

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1970**

In re the Marriage of:  
Sandra Sue Grazzini-Rucki, petitioner,  
Appellant,

vs.

David Victor Rucki,  
Respondent,

County of Dakota, intervenor,  
Respondent.

**Filed August 21, 2017  
Affirmed  
Halbrooks, Judge**

Dakota County District Court  
File No. 19AV-FA-11-1273

Michelle Lowney MacDonald, MacDonald Law Firm, LLC, West St. Paul, Minnesota (for appellant)

Lisa M. Elliott, Elliott Law Offices, P.A., Minneapolis, Minnesota (for respondent David Rucki)

James C. Backstrom, Dakota County Attorney, James W. Donehower, Assistant County Attorney, West St. Paul, Minnesota (for respondent Dakota County)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Smith, John, Judge.\*

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Appellant challenges a series of child-support orders, arguing that the presiding child-support magistrate (CSM) erred by (1) failing to retroactively modify appellant's support obligation to the date that the motion was filed, (2) failing to make adverse inferences against respondent when addressing respondent's gross income, (3) ordering appellant to pay temporary basic child support before her criminal sentencing, (4) imputing income to appellant improperly and failing to assess her ability to pay support, (5) ignoring respondent's actual gross income in calculating the child-support obligation, and (6) ruling prematurely on modification prior to appellant's sentencing hearing and conditioning her support obligation on future incarceration. We affirm.

### FACTS

Appellant Sandra Sue Grazzini-Rucki and respondent David Victor Rucki are the parents of five children, three of whom are minors. At the time of the dissolution in 2013, the district court awarded Rucki sole physical and sole legal custody of all five children. Based on findings that Grazzini-Rucki's gross monthly income was \$4,126 and that

---

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

Rucki's gross monthly income was \$5,000, the district court ordered Grazzini-Rucki to pay \$1,020 per month in basic child support.<sup>1</sup>

On June 29, 2015, Grazzini-Rucki moved for modification of child support. The district court summarily denied the motion in August 2015 and directed Grazzini-Rucki to present her request for modification to a CSM. Grazzini-Rucki filed another modification motion on November 17, 2015, citing her October 18, 2015 arrest and subsequent incarceration as reasons for her inability to work. On February 1, 2016, the CSM determined that modification was warranted because Grazzini-Rucki had experienced a change of circumstances due to her incarceration.<sup>2</sup> The CSM reduced her support obligation to \$0 per month effective January 1, 2016. The CSM also decided that Grazzini-Rucki's support obligation could be modified nunc pro tunc pending a review hearing scheduled in April 2016.

Both parties filed motions prior to the review hearing. Rucki requested that Grazzini-Rucki's support obligation be reinstated because she had been released from jail in late February 2016. Grazzini-Rucki requested that the review hearing be continued to allow for further discovery. The CSM conducted the review hearing and issued an order on April 5, 2016. The CSM found that she lacked sufficient information regarding the parties' respective incomes to make a child-support determination and ordered the parties

---

<sup>1</sup> In July 2014, the district court modified Grazzini-Rucki's support obligation to \$904 per month to account for the emancipation of the parties' oldest child.

<sup>2</sup> Three different CSMs conducted hearings and issued orders during the relevant portions of this proceeding.

to exchange their relevant financial documents.<sup>3</sup> The CSM continued the review hearing to August 11, 2016.

On August 1, 2016, Grazzini-Rucki sought another continuance of the review hearing because the sentencing hearing in her criminal matter was scheduled for September 21, 2016. The hearing proceeded as scheduled but the CSM ultimately continued the review hearing to September 15, 2016. The CSM issued an order at the August 2016 hearing, directing Rucki to submit a 2014 corporate tax return and to allow Grazzini-Rucki's attorney an opportunity to view a copy of the tax return. Because Grazzini-Rucki was no longer incarcerated, the CSM also ordered her to pay \$50 per month in temporary basic child support.

Before the September 15, 2016 hearing, Grazzini-Rucki filed a motion for review of the CSM's August 11, 2016 order and requested that the CSM make adverse inferences against Rucki for failing to supply his financial information. Both parties testified at the September 2016 hearing. Rucki testified that he receives medical assistance for the three minor children and that his current income is about "60 grand" per year. Grazzini-Rucki testified that her employment status with the airline she worked for was unknown and that she had applied for approximately 30 to 40 jobs but had not received any employment offers.

