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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1667**

In re the Marriage of: Jessica Stadler, f/k/a Ackerman, petitioner,  
Appellant,

vs.

Wayne Eric Ackerman,  
Respondent.

**Filed May 16, 2011  
Affirmed  
Minge, Judge**

Rice County District Court  
File No. 66-F6-04-000337

Jessica Stadler, Northfield, Minnesota (pro se appellant)

Wayne Ackerman, Newfield, Maine (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Minge,  
Judge.

**UNPUBLISHED OPINION**

**MINGE, Judge**

Mother challenges the decision of the child-support magistrate (CSM), claiming that the child-support award was legal error and an abuse of discretion. The dispute arose when father received a lump-sum payment of over \$116,000 from the United States Department of Veterans Affairs (VA) as a result of a substantial retroactive increase of

his monthly disability payments. Mother asserts numerous errors by the CSM, including failure to apply the terms of the marital termination agreement to the lump-sum payment from the VA and failure to recognize father's additional unexplained financial resources as income. Because the marital termination agreement is ambiguous and mother's interpretation would lead to an unconscionable result, because the CSM award is not an unreasonable allocation of the lump-sum payment, and because the CSM did not abuse her discretion in declining to recognize father's apparent additional resources as income, we affirm.

### **FACTS**

Appellant-mother Jessica Stadler married respondent-father Wayne Ackerman in July 2000. They have one child together, also born in 2000. The marriage was dissolved in March 2004 pursuant to a marital termination agreement (MTA). In addition to providing that mother would have sole physical custody of the child, the MTA defined father's child-support obligation. Beginning in April 2004, father was to pay child support of \$250 per month, most of which was to be directly drawn from his social security disability benefits. The social-security direct payment stopped after a few months. From April 2004 until March 2010, father has only paid \$1,824 in child support. The MTA specified that father's child-support obligation would increase by the same

percentage as any increase in father's veteran disability benefit above its then-current amount of \$304 per month.<sup>1</sup>

Over an extended period of time, father tried to qualify for increased disability benefits from the VA, sometimes with assistance from mother. In May 2009, the VA awarded father additional disability benefits retroactively to December 1, 2001. On July 15, 2009, the VA paid father a lump sum of \$116,426.42 as the net amount due for disability benefits previously denied. A VA award letter in the record sets forth the size of the VA benefit that father should have been paid each month since December 2001.<sup>2</sup> In addition to the lump sum, on July 31, 2009, father's veteran disability payment increased from \$304 per month to \$2,849 per month, an increase by a factor of 8.4. Father did not notify mother of the increased benefit amount, adjust his monthly child support or pay past child support arrearages. Instead, he reportedly spent the lump sum building a house and paying miscellaneous debts.

In March 2010, father filed a motion to modify his child support payment. He argued that payment under the MTA required making child-support payments that constituted 82% of his VA disability payments and was unreasonable. A CSM found that there had been a substantial change in circumstances that rendered the existing support order unreasonable and unfair and issued a decision granting the father's motion. The

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<sup>1</sup> Father received veteran disability benefits beginning in 2001. While serving in the Army, father injured his lumbar spine. Since the injury, father developed depression and a variety of other physical disabilities related to his service.

<sup>2</sup> The record is unclear as to the actual amount of the lump-sum award. According to father and bank records, the lump sum amounted to \$116,426.42. Although mother argued the actual VA award was higher, she presented no evidence supporting her allegation. Therefore, we assume father's stated amount is correct.

CSM found that, with VA disability and other income, father's parental income for determining child support (PICS) was \$3,959 per month and mother's PICS was \$1,487. The CSM did not include certain disputed income in determining father's PICS. Using the statutory child-support guidelines, the CSM found that, beginning April 1, 2010, father should pay mother \$623 per month. With respect to past child support, the CSM recognized the inequity of a strict application of the MTA to the gross lump-sum amount due father, finding that he would owe child support of at least \$135,000 if the gross lump sum was treated as a single monthly payment. Therefore, the CSM ordered father to pay mother 25% (\$29,107) of the net lump sum award and to pay increased child support in the amount of \$2,350 per month, consistent with the MTA's percentage-increase term, from August 2009, (the date the VA began paying regular monthly benefits at the increased level) until March 2010 when he brought his motion (\$18,640) for a total of \$47,747.

A district court judge reviewed the CSM's findings and affirmed. Mother appealed.

