STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0090

Mower County Health and Human Services,
Petitioner,

April Ann Rowe,
Appellant,

vs.

Michael Paul Osborn,
Respondent.

Filed August 23, 2021
Affirmed
Frisch, Judge

Mower County District Court
File No. 50-FA-18-1107

April A. Rowe, Albert Lea, Minnesota (pro se appellant)

Danielle DiFiore, Anderson Law Firm, Rochester, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from an order determining child support, appellant-mother argues that the child support magistrate lacked authority to order child support while a custody and parenting-time order was pending appeal, abused her discretion by denying mother's

request for a continuance, deprived mother of a fair opportunity to present evidence, and abused her discretion in determining mother's child-support obligations. We affirm.

FACTS

In June 2017, appellant-mother April Ann Rowe gave birth to J.T.R. In May 2018, mother and Mower County Health and Human Services (the county) filed a complaint in district court seeking an order (1) adjudicating respondent-father Michael Paul Osborn as J.T.R.'s biological father, (2) awarding mother sole legal and sole physical custody, and (3) determining father's child-support obligations. The complaint indicated that the matter was a IV-D case subject to the expedited child-support process. *See* Minn. Stat. § 518A.26, subd. 10 (2020) (defining IV-D cases).

The matter came on for a hearing before a child support magistrate (CSM). The CSM (1) adjudicated father's parentage of J.T.R., (2) awarded mother temporary custody, (3) determined the parties' incomes for the purpose of establishing support obligations, (4) ordered father to pay temporary basic support, (5) reserved the issue of childcare costs, and (6) ordered father to pay 73% of unreimbursed medical and/or dental expenses. The CSM referred the issues of permanent custody, parenting time, childcare costs, and past support obligations to the district court.

In July 2019, father filed an answer and counterpetition asking the district court to award the parties joint legal and joint physical custody and calculate the parties' respective child-support obligations. The case proceeded to a court trial in February 2020. On April 16, 2020, the district court issued its findings, conclusions, and order, awarding permanent sole legal and permanent sole physical custody of J.T.R. to father, setting a parenting-time

schedule, suspending father's child-support obligation, and referring the issue of ongoing child support back to the expedited process because it lacked the requisite financial information to decide the issue.

On May 18, 2020, mother moved for a new trial. On August 18, the district court filed a notice of a remote hearing indicating that the case was scheduled for a hearing on September 21. On September 14, father filed a motion and memorandum urging the district court to deny mother's motion for a new trial and order mother to pay conduct-based attorney fees. The child-support issue was apparently not addressed at the September 21 hearing. The district court denied the motion for a new trial on September 30.

On October 2, father filed a financial disclosure statement documenting his monthly income and expenses. On October 9, mother's attorney withdrew from representation. On October 15, the district court administrator filed a notice of hearing indicating that the child-support matter was scheduled for a remote hearing before a CSM on November 17. In correspondence dated October 29, mother requested a continuance because she was "in the process of an appeal," had "yet to be served with any documents from the county," and "never petitioned for anything other than the current appeal." The district court denied the continuance request.

On November 17, a CSM conducted a remote child-support hearing. An assistant county attorney and a child-support officer appeared on behalf of the county. Mother appeared pro se and father appeared with counsel. At the outset of the hearing, mother requested counsel and engaged in the following exchange with the CSM.

MOTHER: I would like, at this time, counsel.

> CSM: Okay. Well, did you hire private counsel?
>
> MOTHER: I have not. I would like the opportunity to do that.
>
> CSM: Well, this hearing has been scheduled for quite some time. Can you tell me why you haven't sought counsel between when this hearing was set and today's date?
>
> MOTHER: I just got the information a couple weeks ago stating that this was set for today's date and that's all I have gotten. And I've talked to multiple counsel and I found one that could do it, but they couldn't do it for today.

The CSM denied mother's request for a continuance, explaining the hearing had "been set for some time" and that mother "had ample opportunity to seek counsel." When the CSM attempted to administer an oath to mother, she replied, "I choose not to speak without an attorney present." Soon thereafter, mother disconnected from the remote hearing.