---

<sup>3</sup> In June 2016, Grazzini-Rucki filed a motion requesting that Rucki be found in contempt of court and to compel Rucki to provide discovery responses. Rucki filed a responsive motion asking that Grazzini-Rucki's motion be denied and for a protective order to keep his financial information confidential. In late July 2016, the district court granted Rucki's motion and denied Grazzini-Rucki's motion in all respects.

The CSM issued two orders on October 13, 2016. In the first order responding to Grazzini-Rucki's motion for review, the CSM affirmed the August 11, 2016 order except for a minor amendment to the order's preamble. In the second order, the CSM imputed potential income to Grazzini-Rucki and found that she had the ability to earn \$4,143 in gross monthly income. The CSM also found that Rucki's gross income was \$5,000 per month. Based on these findings and pursuant to the child-support guidelines, the CSM ordered Grazzini-Rucki to pay \$975 per month in basic child support. The order also acknowledged Grazzini-Rucki's sentencing hearing and provided that her support obligation would be suspended if and when she is incarcerated. This appeal follows.

### **D E C I S I O N**

Grazzini-Rucki alleges several errors in three separate child-support orders filed on February 1, 2016; August 11, 2016; and October 13, 2016. A CSM issued each of the three orders as part of these proceedings conducted in the expedited child-support process. *See generally* Minn. R. Gen. Pract. 351-379. A CSM may be assigned in a IV-D case going through the expedited process and is authorized to establish, modify, or enforce child support. *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). Because Rucki receives public assistance in the form of medical assistance for the three minor children, the CSM has jurisdiction to preside over this IV-D case. *See* Minn. Stat. § 518A.26, subd. 10 (2016) (defining a case as IV-D when "a party has assigned to the state rights to child support because of the receipt of public assistance").

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). Accordingly, a CSM is afforded broad discretion in making child-support determinations. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). But we will find an abuse of this discretion if the CSM makes an erroneous conclusion that goes against logic and facts on the record. *Id.*

### **I. The February 1, 2016 Order and Effective Date of Modification**

Grazzini-Rucki first contends that the CSM who issued the February 1, 2016 order erred by failing to modify her child-support obligation retroactively to July 1, 2015, the date she filed her initial motion. Respondent Dakota County suggests that we are procedurally foreclosed from addressing this issue because Grazzini-Rucki did not request the district court's review of the February 1, 2016 order and did not immediately appeal. The county also notes that Grazzini-Rucki did not mention the issue of retroactivity in any of her pleadings filed in March and August of 2016. But a temporary order regarding child support is generally not appealable. *See* Minn. Stat. § 518.131, subd. 1(c) (2016) (stating that temporary child-support orders are not final); Minn. R. Civ. App. P. 103.03(a) (stating that this court generally reviews only final orders). And this court "may review any order affecting the order from which the appeal is taken." Minn. R. Civ. App. P. 103.04. Because the February 1, 2016 order set a review hearing at which Grazzini-Rucki's support obligation could be further modified, it constitutes a temporary order that was not immediately appealable.

We will review this issue but note that Grazzini-Rucki directly appealed to this court without first requesting the district court's review of the CSM's order. A party may appeal from a CSM's order without first filing a motion for review to the district court. Minn. R.

Gen. Pract. 378.01. Because Grazinni-Rucki did not file a motion to review this issue, our review is limited to whether the evidence supports the CSM's factual findings and whether the findings support the CSM's conclusions of law. *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001).

**A. Retroactivity**

In February 2016, the CSM determined that because Grazzini-Rucki was incarcerated at the time, her circumstances had substantially changed, justifying a modification of her support obligation. The CSM ordered that her support obligation be modified to \$0 per month effective on January 1, 2016. Grazzini-Rucki argues that the CSM should have modified her support obligation retroactively to July 1, 2015, because she filed and served her modification motion on June 29, 2015. She relies on Minn. Stat. § 518A.39, subd. 2(f) (2016), which provides that “[a] modification . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification . . . .”

