STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1970

In re the Marriage of:

Katie Lynn Helsene, Petitioner,

vs.

Christopher Lee Helsene,
Respondent,

and

Crow Wing County, intervenor,
Appellant.

Filed July 15, 2019
Affirmed in part and remanded
Smith, Tracy M., Judge

Crow Wing County District Court
File No. 18-FA-07-2580

Christopher L. Helsene, Brainerd, Minnesota (pro se respondent)

Donald F. Ryan, Crow Wing County Attorney, Rockwell J. Wells, Assistant County Attorney, Brainerd, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Smith, Tracy M., Judge; and Kirk, Judge.*

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

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

SMITH, TRACY M., Judge

In this child-support case between petitioner Katie Lynn Helsene (mother) and respondent Christopher Lee Helsene (father), intervenor-appellant Crow Wing County (the county) appeals the denial of its motion to modify father's child-support obligation, arguing that a new parenting-expense adjustment should have been applied to father's basic-support obligation and that the issue of medical-support offset was not determined. We remand for determination of the effective date of the removal of the medical-support offset but affirm in other regards.

FACTS

By order filed March 12, 2008 (the 2008 order), the district court dissolved the marriage between mother and father. The district court awarded mother sole physical custody of the parties' joint child subject to father having parenting time with the child. The basic schedule was that father would have parenting time "on Tuesdays and Wednesdays, both overnight each week and every other weekend (Friday evening to Sunday evening)." The parties would alternate holidays. The district court also ordered the parties to abide by a more detailed plan for parenting attached thereto. The plan affirmed the basic and holiday schedules but added that "[e]ach parent is entitled to reasonable vacation time with [the child]." The dissolution judgment also required father to pay child support.

On June 2, 2015, a child-support modification order was filed. Father was ordered to pay basic support of $385 per month and carry health insurance for the child. The basic

support of $385 reflected a 12% parenting-expense adjustment.[1] Mother was ordered to pay medical support of $159 per month to father, which resulted in a medical-support offset being applied to father's basic-support obligation.

Through a letter dated April 19, 2018, the Crow Wing County Child Support Office notified the parties that it had learned that father's health-insurance coverage for the child ended on October 31, 2017, and, therefore, the medical-support offset would be removed effective November 1, 2017. Father requested a hearing to contest the removal of the medical-support offset. Because the county was planning to seek modification of father's basic child-support obligation for other reasons, the matter, including father's challenge to the removal of the offset, came before a child-support magistrate (CSM) on the county's motion to modify. Among other things, the county argued that (1) the medical-support offset should be removed and (2) a new parenting-expense adjustment should be applied to father's basic-support obligation pursuant to an amendment to the relevant statute.[2]

The CSM issued an order on August 22, 2018 (the August order), refusing to apply the new parenting-expense adjustment and "reserv[ing]" both parties' medical-support obligations. The county filed a motion for review by the same CSM, and the CSM denied the motion in an order filed on October 3, 2018 (the October order). In the October order,

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[1] Father was found to have had parenting time between 10% and 45% under the 2008 order and therefore was entitled to a 12% parenting-expense adjustment. *See* Minn. Stat. § 518A.36, subd. 2(1)(ii) (2014).

[2] Minn. Stat. § 518A.36, subd. 2 (2018), lays out a new method of calculating parenting-expense adjustment based on the number of overnights that each parent has with the child annually.

responding to the county's argument that the August order did not address the issue of medical-support offset, the CSM explained that "reserving" the parties' medical-support obligation eliminated the then-existing obligation.

The county appeals.

D E C I S I O N

"[W]hen reviewing a child support magistrate's order . . . , we will apply the same standard of review that we would apply to the order if it had been issued by a district court judge . . . ." *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). Whether to modify child support is within the broad discretion of the district court. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017). A district court abuses its discretion if its decision is based on a misapplication of the law, is contrary to the facts, or is contrary to logic. *Id.*

I. The CSM did not abuse his discretion by not applying the new parenting-expense adjustment.

In 2016, the legislature set forth a new method of calculating a parenting-expense adjustment. 2016 Minn. Laws ch. 189, art. 15, § 20, at 1120-21 (codified at Minn. Stat. § 518A.36 (2018)). The county argues that the CSM abused his discretion by refusing to recalculate the 12% parenting-expense adjustment under the new method.

