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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1498**

Nuro B. Dedefo, petitioner,
Appellant,

vs.

Bontu Bullo Gada,
Respondent,

Hennepin County,
Respondent.

**Filed July 15, 2013
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-FA-000287695

Nuro B. Dedefo, Blaine, Minnesota (pro se appellant)

Constance S. Baillie, Central Minnesota Legal Services, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Kalitowski, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant-obligor challenges the district court's order affirming a child support magistrate's modification of his child support obligation based on increased earnings. He

argues that the district court erred by including in his income financial assistance received from family members and by relying upon deposits into his personal and business checking accounts in order to calculate his income. We affirm.

FACTS

Appellant Nuro B. Dedefo and respondent Bontu Bullo Gada were divorced in August 2005 and have two joint minor children. Respondent was awarded sole legal and physical custody of the minor children, subject to appellant's reasonable parenting time. Appellant was required to pay child support of \$1,200 per month. At the time, appellant, who was working as a personal injury attorney, had net monthly income of \$4,000 while respondent had monthly income of \$1,985.16.

However, as of July 17, 2008, appellant's law license was suspended indefinitely, with no right to petition for reinstatement for six months. *See In re Dedefo*, 752 N.W.2d 523, 532 (Minn. 2008). Appellant filed a motion to modify his support obligation in late 2008. In April 2009, a child support magistrate (CSM) found that appellant was employed as a personal care assistant (PCA) earning an average of \$1,251 per month, and that, although six months had passed since his law license was suspended, it was likely that he would not be immediately reinstated to practice. Given the change of circumstances, appellant's monthly support obligation was decreased to \$168 per month pursuant to the child support guidelines. Appellant was also required to immediately notify respondent and her attorney in writing of any changes in his income or attorney license status. The CSM's order highlights that failure to do so within 10 days of any such changes would be grounds for retroactive modification of his support obligation.

In June 2011, respondent filed a motion requesting an increase in appellant's support obligation, retroactive to the date of the reinstatement of appellant's law license, and the establishment of child care and medical support. In appellant's motion requesting denial of respondent's motion for modification of child support, appellant attached his affidavit in which he explained that his law license had been reinstated in July 2010 and that he had quit his job as a PCA. But, because he had not made any money from his law practice and was experiencing financial difficulties, his brother had been providing him with \$1,200 per month and his adult daughter was contributing \$350 per month towards household expenses. He also worked as an interpreter, but claimed that he earned no more than \$1,500 per month.

At a hearing before a CSM in August 2011, appellant testified that he had been working at his law practice full-time and was only interpreting about once a month. He also testified that since the beginning of 2011, he had earned \$10,000 in contingency-based attorney fees. He claimed that his monthly living expenses of \$3,000 were greater than his monthly income of approximately \$1,500 from his interpreting services and law practice, with the difference covered by contributions from his brother and adult daughter. Appellant submitted financial documents which established that, from the beginning of 2011 until the hearing, appellant earned \$3,908.30 from his interpreting services and \$13,583.32 from his law practice.

Based on the evidence submitted, the CSM increased appellant's basic support obligation to \$637 per month for the period between July 1 and December 31, 2010, to \$855 per month for 2011, and to \$1,200 per month beginning January 1, 2012. The CSM

found that while appellant voluntarily quit his job as a PCA to work full-time as an attorney in July 2010, he failed to show that he could not have continued to work as a PCA while re-building his law practice. Because appellant's 2010 tax return reported wages of \$11,760 from PCA work, interpreting income of \$10,273 (minus \$2,500 in claimed expenses), and \$1,000 in proceeds from his law firm, appellant had a total annual income of \$20,533, or a monthly income of \$1,711. The CSM then found that appellant would have earned, at minimum, an additional \$11,000 had he continued to work as a PCA, with a resulting annual income of \$31,533, or monthly income of \$2,628, for purposes of calculating support through the end of 2010.

