STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1731

Ngozi Egwim,
Appellant,

vs.

Agugua Ogini Egwim,
Respondent,

Ramsey County Child Support,
Respondent.

Filed November 4, 2019
Affirmed
Cleary, Chief Judge

Ramsey County District Court
File No. 62-F3-99-000275

Ngozi Egwim, St. Paul, Minnesota (pro se appellant)

Agugua Ogini Egwim, Far Rockaway, New York (pro se respondent)

John J. Choi, Ramsey County Attorney, Sara Lauthen, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

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

CLEARY, Chief Judge

Appellant mother challenges the child-support magistrate's: (1) removal of interest accrued on father's child-support arrearages; (2) determination that a 2015 cost-of-living adjustment was ineffective; and (3) consideration of her income and expenses. We affirm.

FACTS

Appellant Ngozi Egwim (mother) and respondent Agugua Ogini Egwim (father) dissolved their marriage in 2000. The parties have two children together, born in 1995 and 1998. Father has been ordered to pay child support to mother since 1999. Respondent Ramsey County informed father that he needed to make his payments through its child-support office. Father could not pay mother directly because her address was confidential.

Mother received non-public assistance through the county's IV-D[1] agency to enforce the child-support order because father was behind on payments. The county withheld income from father. In 2013, the county closed the IV-D case after losing contact with mother and terminated income withholding for father. At this time, the county removed the arrearages owed by father from its IV-D records. It also returned $6,737.66 to father because its records showed that he had overpaid. The county reopened the IV-D case in January 2015 without adding the arrearages that it removed when it closed the case in 2013. In March 2017, the county informed father that he owed $42.25 in arrearages,

[1] A IV-D case is "a case where a party has assigned to the state rights to child support because of the receipt of public assistance as defined in section 256.741 or has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4)." Minn. Stat. § 518A.26, subd. 10 (2018).

which he paid. It then closed the case because its records showed that father was current on his payments.

The county reopened the IV-D case in May 2018, after mother again applied for IV-D services to collect on arrearages. The county informed father that he owed a total of $663 in child support. It then conducted an account review, calculating arrearages and interest accrued, and in June 2018, the county informed father that he owed approximately $39,000 in child support and interest.

The county had been adding cost-of-living adjustments (COLA) to father's payments. It increased father's monthly payment from $455 per month to $663 per month, effective May 1, 2015. But, according to the 2018 account review, the 2015 COLA increased father's payment to $470 per month, not $663.

In July 2018, father moved to eliminate interest accrued from September 2013 to June 2018, eliminate or reduce arrearages, and eliminate child-support payments going forward. After a hearing before a child-support magistrate (CSM), the CSM granted father's motion to remove interest accrued on the arrearages and determined that the 2015 COLA was ineffective. It ordered father to pay $455 per month toward the remaining arrearages. Mother appeals.

D E C I S I O N

A party may appeal from a final order or judgment of a CSM. Minn. R. Gen. Prac. 378.01. On appeal from a CSM's order that has not been reviewed by a district court, this court uses the same standard of review that it would had a district court issued the order. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009).

I. The CSM acted within its discretion by eliminating the interest accrued on father's child-support arrearages.

Whether to modify child support is within the broad discretion of the CSM. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). A CSM abuses its discretion if it misapplies the law or makes its decision contrary to logic or the facts on record. *Id.* Mother argues that the CSM erred by eliminating the interest accrued on father's child-support arrearages. The county agrees.

Arrearages are amounts that accrue because of an obligor's failure to comply with a child-support order. Minn. Stat. § 518A.26, subd. 3 (2018). Generally, interest accrues on a child-support payment whenever the unpaid amount due is greater than the current support due. Minn. Stat. § 548.091, subd. 1a (2018). Forgiveness of child-support arrearages is a retroactive modification of child support. *Darcy v. Darcy*, 455 N.W.2d 518, 524-25 (Minn. App. 1990). A CSM may modify child support upon a showing that there has been a substantial change in circumstances rendering the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2018). A modification of a support obligation, including interest accrued, may be made retroactive only with respect to any period during which the petitioning party has a motion for modification pending, or if the parties agree to an alternative effective date. *Id.*, subd. 2(f). A district court abuses its discretion if it forgives arrearages that accrued prior to an obligor's service of a motion to modify child support. *Allan v. Allan*, 509 N.W.2d 593, 597 (Minn. App. 1993).

The CSM eliminated interest accrued from September 2013 through June 2018 because the county terminated income withholding from father, closed the IV-D case, and

returned over $6,700 to father as overpayment. Father was told that his child-support payments needed to go through the county, and he could not pay mother directly because her address was confidential.

Father did not file his motion for modification until 2018, and the record does not indicate that the parties agreed on an alternative effective date that would permit the CSM to retroactively eliminate interest from 2013. However, although the CSM may not have acted pursuant to statutory authority, Minnesota caselaw provides that a CSM retains some equitable discretion in family-law matters. *See LaFreniere-Nietz v. Nietz*, 547 N.W.2d 895, 898 (Minn. App. 1996) (stating that a district court may supplement statutes with equitable principles).

