STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0026

In re the Marriage of:
Heidi Marie Owens, petitioner,
Respondent,

vs.

James Allen Owens,
Appellant,

State of Minnesota, County of St. Louis, intervener,
Respondent.

Filed October 15, 2018
Affirmed
Halbrooks, Judge

St. Louis County District Court
File No. 69DU-FA-13-56

Brent W. Malvick, Hanft Fride, P.A., Duluth, Minnesota (for respondent Heidi Owens)

James Owens, Johnstown, Pennsylvania (pro se appellant)

Mark S. Rubin, St. Louis County Attorney, Amy E. Lukasavitz, Assistant County Attorney, Duluth, Minnesota (for respondent county)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the denial of his motion to modify child support, arguing that his child-support obligation is overstated and that the child-support magistrate (CSM) failed to account for his disability and the resulting limitation on his income. We affirm.

FACTS

Appellant James Allen Owens (father) and respondent Heidi Marie Owens (mother) are the parents of three children, two of whom are minors. At the time of dissolution of their marriage in 2014, the district court awarded mother sole legal and sole physical custody of the three children, subject to father's reasonable parenting time. Of the marital investments, retirement funds, and proceeds from selling the marital homestead, father received one-half. Based on findings that father was unemployed but received severance pay from his previous employment, the district court ordered father to pay $1,500 per month in spousal maintenance and $1,744 per month in basic child support.

Father appealed the judgment. The parties and their attorneys participated in mediation provided by this court. They reached a mediated agreement in which they stipulated that father would pay $2,000 per month in child support but that terminated his spousal-maintenance obligation. Father dismissed his appeal. At the time, mother continued to work full-time, and father remained unemployed.

In 2016, father moved for modification of child support. The CSM denied father's motion, finding no substantial change in circumstances that rendered the stipulated order unfair or unreasonable. The CSM found that father's assertion that his disability warranted

a modification to be immaterial, as father's employment status had not changed. At the time of the prior order, when father was unemployed, he stipulated that the child-support order was fair and reasonable. To subsequently find the same order unreasonable and unfair would "stand child support modification law on its head," according to the CSM. Father appealed, then voluntarily dismissed the appeal.

In 2017, father moved a second time for modification of child support, by sending the motion to the opposing parties by U.S. Mail himself. Because both the county and mother appeared at the hearing and did not object to improper service, the CSM found that any service-related objection was waived. Father asked the CSM to decrease his child-support obligation based on the emancipation of the oldest child and father's disability. Despite testifying that he was working full-time, earning $12.75 per hour, father argued that he was disabled due to his mental-health diagnoses and a shoulder injury. He testified that he had applied for Social Security benefits in 2015, was denied, and had been waiting for a hearing since. The CSM explained to father that in order to find him disabled and unable to work, father must provide objective medical verification of that fact. Father did not provide such documentation.

Father testified that he had no remaining assets from the judgment. The CSM requested further information and left the record open for father to submit verification of his assets. Before the record closed, father submitted a handwritten response that listed some assets (but failed to account for his retirement funds), reported that since 2013 he had spent $397,353 on the children, and stated that his employment had been terminated. After

the record closed and one day before the order was filed, father submitted additional materials to the CSM that were not considered.

On November 21, 2017, the CSM denied father's second motion, finding that absent verification of his disability, father was not considered to be disabled and was able to earn $12.75 per hour on a full-time basis. The CSM concluded that absent verification of the nature and extent of father's assets, the CSM could not determine appropriate child support following the emancipation of a child. This appeal follows.

D E C I S I O N

Father contends that his child-support obligation is overstated because the CSM failed to take into consideration his mental-health diagnoses and his shoulder injury. We apply the same standard for reviewing a CSM's order that we apply to a district court's order regarding child support. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). 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.*

A CSM may modify a child-support order "upon a showing of a substantial change in circumstances that makes the order unreasonable and unfair." *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009) (quotation omitted). The moving party has the burden of proof in support-modification proceedings. *Johnson v. Johnson*, 232 N.W.2d 204, 205 (Minn. 1975). A district court may reject a party's disability claim if the party fails to present

documentation of a medical restriction on employment. *Funari v. Funari*, 388 N.W.2d 751, 753 (Minn. App. 1986).

Here, the record reflects, and the CSM acknowledged, that father has been diagnosed with multiple mental-health illnesses. While we are sympathetic to father's health challenges, the CSM made it abundantly clear that, in order to modify his child-support obligation on this basis, father needed to provide medical verification that his disability affected his ability to work. Father failed to do so. The CSM explained to father that his application for Social Security benefits alone was not sufficient to find that he was disabled and unable to earn an income. The CSM grappled with the fact that, although father stated that he was disabled, he also testified that he was working full-time, earning $2,208 per month. The CSM did not abuse his discretion in requiring father to provide medical verification of his inability to work based on a disability. *See Sand v. Sand*, 379 N.W.2d 119, 124 (Minn. App. 1985) (holding that an allegation of "poor health" alone is insufficient to meet appellant's burden of proof), *review denied* (Minn. Jan. 31, 1986). And the CSM did not abuse his discretion in finding that father could work, as father testified he *was* working at the time.

The CSM also found that because father did not submit verification of his assets as ordered, the CSM was unable to calculate child support based on the emancipation of a child. The emancipation of a child is one of the grounds for modification of child support. Minn. Stat. § 518A.39, subd. 2(a) (2016). Upon emancipation of one child while minor children remain under the order, a party may move for modification, and "[t]he child support obligation shall be determined based on the income of the parties at the time the

modification is sought." Minn. Stat. § 518A.39, subd. 1(1) (2016). In modifying child support that deviates from guidelines, the district court is required to take into account factors such as the earnings, income, circumstances, and resources of each parent, including real and personal property. Minn. Stat. § 518A.43, subd. 5(c) (2016). At the time of the mediated agreement, father was unemployed and yet agreed to pay child support in the amount of $2,000, presumably based on his assets following the dissolution. At the modification hearing, father testified that he no longer owned any of the assets that he had at the time of the mediated agreement. The CSM requested that father submit a sworn statement of the assets that he had at the time of the agreement, the status verifying his assets at the time of the modification hearing, and an explanation of what, if anything, happened to those assets. Father's handwritten submission generally asserted that he spent $397,353 between 2013 and 2017 on the children, yet provided no verification of the status of his retirement or bank accounts or any payments he made during those years. Based on this record, the CSM properly exercised his discretion by declining to modify father's child support.

Father contends that service of his motion was proper, as he sent the notice of motion and motion to mother and the county through the U.S. Postal Service. We need not address this argument, as the CSM found that any service objections were waived by the parties, as they appeared at the motion hearing and made no objections. To be clear, father failed to properly serve the parties because he *personally* sent the motion in the mail. A party to a proceeding cannot serve a motion by depositing it in the mail himself. *See* Minn. R. Gen. Prac. 355.02, subd. 2. Proper service by U.S. Mail, under the expedited child-support rules,

requires that only a "sheriff or . . . any other person who is at least 18 years of age who is not a party to the proceeding" send the notice of motion and motion in the mail. *Id.*

Father argues that he is protected under the Americans with Disabilities Act. Because this argument is raised for the first time on appeal, was not adequately briefed, and is unsupported by authority, we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, appellate courts address only those questions previously presented to and considered by the district court).

Father also raises other arguments regarding the events leading up to the parties' dissolution and the terms of the mediated agreement. Because these arguments have no bearing in the motion to modify child support, we decline to address them.

Affirmed.