Next, the CSM found that appellant earned \$3,908 from interpreting between January and August of 2011, as well as a "balance" of \$43,499.98 that was "presumably the amount still owing and expected" from his law practice. However, after considering appellant's financial assistance from his family, the CSM concluded that appellant had the ability to earn income of \$4,000 per month given his law firm's accounts receivable, resulting in the increased 2011 support obligation. Finally, the CSM concluded that it was not likely that reliable income information would be received from appellant at a future review hearing, and reinstated the prior support obligation of \$1,200 as of January 1, 2012.

Upon appellant's motion for review, the district court affirmed the CSM's determination of appellant's income and child support for 2010, but concluded that the CSM's calculation of appellant's 2011 income, based primarily upon his law firm's financial records, was erroneous. The district court vacated the CSM's order pertaining

to child support for 2011 and remanded the matter to the CSM for consideration of appellant's monthly child support obligation, which hearing was to be held after appellant had filed his 2012 tax returns. The district court ordered that appellant was to pay a monthly temporary basic support obligation of \$462.

Following a subsequent hearing, the CSM, in an order filed in May 2012, considered appellant's 2010 and 2011 tax returns, a list of income from settled cases in appellant's law firm, a statement from appellant's brother providing that he gives appellant between \$1,200 and \$1,800 per month, and a list of appellant's monthly personal and business expenses. In 2011, appellant claimed an annual gross income of \$6,789 from work as an interpreter, with expenses of \$2,663 associated with his work as an interpreter, for a total net income from his interpreting services of \$4,126. He also claimed \$25,000 in gross receipts from his law firm, which after deducting the firm's expenses of \$14,399, resulted in a net income of \$10,601. Thus, for the year 2011, appellant claimed that he earned an annual income of \$14,727.

But, the CSM did not accept appellant's evidence. Rather, the CSM concluded that payments from appellant's brother should be considered income for support purposes because they were received on a regular and periodic basis. The CSM, in analyzing appellant's business and personal checking accounts, found that in 2011, appellant had \$47,565.94 deposited into his personal checking account, and \$14,383.33 into his business checking account, for a total of \$61,949.27. The CSM interpreted this amount as appellant's total annual income for 2011. Then, the CSM subtracted \$17,062 in expenses (\$14,399 plus \$2,663) from the combined amount of the accounts in 2011 to

arrive at a net annual income of \$44,887.27, or \$3,740 per month. The CSM then concluded that appellant, between January and April 2012, deposited \$21,119.02 into his personal and business checking accounts, which amounted to approximate gross monthly income of \$5,279.76, or about \$3,800 in monthly income after subtracting \$1,400 per month in business expenses. After noting that appellant withdrew or paid a total of \$61,440.90 from his personal and business checking accounts in 2011, the CSM concluded that appellant's monthly income for purposes of calculating support was \$3,740. After considering respondent's monthly income, the CSM calculated appellant's basic support obligation as \$806 per month as of January 1, 2011.

Appellant again filed a motion for review, arguing that the CSM should not have imputed income from his PCA job in 2010, his gross income erroneously included \$5,000 that was temporarily deposited into his account from H&R Block in order to pay 2009 taxes, and that, of the more than \$61,000 in his accounts, \$25,000 came from family in the form of financial assistance and should not be included in his income. This appeal follows the district court's affirmance of the CSM's support calculation.

D E C I S I O N

On appeal, appellant argues that the district court erred by including payments from his family in the calculation of his monthly income for purposes of support, erred by calculating his monthly income based upon his deposits into his checking accounts without verification as to the source of the deposits, and erred by modifying his support

obligation without following the required statutory factors.¹ “When a district court affirms a CSM’s ruling, the CSM’s ruling becomes the ruling of the district court, and we review the CSM’s decision, to the extent it is affirmed by the district court, as if it were made by the district court.” *Welsh v. Welsh*, 775 N.W.2d 364, 366 (Minn. App. 2009). “We review the district court’s decision confirming the CSM’s order under an abuse-of-discretion standard.” *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). A district court’s order regarding child support will be reversed if “the district court abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record.” *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

Appellant admits that he received monthly payments from his brother and adult daughter and deposited these funds into his account on a monthly basis in order to help meet expenses, but argues that the calculation of his income for child support should not include this financial assistance. Whether a source of funds is income for child-support purposes is a legal question we review de novo. *Hubbard Cnty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 227 (Minn. App. 2007).

