STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2368

In re the Marriage of:
Thomas Eugene Broome, petitioner,
Appellant,

vs.

Sandra Marie Wedmann, f/k/a
Sandra Marie Broome, f/k/a
Sandra Marie Lambrecht,
Respondent.

Filed January 22, 2008
Reversed and remanded
Halbrooks, Judge

Scott County District Court
File No. 70-2003-00991

Thomas Broome, 15384 Wood Duck Trail Northwest, Prior lake, MN 55372 (pro se appellant)

Anne Heimkes Tuttle, 1275 Ramsey Street, Suite 600, Shakopee, MN 55379 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Minge, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the modification of his monthly child-support obligation on the grounds that the child-support magistrate (CSM) erred by not applying the *Hortis/Valento* formula and because the CSM did not make the factual findings necessary to justify this deviation. Because we conclude that the proper findings were not made, we reverse and remand.

FACTS

Appellant Thomas Broome and respondent Sandra Wedmann f/k/a Sandra Broome have two children. Their marriage was dissolved in 2004; in an amended dissolution judgment and decree, the parties agreed to joint physical and legal custody of the children. According to the agreed-upon parenting schedule, appellant had the children with him approximately 40% of the time, and respondent had the remaining 60%.

Appellant and respondent stipulated that the *Hortis/Valento* formula would not be used to calculate appellant's monthly child-support payment to respondent and that there would be no adjustment based on the parties' parenting schedule. Instead, the amended dissolution judgment stated that the statutory child-support guidelines would be used, resulting in a monthly obligation for appellant of $1,500. A cost-of-living increase went into effect in May 2006, increasing appellant's monthly child-support obligation to $1,679.

In April 2005, the parties' younger son, Z.B., was diagnosed with a mild form of autism. In response to the diagnosis, appellant and respondent enrolled Z.B. in various

specialized programs designed to foster his continued development and education. These programs increased the cost of Z.B.'s care. In addition, appellant's income has decreased since the amended dissolution judgment.

In June 2006, appellant moved to modify his child-support obligation based on changed financial circumstances. Following a hearing before a child-support magistrate (CSM), the CSM reduced appellant's monthly child-support obligation to $1,432. Appellant moved the CSM for review on the ground that the CSM should have applied the *Hortis/Valento* formula in modifying his child-support obligation. The CSM reaffirmed her earlier judgment. This appeal follows.

D E C I S I O N

Generally, a CSM has broad discretion when ordering modifications to child-support obligations. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). A CSM's order regarding child support will be reversed only if the CSM "abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record." *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

When a party disputes the propriety of a CSM's child-support determination, it has two options to obtain review of that decision. The party can appeal the CSM's decision directly to this court, or it can seek additional review of the initial determination before the CSM or a district court and then appeal to this court if the party still feels aggrieved. Minn. R. Gen. Pract. 378.01. If a party appeals directly from the decision of a CSM, our scope of review is limited to a determination of whether the evidence supports the findings of fact and whether the findings support the conclusions of law and the

judgment. Minn. R. Gen. Pract. 378.01 advisory comm. cmt.; *Kahn v. Tronnier*, 547 N.W.2d 425, 428 (Minn. App. 1996), *review denied* (Minn. July 10, 1996). But if a party seeks further review before the CSM or district court—as occurred here—we review the CSM's decision as if the district court had made the decision. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002).

When seeking to modify child support, the burden is on the moving party to show that modification of the existing child-support award is warranted due to substantially changed circumstances and that the changed circumstances render the existing award unfair and unreasonable. Minn. Stat. § 518.64, subd. 2 (2004); *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002). Minn. Stat. § 518.64, subd. 2(a), lists various financial circumstances that, if substantially changed, warrant modification of child support. Two of the factors include a substantial change in the earnings of a party or a substantial change in the needs of the children being supported. Minn. Stat. § 518.64, subd. 2(a).

The CSM found that appellant's earnings had decreased and that Z.B.'s needs had increased and determined that these changes warranted modification of appellant's child-support obligation. Respondent does not dispute the validity of either factual finding. But respondent argues that both parties should bear equally the increased expenses related to Z.B.'s autism diagnosis and that appellant's income did not decrease to such a degree that it triggers the statutory presumption that modification of child support is proper. But the mere fact that a change in a party's income is not of the magnitude to trigger the statutory presumption of modification contained in Minn. Stat. § 518.64, subd.

2(b), does not mean that a CSM must disregard that change. A CSM may still properly find, in the exercise of its broad discretion, that the change in income is substantial enough to justify modification. Further, even if the parties share equally the increased expense of caring for Z.B., a CSM has the discretion to consider how this equally borne expense might burden the parties differently. Thus, we conclude that the CSM did not abuse its discretion in finding that modification was warranted here.