## **D E C I S I O N**

On appeal from a CSM's ruling that has been affirmed by the district court, the standard of review is the same standard as would have been applied if the decision had been made by a district court in the first instance. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). We will reverse an order modifying a child-support obligation if the district court abused its discretion by resolving the matter in a manner against the logic and the facts on the record, *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn.

1999), or by misapplying the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998).

## **I. LUMP SUM AND CHILD SUPPORT**

The first issue is whether the CSM abused her discretion in ordering that father pay mother \$29,107 from the VA lump-sum award. The CSM determined that the MTA's language created an absurd result and departed from it, finding instead that father owed 25% of his lump-sum payment as child support. Because father did not file a brief or otherwise challenge the CSM's decision, we will evaluate only whether the CSM committed an error of law or abuse of discretion adverse to mother by not awarding a greater amount.

Mother argues that the MTA's plain language applies to the lump-sum payment and provides a formula for calculating child support due. The terms of a stipulated dissolution judgment and decree are construed using contract-law principles. *In re Estate of Rock*, 612 N.W.2d 891, 894 (Minn. App. 2000). When the language of such a judgment and decree is reasonably subject to more than one interpretation, it is ambiguous. *Id.* Whether a dissolution judgment and decree is ambiguous presents a question of law, which we review de novo. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005). Resolution of any ambiguity is a question of fact, reviewed for clear error. *Id.*

The MTA states that father's child-support obligation will increase both when father *receives* and becomes *entitled* to an increase in his VA payments. Father did not receive an increase in his VA payments until July 2009. However, the VA, in

distributing disability payments retroactively, recognized that father was entitled to the increased payments back to December 2001. Because child support was not payable until after the marriage dissolution in March 2004, the child-support payments could not increase until that date, at the earliest. Reasonable minds could differ as to whether the parents intended that father's child-support obligation increase in July 2009 when he "received" his increased payments or retroactively in March 2004 when he was "entitled" to the increase in benefits. In addition, the MTA implies a gradual increase in father's monthly VA payments from its then-current amount of \$304. Nothing in the record indicates the parties contemplated a significant lump-sum payment resembling the net payment received, which is 382 times greater than father's original monthly VA benefit. Because the MTA language does not include a provision regarding a lump-sum payment for past benefits denied, one could even interpret the MTA to exclude the lump-sum payment. The MTA provision regarding increases in child-support payments is ambiguous.

Generally, when a contract is open to conflicting interpretations and neither party can clearly show the parties' intent at the time of execution, the interpretation more favorable to the party who did not draft the instrument should be adopted. *ICC Leasing Corp. v. Midwestern Mach. Co.*, 257 N.W.2d 551, 555 (Minn. 1977). Mother was the only party represented by counsel during the divorce proceedings. Her attorney drafted the MTA. In addition, father had moved to Massachusetts, and it is unclear that he had any opportunity for input in the drafting of the MTA. This situation favors resolution of the ambiguity in father's favor.

The CSM interpreted the MTA as authorizing increases in child-support payments upon receipt of increased VA payments. In addition, the CSM reasoned that the MTA did not contemplate and therefore did not apply to a lump-sum payment. Neither party introduced evidence indicating that the parties, at the time of the marriage dissolution, intended a different result. Therefore, this resolution of the ambiguity is not clearly erroneous.

We next ask whether the CSM's determination of father's arrearages was less than required by law. Courts generally determine the amount of child-support payments by calculating each parent's gross income, meaning "any form of periodic payment to an individual." Minn. Stat. § 518A.29(a) (2010). However, a court can consider "all earnings, income, circumstances, and resources of each parent" in determining whether to deviate from the child-support guidelines, which would include a lump-sum payment. Minn. Stat. § 518A.43, subd. 1 (2010). When determining whether to deviate upward or downward from the presumptive obligation, a district court must make written findings that state the reasons for the deviation and how the deviation serves the best interests of the child. Minn. Stat. § 518A.37, subd. 2 (2010). Because a single lump-sum payment is not a periodic payment, the child-support guidelines generally exclude it from a calculation of child support owed. *See Stangel v. Stangel*, 366 N.W.2d 747, 749 (Minn. App. 1985) (stating that "periodic payments" are those which could or should provide a dependable source of child support).

