STATE OF MINNESOTA
IN COURT OF APPEALS
A09-706

Itasca County Health & Human Services,
Respondent,

Tiffani S. Apel,
Appellant,

vs.

Dustin Michael Nelson,
Respondent.

Filed December 22, 2009
Reversed and remanded
Larkin, Judge

Itasca County District Court
File No. 31-F8-97-000338

John J. Muhar, Itasca County Attorney, Heidi M. Chandler, Assistant County Attorney, County Health & Human Services, 123 Northeast Fourth Street, Grand Rapids, MN 55744 (for respondent)

Gregg Bilz, Bilz Law Office, 71 South Drive, Suite 13, Babbitt, MN 55706 (for appellant)

Dustin M. Nelson (pro se respondent)

Considered and decided by Schellhas, Presiding Judge; Minge, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant-mother challenges a child support magistrate's order denying the county's motion to increase respondent-father's basic child-support obligation and requiring appellant-mother to provide medical support. Because the child support magistrate erred by applying the parenting-expense adjustment in the absence of a court order awarding parenting time and by ordering appellant-mother to contribute to the cost of the child's health-care coverage when the child is covered by respondent-father's dependent-health-care policy at no additional cost to respondent-father, we reverse and remand.

FACTS

Appellant Tiffani Apel (mother) and respondent Dustin Nelson (father) are the parents of J.M.N. (the child), born May 12, 1996. Mother has physical custody of the child. There is no court order awarding father parenting time, but father exercises parenting time on alternating weekends pursuant to an informal agreement.

A June 30, 2000 order required father to pay $255 per month in child support ($230 in basic support and $25 in medical support). Father's basic child-support obligation later increased to $280 per month due to cost-of-living adjustments. Respondent Itasca County Health and Human Services (the county) moved to increase father's basic child-support obligation to $395 per month and to require mother to contribute $41 per month in medical support. At the time of the motion hearing, the child was insured under a dependent-health-care policy through father's employer. The

premium cost to father for the dependent coverage is $150 per month, regardless of the number of insured dependents.

A child support magistrate (CSM) denied the motion to increase father's basic child-support obligation but granted the motion to require mother to contribute to the cost of the child's health-care coverage. The CSM found that (1) father's presumptive guidelines basic-support obligation is $321 per month after application of the parenting-expense adjustment and that this amount is not $75 and 20% greater than his current support obligation[1] and (2) mother's proportionate share of the cost of health-care coverage for the child is $68 per month. The CSM ordered father to continue to pay $280 in basic child support per month and ordered mother to pay $68 in medical support per month. The CSM also ordered father to maintain medical and dental insurance for the child as currently available through his employer.

Mother moved for review of the order. Neither the county nor father responded to the motion. The CSM denied the motion, and mother appeals.

D E C I S I O N

"The district court enjoys broad discretion in ordering modifications to child support orders." *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). We will reverse an order regarding child support only if we are convinced that the district court abused its broad discretion by making "a clearly erroneous conclusion that is against the logic and the facts on the record." *Id.* (quotation omitted). But the district court's discretion must

[1] This is the threshold for establishing a presumed substantial change in circumstances under Minn. Stat. § 518A.39, subd. 2(b)(1) (2008).

be exercised within the limits set by the legislature. *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986). "[W]hen reviewing a child support magistrate's order in an expedited child support process proceeding, we will apply the same standard of review that we would apply to the order if it had been issued by a district court judge in a proceeding conducted outside the expedited child support process." *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000).

Mother claims that the CSM erred by applying a parenting-expense adjustment to calculate father's basic child-support obligation in the absence of a court order awarding father parenting time. Mother also claims that the CSM erred by ordering her to contribute to the premium cost of the child's health-care coverage when the child is insured under father's dependent-health-care policy at no additional cost to father. We address each claim in turn.

I.