Father proceeded to testify that (1) J.T.R. had two overnights per week with mother; (2) father paid $486 per month in ongoing support of children from a prior marriage; (3) father earned $49.04 per hour and worked between 35 and 40 hours a week; and (4) father paid $1,500 per month for family medical coverage and $200 per week in childcare expenses for J.T.R. The child-support officer testified that mother was "currently employed, working [35] average hours at $10.25 an hour bi-weekly." During the hearing, father's counsel stated, "[Mother] was with Mayo Clinic for some period of time . . . . I believe right now she's working for a produce company just based on the child's disclosures." The CSM indicated she would leave the record open for an additional week to receive documentation regarding father's childcare and healthcare costs. On

November 24, father filed evidence of his childcare expenses and health-insurance costs. On November 28, mother appealed the district court's custody and parenting-time order and order denying mother's motion for a new trial.

On December 24, the CSM issued findings, conclusions, and an order establishing child support. The CSM found that mother requested counsel, that she "had notice of th[e] hearing for over one month providing ample time to hire an attorney," and that "[u]pon hearing that her request for a continuance was denied, [mother] indicated that she would not speak without an attorney and disconnected from the Zoom hearing." The CSM found that father's monthly income totaled $8,069. She also found that mother's employment status was unknown but that her last known employer was Hy-Vee, where she worked 35 hours per week for $10.25 per hour. The CSM found that mother had the ability to earn $10.25 per hour and work 40 hours per week, and she therefore imputed a gross monthly income to mother of $1,775 for the purpose of calculating child support. After accounting for mother's parenting time, the CSM set mother's basic support obligation at $133 per month. The CSM next found that father incurred $866 per month in childcare costs before estimated tax credits. She ordered mother to contribute $155 per month toward those costs. The CSM reserved the issue of mother's medical support because father was unable to provide a breakdown of what portion of his insurance expenses were attributable to J.T.R., but ordered mother to pay 19% of all unreimbursed and uninsured medical and dental expenses incurred on behalf of J.T.R.

Mother appeals.

DECISION

Mother argues that (I) the CSM lacked authority to determine child support while the appeal of her custody and parenting-time order was pending, (II) the CSM abused her discretion by denying mother's request to continue the child-support hearing to obtain counsel, (III) mother was deprived of a fair opportunity to present evidence, and (IV) the CSM abused her discretion in determining mother's child-support obligations.[1]

I. The CSM retained jurisdiction to decide the issue of ongoing child support despite the custody and parenting-time appeal.

Mother contends that the CSM was precluded from deciding the child-support issue because "[o]nce an order begins the appeal process nothing in that order can be decided on or changed." Father contends that the CSM retained authority to determine child support because "[t]he referral to the [CSM was] independent of, supplemental to, and collateral of previous child support orders" and was "based on new information."

Whether the CSM had jurisdiction over the child-support matter presents a question of law we review de novo. *See City of Waite Park v. Minn. Off. of Admin. Hearings*, 758 N.W.2d 347, 352 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009). We review the

[1] Mother hints at other issues, asserting that she (1) "was never served with documentation to submit required documents," (2) "was never served with opposing parties' information," and (3) "was never served with documents from respondent about the child support hearing." She does not develop any argument beyond her mere assertions, and because we discern no prejudicial error on inspection of the record, we deem any potential argument forfeited. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (deeming argument forfeited for insufficient briefing where no prejudicial error was obvious); *Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family-law appeal), *review denied* (Minn. Oct. 24, 2001).

application and construction of our rules of civil appellate procedure de novo. *See In re Est. of Janecek*, 610 N.W.2d 638, 641 (Minn. 2000).

