minn. Stat. § 518.551, subd. 13(b) (2004).

At the time of the February 2007 hearing that resulted in suspension of Seuberth’s driver’s license, Seuberth had child-support arrears of \$7,412—an amount well over three times his total monthly support obligation of approximately \$500. Seuberth agreed to a temporary payment plan in April 2006, but failed to follow the plan. On remand, the CSM found that there was a sufficient basis to suspend Seuberth’s driver’s license in February 2007. The CSM did not abuse his discretion by suspending Seuberth’s driver’s license on remand.

Affirmed.

Dated: _____

The Honorable Michelle A. Larkin