We next turn to whether the amount of the CSM's modification of appellant's child-support obligation was proper. As noted, generally, a CSM's decision to modify child support is reviewed for abuse of discretion. *Putz*, 645 N.W.2d at 347. But the propriety of the CSM's failure to apply the *Hortis/Valento* formula to undisputed facts is a matter of law, which we review de novo. *Davis v. Davis*, 631 N.W.2d 822, 828 (Minn. App. 2001).

Minn. Stat. § 518.551 (2004) sets presumptive guidelines for CSMs and district courts to follow when calculating child-support obligations. When the parties' custody arrangement is that of joint physical custody, the presumptive child-support obligation is calculated using what is known as the *Hortis/Valento* formula. *Schlichting v. Paulus*, 632 N.W.2d 790, 792 (Minn. App. 2001). Under this formula, each parent pays the guideline child-support obligation as determined by the table in Minn. Stat. § 518.551, subd. 5(b), for the period of time that the other parent has custody of the children. *Id.*; *Davis*, 631 N.W.2d at 828. Those obligations are then offset against each other, generating a single, net payment from the parent with the greater obligation to the parent with the lesser obligation. *Bender v. Bender*, 671 N.W.2d 602, 608 (Minn. App. 2003). The

presumptive child-support guidelines, which include the *Hortis/Valento* formula, apply when modifying child support as well as when initially setting the support obligation. Minn. Stat. § 518.551, subd. 5(i); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986).

A CSM may depart from the child-support guidelines and the *Hortis/Valento* formula only if the CSM makes specific written findings. Minn. Stat. § 518.551, subd. 5(i). The findings must include the amount of child support if calculated under the guidelines, the CSM's reasons for deviating from the guidelines, how the deviation serves the best interests of the children, and findings addressing each of the criteria listed in Minn. Stat. § 518.551, subd. 5(c). *Id*. The criteria in Minn. Stat. § 518.551, subd. 5(c), require a CSM to make findings regarding:

> (1) all earnings, income, and resources of the parents, including real and personal property . . . ;
>
> (2) the financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;
>
> (3) the standard of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;
>
> (4) which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it;
>
> (5) the parents' debts . . . ; and
>
> (6) the obligor's receipt of public assistance . . . .

Here, because the CSM departed from the guidelines by opting not to apply the *Hortis/Valento* formula when modifying appellant's child-support obligation, the CSM must make findings to support the deviation. The CSM addressed both parties' earnings, spending a large portion of the modification order on that factor. While these findings were certainly sufficient, other required findings were lacking. The CSM did not

calculate the presumptive amount of child support under the *Hortis/Valento* formula or address whether deviation from this amount is in the best interests of the parties' children. There also was no discussion of the parties' debts, the standard of living during the marriage, or if either party received any tax benefits flowing from Z.B. or C.B.

Respondent relies on the case of *Schlichting* to support her argument that the findings justifying the deviation from the guidelines here are sufficient. In *Schlichting*, this court upheld a deviation from the *Hortis/Valento* formula even though it characterized the findings supporting the deviation as "sparse." *Schlichting*, 632 N.W.2d at 793. But *Schlichting* is distinguishable from the present circumstances. Importantly, the findings in *Schlichting* established that the child-support deviation was in the best interests of the children. *Id*. at 793-94. Furthermore, the *Schlichting* findings determined each party's earnings; that the custody arrangement in place was more similar to a traditional custody/visitation arrangement than to true joint custody; that the support recipient was currently a full-time student whose earning potential would soon be enhanced; and that, unless full support was paid, the mother would not be able to meet her monthly expenses. *Id.* at 793-94. Finally, we noted in *Schlichting* that the statutorily mandated findings that the district court did not make were either neutral or inapplicable to the particular facts of the case. *Id.* at 794.

The record here does not support similar conclusions, and we are unable to determine whether the CSM considered the relevant statutory factors in its decision to deviate from the *Hortis/Valento* formula, including whether the determined child-support amount is in the children's best interests. *See Peterka v. Peterka*, 675 N.W.2d 353,

360 (Minn. App. 2004) (stating, in the context of the modification of spousal maintenance, that "the district court is not required to make specific findings on every statutory factor if the findings that were made reflect that the district court adequately considered the relevant statutory factors") (citing *Rosenfeld v. Rosenfeld*, 311 Minn. 76, 83, 249 N.W.2d 168, 171-72 (1976)). We therefore reverse and remand to the CSM for findings.[1]

Reversed and remanded.

[1] We note that in the recent case of *Frank-Bretwisch v. Ryan*, 741 N.W.2d 910 (Minn. App. 2007), where the parties had agreed to set child support below the presumptively appropriate guideline amount, this court stressed the importance of making certain factual findings if the decided upon amount deviated from the guidelines to a degree that the obligation, when set, creates a presumption that it should be modified. We leave for the CSM to determine the propriety of application of this new case law, if any, to the present circumstances.