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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-459**

In re the Marriage of:
Daniel T. Perez, petitioner, Respondent,

vs.

Nadene M. Mitchell-Perez,
Appellant.

**Filed February 2, 2010
Reversed and remanded
Ross, Judge**

Washington County District Court
File No. 82-F3-06-003665

Daniel T. Perez, Cottage Grove, Minnesota (pro se respondent)

David K. Meier, Sjoberg & Tebelius, P.A., Woodbury, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Mother Nadene Mitchell-Perez appeals from the denial of her motion to increase father Daniel Perez's child-support obligation. Mitchell-Perez argues that the child-support magistrate (CSM) abused her discretion by failing to properly apply the statutory presumptions that there has been a substantial change in circumstances and that the

current obligation is unfair. Because the CSM did not make adequate findings to support her decision not to apply the presumptive child-support obligation, we reverse and remand for further findings.

FACTS

Mitchell-Perez's marriage to Perez was dissolved by a July 2007 judgment and decree that required Perez to pay Mitchell-Perez \$1,100 per month for basic child support and to provide health and dental insurance, daycare expenses, and 60 percent of the extracurricular activity expenses for the parties' two daughters. Perez and Mitchell-Perez had gross monthly incomes of \$11,000 and \$1,800, respectively.

In September 2008, 14 months after the original child-support obligations were determined, Mitchell-Perez moved to have Perez's obligation modified. She asserted that Perez's child-support obligation was no longer fair because their youngest child was attending kindergarten full time and Perez therefore no longer had the corresponding \$1,340 monthly daycare expense. Perez conceded that the cost of child care had significantly decreased but maintained that the expense continued at an average of \$415 per month. Mitchell-Perez also reported that she no longer worked her second job, which reduced her monthly income to \$1,210. She asserted that she was attending a business school full time and hoped to find a higher paying job on graduation. A CSM heard and then denied the motion to modify child support. The CSM concluded that a minimal and temporary decrease in Mitchell-Perez's income did not warrant an increase in the basic support obligation and that there was no indication that she had expenses for the children that were not being met under the July 2007 decree's child-support terms.

Mitchell-Perez filed a motion for review. The CSM reviewed her previous order and amended a finding of fact and a conclusion of law, but left her denial of the motion to modify in place. The CSM's amended order acknowledged that the application of the child-support guidelines to the parties' current circumstances resulted in a statutory presumption that there was a substantial change in circumstances and that the existing obligations were unreasonable and unfair. But the CSM found that the presumption was overcome by the circumstances of the parties, including additional expenses paid by Perez. These expenses included the younger daughter's kindergarten fee of \$2,628, most of the extracurricular and other incidental expenses for the children, the total child-care expense, and the total cost of dependent insurance. Mitchell-Perez appeals from the amended order and argues that Perez's monthly child-support obligation should have been increased to the presumptive obligation of \$1,453.

D E C I S I O N

Mitchell-Perez challenges the CSM's denial of the motion to modify Perez's child-support obligation. We review a CSM's ruling under the same standard that we would apply if the decision had been made by a district court judge. *See Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). A CSM has broad discretion when considering a motion to modify child support. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). This court will uphold the CSM's child-support decision unless the decision reflects an abuse of discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). A CSM abuses her discretion if she

sets support in a manner that is against logic and the facts on the record or misapplies the law. *Id.*

Minnesota law provides that a child-support order may be modified on a showing of a substantial change in circumstances that makes its terms unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2008); *Bormann v. Bormann*, 644 N.W.2d 478, 480–81 (Minn. App. 2002). It is presumed that a substantial change in circumstances occurred if the application of the child-support guidelines to the parties' current circumstances would result in a monthly support obligation that is at least 20 percent and at least \$75 higher or lower than the current support order. Minn. Stat. § 518A.39, subd. 2(b)(1) (2008). This presumption of a substantial change in circumstances is irrebuttable. *Frank-Bretwisch v. Ryan*, 741 N.W.2d 910, 914 (Minn. App. 2007). If there is a substantial change in circumstances, the terms of the current support order are rebuttably presumed to be unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(b).