But, as both Rucki and the county emphasize, that motion was no longer pending after the district court issued an order on August 31, 2015. The district court summarily denied Grazzini-Rucki's motion and directed her to “present this request to an appropriate magistrate.” Even if Grazzini-Rucki argues that the district court was merely referring her to the CSM and that the district court did not effectively deny her motion, the motion could not be considered pending because she was required to take further action to have the

request heard by the CSM.<sup>4</sup> We conclude that Grazzini-Rucki's June 2015 motion was no longer pending and that the CSM did not err by not making her modified support obligation retroactive to July 1, 2015. *Cf. Hicks v. Hicks*, 533 N.W.2d 885, 886 (Minn. App. 1995) (concluding that a motion was no longer pending after the district court's "general dismissal" of the proceeding).

Grazzini-Rucki argues alternatively that, at the very least, the CSM should have retroactively modified her support obligation to December 1, 2015 because she filed another motion for modification on November 17, 2015. As discussed previously, the statute explicitly states that "[a] modification . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification . . . ." Minn. Stat. § 518A.39, subd. 2(f) (emphasis added). The word "may" is permissive and indicates discretionary authority in this context. *See Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009) (interpreting the 2008 version of the statute). "A modification of support is generally retroactive to the date the moving party served notice of the motion on the responding party." *Bormann v. Bormann*, 644 N.W.2d 478, 482 (Minn. App. 2002). But the CSM has broad discretion in setting the effective date of a modified child-support obligation. *Borcherding v. Borcherding*, 566 N.W.2d 90, 93 (Minn. App. 1997). For instance in *Finch v. Marusich*, the district court modified the appellant's support obligation

---

<sup>4</sup> At a hearing on November 17, 2015, Grazzini-Rucki requested that the district court take her child-support motion under advisement. The district court explained that Grazzini-Rucki had "to file something with the magistrate" in order to have that motion addressed. The district court reiterated that the motion was previously denied and that the appropriate mechanism to resolve the issue would involve a CSM.



retroactively to June 1, 1989, even though the appellant filed his modification motion in March 1989. 457 N.W.2d 767, 770 (Minn. App. 1990). This court held that the district court did not abuse its discretion in setting the effective date. *Id.* Similar to our decision in *Finch*, we conclude that the CSM did not abuse his discretion by establishing January 1, 2016 as the effective date.

### **B. Nunc Pro Tunc**

The CSM's February 1, 2016 order also stated that Grazzini-Rucki's support obligations "may be modified nunc pro tunc to January 1, 2016, at the scheduled Review Hearing." Grazzini-Rucki contends that the term "nunc pro tunc" should not be used in modification proceedings because it does not appear in the child-support statutes. Her argument implies that the use of this term allows a CSM to circumvent the modification statute and review support decisions retroactively.

Nunc pro tunc, a Latin term meaning "now for then," describes a "retroactive legal effect through a court's inherent power." *Black's Law Dictionary* 1237 (10th ed. 2014). A nunc pro tunc order may be used for correcting an omission of the district court or fixing a clerical error. *County of Washington v. TMT Land V, LLC*, 791 N.W.2d 132, 135 (Minn. App. 2010). One purpose of a nunc pro tunc entry is to correct the record, "not to supply[] judicial action." *Hampshire Arms Hotel Co. v. Wells*, 210 Minn. 286, 288, 298 N.W. 452, 453 (1941). Contrary to Grazzini-Rucki's assertions, the term is grounded in Minnesota caselaw and does not circumvent the modification statute because it is limited to correcting errors.

Rucki and the county contend that this language was appropriate due to the evolving circumstances regarding Grazzini-Rucki's incarceration and the parties' difficulty in conducting discovery. The decision to issue a nunc pro tunc order is discretionary. *TMT Land V*, 791 N.W.2d at 135. Due to the lack of information regarding the parties' income and Grazzini-Rucki's unsettled employment status, it was reasonable for the CSM to recognize that the February 1, 2016 order may need to be corrected to more fully account for the parties' financial circumstances. The CSM did not abuse his discretion in using this nunc pro tunc language to permit its reconsideration of the modification issue at a later date.

