STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0104

In re the Marriage of: Tammy Sundbom Otterson, petitioner,
Appellant,

vs.

Troy Otterson,
Respondent,

and

County of St. Louis,
Intervenor.

Filed October 25, 2021
Affirmed
Hooten, Judge

St. Louis County District Court
File No. 69DU-FA-18-195

Shawn B. Reed, Bray & Reed, Ltd., Duluth, Minnesota (for appellant)

Troy Otterson, Bovey, Minnesota (pro se respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

On appeal in this child support dispute, appellant Tammy Sundbom (mother) contends that the child support magistrate (CSM) abused her discretion by reducing

respondent Troy Otterson's (father's) child support obligation. Because there is ample record evidence supporting the CSM's decision to reduce father's child support obligation, we affirm.

FACTS

The parties married in 2000, and their marriage was dissolved by a stipulated judgment and decree in 2018. At the time of the divorce, the parties had three minor children. The oldest child is now emancipated.

In the judgment and decree, the district court granted the parties joint legal custody and mother sole physical custody of the minor children. The district court also ordered father to pay mother $2,000 per month in child support. The judgment and decree provided that if father paid at least $2,000 in child support, he need not pay spousal maintenance. But if the amount of child support father paid ever fell below $2,000 per month, father then was required to pay mother spousal maintenance equal to the difference between the support obligation and $2,000, so that mother continued to receive $2,000 in total support. The judgment and decree further provided that any spousal maintenance would not be taxable to mother nor deductible by father.

Father holds a master's degree in social work and is a licensed independent clinical social worker in Minnesota. Father testified that he was previously self-employed as the owner and operator of a mental health clinic in Duluth. Following an audit in 2015, the State of Minnesota prohibited father from billing mental health services to the State of Minnesota Health Care Program (MHCP), including Medicaid and Medical Assistance. Father testified that Blue Cross/Blue Shield of Minnesota also audited him and that he can

no longer bill that insurance company. In early 2020, father closed his mental health clinic and moved to Bovey, Minnesota where he currently lives and works at a restaurant. There, father works 40 hours per week and earns $10 per hour. He rents a room from the restaurant owner, his girlfriend, for $500 per month. The amount also covers his expenses for meals at the restaurant. Father testified that he has been unable to obtain any other employment.

In October 2019, father moved to modify his child support obligation based on the emancipation of the parties' oldest child and a substantial change in circumstances relating to his decreased income.[1] Mother contested father's motion claiming that a substantial change in circumstances did not occur. She argued that, to the extent that father's income decreased, it was attributable to voluntary underemployment. The CSM found that father was not voluntarily underemployed and that there have been substantial changes to father's circumstances that made his then-existing child support obligation unreasonable and unfair. Accordingly, the CSM reduced father's child support obligation to $388 per month. Under the terms of the judgment and decree, the CSM also increased father's spousal maintenance obligation and ordered him to pay mother $1,612 per month.

Mother appeals.[2]

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[1] At the time of the child support modification hearing, father had a pending felony drug charge against him.

[2] Father did not file a brief in this appeal, and we ordered that the matter proceed under Minn. R. Civ. App. P. 142.03.

DECISION

We apply the same standard for reviewing a CSM's order as applied to a district court's order regarding child support. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445–46 (Minn. App. 2002). We therefore review the CSM's decision on the modification of child support for an abuse of discretion. *See, e.g.*, *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). A CSM is afforded broad discretion in making child-support determinations, *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999), and we defer to the CSM's credibility determinations, *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). But a CSM abuses her discretion if she makes findings of fact unsupported by the record, improperly applies the law, or resolves the discretionary question in a manner that is contrary to logic and facts in the record. *See Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

I. There is ample evidence in the record that father is not voluntarily underemployed and that there was a significant change in his circumstances rendering the initial child support obligation unreasonable and unfair.

Mother argues that the CSM clearly erred by finding that father is not voluntarily underemployed. She contends that the CSM should have found that he is voluntarily underemployed and then imputed more income to father comparable to his previous employment history as potential income.

Our review of the CSM's decision to reduce father's child support obligation proceeds in two steps. First, we review for clear error the CSM's finding that father is not voluntarily underemployed. *See Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). The key inquiry into whether a parent is voluntarily underemployed is whether that parent

has chosen to limit their income. *See Franzen v. Borders*, 521 N.W.2d 626, 629 (Minn. App. 1994). If a parent has chosen to limit their income, then imputation of income is appropriate, and the district court must calculate child support "based on a determination of [a parent's] potential income" rather than actual income. Minn. Stat. § 518A.32, subd. 1 (2020).

Second, we review for an abuse of discretion the CSM's determination that father's decreased income constitutes a substantial change in circumstances making the initial child support obligation unreasonable and unfair. *Shearer*, 891 N.W.2d at 77. Child support or maintenance may be modified upon a showing of a "substantially increased or decreased gross income of an obligor or obligee." Minn. Stat. § 518A.39, subd. 2(a)(1) (2020). The moving party carries the burden of proof in establishing that there has been a substantial change in circumstances. *Youker v. Youker*, 661 N.W.2d 266, 269 (Minn. App. 2003), *rev. denied* (Minn. Aug. 5, 2003). When addressing whether to modify child support, there is a presumption that circumstances have substantially changed and a rebuttable presumption that the existing support obligation is unreasonable and unfair, if the application of the child support guidelines to the parties' current circumstances generates a guideline support obligation that is at least 20% and $75 per month different than the existing support order. Minn. Stat. § 518A.39, subd. 2(b)(1) (2020).

