STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0793

Carlene Yvonne Nistler, petitioner,
Respondent,

vs.

Terrance Roger Nistler, II,
Appellant.

Filed April 1, 2008
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27FA000263722

Robert L. Weiner, Robert L. Weiner & Associates, Suite 500, 701 Fourth Avenue South, Minneapolis, MN 55415 (for respondent)

Carole M. Megarry, Suite 2000, 220 Sixth Street South, Minneapolis, MN 55402 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Peterson, Judge.

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

STONEBURNER, Judge

Appellant father challenges the denial of his motion to reduce his child-support obligation and arrears, arguing that he was denied due process of law at the hearing and the child-support magistrate (CSM) abused her discretion by (1) finding that having the

child live in his home had not satisfied his support obligation and (2) in denying his motion to reduce his ongoing support obligation. We affirm.

FACTS

Appellant Terrance Roger Nistler, II (father) and respondent Carlene Yvonne Lee, f/k/a Carlene Yvonne Nistler (mother), stipulated at the time of their dissolution in 2001 that they would have joint legal and physical custody of their minor child. The parenting schedule they agreed to provides for the child to spend alternate weeks with each parent. The dissolution decree provides that father would pay child support in the amount of $700 per month. The decree contains stipulated findings that father's net monthly income was $4,800, his monthly expenses were $4,100, mother's net monthly income was $3,100, and her monthly expenses were $3,800.[1]

After the decree was entered, father moved to Texas and the parties informally modified the parenting schedule by having their daughter alternate spending the school year and summer vacation with each parent. Father has never paid any child support, and his current arrears exceed $43,000.

In December 2006, father sought modification of his child-support obligation after he learned that mother was seeking judgment on the arrears. He submitted his motion and supporting affidavit on forms provided by the district court, and he attached some school records for the minor child. Father participated in the hearing on his modification

[1] Although the Marital Termination Agreement (MTA) and decree refer to the child-support guidelines, there is no explanation in either document of how the child-support amount was determined other than the statement in the MTA that the parties are sharing custody and father is "willing to pay" $700 per month.

motion by telephone. At the time of the hearing in January 2007, father had not received mother's responsive pleadings (also submitted on court-approved forms) or her exhibits. At the hearing, the CSM received mother's pleadings and exhibits. The exhibits consisted of a purported resume for father, evidence of father's master electrician's license, the child's school records, documents relating to father's electric company and its predecessor, documentation of ownership of the house father lives in, and an e-mail from father's first wife describing her experience with father and child support. Mother asserted that father is voluntarily underemployed. She testified that father told her that he owns the house he lives in. Father testified that the predecessor to his company owns the house that he lives in, and his mother holds the mortgage. The CSM learned only at the conclusion of the hearing that father had not received any of mother's pleadings or exhibits. The CSM made arrangements for the documents to be faxed to father from the CSM's office at the conclusion of the hearing.

Father argued that his income decreased substantially after he was laid off from his job approximately six months after entry of the dissolution decree. He testified that he was unemployed for three years. He retrained as a licensed master electrician and now owns and operates an electrical business formerly owned by his stepfather. He testified that he has earned less than $10,000 in each year since he was laid off. Father did not submit any documentation of his income but testified that his total income for 2006 was $17,447, including a $106 per month veteran's-disability payment. He testified that he owes his mother approximately $17,000. Father testified that he thought that because mother had not previously sought to collect child support he "just on good faith trusted

her that everything was even." He testified that he and mother had agreed that he would not have to pay child support because he had custody for a "majority" of the time.[2]

Father did not ask for a continuance or for an opportunity to submit additional evidence. The CSM found that despite the change in the parenting schedule, the time the child spends with each parent remains approximately equal so that there is no basis for a modification of child support based on the parenting schedule. The CSM found that there was no evidence that mother had agreed to suspend child support or forego collection of arrears. The CSM concluded that father failed to establish that he was entitled to a modification of support or arrears because he failed to show that any reduction in his income was not due to voluntary underemployment. This appeal followed.

