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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1772**

Mary Jo Brooks Hunter, petitioner,
Respondent,

vs.

Michael Anthony Owen,
Appellant.

**Filed September 16, 2008
Affirmed
Huspeni, Judge***

Goodhue County District Court
File No. 25-F4-92-050105

Mary Jo Brooks Hunter, 4 Linder Court, St. Paul, MN 55106 (attorney pro se)

Kent D. Laugen, 306 West Avenue, Red Wing, MN 55066 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Huspeni, Judge; and
Muehlberg, Judge.**

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

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

UNPUBLISHED OPINION

HUSPENI, Judge

Appellant challenges the decision of a child support magistrate (CSM) to continue his child-support obligation, arguing that (1) respondent's motion to continue child support was not properly served and (2) the CSM's findings are erroneous. We affirm.

FACTS

Appellant Michael Owen and respondent Mary Jo Hunter are the parents of B.O., born October 30, 1987. Hunter and Owen are not married, and Owen was adjudicated the father of B.O. in 1992. B.O. lived with Hunter, and Owen was ordered to pay Hunter child support. In May 2002, B.O. was diagnosed with bipolar disorder. B.O. graduated from high school in June 2006 but continues to live with Hunter, who provides for B.O. in various ways, including ordering and paying for his prescriptions and reminding him to take them.

Collection of child support stopped after December 2006, based on the belief that B.O. was emancipated. In March 2007, Hunter moved for modification of Owen's child-support obligation, requesting that support continue until B.O. reaches the age of 21 because of his bipolar disorder.

Owen was not present at the May 1, 2007 hearing before a CSM. In a letter dated May 25, 2007, Owen wrote to the CSM, asserting that he was not notified of the hearing and that he first became aware of the modification proceedings when he received "the

documents” from Hunter dated May 8, 2007.¹ He maintained that Hunter had put the documents in his mailbox, rather than mailing them, and requested that the CSM “reconsider [his] decision and grant [Owen] another court date.” Thereafter, the CSM issued an order dated June 5, 2007, granting Hunter’s motion.

On June 25, 2007, Owen formally requested that the CSM reconsider two aspects of its June 5, 2007 order: (1) the finding that Hunter’s motion to modify child support was served on Owen on March 12, 2007, and (2) the finding that B.O. is unable to support himself because of his bipolar disorder. In support of his motion, Owen submitted an affidavit in which he stated that he was “not aware of these proceedings until after the Court issued its Order” and maintained that he had lived at the same address for five years and “there is no reason that [he] was not properly served.” He also maintained that B.O. had various sources of income, was living with Hunter “sporadically,” and could be self supporting. Hunter opposed Owen’s motion and submitted her own affidavit.

In an order dated July 16, 2007, the CSM denied Owen’s motion, stating that the record contained an affidavit of service by United States mail, which indicated that Hunter’s motion was mailed to Owen on March 12, 2007, at the same address Owen identified in his affidavit, and Owen “submit[ted] nothing to refute [the] Affidavit of Service.” This appeal followed.

¹ Owen did not specify which documents he received. The only document in the record dated May 8, 2007, is a letter from Hunter to the CSM supplementing the record according to an agreement at the hearing with information regarding B.O.’s diagnosis. The letter indicates that a copy was sent to Owen.

DECISION

I.

Whether service of process is proper is a question of law, which we review de novo. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), review denied (Minn. Jan. 26, 2001). “A judgment is void if the issuing court lacked personal jurisdiction over a party through a failure of service that has not been waived.” *Ayala v. Ayala*, 749 N.W.2d 817, 820 (Minn. App. 2008); see also *Turek*, 618 N.W.2d at 611 (stating that a judgment “entered without due service of process must be vacated” (quotation omitted)).

In child-support proceedings, a motion to modify the child-support order may be served by United States mail. Minn. R. Gen. Pract. 355.02, subd. 2. Service made by United States mail pursuant to rule 355.02 is complete upon proper mailing. Minn. R. Gen. Pract. 355.03; *Wise v. Bix*, 434 N.W.2d 502, 504 (Minn. App. 1989). Proper mailing requires a proper address. See *Wise*, 434 N.W.2d at 504 (holding that “[w]here papers are incorrectly addressed, returned to the sender, and then remailed, service is *not* made at the time of the initial mailing”). But the rules of service are not always strictly construed. *Maki v. Hansen*, 694 N.W.2d 78, 82 (Minn. App. 2005). Indeed, receipt of the motion may eradicate flaws in service. See, e.g., *State v. Pierce*, 257 Minn. 114, 115-16, 100 N.W.2d 137, 138 (1959) (“[W]e have long held that, where service is made by mail and actually reaches the party to be served within the required time, it is equivalent to personal service.”). An affidavit of service by United States mail raises a presumption of receipt but may be overcome by reasonable evidence demonstrating no actual receipt.