## **II. The August 11, 2016 Order and the Temporary Support Obligation**

Grazzini-Rucki argues that the CSM erred by establishing a temporary support obligation of \$50 per month in the August 11, 2016 order. She asserts that the CSM did not make any of the necessary findings in computing child support and failed to recognize that she is an indigent individual receiving public assistance. Rucki asserts that the issue is moot because the October 13, 2016 order, which sets Grazzini-Rucki's permanent support obligation, supersedes the temporary support obligation established in the August 11, 2016 order. We agree.

The August 11, 2016 order is labeled a temporary order and states that Grazzini-Rucki's "support obligation shall be reviewed at the next hearing and if warranted may be changed *nunc pro tunc*." The October 13, 2016 order increases her support obligation and retroactively applies this modified obligation to April 1, 2016. The increased modification obligation amount therefore encompasses the temporary amount ordered in August 2016,

rendering that order essentially null and void. An issue on appeal is moot if, during the appeal, “an event occurs making a decision on the merits unnecessary or an award of relief impossible.” *In re Paternity of B.J.H.*, 573 N.W.2d 99, 105 (Minn. App. 1998) (citing *In re Inspection of Minn. Auto Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984)). Although the October 13, 2016 order is not an event that occurred during the appeal, we consider this issue moot. Even if Grazzini-Rucki is correct that the CSM erred, she would not receive any relief because we are affirming the CSM’s October 13, 2016 order, discussed in more detail below.

### **III. The October 13, 2016 Order and Grazzini-Rucki’s Income**

After the full review hearing in September 2016, the CSM established Grazzini-Rucki’s basic child-support obligation in one of the two October 13, 2016 orders. The CSM imputed \$4,143 per month in potential income to Grazzini-Rucki. This was the amount she earned as a flight attendant as determined in the district court’s order in July 2014. The CSM found that while Grazzini-Rucki’s employment status at the airline was unknown at the time, she was still capable of working as a flight attendant, and she did not claim that her employment was terminated. Grazzini-Rucki raises a variety of objections to assert that the CSM’s decision amounts to reversible error, including that (1) a child-support determination does not require a finding that the children actually need support, (2) the CSM “obstructed” her right to modification, (3) the CSM improperly imputed income to her, (4) the CSM failed to determine the parties’ “actual” income, (5) the CSM failed to properly apply the statutory analysis for calculating gross income and potential

income, (6) the CSM failed to consider her ability to pay, and (7) the CSM erroneously adopted an earlier finding of income and ignored her actual income.

“To determine the presumptive child support obligation of a parent, the [district] court shall . . . determine the gross income of each parent.” *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015), *review denied* (Minn. Dec. 15, 2015). Gross income is broadly construed and may include a parties’ potential income. Minn. Stat. § 518A.29(a) (2016). A district court’s determination of a parties’ income is a finding of fact that we review for clear error. *Newstrand*, 869 N.W.2d at 685. A finding of fact is clearly erroneous if this court is “left with the definite and firm conviction that a mistake has been made.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). In deciding whether the findings are clearly erroneous, this court views the record in the light most favorable to the CSM’s findings. *Id.* Due to the number of issues raised by Grazzini-Rucki, we will attempt to address the distinct issues separately and the overlapping issues together.

**A. Finding of Need**

Grazzini-Rucki asserts that the statutory analysis in calculating child support does not require a showing of need. Grazzini-Rucki does not refer to the record regarding the minor children’s needs nor does she appear to contend that the CSM erred in considering the children’s basic needs. Because this claim does not create an issue, it does not present a basis for reversal.

## **B. Right to Seek Modification**

Grazzini-Rucki contends that the CSM obstructed her ability to seek modification of her child-support obligation, violating Minn. Stat. § 518A.39, subd. 1 (2016). The statute provides that, “[a]fter an order under this chapter or chapter 518 for maintenance or support money . . . the [district] court may from time to time, on motion of either of the parties . . . modify the order respecting the amount of maintenance or support money.” Minn. Stat. § 518A.39, subd. 1. Grazzini-Rucki maintains that she has “no income or assets” and that the CSM violated Minn. Stat. § 518A.39, subd. 2(a) (2016), after the CSM found a substantial change of circumstances in the February 1, 2016 order. But the February 1, 2016 order explicitly states that Grazzini-Rucki’s support obligation was subject to change after the review hearing originally scheduled in April 2016. The review hearing was continued twice before the CSM conducted the full hearing in September 2016. The modification of her support obligation in October 2016 is entirely consistent with the CSM’s order in February 2016. And as the county emphasizes, Grazzini-Rucki filed this motion in November 2015; this motion was addressed at several different hearings. There is no merit to her claim that the CSM “obstructed” her right to seek modification.

