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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0222

In re the Marriage of:
Rosemary Catherine Sawyer, petitioner,
Respondent,

vs.

James Abbott Sawyer,
Appellant.

Filed September 22, 2009
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-F4-87-023798

Rosemary Catherine Sawyer, n/k/a Rosemary Catherine Hildebrandt, 3433 77th Avenue North, Brooklyn Park, MN 55433 (pro se respondent)

Susan Gaertner, Ramsey County Attorney, Anne Jolliffe, Autumn Tompkins, Assistant County Attorneys, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for Ramsey County Child Support and Collections)

Robert J. Hajek, Donald L. Beauclaire, Hajek, Meyer & Beauclaire, PLLC, 3433 Broadway Street Northeast, Suite 110, Minneapolis, MN 55413 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Larkin, Judge.

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

HALBROOKS, Judge

In this dispute over child-support arrears, appellant argues that two child-support magistrates erred by denying his requests for a continuance and that one of the child-support magistrates erred by dismissing, for failure to state a claim, appellant's motion to vacate a 2001 judgment. We affirm.

FACTS

Appellant James Abbott Sawyer and pro se respondent Rosemary Catherine Sawyer were married in 1979. Respondent petitioned for dissolution of the marriage in 1987. Under the January 20, 1989 stipulated dissolution judgment and decree, appellant was to pay child support of $1,000 per month for the parties' two sons. In June 1989, appellant moved to California, where he continues to reside.

In February 2001, the district court issued an order that, among other things, determined that respondent was entitled to judgment against appellant for $89,582.15 in child-support arrears "unless, within sixty (60) days from the date of this Order, the parties agree that a different amount is owing, or [appellant] proceeds before this Court by Notice of Motion and Motion within that sixty (60) day period." The parties came to no agreement within the 60-day period, nor did appellant move the district court within the 60-day period. Judgment was entered on April 16, 2001. Appellant did not appeal from the entry of judgment.

Six years later, in May 2007, appellant moved for a determination that he owed no arrears to respondent so that the state of California would terminate proceedings against

him to collect the 2001 Minnesota judgment. Appellant claimed to have overpaid respondent "at least $15,641.49" from January 1991 through May 2002.

On June 12, 2007, the first child-support magistrate (CSM) issued an order rescheduling the matter—at appellant's request—for a hearing on July 19 to provide time for appellant's exhibits to be served on all parties and to be filed with the court.

On July 11, appellant's attorney requested that the July 19 hearing be rescheduled in August. Appellant's attorney's letter to the CSM stated that appellant had "been unable to review the County's paperwork and put together a response in time for the [July 19] hearing." The CSM granted this second request for a continuance and rescheduled the hearing for August 17.

On August 1, appellant's attorney requested that the August 17 hearing be rescheduled because of his vacation plans. The CSM granted this third request for a continuance and rescheduled the hearing for October 2.

On September 21, the assistant county attorney wrote a letter to the CSM stating that the county had not been contacted regarding the continuances. The assistant county attorney requested that no further continuances be granted to appellant unless and until the county and respondent had the opportunity to be heard. Copies of this letter were sent to respondent and appellant's counsel.

On October 1, 2007, appellant's attorney sent two letters to the CSM. One letter requested that the CSM "simply strike" the upcoming hearing because appellant had been unable to reconcile his own financial records with those of the county. The other letter

stated: "After speaking to [the assistant county attorney] today, [appellant] is hereby withdrawing his Motion and therefore, the hearing should be stricken."

One year later, on October 16, 2008, appellant again moved for a determination that he owed no arrears to respondent. Appellant claimed to have overpaid respondent by "at least $38,518.87," from October 1987[1] through August 2008.

A hearing was scheduled for Tuesday, November 4, 2008. On Friday, October 31, appellant's attorney faxed a letter to the CSM requesting a continuance to November 11.[2] The letter stated, in relevant part:

> All parties to the above-captioned matter, along with [the assistant county attorney], Ramsey County Child Support, and Anne Jones, Ramsey County Attorney, have stipulated to a continuance of the hearing to November 11th . . . .
>
> This change is necessitated by an out-of-state conflict for me, as well as the need for additional hearing time . . . .

On Saturday, November 1, the CSM denied the request because "[t]he underlying stipulation with Ramsey County was not provided (county attorney listed is no longer with the RCAO), and there is nothing to indicate that [respondent] has consented to rescheduling."

The hearing took place as scheduled on November 4, before a different CSM than the one who had denied the continuance request on November 1. Respondent, child-

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[1] In November 1987, appellant was ordered to pay temporary child support pending the dissolution trial. The parties reached an agreement in December 1988, so no trial took place.

