STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0171

In re the Marriage of: Jane Ann Holm, petitioner,
Respondent,

vs.

Stephen Edward Kuske,
Appellant.

Filed August 10, 2020
Affirmed
Reyes, Judge

Dakota County District Court
File No. 19-F1-06-008876

Jane Ann Holm, Eagan, Minnesota (pro se respondent)

James C. Backstrom, Dakota County Attorney, Hastings, Minnesota; and

Tina K. Isaac, Assistant Dakota County Attorney, West St. Paul, Minnesota (for respondent Dakota County)

Steven Edward Kuske, Fairmont, Minnesota (pro se appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Slieter, Judge.

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

REYES, Judge

Pro se appellant-father makes a series of arguments challenging the denial by a child support magistrate (CSM) of his motion for review of administratively renewed child-support judgments, including that (1) the district court and CSM lacked subject-matter

jurisdiction; (2) the district court, county attorney, and county child-support services had financial conflicts of interest that required their removal from the case; (3) the district court and county violated father's fundamental rights as a parent; (4) the record does not support the CSM's findings of fact; (5) the county did not prove father's ability to pay; (6) the district court judge should have recused; and (7) the county is not a proper party. We affirm.

FACTS

Appellant-father Stephen Edward Kuske and respondent-mother Jane Ann Holm dissolved their marriage in February 2009 after transferring their dissolution proceeding from Colorado to Minnesota two and a half years earlier. They are the parents of four children, all now emancipated. Respondent Dakota County intervened as a party in the case in 2009 based on its provision of Title IV-D child-support-enforcement services under Title IV-D of the Social Security Act. *See* 42 U.S.C. § 654(4) (2018); Minn. Stat. § 518A.26, subd. 10 (2018).

The dissolution judgment and decree required that father pay $1,392 per month in basic child support. In October 2009, the district court reduced father's ongoing basic child-support obligation and entered judgments against father totaling $5,888.24 for past basic child support, past child-care support, past child-medical support, and past child-uninsured or unreimbursed medical and dental support. In January 2010, the district court added outstanding amounts for past child support, child care, medical expenses, and attorney fees to the judgments, totaling $34,505.79. The district court reduced father's ongoing child-support obligation to $0.00 per month in 2013.

In September 2019, the district court administratively renewed judgments against father for $200.60, $949.18, $3,343.15, and $3,440.95, under Minn. Stat. § 548.091, subd. 3b (2018) (providing for administrative renewal of child-support judgments). Father challenged the renewed judgments in a motion for review by a CSM under the expedited process, which governs Title IV-D child-support cases, raising several arguments. *See* Minn. R. Gen. Prac. 353.01, subd. 1, 352.01(g). Father also appealed the renewed judgments directly to this court while his motion for review was pending before the CSM. We dismissed his appeal, concluding that we lacked jurisdiction because administratively renewed judgments are not independently appealable under Minn. R. Civ. App. P. 103.03.

The CSM denied father's motion for review after determining that neither Minn. R. Gen. Prac. 375 nor 377.09 provided a basis for it to grant the motion. It determined that it had jurisdiction but that the judgment renewals were an administrative process and that there were no orders for it to review from the dates that father referenced in his motion. This appeal follows.

D E C I S I O N

Father makes numerous arguments as to why we must vacate the CSM's order. We construe father's arguments to be that (1) the CSM lacked subject-matter jurisdiction; (2) the district court, county attorney, and county child-support services have financial conflicts of interest that required their removal from the case; (3) the district court and county violated father's fundamental rights as a parent; (4) the record does not support the CSM's findings of fact; (5) the county did not prove father's ability to pay; (6) the district

court judge should have recused; and (7) the county is not a proper party. We address each issue in turn.

I. Scope of appellate review

As an initial matter, the county argues that father did not preserve any of his arguments for appeal, even though he raised certain arguments before the CSM, because the CSM did not decide them due to its limited scope of review. We agree that father did not challenge the renewed judgments in accordance with the expedited-process rules or the rules of civil procedure, but we address arguments raised by father as a pro se litigant. *See* Minn. R. Civ. App. P. 103.04 (allowing this court to address questions in interest of justice).

Father's motion for review stated that he sought review of the renewed judgments and a February 15, 2018 order. The CSM found that there is no February 15, 2018 order in the record. The record supports this finding.[1] Because the CSM then determined that judgment renewals are an administrative process, it denied father's motion without addressing any of his specific claims for relief, all of which he raises on appeal. Determining the scope of review here requires us to consider whether a party must bring a challenge to an administratively renewed judgment as a request for a hearing under Minn. Stat. § 548.091, subd. 4 (2018), or as a motion for review under the expedited-process rules.

We review de novo a CSM's application of procedural rules, *see Reid v. Strodtman*, 631 N.W.2d 414, 417 (Minn. App. 2001), and statutes, *see State v. Leathers*, 799 N.W.2d

[1] Father refers to some of his filings throughout this case as "orders," but the record does not show any district court or CSM orders or other filings at any point in 2018.