## **C. Potential Income and Ability to Pay**

Grazzini-Rucki argues that the CSM erred by imputing potential income to her because the CSM (1) disregarded her actual income, (2) failed to make a proper statutory analysis, and (3) improperly adopted a level of income determined by the district court in a prior order. A CSM must calculate a parent’s income based on her potential income if

the “parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income.” Minn. Stat. § 518A.32, subd. 1 (2016). One method for calculating a parent’s potential income considers “the parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community.” *Id.*, subd. 2(1) (2016).

Grazzini-Rucki asserts that she had no ability to pay child support because her employment with the airline was “in flux” and that the CSM made “vague, generalized and conclusory findings” that did not justify imputing income under Minn. Stat. § 518A.32, subd. 1.<sup>5</sup> But these assertions misconstrue the record, particularly the evidence admitted during the September 2016 hearing. The CSM found that after Grazzini-Rucki was released from jail, she submitted a document in March 2016 that stated that she currently worked as a flight attendant. Grazzini-Rucki testified, and the CSM acknowledged, that her status of employment was unknown at the time of the September 2016 hearing. But Grazzini-Rucki did not provide any evidence that her employment status had changed or that her employment had been terminated after March 2016. There was also no indication that her pending criminal sentence barred employment at the airline. Grazzini-Rucki

---

<sup>5</sup> Grazzini-Rucki also states that the CSM was “[p]arrotting earlier findings verbatim” from the April 5, 2016 order without making independent findings regarding her employment status. The county contends that the CSM used these previous findings to highlight that there was nothing in the record indicating that Grazzini-Rucki’s employment had changed. Because several different CSMs presided over this matter, it was reasonable for the CSM to recite language from the earlier April 5, 2016 order in establishing a clear understanding of the parties’ circumstances and the case’s procedural history.

testified that she had applied for approximately 30 to 40 jobs, including at fast-food restaurants and home-improvement stores, but said that she had not received any job offers.<sup>6</sup> The CSM reasonably determined that Grazzini-Rucki did not show that she could not work full-time. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that “a party cannot complain about a district court’s failure to rule in [that party’s] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question”). We conclude that the CSM’s imputing of potential income was appropriate under these circumstances.

Grazzini-Rucki also appears to suggest that she cannot be considered voluntarily unemployed or underemployed because she was incarcerated. She is correct that a person is not voluntarily unemployed or underemployed if it is due to incarceration. Minn. Stat. § 518A.32, subd. 3(3) (2016). But the CSM found that she was released from jail in February 2016 and therefore was no longer incarcerated. Grazzini-Rucki next argues that the CSM “already concluded that she was entitled to a modification,” apparently referring to the February 1, 2016 order. But as discussed previously, the February 1, 2016 order was temporary in nature and emphasized that the order could be further modified after a review hearing.

Grazzini-Rucki alleges that the CSM used an improper methodology in calculating her potential income. The CSM decided that Grazzini-Rucki has the ability to earn a gross

---

<sup>6</sup> Grazzini-Rucki alleged that she created a list of all the jobs for which she had applied. But this list was never admitted into evidence.

monthly income of \$4,143, the amount determined in a district court order from July 17, 2014. Grazzini-Rucki argues that this amount is significantly more than what she earned from 2011 to 2015. She refers to her March 2016 affidavit that references her W-2 statements from those five years. The statements from 2014 and 2015 indicate that she earned gross income of \$24,405.89 and \$23,566.72, respectively.

In the July 17, 2014 order regarding an earlier modification of child support, the district court reviewed three of the W-2 statements (2011, 2012, and 2013) that Grazzini-Rucki refers to in her March 2016 affidavit. But the district court also considered a March 2014 paycheck stub in which Grazzini-Rucki received regular pay for a 40-hour week. The district court found that because the paycheck stub best reflected the amount that she was able to earn when she was working full-time, her gross monthly income was \$4,143.12. In a November 25, 2013 order, the district court reviewed five paycheck stubs from May 2013 to July 2013 and found that Grazzini-Rucki's income was approximately \$4,126 per month. The district court also found that the parties stipulated in August 2012 that Grazzini-Rucki was able to earn \$5,000 per month. Due to the difficulty in ascertaining Grazzini-Rucki's actual income, it was reasonable for the CSM to refer to these findings from the district court as an accurate measure of what she is capable of earning as a flight attendant on a full-time basis.

