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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A07-0074

Samantha Jane Gemberling,
Respondent,

vs.

Karl Hampton,
Appellant.

**Filed January 15, 2008
Affirmed; motion denied
Wright, Judge**

Ramsey County District Court
File No. F7-04-50614

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Considered and decided by Willis, Presiding Judge; Hudson, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the child support magistrate's denial of his motion for modification of child support. And respondent moves to strike portions of appellant's reply brief. We affirm the denial of the modification motion and deny respondent's motion to strike.

FACTS

S.M.G. was born to respondent Samantha Gemberling in November 2003. Following a January 2005 hearing, appellant Karl Hampton was adjudicated the father. Hampton failed to appear at the paternity adjudication, and he failed to respond to discovery requests regarding his income. Therefore, to calculate his child-support obligations, the child support magistrate (CSM) used income information obtained through a Freedom of Information Act request. The CSM ordered Hampton, a high-ranking civil servant in the Foreign Agricultural Service of the United States Department of Agriculture (USDA), to pay monthly child support of \$1,138.69, along with \$206.74 for child care and \$115.66 for health care. The CSM also awarded \$17,787.57 in past support.

Hampton subsequently moved to reopen the order and to modify his child-support obligations. Based in part on Hampton's failure to provide "clear, unblurred copies of his pay statements," the CSM denied both motions. The CSM also awarded conduct-based attorney fees to Gemberling, finding that Hampton "opted to circumvent [the] appeal

process by filing a motion to vacate without any legal basis for that motion.” Hampton sought, and was denied, reconsideration.

In May 2006, Hampton again sought modification of his child-support obligations. Following a hearing, the CSM found that Hampton had been on paid administrative leave from January 2005 to April 2006 and was receiving unemployment compensation at the time of the hearing. In its July 2006 order, the CSM found that Hampton had been “somewhat evasive in addressing possible resources to meet his monthly expenses” but temporarily modified Hampton’s child-support obligations pending a full hearing. Hampton’s monthly child-support and child-care obligations were reduced to \$368 and \$175, respectively, and his health-care obligation was suspended. After Gemberling alleged that Hampton failed to disclose income from an import business, both parties were ordered to verify current employment, income, and insurance expenses, and to submit 2005 tax returns for the hearing. Hampton also was ordered to verify his support obligations for two other children, that such obligations were being paid, and the status of the review of his grievance with the USDA.

At the hearing on October 27, 2006, Hampton failed to appear, although he was granted leave to appear by telephone. Hampton’s counsel submitted printouts of job listings for which Hampton purportedly had applied, four carbon copies of checks purported to be support payments for Hampton’s other children, and an incomplete copy of Hampton’s 2005 tax return. Although the tax return indicated that schedules relating to Hampton’s business, farm, and partnership or subchapter S income were attached, these schedules were not included in Hampton’s submission. The CSM found that

Hampton's history of being "somewhat evasive in addressing possible resources to meet his monthly expenses" continues. Concluding that Hampton failed to meet his burden of proof, the CSM denied Hampton's modification motion. Accordingly, Hampton's support obligations returned to their original levels, retroactive to June 2006.

This appeal followed. After briefing was completed, Gemberling moved to strike all or portions of Hampton's reply brief.

DECISION

I.

Hampton directly appeals the decision of the CSM without having sought review by the district court. Minn. R. Gen. Pract. 378.01. On appeal from a final order by a CSM, our review is limited to determining whether the evidence supports the findings of fact and whether the findings support the conclusions of law and judgment. *County of Anoka ex rel. Hassan v. Roba*, 690 N.W.2d 322, 324 (Minn. App. 2004).¹ In conducting this limited review, we view the record in the light most favorable to the CSM's findings and defer to the CSM's credibility determinations. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (establishing standard for reviewing district court); *see also Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002) (establishing standard of review for CSM's decision is the same as for district court's decision). The decision to accept or reject evidence of an obligor's income rests within the CSM's sound discretion. *See Nelson v. Nelson*, 291 Minn. 496, 497, 189 N.W.2d 413, 415 (1971)

¹ The parties do not argue, and we do not address, what impact, if any, the Minnesota Supreme Court's discussion of the scope of review in *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 644 N.W.2d 303 (Minn. 2003), might have in this case.