“Parents have a ‘legal and natural duty’ to take care of their children until they are old enough to take care of themselves.” *Barnier v. Wells*, 476 N.W.2d 795, 797 (Minn. App. 1991) (quoting *Mund v. Mund*, 252 Minn. 442, 445, 90 N.W.2d 309, 312 (1958)).

¹ On appeal, appellant failed to brief or argue that the CSM erred by imputing income he could have earned as a PCA in the calculation of his income in 2010. Since this argument was not raised either in briefing or argument, we decline to address the issue here. *State, Dep’t of Labor and Industry v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480 (Minn. 1997); *Ganguli v. University of Minnesota*, 512 N.W.2d 918, 919 n. 1 (Minn. App. 1994).

In order “[t]o determine the presumptive child support obligation of a parent,” a district court must “determine the obligor’s basic support obligation,” which in turn requires the determination of each parent’s gross income pursuant to Minn. Stat. § 518A.29 (2012). Minn. Stat. § 518A.34(a), (b)(1) (2012). “[G]ross income includes any form of periodic payment to an individual, including, *but not limited to*, salaries, wages, commissions, [and] self-employment income under section 518A.30” Minn. Stat. § 518A.29(a) (emphasis added). “For purposes of section 518A.29, income from self-employment or operation of a business, including joint ownership of a partnership or closely held corporation, is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation.” Minn. Stat. § 518A.30 (2012).

Both respondent and the district court cite this court’s opinion in *Barnier*, which addressed the gross income of an obligor who received monthly payments from a trust fund established by his great-grandmother, as well as monthly payments of \$833 from his father and \$5,000 payments from his grandmother on his birthday, Easter, and Christmas. 476 N.W.2d at 796. While support was initially calculated pursuant to stipulation and the obligor’s income from the trust fund, the obligor failed to disclose the additional funds received from his family or income from another job he accepted just prior to the support determination. *Id.* In considering whether to modify the obligor’s support obligation given the monthly family contributions, this court noted that while “a regular, systematic gift cannot be classified as an enforceable obligation [because] a person is not forced to

give a gift,” a gift “may properly be used to determine the amount of a child support obligation” if it “is regularly received from a dependable source.” *Id.* at 797.

“A valid gift requires: 1) donative intent; 2) delivery; and 3) absolute disposition of the property.” *Id.* Given the record, there is no reasonable dispute that the financial assistance received by appellant from his brother and daughter satisfies these requirements.² Nor is there any reasonable dispute that this assistance was received in a regular and dependable manner. Appellant argues that *Barnier* is distinguishable because the assistance received from his brother was not a gift insofar as he requested the assistance from his brother. He also argues that, unlike the obligor in *Barnier*, he did not have excess funds and was required to spend the money on monthly expenses. However, appellant admits that he received these payments on a monthly basis in order to help him meet his monthly expenses because he was experiencing financial hardship.

The fact that appellant requested the assistance does not negate donative intent given the undisputed delivery and ultimate deposit of the funds into his account. While the assistance may have been temporary, appellant received the assistance on a regular basis over an extended period of time. Appellant’s attempt to distinguish *Barnier* on the basis that the child support obligor in that case, unlike appellant, enjoyed a financial surplus, is without merit. Rather, the fact that appellant had no excess funds simply meant that he chose to maintain his standard of living despite his financial difficulties.

² The district court noted that the CSM did not consider funds appellant received from his adult daughter, but it does not appear that the CSM subtracted any funds from the amounts deposited into appellant’s accounts when calculating his income. Accordingly, any amounts from appellant’s adult daughter would have been included in the CSM’s calculation of income.