Here, father was informed that he needed to make his payments through the county. But in September 2013, father received a letter from Ramsey County Child Support and Collections informing him that it was terminating the obligation to withhold funds from his income. The county also returned $6,737 to father as overpayment. Further, in March 2017, the county sent a letter to father stating that his outstanding child-support balance was $42.25. Father paid the balance, and the county closed the case because its records showed that father had paid all of his arrearages. In May 2018, father received a letter stating that he owed $663 in child support. One month later, in June 2018, father received a letter stating that his outstanding balance was nearly $39,000.

During the time that he owed child support, father had no way to contact mother because her address was confidential. This court has affirmed a district court's forgiveness of arrearages when the obligor stopped making payments because the obligee did not

provide her with an address to which to send the payments. *Meier v. Connelly*, 378 N.W.2d 812, 818 (Minn. App. 1985).

Mother appears to challenge the CSM's finding that her address was confidential. She contends that she had a mailing address to which father could have sent child support. We will affirm a district court's findings of fact if they are reasonably supported by the record. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472, 474 (Minn. App. 2000). The record supports the CSM's finding that mother's address was confidential. In fact, the county closed the IV-D case with her because it did not have her address or any contact information for her on file. There is nothing in the record indicating that father had knowledge of mother's mailing address.

We express disappointment in the mixed messages sent to father regarding his child-support obligations by the county. The county refunded father over $6,700 and repeatedly misinformed him of his obligations, including informing him that he was up to date on payments. Father had to make payments through the county, but the county returned his money. He had no way to pay mother directly. While closure of the IV-D case did not relieve father of his child-support obligations, under these circumstances, we affirm the CSM's decision to remove interest accrued on father's arrearages.

II. The CSM did not abuse its discretion by determining that the 2015 COLA was ineffective.

An order establishing child support must provide for a biennial adjustment in the amount to be paid based on a change in the cost of living. Minn. Stat. § 518A.75, subd. 1(a) (2018). To be effective, the public authority, or obligee, must send notice of the intended

COLA to the obligor's last known address at least 20 days before the effective date. *Id.*, subd. 2 (2018). To contest a COLA, the obligor must, before the effective date, (1) file a motion contesting the COLA and (2) serve the motion by first-class mail on the public authority and the obligee. *Id.*, subd. 2a(a)(1)-(2) (2018). A CSM's discretion is limited to whether the COLA should take effect. *Braatz v. Braatz*, 489 N.W.2d 262, 264 (Minn. App. 1992), *review denied* (Minn. Oct. 28, 1992). Mother argues that the CSM erroneously determined that a COLA did not exist because none of the statutory requirements for waiving a COLA are present. The county agrees.

The CSM found that the record contains no documentation that notices were ever sent to either party regarding the 2015 COLA. The CSM also found that the COLA notice was incorrect because it stated that the support obligation would increase from $455 per month to $663 per month. As a result, the CSM determined that the COLA was ineffective and that father would continue to pay his arrearages at the rate of $455 per month instead of $470.

Father did not contest the COLA. The record contains COLA notices dated March 21, 2015, addressed to both parties, informing them that the support amount would increase to $663 per month. But according to the county's account review, the COLA-adjusted amount was $470 per month, rather than $663. The record suggests that neither party recalled receiving the COLA notice. The CSM asked the county to provide affidavits of service of the COLA notices on the parties, but the county did not have record of the affidavits of service. Because the record does not indicate that the notices of the correct COLA were sent to the parties, we affirm the CSM's decision.

III. The CSM properly considered mother's income and expenses.

Mother appears to argue that the CSM should not have considered her income, and that it is not unreasonable for her expenses to exceed her income. She also contends that she has debt, significant expenses, and has been unable to work due to illness. The county contends that the CSM is required to consider both parents' income when determining child support.

Mother cites no legal authority as to why the CSM should not have considered her income in deciding whether to modify child support. We decline to address allegations unsupported by legal analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). And mother's income is relevant to the CSM's determination of whether to modify child support. *See* Minn. Stat. § 518A.34(b)(1) (2018) (stating that in determining child support obligations of a parent, the court shall determine the gross income of each parent); *see also* Minn. Stat. § 518A.43, subd. 1 (2018) (stating that in determining whether to modify child support, the district court must consider earnings, income, and circumstances of each parent).

The CSM considered and made findings regarding both parents' income and expenses. A CSM's determination of income must be based in fact and will stand unless clearly erroneous. *Newstrand v. Arend*, 869 N.W.2d 681, 685 (Minn. App. 2015), *review denied* (Minn. Dec. 15, 2015). Mother appears to challenge the CSM's finding that father is unemployed. But father testified that he does not have a job. She also challenges the CSM's findings regarding her income, but financial documentation in the record is consistent with the district court's finding that mother earned $13,975.80 in the first quarter

of 2018. We affirm the CSM's findings regarding the parties' income and its consideration of mother's financial circumstances.

Affirmed.