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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-258**

In re the Marriage of:
Tracey Lee Sigstad, petitioner,
Respondent,

vs.

Michael Gerald Sigstad,
Appellant.

**Filed December 14, 2010
Affirmed as modified
Huspeni, Judge***

Washington County District Court
File No. 82-F2-06-005763

Michael A. Welch, Hebert and Welch, P.A., Forest Lake, Minnesota (for respondent Tracey Lee Sigstad)

Doug Johnson, Washington County Attorney, Kari A. Lindstrom, Assistant County Attorney, Stillwater, Minnesota (for respondent Washington County)

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Considered and decided by Toussaint, Presiding Judge; Johnson, Chief Judge; and Huspeni, Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

Appellant challenges as an abuse of discretion the district court's denial of a motion to reduce appellant's child-support obligation as well as the court's attribution to appellant of \$3,000 a month earned installing carpet and \$500 a month acquired as unreported cash income. Because the district court did not abuse its discretion in denying appellant's motion and attributing income to him of \$3,000 per month, but because we reject the attribution of \$500 per month earnings by way of unreported cash income, we affirm as modified.

FACTS

When the 13-year marriage of appellant Michael Sigstad and respondent Tracey Sigstad was dissolved, the district court ordered appellant to pay child support of \$1,400 a month for the parties' two minor children. The amount of child support ordered was based upon the parties' stipulation that appellant earned a gross annual salary of \$87,236 through his then-full-time employment with, and his one-third ownership of, Sigstad's Mill-Direct Flooring (Sigstad's).

Several months after the marriage dissolution, appellant moved to modify his child-support obligation, contending that his gross annual income had decreased because of the impact of the economic downturn on Sigstad's. After a hearing on the motion, a child support magistrate (CSM) determined appellant had produced insufficient evidence to satisfy his burden. The CSM continued the hearing for more than one month to enable

appellant to produce additional evidence. Upon receipt of additional evidence, the CSM found that:

[T]here was insufficient information on which the Court would be able to determine the [appellant's] personal or business income. The personal finances of the [appellant] and the personal finances of [his] parents are co-mingled with the business, Sigstad's Mill-Direct Flooring. Additional information is needed before any conclusions can be reached with regard to the financial circumstances of the business.

The CSM reserved judgment for 60 days to allow appellant to provide yet additional evidence in support of his motion. Appellant did not provide any evidence, and the CSM denied the motion.

Several weeks after dismissal of his first motion, appellant again moved to modify his child-support obligation, again contending that his gross income had decreased because of the impact of the economic downturn on Sigstad's. A first hearing on the motion was followed by a second hearing several weeks later. At these hearings, the CSM heard extensive testimony from appellant, from his mother (who is also a one-third owner of Sigstad's), and from respondent. The parties testified as to income earned by appellant from installing carpet and as to whether and how much he earned in unreported cash income. Appellant conceded that he currently earned some income installing carpet but claimed it to be less than \$3,000 a month; and he denied earning any unreported cash income.

The CSM denied appellant's motion after determining that he could earn \$3,000 a month installing carpet and \$500 a month in unreported cash income. The CSM

concluded that “[t]here has not been a change in circumstances that renders the existing child support obligation unreasonable an[d] unfair.” The CSM also concluded that:

In the alternative, the Court could deny the Motion of the [appellant] because he has failed to provide sufficient information to determine his income or in the absence of more reliable information the Court could find the [appellant] continues to have the ability to earn at the level as provided in the Judgment and Decree. Either way results in the same outcome, which is a denial of the [appellant’s] Motion to modify support.

Appellant sought review of the CSM’s order. The district court did not hold a hearing, as neither party requested one. The district court affirmed the CSM’s order and this appeal followed.

D E C I S I O N

Motion Hearings

“The district court reviews the CSM’s decision de novo.” *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001). A CSM’s order that the district court has affirmed becomes the district court’s order. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). On appeal from a CSM’s ruling that the district court has affirmed, the standard of review is the same standard as would have been applied if the decision had been made by the district court in the first instance. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). The district court has broad discretion to modify a child-support obligation, and this court will not reverse the district court’s decision unless the court reached a “clearly erroneous conclusion that is against logic and the facts on the record.” *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). This court

defers to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

The terms of an order for child support may be modified upon the moving party showing that the terms of the obligation are unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (Supp. 2009). The moving party bears the burden of proof in a child-support-modification hearing. *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). A party's motion to modify child support must be accompanied by supporting documents, including "a financial affidavit, disclosing all sources of gross income." Minn. Stat. § 518A.28(a) (2008). The financial affidavit "shall include relevant supporting documentation . . . including, but not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed." *Id.*

The CSM's determination that appellant had not provided sufficient evidence to carry the burden he bore in a motion for reduction of child support is amply supported by the record. Appellant produced insufficient evidence at the first hearing on his motion and was given almost three months to provide sufficient evidence but returned to court without pay stubs, checking-account statements, or receipts for the carpet-installation work he acknowledged performing. Not surprisingly, he provided no evidence of unreported cash income, because he denied receiving any such income. Nor did he produce any documentation that would have assisted the CSM in distinguishing between his personal finances and Sigstad's finances in order to determine whether his income had in fact decreased, warranting a modification of his child-support obligation. For

instance, although appellant alleged he had made substantial loans to Sigstad's, he provided no documentation of these loans, nor did he produce Sigstad's 2008 business tax return.