606, 608 (Minn. 2011). Section 548.091, subdivision 3b, allows for the administrative renewal of child-support judgments by a court administrator upon the filing of notice and proof of service to the debtor. Section 548.091, subdivision 4, then provides that "[a] child support obligor may request a hearing under the Rules of Civil Procedure *on the issue of whether the judgment amount or amounts have been paid* and may move the court for an order directing the court administrator to vacate or modify the judgment or judgments." (Emphasis added.)

In the expedited process, a party may bring a motion for review of a "judgment of the child support magistrate." Minn. R. Gen. Prac. 376.01. Rules 351 through 379 govern all expedited-process proceedings, but the Minnesota Rules of Civil Procedure also apply unless inconsistent with the expedited-process rules. Minn. R. Gen. Prac. 351.01.

Here, father filed a motion for review of the administratively renewed judgments under the expedited process. But an administratively renewed judgment is entered by a court administrator and is not a "judgment of the child support magistrate," regarding which Minn. R. Gen. Prac. 376.01 allows a party to bring a motion for review. Father therefore needed to challenge the renewed judgments under Minn. Stat. § 548.091, subd. 4, by filing a request for a hearing.

Even if we construe father's motion for review as a request for a hearing, father does not dispute "whether the judgment amount or amounts have been paid." *See* Minn. Stat. § 548.091, subd. 4. Rather, he essentially challenges the original judgments, which the district court first issued more than ten years ago. But he does ask that we vacate the judgments, and the statute permits him to "move the court for an order directing the court

administrator to vacate or modify the judgment or judgments."[2] Minn. Stat. § 548.091, subd. 4. Assuming without deciding that this motion may be on grounds other than those to which a hearing is limited, the scope of father's challenge would be proper.

It does not appear, however, that father raised any of his current issues regarding the original judgments when the district court first entered them against him in 2009 and 2010. A party generally forfeits arguments not raised below. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Nonetheless, we may address matters not argued and considered below if the interest of justice requires it, *see* Minn. R. Civ. App. P. 103.04, particularly with respect to pro se litigants, *see Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002).

II. The district court and CSM have jurisdiction.

Father argues that the district court and CSM lacked subject-matter jurisdiction because he did not consent to jurisdiction or cause any injury. We addressed this issue in an April 21, 2020 order and concluded that the CSM properly determined that it had subject-matter jurisdiction under Minn. R. Gen. Prac. 353.01, subd. 1, because this is a Title IV-D case. *See also* Minn. Stat. § 484.702, subds. 1, 3. Under Minn. R. Civ. App. P. 140.01, "[n]o petition for rehearing shall be allowed in the Court of Appeals." This rule forecloses our reconsideration of issues we decided in a previous order. *State v.*

[2] While we note that a judgment is final even if in error, *see Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006), *review denied* (Minn. May 16, 2006), and that we do not permit collateral attacks on judgments on nonjurisdictional grounds, *see Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996), *review denied* (Minn. Feb. 26, 1997), respondent does not raise these issues. Further, father in part claims jurisdictional defects.

Vonderharr, 733 N.W.2d 847, 850 n.2 (Minn. App. 2007) (addressing issues decided in orders in same appeal).

If father is also challenging personal jurisdiction, this argument lacks merit. Personal jurisdiction requires "an adequate connection between the defendant and the state" and proper service of process. *See Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003). Father, a Minnesota resident, does not argue that either of these requirements are lacking. Further, a party in a child-support proceeding assumes that personal jurisdiction exists by making a motion to reduce child support. *Wachsmuth v. Johnson*, 352 N.W.2d 132, 133 (Minn. App. 1984). Father has made multiple motions to reduce his child-support obligation. Father argues that he did not consent to personal jurisdiction by participating because county and state employees and the courts used duress to obtain his participation. But father consented in 2006, while represented by counsel, to transfer his and mother's dissolution proceeding from Colorado to Minnesota, including jurisdiction over child-support matters, and he actively participated in this case for years without questioning personal jurisdiction. He does not show how his claims of duress caused him to consent to the district court's jurisdiction in 2006. Father is not entitled to relief on this basis.

III. Neither the district court judge nor the county employees have a financial conflict of interest based on the state's receipt of Title IV-D funding.

Father argues that the district court judge, county attorney, and county child-support services agency all have financial conflicts of interest due to the state and county receiving federal Title IV-D funds, which requires their removal from this case. We are not persuaded.

Father cites to 18 U.S.C. § 208 (2018). But 18 U.S.C. § 208 applies only to personal financial conflicts of interest of executive-branch employees of the federal government. *See* 18 U.S.C. § 208(a); *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 548, 81 S. Ct. 294, 308 (1961) (describing purpose of 18 U.S.C. § 434, now 18 U.S.C. § 208, as "preventing *federal agents* who have interests adverse to those of the Government from advancing their own interests at the expense of the public welfare" (emphasis added)). Because neither the district court judge, county attorney, nor county child-support-services employees are employees of the executive branch of the federal government, 18 U.S.C. § 208 does not apply.