Typically, "the filing of a timely and proper appeal suspends the trial court's authority to make any order that affects the order or judgment appealed from." Minn. R. Civ. App. P. 108.01, subd. 2. But "the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from." Minn. R. Civ. App. P. 108.01, subd. 2. This rule "is designed to avoid the confusion and waste of time potentially arising from having the same issues before two courts at the same time." *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 825 (Minn. 1984). Whether the CSM's determination of child support violated Rule 108.01 depends on whether the order necessarily affected the district court's April 16, 2020 order determining custody and parenting time and suspending father's child-support obligation. *Perry v. Perry*, 749 N.W.2d 399, 402 (Minn. App. 2008).

Mother's appeal of the district court's custody and parenting-time order did not deprive the CSM of authority to decide the issue of ongoing child-support. The child-support matter was not decided by the district court. That issue was referred to the CSM, rendering the matter "independent of" and "supplemental to" the custody and parenting-time order. Minn. R. Civ. App. P. 108.01, subd. 2. The CSM based the child-support determination on information unavailable to the district court and was "not require[d] . . . to consider the merits of the issue[s] on appeal" in the custody and parenting-time matter. *Perry*, 749 N.W.2d at 403. Further, nothing in the child-support decision "necessarily

affect[s] the order on appeal." *Id.* The CSM had authority to decide the issue of ongoing child support.

II. The CSM did not abuse her discretion by denying the continuance request.

Mother contends that the CSM abused her discretion by denying mother's request for a continuance because the CSM "ignored" mother's claim that she had "received the notice of hearing just two weeks prior," thereby depriving mother of the "opportunity to find proper representation." Father contends "that [mother] had notice of th[e] hearing" and "ample time to seek a new attorney."

We review a CSM's denial of a continuance request for an abuse of discretion. *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). A CSM abuses her discretion if her findings are clearly erroneous. *Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009). A CSM may grant a continuance upon "a showing of good cause." Minn. R. Gen. Prac. 364.05. Good cause may include "lack of proper notice of the hearing." *Id.*, advisory comm. cmt. A notice of hearing must be served "at least 14 days before the scheduled hearing." Minn. R. Gen. Prac. 352.01(h).[2]

Mother's only assignment of error is that the CSM "ignored" her claim that she received notice of the hearing only "two weeks" before the hearing date. But the CSM did not "ignore" mother's claim. The CSM explicitly rejected it, finding that mother "had notice of th[e] hearing for over one month." Mother does nothing to demonstrate that this finding is clearly erroneous, and the record supports the CSM's finding. The notice of

[2] We note that mother's argument relates only to the *timing* of the notice of hearing and does not raise any other issues regarding its delivery, form, or substance.

hearing was filed by the district court administrator on October 15, 2020, and notice by mail is effective on the date of sending. Minn. R. Gen. Prac. 355.03. Mother responded to the notice of hearing by submitting a written request for a continuance dated October 29, 2020, evidencing her receipt of the notice at least *19 days* before the hearing. And, mother actually appeared at the hearing and confirmed, at a minimum, that she "got the information . . . stating that this was set for today's date."

Because the CSM's finding that mother had notice of the hearing for over one month is not clearly erroneous, we discern no abuse of discretion in the denial of mother's request for a continuance to obtain counsel. A party's failure to obtain counsel despite an adequate opportunity to do so is relevant in determining whether good cause exists to grant a request for a continuance. *See Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (noting ability to secure an attorney with six days' notice); *Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986) (noting party's failure to obtain counsel in two-month period). Where mother's counsel withdrew on October 9, and where mother failed to obtain counsel despite advance notice of the hearing, the CSM acted within her broad discretion by denying the continuance request.

III. Mother received a fair opportunity to present evidence.

Mother alleges that she "was booted out of the [Z]oom hearing and [was] unable to get back in," that she called the court administrator and was instructed to rejoin the hearing, and upon informing the court administrator that she was unable to rejoin, mother was informed the hearing had ended. She therefore concludes that she was not afforded "a fair opportunity to represent all of [her] information."

We construe mother's argument as a claimed violation of her right to procedural due process. "We review questions of whether procedural due process has been violated de novo." *Olson v. One 1999 Lexus*, 924 N.W.2d 594, 601 (Minn. 2019). Due process requires "an *opportunity* to be heard at a meaningful time and in a meaningful way." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (emphasis added).

