

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1547**

State of MN ex rel. Kandiyohi County Family Services, Plaintiff, o/b/o Kristi A. Barber,
Appellant,

vs.

Nathan W. Koering,
Respondent.

**Filed September 7, 2021
Affirmed in part, reversed in part, and remanded
Bryan, Judge**

Kandiyohi County District Court
File No. 34-F2-02-001558

Kristi A. Barber, Spicer, Minnesota (pro se appellant)

Nathan W. Koering, Grand Forks, North Dakota (pro se respondent)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this child support modification dispute, appellant raises two primary challenges to the decision by the child support magistrate (CSM). First, appellant argues that the CSM abused its discretion when it denied her motion for a continuance. Second, appellant argues that the CSM erred when it denied her motion for an upward deviation from the child support guidelines. We conclude that the CSM did not abuse its discretion in denying the

continuance motion and affirm this decision. However, because the CSM failed to analyze the applicable statutory factors regarding deviations from the child support guidelines, we reverse and remand the CSM's decision denying appellant's deviation request.

FACTS

Appellant Kristi Barber and respondent Nathan Koering were previously married and have two children, T.B. and J.B. They were divorced in 2005. On November 5, 2018, the district court revised the previous parenting time schedule, permitting Koering to exercise parenting time with J.B. for "two weeks of each month," for a total of 168 overnights annually. The November 5, 2018 order also permitted Koering to exercise parenting time with [T.B.] "at a minimum of every other weekend and other times as [T.B.] desires." Both parties subsequently requested modification of child support. In an order dated March 4, 2019, the CSM denied Koering's request to modify child support and denied Barber's request for an upward deviation.¹

After T.B. graduated from high school, Koering moved for a modification of child support based on the emancipation of T.B. Koering sent the motion by email to Barber and informed Barber of the hearing date of August 7, 2020. On June 30, 2020, Barber moved to continue the August 7, 2020 hearing date. In support of the continuance motion, Barber argued that Koering had failed to provide her with proper notice of the August 7, 2020 hearing because he had not served the modification motion and accompanying

¹ The CSM denied Barber's deviation request in conclusory fashion: "[Barber] requested an upward deviation from the Minnesota Child Support Guidelines. There is no basis for a deviation and [Barber] has not met her burden pursuant to Minn. Stat. 518A.43." The March 4, 2019 order does not include any additional analysis.

affidavit by mail or in person. In addition, Barber argued that the CSM should wait to hold a hearing on the child support modification motion until after the district court filed an order deciding the parenting time modification motions pending before it. On June 30, 2020, the district court informed Koering that his child support modification pleadings did not comply with the applicable rules. Koering properly served and filed an amended motion to modify child support on July 13, 2020, and on July 16, 2020, three weeks prior to the scheduled hearing, the CSM denied Barber's motion for a continuance. Separately, on June 30, 2020, Barber also filed a responsive motion opposing Koering's request to modify child support. In support of her responsive motion, Barber filed an 11-page affidavit and 82 pages of exhibits. In the responsive motion, Barber requested an upward deviation from the otherwise applicable child support guidelines obligation, among other requests.²

Barber and Koering attended the scheduled hearing on August 7, 2020, and both parties presented arguments and made statements to the CSM. On October 9, 2020,³ the CSM issued an order granting Koering's motion to modify child support based on the emancipation of T.B. and denying Barber's request for an upward deviation. The CSM made the following findings: Koering's gross monthly income was \$11,586; Barber's gross monthly income was \$3,250; Koering's percentage share of the combined parental income

² Barber requested an increase in Koering's basic and medical support obligations, an increase in Koering's arrearage payments, and that the children be added to Barber's health insurance policy. Barber does not appeal the decisions regarding these requests.

³ The CSM initially issued an order that referenced the parenting time schedule in place prior to November 5, 2018. After Koering filed a request to reconsider, the CSM issued the amended order on October 9, 2020, reflecting the correct parenting time schedule.

was 78%; Barber's percentage share of the combined parental income was 22%; the combined basic support obligation for J.B. was \$1,872; and Koering exercised 168 overnights each year. Based on those findings, and after applying the parenting time adjustment for Koering, the CSM calculated Koering's monthly basic child support obligation to be \$743. The CSM included a single paragraph regarding Barber's request for an upward deviation, summarily concluding that the request had no merit:

[Barber] has previously made requests for an upward deviation. The court has previously found there is no basis for an upward deviation. [T]he court's order dated March 4, 2019, noted that [Barber] had not met her burden pursuant to Minn. Stat. § 518A.43. In this case, with the facts and evidence presented by [Barber], there is no basis for an upward deviation and the request for an upward deviation is denied.

Barber appeals.

DECISION

I. Denial of Barber's Request for Continuance

Barber first argues that the CSM abused its discretion when it denied her motion for a continuance in the July 16, 2020 order.⁴ Because Barber did not establish good cause to continue the hearing, we conclude that the CSM did not abuse its discretion when it denied Barber's continuance motion.