[2] The proposed order submitted by appellant's counsel would have rescheduled the hearing for November 12.

support officer Anne Jones, and assistant county attorney Anne Jolliffe appeared. Donald Beauclaire, appellant's attorney's associate, appeared on behalf of appellant, who was not present. Beauclaire stated that he was appearing at appellant's counsel's request to ask for a continuance because appellant and his attorney were "out of state" and "unavailable."[3] The second CSM denied the request for a continuance.

Beauclaire then requested that appellant's motion be dismissed without prejudice. Jolliffe argued for dismissal with prejudice. The CSM decided to continue the hearing to November 25. In her November 4, 2008 order, the CSM stated that the upcoming hearing would be limited to four issues: (1) whether the dismissal of appellant's motion would be with or without prejudice; (2) what terms and conditions should be imposed on the dismissal; (3) whether sanctions should be imposed; and (4) whether appellant should pay costs and attorney fees.

The order also clarified why the first CSM had denied the October 31, 2008 request for a continuance: "Because the request did not indicate that [respondent] had been contacted, and because Anne Jones is a Child Support Officer, and because Tracy Olson, who was an Assistant County Attorney, has not worked for that office for months, the request was denied."

Respondent, Jones, Jolliffe, and Beauclaire appeared for the November 25, 2008 hearing. Appellant and appellant's counsel did not appear. Because the county

[3] Appellant's attorney stated in a November 18, 2008 affidavit that he was "scheduled to be out of state" on November 4. Appellant stated in a November 21, 2008 affidavit that he planned to fly to Minnesota on October 31 and was delayed on his way to the airport. Appellant also stated that he could have reached Minnesota for the November 4 hearing, but he assumed that the hearing would be rescheduled.

attorney's office had decided not to seek sanctions, the sole issue at the hearing was whether the dismissal should be with or without prejudice.[4] After making the point that the current action was delaying the California enforcement action against appellant, the CSM turned to the merits of appellant's motion and why it should not be dismissed with prejudice:

THE CSM:	Your request is that I determine that there . . . are no arrears owed. Is that based on payments that your client alleges he has made since the judgment or is that based on an allegation that the judgment was an error?
BEAUCLAIRE:	I believe it's an allegation that the judgment was an error, that it's primarily for payments made prior to that date. That is the position.
THE CSM:	. . . . Where do you have any likelihood of prevailing on the motion? This isn't; I'm not, I can't undo a judgment.
BEAUCLAIRE:	If the—
THE CSM:	So . . . Let's say I give you a hearing. Let's say you present every piece of information you've got and let's say every piece of information that you present is credible. What do I do with this judgment? This isn't a motion to reopen a judgment, couldn't be a motion to reopen a judgment, [because] wasn't it the district court that granted the judgment?
RESPONDENT:	Mmm hmm.
THE CSM:	Was it a district court judgment?
JOLLIFFE:	Yes.
THE CSM:	Not an expedited child support process?
JOLLIFFE:	No.
RESPONDENT:	Right.

[4] Jolliffe indicated that this decision was made because "if the county asks for sanctions or monetary awards from [appellant] it takes it out and away from what money might be available" to satisfy the judgment.

THE CSM: So I can't do anything. So why in the world would I let you go; come and do this again?

On December 9, 2008, the CSM issued an order stating that "prior to resolution of the issue of whether [appellant] should be allowed to dismiss his motion, the issue of whether [appellant]'s motion states a claim upon which relief can be granted shall be determined." Appellant and the county were ordered to serve and file memoranda "on the issue of whether this Court can determine the amount of arrears owed when those arrears have already been reduced to judgment." Respondent was given the option to serve and file a memorandum.

On January 5, 2009, the CSM issued an order (1) dismissing appellant's motion to determine arrears which accrued through January 31, 2001, for failure to state a claim for which relief can be granted and (2) dismissing appellant's motion to determine arrears which accrued after January 31, 2001, without prejudice but with conditions upon refiling.[5] The CSM set forth its reasoning regarding the pre-2001 arrears:

> 11. . . . [T]here was a judgment entered in this matter determining arrears as of January 31, 2001.
>
> . . . .
>
> 13. A judgment is a final determination of an issue. In this case, it is a final determination of the amounts owed by [appellant] for child support through January 31, 2001. The judgment was necessarily a determination of both amounts owed and amounts paid as of that date.

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[5] The conditions were that the motion must be served and filed within 30 days of the order and that appellant must deposit $10,000 with the Office of Child Support as a payment toward arrears to be held pending resolution of the motion. Appellant does not challenge these conditions.