We reject mother's argument for three reasons. First, mother relies on facts not in the record. "The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. The record contains nothing to substantiate mother's claim that she (1) was involuntarily disconnected from the hearing, (2) attempted to rejoin the hearing, or (3) contacted court administration. And the record contains no posthearing correspondence indicating that she was involuntarily disconnected from the hearing. Second, mother does not demonstrate that the CSM clearly erred by finding that mother intentionally disconnected from the remote hearing in response to her continuance request being denied. Third, mother stated at the outset of the hearing that she chose "not to speak" at the hearing despite the opportunity to do so. Accordingly, mother's argument fails because she was afforded the requisite opportunity to be heard at the hearing. *Sawh*, 823 N.W.2d at 632. Mother could have testified, offered other evidence, and made arguments pursuant to Minn. R. Gen. Prac. 364.09. By leaving the hearing, mother forfeited the opportunity.

IV. The CSM did not abuse her discretion by determining mother's child-support obligations.

Mother suggests that the CSM abused her discretion by imputing income to her and relying on "false" or inadmissible evidence. Father urges us to affirm because the CSM properly imputed income and made findings supported by the record.

"[W]e will reverse a [CSM]'s order regarding child support only if we are convinced that the [CSM] abused [her] broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record." *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008). Findings are clearly erroneous if they are not reasonably supported by the evidence as a whole or are manifestly contrary to the weight of the evidence. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

A CSM must calculate a parent's child-support obligations—basic support, childcare support, and medical support—pursuant to Minn. Stat. § 518A.34 (2020). To determine an obligor's basic support obligation, the CSM must determine the parents' gross incomes, calculate their parental incomes for determining child support (PICS), determine their percentage contribution based on their combined PICS, determine the combined support obligation by application of statutory guidelines, determine the parent's share of the combined basic support obligation, and account for a parenting-expense adjustment based on parenting time. Minn. Stat. § 518A.34(b). Generally, obligations for childcare costs and medical costs are apportioned based on the obligor's share of the parties' combined PICS. Minn. Stat. §§ 518A.40, subd. 1, .41, subd. 5 (2020).

A party's actual gross income may be calculated pursuant to Minn. Stat. § 518A.29 (2020). However,

> [i]f 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.

Minn. Stat. § 518A.32, subd. 1 (2020). A CSM may consider "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" to determine a parent's potential income. *Id.*, subd. 2(1) (2020).

Mother suggests that it was improper to impute gross monthly income to her, representing that she "in fact work[s] 40 hours a week earning $12.50."[3] We discern no abuse of discretion because a CSM *must* impute income when a parent is voluntarily "underemployed[] or employed on a less than full-time basis" or if "there is no direct evidence of any income." *Id.*, subd. 1. Here, mother left the hearing without presenting evidence. The child-support officer testified based on recent employment verification that mother was working an average of 35 hours per week at a rate of $10.25 per hour. Imputation of income would have been proper upon *either* a lack of direct evidence of employment *or* a finding of voluntary underemployment on a less than full-time basis.

[3] Notably, mother's asserted earnings would result in a *higher* gross monthly income of $2,165 and, consequently, *higher* support obligations for mother.

Mother contends that the CSM relied on "false" information or inadmissible evidence in imputing her gross income. Mother brought no motion for review pursuant to Minn. R. Gen. Prac. 377.02-.03, and so she forfeited any evidentiary objections. *See Kahn v. Tronnier*, 547 N.W.2d 425, 428 (Minn. App. 1996), *review denied* (Minn. July 10, 1996). We add that a CSM "may admit any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. Gen. Prac. 364.10, subd. 1. As for mother's assertion that the CSM relied on "false" information, mother offered no contradictory evidence and she fails to demonstrate that any of the CSM's findings are clearly erroneous on the evidence produced at the hearing.

Because we discern no abuse of discretion in the CSM's child-support decision, we affirm.

Affirmed.