⁴ In her brief, Barber also challenges the parenting time decision made by the district court. We need not address this issue because Barber separately appealed the parenting time order, and we dismissed that appeal. *Koering v. Barber*, No. A21-0281 (Minn. App. Mar. 23, 2021). Barber also argues that the CSM erred by relying on the November 5, 2018 order instead of the actual parenting time that Koering had exercised. The CSM properly relied on the court order because the parenting time expense adjustment must be based on the parenting time that "a child is scheduled to spend with the parent during a calendar year according to a court order." Minn. Stat. § 518A.36, subd. 1 (2020) (emphasis added).

Rule 364.05 of the Minnesota General Rules of Practice governs the continuance of a child support hearing in the expedited process: “Upon . . . a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. . . . In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.” The decision to grant or deny a continuance is “within the sound discretion of the district court, and its decision will not be reversed unless it has abused its discretion.” *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006); *see also Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977) (requiring a “clear abuse of discretion”); *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000) (applying the same standard of review to a decision made by a CSM that would apply if the decision had been made by a district court judge).

Barber based the continuance request on the fact that Koering initially sent his motion to her by email only, and did not serve her by mail or in person. In addition, Barber argued that the CSM should continue the hearing until after the district court decided the pending parenting time modification motion. The CSM’s decision to deny Barber’s continuance request was not an abuse of discretion for three reasons. First, Barber had more time than required under the applicable rules to prepare for the August 7, 2020 hearing. Koering properly served the amended motion on July 13, which was 25 days before the scheduled hearing. *See* Minn. R. Gen. Prac. 364.02 (requiring the moving party to obtain a hearing date and to notify all other parties of the hearing date “at least 14 days before the scheduled hearing”); Minn. R. Gen. Prac. 372.01, subd. 1 (requiring motions to

modify an existing support order be served “at least 21 days before any scheduled hearing”); Minn. R. Gen. Prac. 372.06, subd. 1 (permitting the moving party to amend its motion “[a]t any time up to 14 days before a scheduled hearing”).

Second, Barber failed to explain how the timing of the August 7, 2020 hearing prevented her from being adequately prepared. Not only did Barber fail to make the showing required by Rule 364.05, but Barber’s conduct in this case supports the opposite conclusion. Barber filed a substantive response on June 30, 2020, that included nearly 100 pages of sworn statements and exhibits in opposition to Koering’s child support modification motion. This filing, made 38 days prior to the scheduled hearing, indicates that Barber was not prevented from “effectively proceed[ing] without a continuance.” Minn. R. Gen. Prac. 364.05. In the absence of an explanation of how her preparation was impeded and in light of the opposition that Barber was able to mount, we discern no abuse of discretion in the CSM’s decision denying Barber’s requested continuance.

Third, because Koering’s motion to modify child support stemmed from the emancipation of T.B., the pending parenting time motions regarding J.B. would not constitute good cause to continue the child support hearing on August 7, 2020. Any changes to parenting time regarding J.B. would necessarily be the subject of a separate, future child support modification motion. Therefore, the CSM did not abuse its discretion when it denied Barber’s continuance request.

II. Denial of Barber's Request for Upward Deviation

Barber argues that the CSM erred when it denied her request for an upward deviation in the October 9, 2020 order. Because the CSM did not expressly address the requisite statutory factors that apply to deviation requests, we are unable to review this decision.

Deviations from the child support guidelines are controlled by Minnesota statutes section 518A.43 (2020). The relevant language states:

In addition to the child support guidelines and other factors used to calculate the child support obligation under section 518A.34, the court *must take into consideration* the following factors in setting or modifying child support or in determining whether to deviate upward or downward from the presumptive child support obligation:

(1) all earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of section 518A.29, paragraph (b);

(2) the extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported;

(3) the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

(4) whether the child resides in a foreign country for more than one year that has a substantially higher or lower cost of living than this country;

(5) which parent receives the income taxation dependency exemption and the financial benefit the parent receives from it;

(6) the parents' debts as provided in subdivision 2; and

(7) the obligor's total payments for court-ordered child support exceed the limitations set forth in section 571.922.

Minn. Stat. § 518A.43, subd. 1 (emphasis added). A district court may deviate to prevent the children and either parent from living in poverty. *Id.*; see also *Marden v. Marden*, 546

N.W.2d 25, 29 (Minn. App. 1996) (noting that “a court may deviate upward from the guidelines if the custodial parent is unable to sustain a child’s accustomed standard of living, and the obligor has the ability to do so”). The district court has broad discretion to provide for the support of the parties’ children and will only be reversed for an abuse of that discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

In the October 9, 2020 order, the CSM included a summary denial of Barber’s deviation request, noting that in the March 4, 2019 order, the CSM previously concluded that “there is no basis for an upward deviation.” The CSM did not, however, address the statutory factors in either the March 4, 2019 order or the October 9, 2020 order. Nor did the CSM determine whether any circumstances had changed regarding any of the applicable statutory factors since March 4, 2019. Absent some analysis of the applicable statutory factors, we are unable to determine whether the CSM abused its discretion in denying Barber’s deviation request. We reverse and remand to the CSM for further findings and analysis pursuant to section 518A.43, subdivision 1. On remand, the CSM is instructed not to reopen the record but to consider the evidence and submissions made to the CSM as of the date of the October 9, 2020 order.

Affirmed in part, reversed in part, and remanded.