(evidentiary weight and witness credibility are province of fact-finder). We will reverse a CSM's order regarding child-support modification only if we conclude that the decision was an abuse of discretion. *Ludwigson*, 642 N.W.2d at 445.

The terms of a child-support obligation may be modified upon a showing that a party's earnings or needs have substantially increased or decreased such that the child-support obligation has become unreasonable and unfair. Minn. Stat. § 518.64, subd. 2(a)(1), (2) (2004); *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 475 (Minn. App. 2004). "The moving party has the burden of proof in support-modification proceedings." *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002).

Hampton argues that the evidence does not support the CSM's conclusion that Hampton failed to meet his burden of proof regarding a change in his income. But as the CSM found and the record demonstrates, Hampton provided incomplete information and his tax returns omitted pertinent schedules regarding his income. Hampton also failed to comply with the order to include verification of several unsubstantiated claims regarding the review of his employment by the grievance board, his current support obligations for other children, and his compliance with them.

Hampton maintains that Gemberling's allegations that he may have other sources of income are irrelevant because this type of investment income is not used to calculate child support. This contention is without merit. The CSM is required to consider "all earnings, income, and resources of the parents" when setting or modifying a parent's child-support obligations. Minn. Stat. § 518.551, subd. 5(c)(1) (2004). At an earlier stage of the proceedings, Hampton submitted evidence that he developed an agricultural

manufacturing business with the assistance of a federal grant. Although he claims that the business has not been financially successful, he failed to provide verification that he has not received income from this business pursuit. Indeed, the tax returns that he submitted omitted the schedules that are probative of his claims. Hampton cannot successfully challenge the failure to obtain a favorable ruling when the failure to do so is attributable in part to his failure to provide evidence that would permit the district court to fully address the modification motion. *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

Hampton also argues that he demonstrated a substantial decrease in income because the July order lowered his monthly child support by at least 20 percent and at least \$50. To advance this argument, Hampton relies on the rebuttable presumption established by Minn. Stat. § 518.64, subd. 2(b), which provides:

It is presumed that there has been a substantial change in circumstances under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if:

(1) the application of the child support guidelines in section 518.551, subdivision 5, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$50 per month higher or lower than the current support order[.]

Minn. Stat. § 518.64, subd. 2(b) (2004). Hampton contends that, based on the July temporary order, he is presumed to have a substantial change in circumstances justifying modification of his child-support obligation. This argument fails because the temporary nature of the July order was premised on the record's lack of clarity as to the "current circumstances of the parties." Hampton was ordered to provide information to permit the

CSM to determine the merits of Hampton's modification motion. The July order reserved ruling on Hampton's modification motion and ordered all issues to be subject to de novo consideration at the subsequent hearing.

In the July order, the CSM did not find that Hampton's income had substantially decreased. Hampton had only proved that he no longer received a salary from the USDA. Whether he had other income of equal or greater value was reserved for the October 2006 hearing. And as a temporary order, the July order did not "prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding." Minn. Stat. § 518.131, subd. 9(a) (2006).

Finally, Hampton challenges the finding that he was "evasive" in addressing possible resources to meet his monthly expenses. But the record includes ample support for this finding of fact. Because Hampton failed to provide a complete record of his income and financial obligations as ordered, the CSM did not abuse her discretion by concluding that Hampton failed to demonstrate a substantial change in circumstances rendering the child support unreasonable and unfair.

II.

Following Hampton's submission of his reply brief on appeal, Gemberling moved to strike all or portions of the reply brief on the grounds that it raises new issues and is not responsive to respondent's brief. An appellant shall not raise issues for the first time on appeal in a reply brief. "The reply brief must be confined to new matter[s] raised in the brief of the respondent." Minn. R. Civ. App. P. 128.02, subd. 3. An appellant's failure to comply with this rule warrants our striking those arguments in the reply brief

that have not been raised in the main brief or the respondent's brief. *Berg v. State*, 557 N.W.2d 593, 596 (Minn. App. 1996). After careful review, however, we deny Gemberling's motion to strike because Hampton's reply brief does not raise new issues on appeal.

Affirmed; motion denied.