The CSM chose to deviate upward from the guideline minimum and calculated father's arrearages using the entire net lump-sum payment, including benefits attributable

to the period before the marriage dissolution. The CSM could have disregarded the lump-sum payment and calculated arrears based solely on the periodic monthly child-support obligation initially set under the MTA, resulting in total arrearages of \$14,176 (\$250 per month for 64 months, from April 2004 to July 2009 less \$1,824 paid). Other possible calculations include (1) applying the 25%-of-obligor's-income formula from the pre-PICS statutory child-support schedule;<sup>3</sup> (2) applying the PICS worksheet to each monthly VA payment retroactively;<sup>4</sup> and (3) making a reasoned analysis of the parties' circumstances as a part of an ad hoc determination. The CSM had discretion to deviate upward by incorporating the lump-sum payment in her calculation of father's arrearages so as to maintain equity between both parties, reward mother's years of single parenthood, and serve the pecuniary best interests of the child.

Mother argues that we should calculate arrearages including the gross lump-sum payment as outlined in the VA award letter. The VA award letter suggests a total award of greater than \$160,000. However, father's bank records and testimony indicate that the cash award was \$116,426.42. "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R.

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<sup>3</sup> Assuming the lump-sum payment was excluded from father's income for determining child support, father's monthly income at the time of the marriage dissolution was \$1,199. His monthly child-support payment under the pre-PICS statutory guideline (25% of father's income) would be \$299.75. After subtracting the \$1,824 apparently paid through July 2009, it appears that father would have owed over \$17,000 in arrears.

<sup>4</sup> Assuming mother's income stayed at \$800, her income as of the marriage dissolution, and assuming father's social security payments did not increase (from \$895, the benefit at the time of marriage dissolution), application of the PICS format to father's retroactive VA benefits indicates that father would owe over \$35,000 in arrears.

Civ. P. 52.01. The CSM made a finding of fact that the cash award was for the lower figure, which bank records list as \$116,426.42. Because the record supports the CSM's finding, it was not clearly erroneous.

The CSM did not make specific written findings regarding the deviation, but the CSM's order demonstrates an in-depth examination of the conflicting facts on record and the parties' arguments. The CSM considered mother's interpretation of the MTA but determined that it defied common sense if father were to be ordered to pay more than the net VA lump-sum payment. In addition, neither party could conclusively prove the amount of or where father invested and distributed the lump-sum payment. Given a difficult situation, the CSM used the discretion that the law provides and awarded mother a significant sum. We conclude that the CSM and the district court did not abuse their discretion in awarding the lump sum of \$29,107 plus child support according to the MTA for the time period between receipt of the adjusted monthly benefits in August 2009 and father's motion to modify in March 2010.

## **II. OTHER RESOURCES AND PICS**

The second issue is whether the CSM abused her discretion in not including unexplained resources in father's income in calculating father's PICS. Appellate courts will only set aside findings of fact if clearly erroneous, "giving deference to the district court's opportunity to evaluate witness credibility." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

Mother argues that father's PICS should include \$18,554.79 in deposits to father's bank account that are largely unexplained.<sup>5</sup> Income for determining child support includes periodic payments regularly received from a dependable source. *Barnier v. Wells*, 476 N.W.2d 795, 797 (Minn. App. 1991). Nine of the fourteen deposits identified by mother occurred during October and November of 2009, while the remaining five appear sporadically over the course of one year. The dates and dollar amounts of the deposit follow no specific pattern. Mother offered no evidence that the deposits were employment-related aside from assertions that they may stem from father's glass-blowing hobby. Based on this record, we conclude that the CSM did not clearly err in determining that the random deposits did not constitute periodic, earned income.

However, we note that father does have a duty to disclose any and all sources of income when filing a motion to modify a child-support obligation. Minn. Stat. § 518A.28(a) (2010). If it is established that father defrauded the court by failing to disclose or misrepresenting income to avoid paying child support and that mother could not with reasonable diligence have learned of that income and fraudulent behavior, mother may petition to recover child support for the period of time during which father fraudulently concealed the income. At this time, though, father has denied that the deposits were additional income.

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<sup>5</sup> The record indicates that father identified one of these deposits as a \$5,000 loan from his grandfather.

## SUMMARY

Beginning April 2010, the CSM ordered father to pay \$623 per month, offset by a continuing \$20 payment directly from VA, as ongoing basic child support. The CSM calculated father's aggregate child-support arrears as being \$47,747 as of April 2010. This represents 25% of the lump-sum payment (\$29,107<sup>6</sup>) plus the increased child-support obligation from August 2009 to March 2010 under the MTA's guidelines (8 payments of \$2,350, for a total of \$18,640). Because these calculations are not an unreasonable allocation of father's lump-sum payment and income, we conclude that the CSM did not abuse her discretion and affirm.

**Affirmed.**

Dated:

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<sup>6</sup> This figure overrides and replaces the arrearage arising from the initial level of child support.