The terms of a child-support order may be modified upon a showing of a substantial change in circumstances. Minn. Stat. § 518A.39, subd. 2. The CSM denied the county's motion to increase father's basic child-support obligation based on its determination that father's presumptive obligation after application of the parenting-expense adjustment would be $321 per month, which is less than the $75 and 20% increase that would result in a rebuttable presumption of changed circumstances under statute. *See* Minn. Stat. § 518A.39, subd. 2(b)(1) (providing that it is presumed that there has been a substantial change in circumstances and rebuttably presumed that the change renders the existing child-support order unreasonable and unfair when "the application of

the child support guidelines in section 518A.35, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least $75 per month higher or lower than the current support order").

An obligor is entitled to a 12% reduction in his or her presumptive child-support obligation if the obligor's percentage of court-ordered parenting time is between 10 and 45%. Minn. Stat. § 518A.36, subd. 2(1) (2008). However, "[i]f there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment." *Id.*, subd. 1(b) (2008). The CSM found that father "has parenting time with the child by informal arrangement on alternating weekends." The record shows that there is not a court order awarding father parenting time. Consideration of the parenting-expense adjustment was therefore not permitted. *See id.* ("If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment.")

Mother and the county argue that without application of the parenting-expense adjustment, father's presumptive obligation would be $365 per month–$85 and 30% higher than father's current obligation–an increase that establishes the statutory presumption of a substantial change of circumstances. Because the CSM erred by applying the parenting-expense adjustment in the absence of a court order awarding parenting time and that error impacted the CSM's conclusion that the county had not established the existence of a substantial change in circumstances, we reverse the CSM's

basic child-support order and remand for further proceedings on the county's motion for modification of child support.

II.

We next consider the CSM's medical-support order. "[T]he court must order that the cost of health care coverage and all unreimbursed and uninsured medical expenses under the health plan be divided between the obligor and obligee based on their proportionate share of the parties' combined monthly PICS." Minn. Stat. § 518A.41, subd. 5(a) (2008). Mother argues that the CSM erred by ordering her to contribute to the premium cost of the child's health-care coverage, citing Minn. Stat. § 518A.41, subd. 5(d), which provides "[i]f the party ordered to carry health care coverage for the joint child already carries dependent health care coverage for other dependents and would incur no additional premium costs to add the joint child to the existing coverage, the court must not order the other party to contribute to the premium costs for coverage of the joint child." The county concedes that mother should not have to contribute to the premium cost of the child's health-care coverage if father's other dependents were already covered by his dependent-health-care policy prior to the addition of the child to the policy.

At the motion hearing in December 2008, father testified that the child was currently covered by his health-insurance policy and that the premium cost "covers the family, whether I have 18 kids or one kid." In response to the CSM's inquiry, father confirmed that "[i]t's all the same" rate. When the CSM asked whether he had just recently put this insurance in place, father responded that he had had this insurance "ever since [he] worked there," but that the child was not previously covered by the policy

because "she had better insurance" elsewhere. During questioning, the CSM referenced information contained in father's financial statement. Father's financial statement indicates that as of June 2008, he carried dependent-health-care coverage through his employer, which covered his dependents[2] and spouse at a cost to father of $150 per month. Mother testified that the child had switched from Minnesota Care to father's policy approximately one month before the hearing.

The CSM found that "[father] provides medical and dental insurance for the child through his employment at a cost of $150 per month" and that mother's proportionate share of the health-care coverage for the child is $68 per month. Given the record evidence, the CSM erred by concluding that mother is responsible for a proportionate share of the cost of the child's health-care coverage. *See* Minn. Stat. § 518A.41, subd. 5(d) (prohibiting an order for contribution to the premium cost of dependent health-care coverage when the coverage includes the parties' joint child at no additional cost); *Moylan*, 384 N.W.2d at 864 (stating that the district court's discretion must be exercised within the limits set out by the legislature).

Because the CSM erred by ordering mother to contribute to the premium cost of the child's health-care coverage when the child is covered by father's dependent-health-

[2] Father testified that the following individuals live in his household: his wife, a child recently born to him and his wife, and his stepdaughter.

care policy at no additional cost, we reverse that portion of the order requiring mother to pay $68 per month in medical support.

Reversed and remanded.

Dated:

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Judge Michelle A. Larkin