STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2119

In re the Marriage of: Diana Lynne Neumann,
n/k/a Diana Lynne deVries, petitioner,
Appellant,

vs.

Harvey Mark Neumann,
Respondent.

Filed September 16, 2019
Affirmed
Hooten, Judge

Washington County District Court
File No. 82-FA-14-4596

Diana deVries, St. Paul, Minnesota (pro se appellant)

Joan Miller, Shakopee, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Hooten, 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

HOOTEN, Judge

Appellant mother argues that the Child Support Magistrate (CSM) abused its discretion in apportioning payment for uninsured medical expenses and modifying her ongoing child support obligations. We affirm.

FACTS

In this appeal from a CSM's order, appellant mother, Diana Lynne Neumann, n/k/a Diana Lynne deVries, challenges the apportionment of uninsured medical expenses and the modification of her ongoing child support obligations. In April of 2015, the parties divorced pursuant to a stipulated judgment and decree. At that time, they had three minor children, ages 13, 15, and 17. In August of 2016, the parties' oldest child emancipated due to turning 18, and their respective child support obligations were modified to reflect this fact. In January of 2017, deVries filed a Notice of Intent to Collect Unreimbursed and Uninsured Medical Expenses to collect reimbursement for medical expenses the parties' children incurred. The district court ordered the parties to mediation in an attempt to resolve the medical expense issue. The mediation session did not occur until October of 2017 and failed to resolve the parties' disagreement.

In September of 2017, the parties' next-oldest child emancipated. Around that same time, a CSM modified the parties' child support obligations to reflect the change in circumstances. In June of 2018, physical custody of the parties' sole remaining un-emancipated child transferred from deVries to respondent father, Harvey Mark Neumann. Following a hearing, a CSM issued an order resolving the dispute regarding medical

expenses for the parties' children and modifying the parties' respective child support obligations to reflect the change in custody. This appeal follows.

D E C I S I O N

This is an appeal directly from the CSM's order. On appeal from a CSM's order which has not been reviewed by a district court, we use the same standard to review issues as would be applied if the order had been issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). The CSM has broad discretion to provide for the support of the parties' children. *See Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A CSM abuses its discretion when it sets support in a manner that is against logic and the facts on record or it misapplies the law. *See id.*

DeVries has filed an informal pro se brief. "While an appellant acting pro se is usually accorded some leeway in attempting to comply with court rules, [she] is still not relieved of the burden of, at least, adequately communicating to the court what it is [she] wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987); *see Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976) (stating that generally, a court will not modify ordinary rules and procedures because a pro se party lacks the skills and knowledge of an attorney); *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) ("Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.").

I. The CSM acted within its discretion when it apportioned the medical expenses.

The parties' stipulated marriage dissolution judgment and decree contained the following procedure for splitting the children's medical expenses:

> Uninsured and/or unreimbursed health related expenses, including but not limited to medical, dental, optical, mental health and orthodontia expenses [shall] be shared by the parties per their PICS percentages. The party incurring the expense shall notify the other party in writing within 30 days of incurring the expense and the other party is ordered to contribute his or her share within 30 days of receiving the written notice. *Any non-emergency medical/dental expense in excess of $100 for which a parent expects reimbursement shall be agreed upon in advance of incurring said expense*. Any dispute concerning incurring or payment of a direct expense for the minor children which the parties cannot agree upon through direct communication will first be submitted to mediation.

(Emphasis added.) DeVries argues that the CSM abused its discretion when it did not order Neumann to compensate her for all of the medical expenses she incurred. Her main argument is that the CSM erred by allowing Neumann to avoid paying for services for which he did not agree. She argues that this allows "a simple objection by one parent to stand in the way of a child's reasonable medical care." But this is exactly what she agreed to in the stipulated divorce decree. While she may now dislike the agreement, her argument is effectively asking this court to re-write the stipulated decree to allow each party to unilaterally incur expenses that the other party will be financially responsible for.[1] DeVries

[1] Notably, the CSM found, "The parties' lack of communication and failure to be able to work together in the best interests of their children is exactly the reason the [stipulated judgment and decree] needed to spell out a procedure regarding non-emergency treatment.

has provided no authority that empowers this court to rewrite the dissolution decree, simply because she now regrets their stipulation regarding non-emergency treatment.

