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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1521**

In re the Marriage of:
Karen Lynn Garlick, n/k/a Karen Lynn Dokken, petitioner,
Respondent,

vs.

William J. Garlick,
Appellant.

**Filed June 17, 2013
Reversed and remanded
Stauber, Judge**

Hennepin County District Court
File No. 27FA000256193

Karen Lynn Dokken, Maple Grove, Minnesota (pro se respondent)

Anne M. Honsa, Deborah M. Gallenberg, Honsa & Associates, P.A., Minneapolis,
Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant contends that the child-support magistrate abused her discretion by
modifying appellant's child-support obligation and ignoring the statutorily presumptive
basic-support obligation, by failing to grant appellant a parenting-expense adjustment,

and by failing to retroactively modify the award to the date appellant served his motion to modify. Appellant further contends that the district court erred by dismissing his motion for review. We reverse and remand.

FACTS

Appellant-father, William Garlick, and respondent-mother, Karen Dokken, were married from 1996 to 2001 and have two children together, now ages 17 and 14. The divorce decree awarded the parties joint legal custody of the children and required appellant to pay respondent \$1,800 a month in child support, the maximum amount allowable under the governing statute at the time, based on a percentage of appellant's income. *See* Minn. Stat. § 518.551, subd. 5(b) (2000).

In setting the obligation, the district court found that appellant's gross annual income for the year 2000 was expected to be \$141,000, and that respondent's gross annual income was \$23,920. The district court further divided the couple's assets, awarding appellant his 40,000 shares of Life Time Fitness stock.

One year later, appellant moved to modify his child-support obligation. The child-support magistrate (CSM) denied the motion, noting that although appellant's actual income for the year 2000 had been lower than expected, \$105,339, he had not shown an inability to meet the obligation. Later, appellant sold his Life Time Fitness stock and purchased approximately \$765,000 in classic automobiles and storage units for the vehicles with the proceeds.

In 2005, appellant became totally disabled and began receiving social security disability and private disability benefits in the total amount of \$8,400 a month.

Respondent also began receiving monthly retirement, survivors, and disability insurance (RSDI) derivative benefits of \$1,150 a month for the benefit of the children as a result of appellant's disability.

In January 2012, appellant moved to modify his child-support obligation, which had increased over the years from \$1,800 to \$2,227 per month, based on cost-of-living adjustments. Thus, with the \$1,150 per month in RSDI benefits and \$2,227 in child-support payments, respondent was receiving total support of \$3,377 per month. Appellant requested a modification due to his disability and as an offset for respondent's receipt of RSDI benefits. Specifically, appellant requested that his obligation be modified to \$1,725 a month, less the RSDI benefits of \$1,150, and a small reduction for his contribution to the children's insurance premiums, for a net obligation of \$538 a month.

The parties appeared at a hearing before the CSM on appellant's motion to modify. Respondent requested additional discovery, and the CSM continued the matter. Appellant provided the requested discovery, and the parties appeared again.

The CSM properly noted that respondent's receipt of \$1,150 in RSDI benefits established a child-support obligation of \$1,577 a month according to the child-support guidelines worksheet. But, in an upward deviation from the guidelines, the CSM set appellant's monthly obligation at \$2,727. Appellant moved for district court review of the order. The district court dismissed the motion and affirmed the CSM's order. This appeal followed.

DECISION

I. Presumptive support obligation

On appeal from a CSM's ruling that has been affirmed by the district court, the standard of review is the same as would have been applied had the district court made the decision. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The district court abuses its discretion when it sets support in a manner that is against logic and the facts in the record or misapplies the law. *Id.*

Appellant contends that the CSM abused her discretion by increasing appellant's basic support obligation to \$2,727 a month. Appellant argues that the CSM properly calculated his statutorily presumptive support obligation at \$538 a month (plus the \$1,150 from RSDI) but then inexplicably ignored this calculation in setting his obligation at \$2,727. *See* Minn. Stat. § 518A.34 (2010). Consequently, the issue is whether the CSM abused her discretion by deviating upward from the presumptive obligation as set forth in the child-support guidelines worksheet. The CSM deviated upward based on Minn. Stat. § 518A.43, subd. 1(1) and (3) (2010), commenting that:

the [c]ourt would be extremely hesitant to decrease [appellant's] existing basic support obligation of \$2,227.00 per month to \$538.00 per month (which includes the offset for [respondent's] medical support) where [appellant] has a hobby¹ for which he has alone spent at least \$765,000.00 and

¹ The "hobby" the CSM referenced is appellant's classic-automobile collection that he purchased in 2003 with the proceeds from selling his Life Time Fitness stock.

given the standard of living which the joint minor children have enjoyed as reflected in . . . [the] pleadings and testimony.

