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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2313**

In re the Matter of: Karen Brys n/k/a Karen Warn, petitioner,
Respondent,

vs.

Timothy Peterson,
Appellant.

**Filed August 19, 2013
Reversed and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-PA-FA-000047882

Jeremy P. Knutson, Knutson Law Office, LLC, Mendota Heights, Minnesota (for
appellant)

Karen Warn, Owatonna, Minnesota (pro se respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Cleary,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, a child-support obligor for the parties' child, argues that the child
support magistrate (CSM) deviated from the child-support obligation guidelines without

making the findings that are required under the law. Because the findings are insufficient, we reverse and remand for entry of the guideline child-support obligation.

FACTS

Respondent Karen Brys, n/k/a Karen Warn, and appellant Timothy Peterson are the parents of ten-year-old J.B., who lives with respondent. Because respondent has no earned income, appellant is the sole obligor for J.B.'s child support. In 2010, appellant's child-support obligation was set at \$1,910.

In 2012, appellant moved to have his child-support obligation reduced to \$1,461, the guideline support amount for \$11,540, his average gross monthly income from 2009 through the first half of 2012.¹ The CSM found that appellant's monthly income was actually \$11,117 and that the guideline obligation for that amount is \$1,410, "clearly 20% and \$75 less than [the] amount currently ordered, \$1,910."² The CSM nevertheless denied appellant's motion to reduce his obligation to the guideline amount on the ground that appellant had not shown the obligation was unreasonable and unfair.

But any child-support order that is at least 20% and at least \$75 per month higher than the guideline amount is rebuttably presumed to be unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(b) (2010). Appellant sought district-court review of the CSM's decision.

¹ Appellant also moved to have the cost-of-living increases to his child-support obligation stopped, and this motion was granted. In her brief, respondent challenges the granting of the motion. Because respondent did not file a notice of related appeal, this issue is not before us, and we do not address it. *See* Minn. R. Civ. App. P. 106 ("[R]espondent may obtain review of a judgment . . . by filing a notice of related appeal . . .").

² The current child-support obligation, \$1,910, is actually 35% and \$500 more than the guideline amount, \$1,410.

The district court concluded that the CSM’s holding “that [appellant] had to . . . make an affirmative showing that the existing order is unreasonable and unfair . . . ignores the clear mandate of Minn. Stat. § 518A.39, subd. 2(b)” and remanded for the CSM “to address the issue of the rebuttable presumption under Minn. Stat. § 518A.39, subd. 2(b).”

On remand, the CSM replaced the finding that “The existing child support order is not unreasonable and/or unfair” with a finding that:

The presumption that the existing child support order is unreasonable and/or unfair has been rebutted. Only one parent in this case has the ability to contribute to the support of the child. [Appellant] has sufficient funds and sufficient discretionary income (as evidenced by his spending) to continue to pay the amount ordered.

In its Conclusions of Law, the CSM replaced the sentence, “The substantial change does not make the existing order unreasonable or unfair” with “The presumption that the existing [child support] order is unreasonable and unfair has been rebutted. The child is wholly dependent upon [appellant] for support.”

Appellant challenges the decision on remand, arguing that the CSM’s deviation from the child-support guidelines is not supported by the requisite findings.

D E C I S I O N

Whether to modify child support is discretionary with the district court, and its decision will be altered on appeal only if it resolved the matter in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). When a CSM’s order has not been reviewed by a district court, this court uses the same standard

to review issues as it would use if the order had been issued by a district court. *See, e.g., id.* at 348. “If the court deviates from the presumptive child support obligation computed under [the guidelines], the court must make written findings that state . . . (4) the reasons for the deviation” Minn. Stat. § 518A.37, subd. 2 (2012).

The CSM’s findings that “[o]nly one parent in this case has the ability to contribute to the support of the child” and that “[appellant] has sufficient funds and sufficient discretionary income (as evidenced by his spending) to continue to pay the amount ordered” do not provide reasons for a deviation from the guideline amount. The CSM provides no support for the implied views that an increase of the guideline child-support obligation set for the combined monthly income of both parents is appropriate when only one parent is contributing to that income or when that parent, in the CSM’s opinion, could contribute more. Absent an explanation of the reasons justifying a child-support obligation that is 35% and more than \$500 over the guideline amount, appellant is entitled to a guideline child-support obligation.

We reverse and remand for the imposition of the guideline amount.

Reversed and remanded.