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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0661, A12-0705**

Hennepin County,  
Plaintiff,

Pennie Lynn Espeland,  
Respondent (A12-661),

Kari Mae Siemieniewski,  
Respondent (A12-705),

vs.

Fred James Dixon, Jr.,  
Appellant.

**Filed December 24, 2012  
Affirmed  
Collins, Judge\***

Hennepin County District Court  
File Nos. 27-PA-FA-000040667, 27-PA-FA-000038347

Pennie L. Espeland, Minneapolis, Minnesota (pro se respondent)

Kari M. Siemieniewski, Skokie, Illinois (pro se respondent)

Fred J. Dixon, Jr., Minneapolis, Minnesota (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and  
Collins, Judge.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**COLLINS**, Judge

Appellant challenges the orders of the child support magistrate (CSM) denying his motions to reduce his child-support obligations. Because the CSM's determination that appellant is voluntarily underemployed is not clearly erroneous and the CSM did not abuse her discretion in denying appellant's motions, we affirm.

### DECISION

Appellant Fred Dixon Jr. is obligated to pay child support for three children in these consolidated appeals: K.S., born to Dixon and respondent-mother Kari Siemieniewski in 1997, and M.E. and M.J.E., born to Dixon and respondent-mother Pennie Espeland in 1995 and 1999, respectively.

In 2011, Dixon moved to reduce his child-support obligations for K.S. and M.J.E. The CSM found that Dixon, who works 12-14 hours per week and earns \$13 per hour, is voluntarily underemployed. The CSM concluded that Dixon has the ability to work full-time and earn at least \$13 per hour. Based on this imputed potential income, the CSM determined that Dixon's ongoing basic- and medical-support obligation under the Minnesota Child Support Guidelines for K.S. would be \$387.00 per month, compared to his current basic support obligation of \$263.00. For M.E. and M.J.E., the CSM determined that Dixon's ongoing basic- and medical-support obligation under the guidelines would be \$495 per month, compared to his current basic support obligation of \$415.00. The CSM denied Dixon's motion to reduce child support because there had not

been a substantial change in circumstances that made the prior child-support orders unreasonable and unfair.

## I.

Dixon seeks reversal of the CSM's orders denying his motion to reduce his child-support obligations, arguing that the CSM erroneously found him to be voluntarily underemployed. Whether a parent is voluntarily underemployed is a finding of fact, which we review for clear error. *See Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). There are a number of circumstances when a parent is not considered voluntarily underemployed, such as incarceration, physical or mental incapacitation, or temporary underemployment that will ultimately lead to an income increase. Minn. Stat. § 518A.32, subd. 3 (2010). If the CSM finds that an obligor is voluntarily underemployed, it calculates the support obligation "based on a determination of [the obligor's] potential income." *Id.*, subd. 1 (2010). When determining "potential income," The CSM may compute "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." *Id.*, subd. 1 (2010).

To bolster his claim that he is not voluntarily underemployed, Dixon relies on factors the CSM expressly considered. The CSM acknowledged Dixon's participation in the Parents' Employment Program (PEP), his years of unemployment, and his felony record. After considering those factors, the CSM determined that Dixon is voluntarily underemployed. Dixon has not presented any information that the CSM erroneously

failed to consider. On the record presented, Dixon has not shown that the CSM's finding that he is voluntarily underemployed is clearly erroneous.

## II.

Dixon also argues that, in denying his motion to reduce his child-support obligations, the CSM failed to properly consider his childcare costs for an additional child, the decrease in his potential income since the original order due to his felony record, the loss of his driving privileges related to child-support issues, and his "other living expenses." The CSM may modify an existing child-support order if there is a substantial change in circumstances, rendering the current order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2010). It is a rebuttable presumption that a substantial change in circumstances occurred if the application of the guidelines to the parties' current circumstances would result in a monthly support obligation that is at least 20 percent and at least \$75.00 higher or lower than the current support order (the 20/75 presumption). *Id.*, subd. 2(b)(1) (2010). We will reverse a CSM's child-support-modification determination if the CSM abused his or her broad discretion by resolving the matter in a manner that is against logic and the facts. *Putz v. Putz*, 645 N.W.2d 345, 347 (Minn. 2002).

Here, the CSM determined Dixon's potential gross monthly income by applying Dixon's current hourly wage rate to full-time employment. This is not against logic or the facts of the case. The CSM found Dixon's gross monthly income to be \$2,253.00. The CSM considered Dixon's PEP participation, felony record, and lack of physical or mental disability, and accounted for Dixon's support obligations for nonjoint children.

Based on Dixon's potential income, the CSM determined that under the guidelines, Dixon's obligation for basic and medical support would be \$387 per month for K.S., an amount \$124 greater than his current obligation. Similarly, the guidelines suggest an obligation of \$495 for M.E. and M.J.E., an amount \$80 greater than Dixon's current obligation. Accordingly, the CSM correctly found that application of the guidelines to the parties' current circumstances does not establish a change in circumstances that renders the current support obligations unreasonable and unfair as to Dixon.

### **III.**

In his brief, Dixon states that "the job that I am skilled at requires me to have a valid drivers licenses which at times has proven a hindrance due to child support holding my drivers licenses since 1999." The propriety of the suspension of Dixon's driver's license was not presented to or considered by the CSM. Generally, an appellate court will not consider matters not argued to and considered by the court below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). There is no basis shown for exception to be made here.

**Affirmed.**