D E C I S I O N

A CSM has broad discretion in determining child support. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). That discretion is abused when child support is set in a manner that is contrary to logic and the facts in the record. *Id.* A modification of child support requires a showing that a substantial change in circumstances makes the terms of the existing child support order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (Supp. 2007).[3] The moving party has the burden of proving a substantial change in

[2] Despite his reference to having the child a "majority" of the time, father agreed at the hearing that the change in the parenting schedule did not change the parties' original agreement to share parenting time 50/50.

[3] In 2005 and 2006, the legislature modified the child-support statutes, replacing the child-support-guidelines system with an income-shares system. See 2006 Minn. Laws ch. 280, §§ 1-47; 2005 Minn. Laws ch. 164, §§ 4-32. The amendments were effective January 1, 2007 and apply to all support orders in effect before January 1, 2007, except that the provisions used to calculate child support apply to actions or motions filed after

circumstances. *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987). "If the moving party shows such a change in circumstances, the court must then consider statutory factors to determine whether the change has made the order unreasonable and unfair." *Witeli v. Witeli*, 392 N.W.2d 756, 758 (Minn. App. 1986).

I. Due process

Father asserts that the CSM denied his right to due process of law by failing in her legal obligation to be impartial, provide a meaningful hearing, and receive appropriate evidence. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Brooks v. Comm'r of Pub. Safety*, 584 N.W.2d 15, 19 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Nov. 24, 1998). We first note that there is no evidence in the record to support father's assertion that the CSM was not impartial, and that claim is without merit. And the record demonstrates that father was afforded the *opportunity* to be heard, although he failed to fully take advantage of that opportunity.

January 1, 2007. 2006 Minn. Laws ch. 280, § 44. Some aspects of the income-shares child-support system were amended again in 2007. Here, father filed his motion to modify child support on December 29, 2006. Generally, appellate courts apply the law in effect at the time they make their decision, but they will not do so if doing so will alter vested rights or result in manifest injustice. *Interstate Power Co. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000); *McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986). Unless otherwise noted, the current statutes cited in this opinion do not reflect a substantive change in the law and their use will not alter the parties' vested rights or result in a manifest injustice. Therefore, this opinion refers to the current versions of the statutes.

Absent erroneous interpretation of the law, the question of whether to admit or exclude evidence is within the district court's discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997).

> On appeal, a party cannot complain about a district court's failure to rule in [his] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.

Eisenschenk v. Eisenschenk, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003); *see also Taflin v. Taflin*, 366 N.W.2d 315, 319 (Minn. App. 1985) (holding that district court did not abuse its discretion in declining to modify child support when father provided only two incomplete tax returns as evidence of his income).

In order for a court to determine child-support, a parent must provide income information, which must

> include relevant supporting documentation necessary to calculate the parental income for child support . . . including, but not limited to, pay stubs for the most recent three months, employer statements, or statements of receipts and expenses if self-employed. Documentation of earnings and income also include relevant copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification.

Minn. Stat. § 518A.28(a) (Supp. 2007).[4] Despite the clear mandate of the statute, father failed to provide any documentation of income with his moving papers.

Father argues that at the time of the hearing, the CSM should have sua sponte granted a continuance to allow him to submit documentation, especially in light of his assertion that he could obtain such documentation. A CSM has discretion to continue a hearing upon a showing of good cause. Minn. R. Gen. Pract. 364.05. A CSM also has the discretion to "leave the record open and request or permit submission of additional documentation." Minn. R. Gen. Pract. 364.14. But father had the initial burden of proof. And "[p]ro se litigants are generally held to the same standards as attorneys." *Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1987). While the courts may provide some latitude to pro se litigants, bending of all rules and requirements or disruption of trial schedules is not permitted. *Liptak v. State ex rel. City of New Hope*, 340 N.W.2d 366, 367 (Minn. App. 1983).