Even if Grazzini-Rucki's affidavit presents evidence supportive of a different finding regarding her gross income, that does not necessarily mean the CSM's finding is clearly erroneous. *See Vangness*, 607 N.W.2d at 474 (“That the record might support findings other than those made by the [district] court does not show that the court's findings



are defective.”). Based on this record and drawing all reasonable inferences in favor of the CSM’s findings, the CSM did not clearly err by determining that Grazzini-Rucki’s gross monthly income is \$4,143.

#### **IV. The October 13, 2016 Order and Rucki’s Income**

Grazzini-Rucki also contends that the CSM erred in the child-support order dated October 13, 2016, by failing to draw adverse inferences against Rucki when calculating his gross monthly income. Her motion for review filed in August 2016 contained a request for an adverse inference. In cases involving a child-support determination, each party is obligated to “disclos[e] all sources of gross income.” Minn. Stat. § 518A.28(a) (2016). “A party has a duty to supply financial information in a proper fashion to the [district] court. Failure to do so justifies adverse inferences.” *Spooner v. Spooner*, 410 N.W.2d 412, 413 (Minn. App. 1987). Grazzini-Rucki alleges that Rucki failed to provide sufficient information concerning his income, therefore demonstrating that an adverse inference was appropriate.

At the September 2016 hearing, Rucki testified that he makes “60 grand” per year. Based on his testimony and two paystubs confirming that testimony, the CSM found that he earned \$5,000 in gross income per month.<sup>7</sup> Despite Grazzini-Rucki’s assertions to the contrary, the CSM did not ignore the evidence. The CSM acknowledged the discovery issues in the case and determined that Grazzini-Rucki was using her discovery requests as a delay tactic. Indeed, the district court in July 2016 granted Rucki’s motion for a

---

<sup>7</sup> Grazzini-Rucki claims that the CSM erred by taking these paystubs at “face value.” It is unclear how this would constitute an error justifying reversal.

protective order permitting his financial information to remain confidential. The CSM did not err by not drawing adverse inferences against Rucki in determining his gross monthly income.

Similar to her adverse-inference argument, Grazzini-Rucki contends that the CSM ignored Rucki's actual gross income in calculating the support obligation. She asserts that the CSM did not evaluate Rucki's previous self-employment income. This argument centers on the CSM's alleged failure to consider a 2014 corporate tax return from Kang Contracting.<sup>8</sup> The tax return stated that the company earned \$1,427,664 in gross receipts. But Rucki testified that, at the time of the September 2016 hearing, he no longer had an ownership interest in Kang Contracting. The CSM therefore determined that the tax return had no effect on the calculation of Rucki's income because he was not self-employed. *See* Minn. Stat. § 518A.30 (2016) (“[I]ncome from self-employment or operation of a business . . . is defined as gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation.”).

Rucki testified that his only source of income is through his employment at TL Rucki Trucking, which is owned by his sister. He testified that from this employment, he earns approximately \$5,000 per month in gross income. The CSM found this testimony to be credible and consistent with his paystubs. We defer to the CSM's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Because the

---

<sup>8</sup> Grazzini-Rucki also submitted partial corporate tax returns from Rucki Trucking Co. for several years between 2001 and 2010. Rucki testified that he sold this company to his sister. The CSM considered this evidence irrelevant because it was outdated and did not accurately reflect Rucki's current financial circumstances.

CSM's finding is consistent with the evidence presented, the CSM did not err in deciding not to impute any potential income to Rucki.