DeVries also claims that the CSM erred in not assigning the chiropractic expenses at issue to father because each visit was under the $100 threshold. The CSM characterized deVries's decision to take the parties' minor child in for chiropractic care as a single expense, adding up to a potential total uninsured cost to father of $537.60. Because this was over the $100 threshold and Neumann had objected to the treatment, the CSM concluded that he did not have to pay for it.

This decision appears to have been within the CSM's broad discretion. *See Rutten*, 347 N.W.2d at 50. The child had been going to one chiropractor before September of 2017, but after that date, deVries made the decision to switch providers because the new one had a clinic "closer to her home." And while the old provider only required a $10 co-pay per visit, the new provider charged the higher rate that resulted in a total uninsured cost of $663.70 during the relevant period.[2] Therefore, the CSM could have characterized each visit as a single event (and therefore under the $100 threshold), or, as it did, characterize the decision to take the child to the new provider as a single event (and therefore over the $100 threshold). Because neither method appears to go "against logic and the facts on the record," the CSM was vested with the discretion to choose between those two reasonable choices. *Id.* Therefore, this argument also fails.

This provision of the [stipulated judgment and decree] continues to be in place and the parties need to follow it."

[2] The parties do not specify how many visits occurred during the relevant period, they do appear to agree that each visit did result in an uninsured cost of less than $100.

The CSM ordered Neumann to pay his share of costs from the child's laboratory tests and from the missed counseling appointments. Neumann testified, and the CSM found, that he had already paid $51.45 and $25 to the respective providers, so the CSM ordered him to pay deVries only the remaining balances. DeVries now claims that he did not pay the $51.45 or the $25 to the respective providers, and asks that we modify the CSM's order to require him to pay to her those additional sums or provide proof of payment. But even construing deVries's argument liberally as a claim that the CSM's finding of father's partial payment was clearly erroneous, there is no support in the record on appeal that he failed to make these payments. DeVries failed to order a transcript of the hearing where Neumann testified, and so we are unable to review the alleged error. *See* Minn. R. Civ. App. P. 110.02, subd. 1(a) (stating that it is appellant's burden to order a transcript if necessary); *see also Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968) (stating that if the record is not sufficient to support review, the appeal may be dismissed). DeVries's argument could also be construed as a request that this court find that father has not actually paid the provider the moneys that he claimed he did. If so, that argument would also fail because we do not find facts and there is nothing in the record on appeal that would support mother's allegation that father failed to pay the amounts as found by the CSM. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that the court of appeals is not permitted to find facts).

II. The CSM did not err in calculating deVries's potential income when it determined her child support obligation.

The CSM ordered that mother pay $224 per month to Neumann as child support for their only un-emancipated minor child, who is now in his custody. DeVries argues that the CSM erred in calculating this amount, and that she should only be required to pay the minimum payment of $50 per month.

The CSM found that although deVries has a minimal work history and claims to be recovering from a 2014 injury, she is voluntarily underemployed. She does not contest this finding, but argues that the CSM erred in calculating her "potential income."

A court'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). "Whether a parent is voluntarily unemployed is a finding of fact, which [appellate courts] review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). "A finding is clearly erroneous if the reviewing 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) (quotations omitted).

> If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, *it is rebuttably presumed that a parent can be gainfully employed on a full-time basis*. As used in this section, 'full time' means 40 hours of work in a week . . . .

Minn. Stat. § 518A.32, subd. 1 (2018) (emphasis added).

> Determination of potential income must be made according to one of three methods, as appropriate:

> (1) 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;
>
> (2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or
>
> (3) the amount of income a parent could earn working 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher.

Minn. Stat. § 518A.32, subd. 2 (2018).

The CSM found that deVries is voluntarily underemployed, meaning that she is capable of working full time but is making the choice not to. She does not contest this finding that she is voluntarily underemployed.