[4] "Parental income for child support" (PICS) is a term of art created in the new income-shares child-support statues and it alters the scope of the funds based upon which a support obligation is based. See 2006 Minn. Laws ch. 280 § 21 (amending definition of PICS enacted at 2005 Minn. Laws ch. 164, § 5); compare Minn. Stat. § 518A.26, subd. 15, (2006) (defining PICS under income-shares child-support statutes) with Minn. Stat. § 518.551, subd. 5(b) (2004) (defining net monthly income for child support purposes under child-support-guidelines statutes). Here, however, the critical question is not the scope of the funds based upon which a support obligation is to be based, but the requirement for documentation of the income upon which a support obligation is to be based. And the documentation requirement in the current statute is substantially similar to that in the prior statute. Compare Minn. Stat. § 518A.28(a) (Supp. 2007) (reciting current documentation requirement) with Minn. Stat. § 518.551, subd. 5b(a) (2004) (reciting prior documentation requirement). Therefore, this opinion refers to the current statute despite the current statute's reference to PICS.

In this case, the CSM asked father if he kept business records. Father responded that he does and that the records are "at the accountant, and I can provide the copy that will be filed with my taxes in about two weeks." When the CSM asked how he meets the expenses claimed in his affidavit ($2,365 per month), father stated that he owes his mother "lots of money. And she's willing to put that in an affidavit [if] necessary." The CSM said: "Well, today is the day of the hearing. We're not having another hearing on this, *unless you are asking for a continuance.* I mean, this is when I get to see your evidence." (Emphasis added). The CSM's comments communicated to father his ability to seek a continuance but father responded: "Right. No, I'm—that is—I—at this time I owe my mom approximately $17,000."

Later in the hearing, the CSM questioned father about why he had not previously sought modification of his support obligation and remarked on the lack of any evidence of his income for any of the years for which he was seeking a reduction. Father responded that he only realized in November 2006 that mother was seeking to collect child support, and when he contacted the child-support office, he was told that he only had until December 31 to seek a modification of child support. Father testified that he "filed it right away," but did not have any time to prepare because "all of this was sprung on me all of a sudden."

It is troubling that the CSM did not more clearly communicate to father that he could ask for a continuance or offer to hold the record open as permitted by procedural rules. But father failed to object to the fact that he had not received mother's documents, failed to request a continuance, and failed to ask that the record be held open even after

he received mother's documents. We cannot say that the CSM abused her discretion by failing to sua sponte grant relief that father did not request.

The CSM's decision was primarily based on father's failure to show that any reduction in his income "is not a voluntary underemployment," a finding not challenged by father on appeal. Father did not testify that he had attempted to find work in the field in which he had, at the time of the dissolution, earned more than $96,000 per year, and he did not testify about why he decided to leave that field to pursue work as an electrician. Mother's exhibits did not address the issue of underemployment, and documentation of father's reduced income is not relevant to the issue of voluntary underemployment. Therefore, even if the failure to allow father to submit additional documents was an abuse of discretion, any error was harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Based on the record, we conclude that the CSM did not deny father his right to due process and did not abuse her discretion in concluding that he had failed to establish that he is entitled to a reduction in his child-support obligation.

II. Denial of modification of arrears

Father argues that the CSM abused her discretion by declining to find that his support obligation was partially satisfied by providing a residence for the child. A CSM has discretion in determining whether providing a residence to a child satisfies a parent's support obligation:

> The court may conclude that an obligor has satisfied a child support obligation by providing a home, care and support for the child while the child is living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee.

Minn. Stat. § 518A.38, subd. 3 (2006). Relieving a parent of a support obligation in such a case is not a retroactive modification of the support obligation, but recognition that the parent has satisfied the support obligation. *Karypis v. Karypis*, 458 N.W.2d 129, 131 (Minn. App. 1990), *review denied* (Minn. Sept. 14, 1990), *superseded by statute*, 1991 Minn. Laws ch. 266, § 3 at 1196 (now codified at Minn. Stat. § 518A.38, subd. 3 (2006)).

But in this case, father agreed that the change in the parenting schedule from alternate weeks to alternate school years did not affect the original agreement of the parties to share parenting time equally. The CSM did not abuse her discretion by concluding that the change in the schedule did not support a change in the agreed-on child-support obligation.

Affirmed.