In the 14-month period between the divorce decree and the motion to modify, Perez's gross monthly income increased from \$11,000 to \$11,814, but he now also has a new child, born from his current wife, residing in his household. Perez was therefore entitled to a nonjoint-child deduction of \$750. *See* Minn. Stat. § 518A.33 (2008) (providing for a deduction from income if a parent is legally responsible for a nonjoint child). Mitchell-Perez's monthly gross income decreased from \$1,800 to \$1,209.74. The CSM applied the child-support guidelines and calculated an obligation of \$1,453 per month. This \$353-per-month increase is greater than 20 percent and \$75, so a substantial change in circumstances is presumed. Minn. Stat. § 518A.39, subd. 2(b)(1). But the

CSM found that the rebuttable presumption of unreasonableness and unfairness was overcome by the parties' circumstances and declined to impose the guideline support obligation of \$1,453.

The presumptions arising from the modification statute do not result in automatic modification, and the CSM may still exercise her discretion to deny the motion to modify. *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 477 (Minn. App. 2004) (applying predecessor modification statute Minn. Stat. § 518.64 (2002)). But if the CSM deviates from the presumptive child-support obligation, she must make written findings that state (1) each parent's gross income, (2) each parent's income for determining child support, (3) the amount of the child-support obligation computed under section 518A.34, (4) the reasons for the deviation, and (5) how the deviation serves the best interests of the child. Minn. Stat. § 518A.37, subd. 2 (2008); *see also Schlichting v. Paulus*, 632 N.W.2d 790, 792 (Minn. App. 2001) (“[D]eviations from the guideline amount may be made with appropriate findings.”).

We recognize that the meaning of “deviation” from the presumptive child-support obligations can be construed in different ways. Under one construction, because the CSM found that modification was not warranted and declined to modify the existing support obligation, her order preserving the status quo might be deemed as not “deviating” under section 518A.37. Under another construction—the one we followed without discussion in *Frank-Bretwisch*—the CSM might be said to have “deviated” by choosing not to modify an existing support obligation at all, leaving the ongoing obligation inconsistent with the presumptive guideline amount. *See Frank-Bretwisch*,

741 N.W.2d at 916. This court has never expressly addressed the issue of whether denying a motion to modify child support after a finding of a substantial change in the parties' circumstances is a deviation from the presumptive child-support obligations. We decline to answer the issue today because it was not briefed by the parties and resolving it is not necessary for our holding.

Written findings are required under either construction. First, if we treat the failure to modify as a deviation under section 518A.37, the CSM did not expressly explain how the deviation serves the children's best interests. Although the CSM's approach to the best-interests issue *might* be discernable from other language in her analysis, the statute requires written findings on point. Second, regardless of whether we treat the decision not to modify as a deviation from the guidelines, the CSM's findings fail to quantify all of the parties' expenses necessary for us to assess the reasonableness and fairness of the current level of support.

The CSM explained the reasons for not modifying to match the presumptive guideline amount only as follows:

There has been a change of circumstances, in the decreased income of [Mitchell-Perez] that provides a basis to modify child support. Application of the child support guidelines to the current circumstances of the parties results in a child support obligation of \$1,453, which is 20% and \$75 greater than the existing obligation. However, the presumption that the existing obligation of \$1,100 is unreasonable and unfair is overcome by the circumstances including the direct support paid by [Perez] while the children reside with him 50% of the time and the additional expenses paid by [Perez] including the entire kindergarten fee, most of the extracurricular expenses and other incidental expenses for

the children, the total child care expense and the total cost of dependent insurance.

The CSM also explained that strict adherence to the support guidelines would likely result in inflexible application of other terms of the dissolution decree and might foster disagreement between the parties:

Despite the terms of the Judgment and Decree, which provides [Perez] and [Mitchell-Perez] would share all extra-curricular expenses for the children with [Perez] paying 60% and [Mitchell-Perez] paying 40% of the expenses, the majority of expenses are paid by [Perez] without a request for contribution from [Mitchell-Perez]. With a significantly greater income [Perez] is in a position to assume more of the expenses, as he has. Ordering a strict adherence to the child support guidelines for basic support would likely result in a strict enforcement of the provision for division of extra-curricular expenses as well as disagreements between the parties with regard to payment of other expenses, including field trips, hair-cuts, clothes, personal incidentals and school supplies. The Court took into consideration the current practice of payment for the children's expense when reviewing the request to increase support.