The CSM's determination, supported by the record, that appellant had not provided sufficient evidence to carry his burden arguably provides an adequate, fully sufficient basis upon which this court could affirm the denial of appellant's motion. But as Minn. Stat. § 518A.28(c) (2008) mandates, if the moving party does not provide the appropriate supporting documentation, "the court shall set income for that parent based on credible evidence before the court." As established, appellant did not provide the appropriate supporting documentation, so the CSM was correct in considering other credible evidence before her. While recognizing that the CSM in this proceeding was not establishing an initial child support order but was considering whether a reduction in support was warranted, we nonetheless address the imputation of income determined by the CSM.

Carpet Installation

Appellant testified that, because of the economic downturn, he now earns between \$40 and \$50 for each job he takes installing carpet, earns approximately \$400 a month installing carpet, and earned only \$150 a week installing carpet between January 2009 and June 2009. He conceded, however, that he had no documentation evidencing the income he earns. Appellant also testified he no longer works full time at Sigstad's, as he used to, because the amount he earns has decreased substantially—not, as respondent

contends, because he makes more money installing carpet full time than working as a salesman at Sigstad's.

In contrast to appellant's testimony, respondent testified that appellant earns significantly more installing carpet than he claims. Respondent testified that, while they were married, appellant "wouldn't even step foot in a home for under \$150" and averaged \$3,000 a weekend and \$500 an evening laying carpet.¹ Respondent testified that, while the parties were married, she paid the bills and ran the household with the money they earned from Sigstad's (respondent was the bookkeeper at Sigstad's for 12 years during the marriage) and that appellant supported his personal activities, including a significant gambling habit and expensive vacations, with his carpet-installation work and unreported cash income. Respondent testified that she observed carpet-installation tools in appellant's truck and that the parties' children told her appellant had been installing carpet. In support of her belief that appellant installs carpet full-time, respondent testified that appellant employed a full-time salesman at Sigstad's instead of working there himself, as he had always done, because installing carpet is more lucrative than working at Sigstad's.

The CSM found respondent's testimony more credible than appellant's and concluded that appellant "has additional income or the ability to earn additional income of at least \$3,000 per month from laying carpet." The CSM also concluded that appellant's claim to have experienced a significant decrease in wages was

¹ While these figures may seem unrealistic, there is no indication that the CSM relied upon them in imputing \$3,000 in monthly income to appellant.

unaccompanied by a change in lifestyle, and that it was unlikely Sigstad's would pay a salesperson if appellant were available to work there, thus demonstrating it is likely that appellant's carpet-installation work is more lucrative than his work at Sigstad's.

The CSM's imputation of income to appellant is thus not clearly erroneous or against logic or facts in the record. The CSM was free to assess the evidence, including judging the credibility of the testimony of the parties. We defer to that judgment.

Unreported Cash Income

Respondent testified that during the marriage appellant consistently obtained income by pocketing money from cash sales at Sigstad's. She testified that when appellant received cash from selling carpet or flooring at Sigstad's, he would inform his parents (who own two-thirds of Sigstad's) that the sale of carpet/flooring was for less than he actually charged and would then pocket the difference. Respondent further testified that appellant asked builders who patronized Sigstad's to pay in cash and gave discounts to those patrons to encourage cash sales he could keep, pocketing "thousands and thousands and thousands" of dollars in this way.

Appellant denied respondent's contentions. Unquestionably, it is the province of the CSM to assess credibility, and respondent was determined to be the more credible party. We recognize that appellant enjoys an undiminished lifestyle and spending habits. However, we are extremely reluctant to affirm the portion of imputed income (\$500 per month) that the CSM attributed to what would clearly be improper, even illegal, conduct by appellant. We decline to include that \$500 per month as imputed income.

The CSM also appears to have imputed income to appellant resulting from significant payments made to him or on his behalf by his mother. In fact, appellant himself testified that his mother paid the mortgage on his home for several months, paid his monthly personal Visa credit card, paid his legal fees for this action, and paid his child-support obligation for the three months prior to the second hearing. While we recognize that payments made by appellant's mother appear to be voluntary and as such may cease at any time, we see no abuse of discretion in the CSM's notice of these payments in the past. There was no testimony that contributions by respondent's mother to him have not continued into the present. Further, we note once more that appellant appears to have maintained his lifestyle, evidenced by his testimony that he has no intention of selling his current home, property admittedly worth more than \$900,000. Ultimately, there remains sufficient appropriately imputed income (\$3,000) to support the CSM's decision.

Finally, appellant's argument that the CSM imputed income to him based on conjecture is unavailing, as is his argument that income should have been calculated pursuant to Minn. Stat. § 518A.30 (2008), which provides a formula for calculating self-employment. First, regarding speculation, appellant's reliance on an unpublished opinion of this court is of limited value, and the opinion is distinguishable on its facts. In *Ilstrup v. Ilstrup*, 2008 WL 5137103, A08-0150 (Minn. App. Dec. 9, 2008), the CSM clearly stated that she was speculating on and estimating the moving party's income for purposes of calculating his child-support obligation. In this case, the CSM neither indicated nor demonstrated estimation or speculation; on the contrary, the decision is clearly based on

respondent's testimony. Second, regarding section 518A.30, the CSM was not required to invoke that section. Appellant books carpet-installation work while employed at Sigstad's. Requiring the CSM to distinguish between the work appellant books through Sigstad's and his "self-employment" installing carpet would be nearly impossible, considering the sparse record presented here.

The decision of the CSM that appellant did not carry his burden of showing that he had experienced a substantial change of circumstances rendering the current child-support order unreasonable and unfair and the decision of the CSM to impute income to appellant of \$3,000 per month were supported by the record.

Affirmed as modified.