After a thorough analysis of deVries's recent work history, her education (including a college degree), the fact that she home-schooled the parties' children, her asserted physical limitations, and her leadership profile from Professionals Global's website (an organization for which deVries volunteers), the CSM concluded that she had a minimum potential income of $1,671 per month. This appears to have come from an approximate calculation of the minimum wage of $9.65 per hour, multiplied by 40 hours per week, multiplied by 52 weeks per year, divided by 12 months per year. The CSM credited the report of her doctor that because of a disc herniation to her low back, she could no longer work at a higher wage as a personal care assistant or a house cleaner. But, the statute instructs the CSM to presume that the voluntarily underemployed person can work 40 hours per week, and the CSM found that deVries failed to rebut that presumption.

DeVries claims that the CSM erred when it found that she is able to work 40 hours per week at minimum wage. She states that, "I am unable to work in any capacity in which I have previously, or in any position that I am aware of and for which I am qualified." But there is support in the record to support the CSM's finding that she failed to rebut the presumption that she could work full-time under Minn. Stat. § 518A.32, subd. 1. While the CSM found that the doctor's note submitted by deVries indicated that she was not able to work as a personal care assistant or house cleaner, it noted that the doctor did not state that she was unable to work at other less physically demanding jobs. We also note that she submitted no documentation or other evidence that supported her claim that she could not work 40 hours per week. And, she testified that the issues she is having with her back do not interfere with her Professionals Global or church leadership activities and that she is able to do online call interactions as part of that work.

DeVries also claims that the CSM misapplied the law in calculating her potential income based on the criteria in Minn. Stat. § 518A.32, subd. 2(1), which is based on "the parent's probable earnings," instead of subdivision 2(3), which is based upon "the amount of income a parent could earn working 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher." Again, this statute applies to allow a district court or CSM to determine potential income when a parent is voluntarily unemployed, underemployed, or employed on less than a full-time basis. Minn. Stat. § 518A.32, subd. 1.

Minn. Stat. § 518A.32, subd. 2, provides three methods of calculating potential income when a parent is voluntarily underemployed, one of which "must" be used "as

appropriate." This appears to give the district court some amount of discretion in choosing which of the three methods to use. Regarding an older version of the statute, our supreme court has said that if the trier of fact "lacks sufficient information, [the statute] directs the court to calculate income for purposes of child support based on [the] minimum wage." *Butt v. Schmidt*, 747 N.W.2d 566, 576 (Minn. 2008).

But here the CSM had sufficient information about mother's past employment and education to make a determination of income based on Minn. Stat. § 518A.31, subd. 2(1). The record contains information about mother's recent work history, her education (including a college degree), the fact that she home-schooled the parties' children, her documented physical limitations, and her leadership profile from Professionals Global's website. There is also testimony regarding the less physically demanding jobs she does for Professionals Global and her ability to home-school the parties' children. DeVries also conceded that she was able to work up to 30 hours per week without having problems with her back. We conclude that because there is sufficient information in the record to support the CSM's decision that Minn. Stat. § 518A.31, subd. 2(1) provided an "appropriate" method for calculating her potential income, the CSM did not abuse its discretion in utilizing this method in determining her potential income.[3]

[3] DeVries did not appeal the CSM's finding that she was voluntarily underemployed, but even if she had, this argument would fail. DeVries is not currently working, and the CSM's finding that appellant has not rebutted the presumption that she is able to work is supported by the doctor's note in the record that only says that appellant cannot do certain types of physical work, not that she cannot work at all or that she can only work a certain number of hours.

We therefore also affirm the child support portion of the CSM's order.[4]

Affirmed.

[4] Neumann also asks that this court address the portion of the CSM's order that required deVries to pay him a portion of their 2016 property tax refund. But Neumann has not alleged any error by the district court, and has not filed a notice of related appeal. *See Nordling v. N. States Power Co.*, 465 N.W.2d 81, 87 (Minn. App. 1991) (stating that failure by a respondent to file a notice of review limits issues on appeal to those properly raised by appellant), *rev'd on other grounds*, 478 N.W.2d 498 (Minn. 1991). It is unclear why father raised this issue or what he wants this court to do about the issue.