In re Estate of Kotowski, 704 N.W.2d 522, 527 (Minn. App. 2005), *review denied* (Minn. Dec. 21, 2005).

Owen argues that he was not properly served because Hunter addressed the envelope using an incorrect address—one different from the address indicated in the affidavit of service. But his argument on appeal is not the same argument he presented to the CSM, and the record does not support the argument he makes here. In his motion for review of the June 5, 2007 order, Owen maintained that he “was not served.” And in his June 25, 2007 affidavit, Owen stated that he “was not aware of these proceedings until after the Court issued its Order.” But Owen wrote to the CSM on May 25, 2007, attesting to a lack of knowledge before May 8, thereby demonstrating his awareness of the proceedings before issuance of the June 5, 2007 order. Owen also identified his address in the June 25, 2007 affidavit. But the address he identified is identical to the one on the affidavit of service, and he did not mention any errors in the address or discrepancies between the envelope he received and the affidavit of service. As such, the CSM’s conclusion that Owen had failed to identify any evidence to rebut the presumption of proper service created by the affidavit of service is correct based on the record.²

² Owen included with his appellate brief a photocopy of “the envelope in which [he] received [Hunter]’s motion.” But he did not present the envelope or photocopy to the CSM. Therefore, the photocopy is outside the record on appeal. Minn. R. Civ. App. P. 110.01. The CSM’s decision was correct based on the record, and we will not reverse the CSM’s decision based on extrarecord evidence presented on appeal. *Cf. White v. Minn. Dep’t of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (stating that “the burden of showing error rests upon the one who relies upon it” (quotation omitted)), *review denied* (Minn. Oct. 31, 1997).

Finally, we note that, notwithstanding arguments Owen raises regarding service, he was given an opportunity to present affidavit evidence for consideration by the CSM prior to issuance of the July 16, 2007 order.

II.

Owen also challenges the CSM's findings regarding B.O.'s residence and ability to support himself. This court's standard for reviewing a CSM's decision is the same as it would be if the district court had made the decision. *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). A child's residence and ability to be self-supporting present questions of fact, and this court will not disturb the district court's factual findings unless clearly erroneous. *See Streit v. Streit*, 363 N.W.2d 135, 137 (Minn. App. 1985) (stating that emancipation is question of fact reviewed for clear error). A finding of fact is clearly erroneous if a reviewing court is left "with the definite and firm conviction that a mistake has been made." *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987).

A.

Owen first argues that the record does not support the CSM's finding that B.O. is incapable of self support. A CSM has authority to require continuing child support even after a child has attained the age of 18 when that child is incapable of self support because of "a mental or physical deficiency." *Krech v. Krech*, 624 N.W.2d 310, 312 (Minn. App. 2001) (citing *McCarthy v. McCarthy*, 301 Minn. 270, 274, 222 N.W.2d 331, 334 (1974)) (discussing district court's authority); *see also* Minn. Stat. § 518A.26, subd. 5 (2006) (defining "child" as "an individual under age 20 who is still attending

secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support”).

Here, the CSM specifically addressed both factors required for a continuation of child support under *McCarthy*. The CSM found that B.O. is incapable of self support, specifically attributing that inability to B.O.’s bipolar disorder. The CSM supported his finding by making several factual findings regarding (1) B.O.’s reliance on Hunter, (2) specifically identified behavioral concerns, and (3) B.O.’s inability, according to Hunter and B.O.’s doctor, to sustain employment. Moreover, the CSM’s findings are supported by Hunter’s March 12, 2007 affidavit, her testimony at the expedited child-support hearing, and the signed, though unsworn, description of B.O.’s condition by his doctor. Thus, the CSM’s finding that B.O. is incapable of self support because of his bipolar disorder is not clearly erroneous.

B.

Owen also argues that the CSM erred by finding that B.O. resides with Hunter. This argument is similarly unavailing. Hunter specifically stated in her March 12, 2007 affidavit that B.O. continues to reside with her and that she provides for B.O.’s shelter, clothing, and food. The only evidence that Owen proffered to the CSM on the issue—indeed, the only mention Owen made of the issue at all—was in his affidavit in support of his motion for review. Owen said, “To the best of my knowledge [B.O.] is only living with [Hunter] sporadically.” But in her July 9, 2007 affidavit, Hunter again stated that she continues to provide shelter, clothing, and food for B.O. The CSM implicitly credited Hunter by finding that B.O. lives with her, and this court does not reweigh

credibility determinations. *See Nelson v. Nelson*, 291 Minn. 496, 497, 189 N.W.2d 413, 415 (1971) (emphasizing that evidentiary weight and witness credibility are province of fact-finder); *see also Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) (stating that appellate courts defer to trial court resolution of factual issues presented by conflicting affidavits); *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998) (citing *Straus*). The CSM's finding that B.O. lives with Hunter is not clearly erroneous.

Affirmed.