The relevant portions of Minn. Stat. § 518A.43, subdivision 1 provide that:

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 . . . ;

. . . .

(3) the standard of living the child would enjoy if the parents were currently living together

Not only did the CSM deviate upward from the statutorily presumptive support obligation of \$538, the CSM deviated upward from appellant's then-current obligation of \$2,227, setting the obligation at \$2,727, which is the maximum child-support obligation under the guidelines for two children, and is applicable to parents earning a combined monthly income of \$15,000 or more. *See* Minn. Stat. § 518A.35, subd. 2 (2010).

The CSM made no findings that would support a conclusion that appellant earns more than \$15,000 a month or that the parties' combined income exceeds that amount. The CSM apparently relied upon appellant's classic-automobile collection in establishing the upward deviation even though appellant argued, and the record supports, that he earns no income from these assets. Appellant compares these assets to retirement assets that do not contribute to his income. We agree.

The CSM also appeared to rely upon the fact that \$2,727 is the current statutory maximum, and appellant's basic support obligation of \$1,800 per month in 2001 was the

statutory maximum under the governing statute at the time. *See* Minn. Stat. § 518.551, subd. 5(b). However, the current law sets a statutory maximum of basic support based upon the combined parental income of both parents. *See* Minn. Stat. § 518A.35, subd. 2. The former statute set the statutory maximum based upon only appellant’s income. *See* Minn. Stat. § 518A.551, subd. 5(b).

Appellant also contends that the CSM failed to make adequate findings in support of its upward deviation, as is required by Minn. Stat. § 518A.37, subd. 2 (2010). A failure to make findings on relevant statutory factors requires a remand. *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989). In relevant part, Minn. Stat. § 518A.37, subd. 2, provides that:

If the court deviates from the presumptive child support obligation . . . the court must make written findings that state:

- (1) each parent’s gross income;
- (2) each parent’s PICS;
- (3) the amount of the child support obligation computed under section 518A.34;
- (4) the reasons for the deviation; and
- (5) how the deviation serves the best interests of the child.

The CSM’s findings and its rationale are insufficient to support its deviation.

Accordingly, we reverse and remand to the district court.

II. Parenting-expense adjustment

Appellant next contends that the CSM abused its discretion by failing to credit him with a parenting-expense adjustment. Interpreting the parenting-expense-adjustment statute “is a legal issue reviewed de novo.” *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). The CSM completed the child-support guidelines worksheet and afforded

appellant a parenting-expense adjustment of \$235 a month. However, the CSM did not consider this adjustment when she deviated upward.

The CSM must compute child support pursuant to Minn. Stat. § 518A.34. Under that statute, the CSM shall “determine the parenting expense adjustment” and “adjust the obligor’s basic support obligation accordingly.” Minn. Stat. § 518A.34(b)(6). Appellant “is entitled to a parenting expense adjustment calculated as provided” by statute. *See* Minn. Stat. § 518A.36, subd. 2 (2010). We reverse and remand to the district court for an adjustment consistent with chapter 518A.

III. Retroactive modification

We review the CSM’s decision regarding the effective date of a modification for an abuse of discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000).

“[M]odification of support is generally retroactive to the date the moving party served notice of the motion on the responding party.” *Bormann v. Bormann*, 644 N.W.2d 478, 482-83 (Minn. App. 2002).

Appellant served respondent with a notice of motion to modify his child-support obligation on January 10, 2012. The parties appeared on the motion on February 8, 2012. At the hearing, respondent requested additional discovery. The CSM continued the hearing to allow appellant to provide this discovery.

Appellant contends that he disclosed all information necessary, including discovery, to support and rule on his motion by the February 8 hearing. This argument alone is insufficient to establish that the CSM abused her discretion. The record shows that the hearing was continued to a later date to allow appellant to provide additional

discovery. The CSM's order following the February 8 hearing requires documents to be provided prior to the continuation of the hearing. Appellant timely provided this information, and the CSM's subsequent order shows that the CSM relied upon this information in drafting the findings and conclusions. The CSM did not abuse her discretion by finding that this discovery was necessary to decide the motion, but failed to make findings to support a modification date different from the date appellant served his motion. Therefore, we reverse and remand to the CSM for appropriate findings.

IV. Denial of motion for review

“We review the district court's decision confirming the CSM's order under an abuse-of-discretion standard.” *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). The district court dismissed appellant's motion for review and affirmed the CSM's findings and conclusions. Because we conclude that the CSM's findings were against logic and the facts in the record, we reverse the district court's dismissal of appellant's motion for review of the CSM's order and remand to the district court to establish appellant's child-support obligation in accordance with the guidelines set forth in statute.

Reversed and remanded.