A. Father is not voluntarily underemployed.

Mother contends that father is voluntarily underemployed because he chose not to work in the mental health field and instead chose to work for a lower wage when there are

higher earning jobs that he could obtain. The CSM's finding that father is not voluntarily underemployed is supported by the record.

The record reflects that, at the time of the evidentiary hearing, although father retained his mental health practitioner license, he was effectively barred from providing mental health services to individuals receiving public healthcare coverage in Minnesota. He testified that he could not bill mental health services to medical assistance providers for what he estimates is 98% of his clientele. Father also testified that an ongoing investigation into his practice could cause him to lose his license, and that he had pending felony drug charges against him. Father also offered credible evidence that he applied in response to four specific mental health job postings, as well as other positions in the mental health field, and that each of his applications was rejected. Based upon this evidence, the CSM concluded that father had sought employment in the mental health field and could not obtain such employment. Mother's speculation that father could somehow obtain employment in the mental health field despite his pending criminal drug charges and his history of exclusion from receiving payment from public healthcare in Minnesota is not reasonable. On this record, mother has failed to show that the CSM's finding that father is not voluntarily underemployed is clearly erroneous.

Mother next asserts that father could earn $5 per hour more if he worked at a larger corporation. But when asked by the CSM whether he considered employment at a large corporation, father explained that "it was very hard for [him] to get a job even as a waiter" and that even his application at a pizza place was rejected. He testified that he will "continue to look at those types of opportunities" but that he "just [hasn't] had much luck."

Although the CSM never explicitly found father credible, a CSM can make implicit findings about credibility and other matters. *See, e.g.*, *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that "[t]he district court's findings implicitly indicate[d]" that it found certain evidence credible). Because the CSM relied on father's income at the restaurant when reducing his child support obligation, we infer that the CSM found father's testimony credible that he is unable to obtain employment at a corporation that pays more than state minimum wage. Further, we defer to the CSM's credibility determinations. *Vangsness*, 607 N.W.2d at 472.

Even if father is voluntarily underemployed, the record sufficiently establishes that father's potential income is not much higher than the income that the CSM used to compute his new child support obligation. Potential income is determined by one of three methods: "(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications;" "(2) the actual amount of [] unemployment compensation received;" or "(3) the amount of income a parent could earn working 30 hours per week at 100 percent of" whichever is higher of the current federal or state minimum wage. Minn. Stat. § 518A.32, subd. 2 (2020).

Here, the CSM used father's actual income, finding that father works 40 hours per week and earns $10 per hour. The CSM then used that income to calculate father's parental income for child support and consequently father's new child support obligation. If the CSM erred in using father's actual income of $10 an hour rather than his alleged potential income of $15 an hour, any error is harmless. Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Even if the CSM imputed another $5 per hour to father as potential income,

the record supports the determination that a substantial change in circumstances occurred as discussed in the next section. Moreover, with father's current job position, he receives an employment benefit of $500 per month for room and board, which also included his meals at the restaurant. The $500 employment benefit likely offsets any benefit that he would receive by earning $5 more per hour.

Based upon this record, we conclude that mother has failed to show that the CSM clearly erred by finding that father is not voluntarily underemployed and that the income figure the CSM used to determine father's new child support obligation prejudiced her.

B. A substantial change in circumstances occurred that renders father's initial child support obligation unreasonable and unfair.

The record supports the CSM's finding that applying the child support guidelines to father's current circumstances leads to a child-support obligation at least 20% and $75 less than his initial child support obligation. A year before the marriage was dissolved, father earned $471,347 annually, and now he earns $1,732 monthly or $20,784 annually. When the CSM applied the child support guidelines to father's existing income, she determined that the calculated support order results in a $388 child support obligation. This calculated child support order is nearly 80% lower than his current child support order of $2,000 per month.[3] Thus, a substantial change in circumstances occurred and there is a rebuttable presumption that father's existing child support obligation is unreasonable and unfair.

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[3] Even if the CSM imputed an additional $5 an hour to father's income as mother argues she should, the calculated child support order would still be at least 20% lower than his $2,000 child support order, triggering the presumption that a substantial change in circumstances occurred, and the rebuttable presumption that father's existing support obligation is unreasonable and unfair.

We affirm the CSM's determination that mother failed to rebut the presumption that father's existing child support obligation is unreasonable and unfair. The record reflects that father's income is reduced by 80%, he is unable to directly bill clients for mental health services, and he has not obtained a job in the mental health field or even a position that pays more than $10 per hour. Further, at the time of the child support modification hearings, he had pending felony drug charges against him, and his existing child support obligation is $300 more than his gross monthly income of $1,732. The CSM did not abuse her discretion in reducing father's child support obligation.

Affirmed.