Here, like the factual situation in *Barnier*, family members provided regular and dependable gifts, which could be included as income for the recipient.³

Appellant next argues that the district court erred by including in his income all funds deposited into his checking accounts, which included assistance from family and \$5,000 received from his tax professional, and by failing to calculate his gross income based upon his 2010 and 2011 tax returns. The appropriateness of including the financial assistance from family has already been discussed. At the second hearing before the CSM, appellant explained that \$5,000 listed as income from “HR Block Peace of Mind” on his 2011 return was not actually income, but was a refund from 2009 when he wrongly claimed the exemption for the parties’ children. He claimed that he was planning to utilize the \$5,000 to repay the IRS. However, appellant could not explain why his tax professional listed this money as income on his tax return, and the record does not contain any further documentation supporting appellant’s contention that the \$5,000 was not income. Under these circumstances, the district court did not err by including this \$5,000 in the calculation of appellant’s income.

³ Respondent stresses that this matter is distinguishable from *Ramsey Cnty. ex rel. Pierce Cnty., Wis. v. Carey*, 645 N.W.2d 747, 751–52 (Minn. App. 2002), in which this court distinguished *Barnier* and concluded that the value of living expenses provided to an obligor by his parents should not be included in his income as a periodic payment given the fact that the obligor, unlike the obligor in *Barnier* “who was fully employed and received significant cash gifts from his relatives,” was a disabled adult who received what this court characterized as “in-kind benefits provided to him by his parents” and had “no control over the expenditure of funds on his behalf.” Given appellant’s ability to work and his apparent absolute control over the funds once received, this distinction is appropriate.

Appellant's claim that the district court erred by calculating his income based upon his deposits into his business and personal accounts is also without merit. "When measuring income, the trial court can consider cash flow in addition to paper income." *Coady v. Jurek*, 366 N.W.2d 715, 718 (Minn. App. 1985) (quotations omitted), *review denied* (Minn. June 27, 1985). In *Schelmeske v. Veit*, this court determined that a trial court did not err by relying upon an obligor's checking account deposits "to obtain a more accurate representation of" income for a particular year given the fact that obligor's "taxable income [was] not an accurate indicator of his cash flow" because he was in the real estate business. 390 N.W.2d 309, 312 (Minn. App. 1986). We have also commented that "the opportunity for a self-employed person to support himself yet report a negligible net income is too well known to require exposition." *Ferguson v. Ferguson*, 357 N.W.2d 104, 108 (Minn. App. 1984).

Appellant only claimed an annual income of \$14,727 for 2011, from his interpreter services and law firm. Yet, as was found by the CSM, it was not clear whether he would even "accept" interpreting work and he chose not to work as a PCA. The CSM also noted that while appellant was claiming that he was earning less than \$850 per month in his law practice in 2011, the amounts deposited into his personal and business checking accounts in 2011 totaled \$61,949.27. Of this amount, appellant spent \$61,440.90 in 2011. The CSM found that even deducting from this amount the expenses claimed by appellant in conjunction with his interpreting services and law firm would indicate that his income, consistent with his spending, was much more than what he was claiming. Under these circumstances, where the personal and business accounts show that the cash

flow is much greater than appellant's reported income, the CSM did not err in considering the deposits to such accounts in the calculation of appellant's income as this method of calculation constituted a more accurate representation of his income.

Appellant also argues that the district court failed to adhere to the statutory factors set forth in Minn. Stat. § 518A.39, subd. 2 (2012). However, appellant bases this argument on the assertion that there was no substantial change to his financial circumstances for purposes of respondent's modification motion. This argument rests on the assumption that the financial assistance from his family should not have been included in calculating his income. However, because appellant's income was properly calculated by the CSM and the CSM properly included the family assistance received by appellant, the district court's order satisfies Minn. Stat. § 518A.39, subd. 2(b)(1), as the monthly support obligation of \$806 per month, calculated from appellant's current circumstances, is "at least 20 percent and at least \$75 per month higher or lower than the current support order" of \$168. The modification of appellant's support obligation between July and December of 2010 also satisfies this provision.

There is no merit to appellant's contentions that the CSM erred by calculating his monthly income based upon his deposits into his personal and business checking accounts, which deposits included contributions from his family. And, based upon this calculation of appellant's income, the CSM correctly modified appellant's child support obligation in accordance with the required statutory factors. The district court did not err in affirming the CSM's order setting appellant's income and child support.

Affirmed.