Neither of these explanations specifies how the CSM perceives that not modifying the obligation to meet the presumptive amount would serve the best interests of the children. The CSM did conclude that “[t]here is no indication [Mitchell-Perez] has expenses for the children that are not being met by the current level of basic support.” Although this is a meaningful finding, an absence of unmet expenses does not alone explain how a support obligation set below the guideline amount is fair or serves the children's best interests. *See Winter v. Winter*, 375 N.W.2d 76, 80 (Minn. App. 1985) (explaining that an evaluation of the fairness of the original decree does not end with a finding that the children's needs are being met), *review denied* (Minn. Dec. 30, 1985).

To allow meaningful appellate review of the CSM's exercise of her broad discretion whether to modify a child-support obligation, her decision must be supported by detailed, explanatory findings. *See, e.g., In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990) (holding that a district court's findings were "inadequate to facilitate effective appellate review, to provide insight into which facts or opinions were most persuasive of the ultimate decision, or to demonstrate the trial court's comprehensive consideration of the statutory criteria" (citing *Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986)); *Wallin v. Wallin*, 290 Minn. 261, 267, 187 N.W.2d 627, 631 (1971) (stating that in view of the district court's broad discretion in family matters, it is "especially important that the basis for the court's decision be set forth with a high degree of particularity if appellate review is to be meaningful"); *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992) (stating that "[t]he trial court must scrupulously assure that findings and conclusions—whether they be the court's alone, one or the other party's, or a combination—are always detailed, specific and sufficient enough to enable meaningful review by this court").

The CSM considered the incomes of both parties and the expenses of Perez. But although the decision appears to rest on the disparity between the parties' payment of the children's expenses, the CSM did not consider Mitchell-Perez's expenses, which are not in the record. Mitchell-Perez testified about her \$500 per month increase in expenses for rent, but the CSM did not make any findings about her expenses generally or specifically regarding the payment of any of the children's expenses. A support-modification order

requires a clear finding of the parties' circumstances to facilitate both appellate review and future modification motions.

Whether there is a substantial change in circumstances rendering an existing support obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify. Unless a support order provides a baseline for future modification motions by reciting the parties' then-existing circumstances, the litigation of a later motion to modify that order becomes unnecessarily complicated because it requires the parties to litigate not only their circumstances at the time of the motion, but also their circumstances at the time of the order sought to be modified.

Frank-Bretwisch, 741 N.W.2d at 915 (quoting *Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005)). The CSM found that the presumption that the existing obligation of \$1,100 was unreasonable and unfair was overcome by the "circumstances." This may be so, but we cannot adequately review whether this finding was an abuse of discretion without a clearer finding on the parties' circumstances, including Mitchell-Perez's expenses.

This is not a situation in which the CSM merely rejected a motion to modify because the movant failed to provide sufficient factual support for the motion. Rather, the CSM identified Mr. Perez's payment of "most of the extracurricular expenses and other incidental expenses for the children" as a key factor that overcame the presumption of unfairness and unreasonableness. But the purportedly comparative analysis includes no finding of the amount of these expenses or the amounts paid by the parties respectively. So while Perez might be paying more than his 60-percent obligation for the

children's extracurricular expenses, the findings are not clear on the matter and we cannot meaningfully consider whether the parties' approach to these expenses justify maintaining a support obligation that is \$353 below the presumptive guidelines amount.

Because the findings are inadequate to meet the statutory mandate or alternatively to permit meaningful appellate review of the CSM's order denying modification of Perez's child-support obligation, we reverse and remand for further findings. On remand, the CSM should make sufficient findings to establish the parties' circumstances, including Mitchell-Perez's expenses. Perez's expenses beyond what he is obligated to provide should be identified and quantified. The record may be reopened on remand and, if so, the CSM may choose to make de novo legal conclusions from the completed findings.

Reversed and remanded.