Grazzini-Rucki also argues that the CSM wrongfully created a support order that compelled "an indigent parent" to pay support to "a wealthy parent."<sup>9</sup> She maintains that the CSM acted unfairly by imputing potential income to her but not to Rucki. But the CSM found that Rucki is not voluntarily underemployed and therefore the CSM was not required to calculate potential income under Minn. Stat. § 518A.32, subd. 1; *see also Welsh v. Welsh*, 775 N.W.2d 364, 367 (Minn. App. 2009). And as the county notes, the decision to impute potential income to one party is based on the financial circumstances of that party and is entirely distinct from the calculation of the other party's income. *See* Minn. Stat. § 518A.32, subd. 1. Minnesota courts have imputed potential income to one parent but not the other parent in several cases. *See, e.g., Newstrand*, 869 N.W.2d at 685-86. We conclude that the CSM did not abuse its discretion by imputing potential income to Grazzini-Rucki but not Rucki.

---

<sup>9</sup> Grazzini-Rucki again raises her alleged inability to pay any child support as a reason highlighting the CSM's alleged unfairness. As discussed previously, this assertion is not supported by the evidence and neglects to account for her responsibility as a parent to support her minor children. *See Barnier v. Wells*, 476 N.W.2d 795, 797 (Minn. App. 1991) ("Parents have a 'legal and natural duty' to take care of their children until they are old enough to take care of themselves.").

## V. The October 13, 2016 Order and Conditional Suspension of Child Support

Grazzini-Rucki argues that the CSM erred by failing to continue the September 2016 hearing to a date after her sentencing hearing and by conditionally suspending her support obligation upon her possible future incarceration.

Grazzini-Rucki sought a continuance of the August 2016 review hearing because of her sentencing hearing scheduled on September 21, 2016. The CSM continued the matter to September 15, 2016, six days before the sentencing hearing. Generally, whether to continue a hearing is within the CSM's discretion. *Richter v. Richter*, 625 N.W.2d 490, 495 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

The record reflects that Grazzini-Rucki's modification motion had been pending since its filing in November 2015. Different CSMs had heard the matter on several occasions but had only addressed the issue on a temporary basis due to discovery difficulties between the parties. Grazzini-Rucki made at least three continuance requests after filing the motion. The CSM construed these requests as an attempt to delay the proceeding. The record also suggests that Grazzini-Rucki had either ignored prior court orders or failed to comply with court orders in a timely manner. And it is clear from the record that the CSM made some effort at the August 2016 hearing to coordinate a hearing date that would reasonably fit the parties' schedules. The CSM did not abuse her discretion in continuing the review hearing to September 15, 2016.

After the September 2016 hearing, the CSM issued an order directing Grazzini-Rucki to pay \$975 per month in basic child support. In light of Grazzini-Rucki's sentencing hearing, the CSM decided that "payment of support should be suspended if and when

[Grazzini-Rucki] is incarcerated and a review hearing should be held after release from any incarceration concerning the sole issue of whether support should be reinstated.” In *Anderson v. Anderson*, this court decided that the district court did not abuse its discretion by temporarily reducing an obligor’s child-support payments but providing for later automatic reinstatement of the pre-reduction amount. 421 N.W.2d 410, 412 (Minn. App. 1988). Grazzini-Rucki argues that the CSM erred in conditioning suspension of her support obligation upon incarceration. Her argument relies significantly on an unpublished opinion from this court. *See Moskal v. Moskal*, No. C2-99-580, 1999 WL 1216340 (Minn. App. Dec. 21, 1999). Unpublished opinions are of limited value in deciding an appeal and are not precedential. Minn. Stat. § 480A.08, subd. 3 (2016).

Even if we consider *Moskal*, it is distinguishable from this case. In *Moskal*, this court held that the district court inappropriately ordered automatic reinstatement of the father’s support obligation to its pre-incarceration amount, immediately following the father’s release from prison. 1999 WL 1216340, at \*2-3. Here, the CSM ordered Grazzini-Rucki’s support obligation to be suspended upon incarceration and instructed the county to file a motion to revisit the issue upon her release. Rather than automatically reinstating the support obligation, as was the district court’s error in *Moskal*, the CSM instructed the county to move for a review hearing upon release to determine whether the obligation should be reinstated.

While the CSM may have been able to avoid this issue altogether if she had scheduled the review hearing after the sentencing hearing, the order requiring suspension of support upon incarceration adequately considers the parties’ unique circumstances and

provides Grazzini-Rucki with a temporary reprieve of her support obligation if and when she is incarcerated. We conclude that the CSM's solution regarding this potential issue was reasonable and did not constitute an abuse of discretion.

**Affirmed.**