> 14. [Appellant]'s motion, *inter alia,* seeks to redo the calculation of the amounts he owed and the amounts he paid through January 31, 2001.
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> 15. Since those issues were necessarily decided by the judgment authorized by the order dated February 13, 2001, any request that the Court determine the amount owed and the amount paid through January 31, 2001 is necessarily an attack on the judgment and is foreclosed by the judgment.
>
> 16. [Appellant]'s motion is most properly characterized as a motion to vacate a judgment.
>
> . . . .
>
> 19. . . . [T]here is absolutely no jurisdiction [in the Expedited Child Support Process] to hear a motion to vacate a judgment entered in the District Court.
>
> 20. This Court is not at liberty to treat [appellant]'s motion as a motion to vacate a judgment in order to proceed to a hearing on the merits.
>
> 21. [Appellant]'s motion to determine arrears through January 31, 2001 fails to state a claim upon which relief can be granted.

This appeal follows.

D E C I S I O N

I.

Appellant argues that the first CSM should have granted his October 31, 2008 request for a continuance because the request was made in good faith. We disagree.

On appeal from a CSM's ruling, the standard of review is the same as it would be if the decision had been made by a district court. *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 712 (Minn. App. 2000). The decision to grant a continuance is "within the sound

discretion of the district court, and its decision will not be reversed unless it has abused its discretion." *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Minn. R. Gen. Pract. 364.05 governs the continuance of an Expedited Child Support Process hearing:

> Upon agreement of the parties or a showing of good cause, the child support magistrate *may* grant a request for continuance of a hearing. . . . Unless time does not permit, a request for continuance shall be made in writing, and shall be filed with the court and served upon all parties at least five (5) days before the hearing. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

(Emphasis added.) The advisory committee comment to this rule states that

> a continuance *may* be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received prior to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.

Minn. R. Gen. Pract. 364.05 advisory comm. cmt. (emphasis added).

We conclude that the CSM acted well within his discretion by denying the October 31, 2008 continuance request. The CSM had sufficient grounds to suspect that the parties had not agreed to a continuance: (1) no stipulation was submitted; (2) appellant listed an attorney who had not worked for the county attorney's office for six months as being the child-support officer assigned to this case; (3) appellant erroneously referred to the actual child-support officer as being the "Ramsey County Attorney"; and (4) there was no evidence that respondent had consented to the rescheduling, other than appellant's vague statement that "all parties . . . have stipulated to a continuance." But even if all parties had agreed to a continuance, the CSM would not have been required to reschedule the hearing in light of appellant's dilatory tactics,[6] which were apparently motivated by his desire to forestall California enforcement proceedings against him.

Appellant also appears to contend that Beauclaire's request for a continuance at the November 4, 2008 hearing was improperly denied. Appellant argues that once the errors in his October 31 request were clarified, the second CSM should have granted the request for a continuance at the hearing. We disagree. The CSM was not required to reschedule the hearing in light of appellant's pattern of delay and the fact that no party consented to the request for a continuance made at the November 4 hearing.

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[6] Appellant requested and received three continuances for the hearing on his May 2007 motion, withdrew the motion in October 2007, waited a year, refiled the motion in October 2008, and then requested a continuance on October 31, 2008.

II.

Appellant challenges the portion of the second CSM's order that dismissed part of his motion with prejudice. Specifically, appellant assigns error to the CSM's determination that he had failed to state a claim for which relief could be granted on the ground that his motion, as it relates to arrears that he claims to have paid before January 31, 2001, was not an attempt to vacate the 2001 judgment or reopen the 1989 dissolution judgment and decree. We disagree.

This court reviews a CSM's decision to dismiss a claim with prejudice under an abuse-of-discretion standard. *Brazinsky*, 610 N.W.2d at 712. Appellant's characterization of his motion is incorrect. The 2001 judgment was a final determination of the arrears that he owed respondent at that point. His assertion that he paid respondent certain monies *before* the 2001 judgment is contrary to the final determination of the district court that appellant owed respondent $89,582.15. His motion is an attempt to relitigate an issue that was resolved eight years ago by the district court. (Any monies paid by appellant *after* the 2001 judgment are not at issue on this appeal because appellant does not challenge the CSM's order as it relates to the post-2001 arrears.) The district court was correct in characterizing appellant's motion as one to vacate the 2001 judgment. *See* Minn. R. Civ. P. 60.02.

Appellant's motion could also be characterized as an attempt to reopen a dissolution judgment and decree under Minn. Stat. § 518.145 (2008). But appellant was precluded from bringing either type of motion in the context of the Expedited Child Support Process: "Except for motions to correct clerical mistakes, motions for review, or

motions alleging fraud, *all other motions for post-decision relief are precluded, including those under Minn. R. Civ. P. 59 and 60 and Minn. Stat. § 518.145* . . . ." Minn. R. Gen. Pract. 377.01 (emphasis added). The second CSM therefore did not abuse her discretion when she dismissed appellant's motion with prejudice based on failure to state a claim for which relief could be granted.

Affirmed.