> If child support was established by applying a parenting expense adjustment . . . under previously existing child support guidelines and there is no parenting plan or order from which overnights or overnight equivalents can be determined, there is a rebuttable presumption that the established adjustment . . . will continue after modification so long as the modification is not based on a change in parenting time.

Minn. Stat. § 518A.39, subd. 2(d) (2018). The modification motion at issue here was "not based on a change in parenting time." *Id.* And the 12% parenting-expense adjustment was determined "under previously existing child support guidelines," based on the parenting-time schedule set by the 2008 order. *Id.* But the CSM continued the established parenting-expense adjustment, and declined to apply the new method, because, it decided, the number of overnights could not be determined.

The county argues that the 2008 order is an "order from which overnights . . . can be determined." *Id.* According to the county, the 2008 order "specifically provides that [father] has parenting time with the child 'on Tuesdays and Wednesdays, both overnight each week and every other weekend (Friday evening to Sunday evening)' and on alternating holidays." Based on that language, the county argues that father has 156 overnights with the child in a year. The county's calculation accurately reflects the basic schedule. It may also accurately reflect the holiday schedule given that the alternating holidays would likely result in complete offset in the long run. However, in the plan for parenting attached to the 2008 order, by which "the parties shall abide," "[e]ach parent is [also] entitled to reasonable vacation time with [the child]." The 2008 order does not specify how long "reasonable vacation time" is. Thus, it is not possible to determine what the accurate number is.

Therefore, it becomes important how specific an order should be under Minn. Stat. § 518A.39, subd. 2(d), to be considered an "order from which overnights . . . can be determined." Put into the context of this appeal, the issue is whether, even in light of the uncertainty regarding "reasonable vacation time," the CSM committed a reversible error

by finding the 2008 order not specific enough. The county does not argue that the CSM did so err. It presents no authority or argument for how to interpret Minn. Stat. § 518A.39, subd. 2(d), or for why the CSM's interpretation constitutes a reversible error. The county fails to meet its burden on appeal. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

II. The CSM abused his discretion by failing to determine the effective date for the removal of the medical-support offset.

Under the medical-support statute, when a child-support obligor contests the public authority's action to remove the medical-support offset, the obligor must be given a hearing and "[t]he district court or child support magistrate must determine whether removing . . . the offset is appropriate and, if appropriate, the effective date for the removal." Minn. Stat. § 518A.41, subd. 16(d) (2018).

The county argues that the CSM did not determine whether removal of the medical-support offset was appropriate and, if so, the effective date of the removal. The August order states that the parties' "medical support obligation[s] [are] reserved until further order." According to the CSM's October order, that statement in the August order means that the CSM "eliminated" the medical-support obligations of the previous order. The elimination of mother's medical-support obligation means in turn that father is no longer entitled to a medical-support offset. *See* Minn. Stat. § 518A.41, subd. 16(a) (2018) ("If a party is the parent with primary physical custody . . . and is [a medical-support] obligor

. . . , the other party's child support . . . obligations are subject to an offset . . . ."). The county does not explain how the determination that father's child-support obligation is not subject to a medical-support offset is different from a determination that the removal of his medical-support offset is appropriate. Also, the county does not explain why the CSM's own interpretation of the August order is clearly erroneous. *See Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014) (holding that a district court's interpretation of an ambiguous provision in an order is reviewed for clear error). The CSM made the requisite finding that removing the offset was appropriate.

But, as the county argues, the CSM did not determine the effective date for removal of the offset. Under Minn. Stat. § 518A.41, subd. 16(b) (2018), the effective date for the removal is "the first day of the month following termination of the joint child's health care coverage." The county argued in its motion that that date is November 1, 2017, but the CSM failed to render any disposition on that argument. We remand for determination of the effective date for removal of the medical-support offset.

Affirmed in part and remanded.