Father also cites to Minn. Stat. § 469.009 (2018), which relates to disclosure of conflicts of interest by commissioners and employees of housing and redevelopment authorities. *See* Minn. Stat. §§ 469.009, subd. 1 (requiring disclosures by "a commissioner or employee of an authority"), .002, subds. 1, 2 (defining "authority" for purposes of section 469.009). The district court judge, county attorney, and child-support-services employees are not employees of a housing and redevelopment authority. *See generally* Minn. Stat. §§ 469.001-.047. Therefore, Minn. Stat. § 469.009 does not apply either.[3]

[3] Father does not cite to Minn. Stat. § 43A.38 (2018), which relates to conflicts of interest for state executive-branch employees, but the county discusses it. To the extent that father is making a general financial conflict-of-interest argument, this is the only applicable statute. But this argument would also lack merit. None of the actions the statute describes applies to the circumstances here, in which father essentially argues that a conflict of interest arises when a state employee receives a state salary for official duties that result in the state receiving funds. The child-support enforcement actions he challenges are required by federal law for the state to receive Title IV-D funding. *See* 42 U.S.C. § 666(a) (2018). They do not create a conflict of interest under Minn. Stat. § 43A.38.

IV. Neither the district court nor the county violated father's fundamental rights as a parent.

Father argues throughout his principal brief and reply brief that the district court's and county's actions violate his fundamental rights as a parent under the U.S. Constitution, relying on *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000), *Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258 (1997), and *City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157 (1997). Parents have a fundamental right to rear their children, *see Troxel*, 530 U.S. at 60, 120 S. Ct. at 2057, but father does not address how the renewed judgments on his past child support interfere with his right to rear his children, all of whom are now emancipated. If this claim relates to prior orders from the district court regarding child custody and support, we do not reach it, as those orders are not subject to this appeal.

V. The record supports the CSM's findings of fact.

Father argues that the record does not support the CSM's findings of fact, in part because the CSM did not take the allegations in his complaint as true. Father does not specify to which complaint or filing he is referring, and he did not raise this issue in his motion for review before the CSM. We generally do not consider issues not argued below. *See Thiele*, 425 N.W.2d at 582. Even if we consider it, the CSM's findings of fact in its order denying father's motion for review are primarily a recitation of the procedural history of the case, and the record supports these findings. Further, the principle that allegations in a complaint must be taken as true applies to the review of a motion to dismiss a complaint, *see Hunt v. Nevada State Bank*, 172 N.W.2d 292, 296 (Minn. 1969), which is not at issue here. Father cannot prevail on this argument.

VI. The county did not need to prove father's ability to pay the renewed judgments.

Father argues that, under *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507 (2011), the county must prove that he has the ability to pay the judgments. Father is incorrect. *Turner* addressed criminal contempt proceedings for failure to pay. *See* 564 U.S. at 445, 131 S. Ct. at 2518. The current proceeding is not a contempt proceeding. Further, while a parent may request a deviation from an ongoing child-support obligation based on inability to pay, father is challenging a renewed judgment, not his ongoing support obligation of $0. *See County of Anoka ex rel Hassan v. Roba*, 690 N.W.2d 322, 325 (Minn. App. 2004). Father is not entitled to relief on this basis.

VII. Father is not entitled to relief based on the district court judge's decision not to recuse.

Father appears to challenge the district court judge's decision not to recuse himself. We addressed this argument in father's 2011 appeal and determined that it lacked merit. *See Kuske v. Kuske*, No. A11-146, 2011 WL 3426170, at *4 (Minn. App. Aug. 8, 2011). Under Minn. R. Civ. App. P. 140.01, we do not reconsider issues that we decided in an earlier appeal. *See City of Waite Park v. Minn. Office of Admin. Hearings*, 758 N.W.2d 347, 353 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009) (addressing issues decided in prior appeals in case).

VIII. The county is a proper party.

Finally, father argues that the county is not a party and that the CSM as well as this court should have granted his requested relief because mother, as the only other "legal party," has not opposed it. We concluded in father's 2013 appeal that this is a Title IV-D

case and that "the county is entitled to intervene in IV-D cases as a matter of right in order to ensure that child support orders are obtained and enforced." *Kuske v. Kuske*, No. A12-0450, 2013 WL 490689, at *5 (Minn. App. Feb. 11, 2013). We also concluded in a February 11, 2020 order that both the county and mother are parties and respondents to this appeal. We will not reconsider this issue. *See Vonderharr*, 733 N.W.2d at 850 n.2. Moreover, we review cases on their merits even when a respondent does not file a brief. *See* Minn. R. Civ. App. P. 142.03. Father is not entitled to relief on this basis.

Affirmed.