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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1446

In re the Marriage of:
Tammy Kay Doetkott, n/k/a Tammy Kay Carlson, petitioner,
Respondent,

vs.

Keith Allen Doetkott,
Appellant,
County of Sibley, intervenor,
Respondent.

Filed March 16, 2010
Affirmed
Stoneburner, Judge

Sibley County District Court
File No. 72F60413

Tammy Kay Doetkott, Arlington, Minnesota (pro se respondent)

Scott R. Timm, Scott R. Timm Law Office, Waconia, Minnesota (for appellant)

David E. Schauer, Sibley County Attorney, Winthrop, Minnesota (for respondent intervenor)

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

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

STONEBURNER, Judge

Appellant father challenges modification of his child-support obligation, arguing that he is entitled to a larger downward deviation than was granted by the child support magistrate (CSM). Appellant also challenges the CSM's credibility determinations and denial of appellant's request to submit additional information. We affirm.

FACTS

The marriage of appellant Keith Allen Doetkott (father) and respondent Tammy Kay Doetkott, n/k/a Tammy Kay Carlson, (mother) was dissolved in November 2004. The parties were granted joint legal and physical custody of their three children, and father was ordered to pay monthly child support in the amount of $143 plus one-half of the children's "essential expenses" as defined in the dissolution judgment. Father was required to maintain medical and dental insurance for the children through his employer, and mother was ordered to pay 44% of the children's insurance premiums. The parties were required to periodically review insurance options for the children to maximize coverage and minimize cost.

In February 2009, respondent-intervenor Sibley County (the county) moved to modify father's child-support obligation, which, due to cost-of-living adjustments, was then $155 per month. The county's motion was supported by the affidavit of a child-support officer. The affidavit included the information that father's monthly household expenses totaled $2,992 and mother's monthly household expenses totaled $2,825.97.

The CSM found that the parties' total monthly household expenses are unknown and that insurance for the children is not available through mother's employment. Based on parenting time and relevant known financial information, the CSM determined that father's support obligation would be $783 per month under the current guidelines. The CSM also determined that, to avoid hardship to father given the "very substantial" time that the children spend with father and the large share of the children's expenses paid by father, a downward deviation from the support guidelines is appropriate. The CSM increased father's obligation to $530 per month.

Father moved for review of the CSM's order, asking that the CSM consider the uncontested information provided by the child-support officer in determining the parties' monthly household expenses. Father also asked the CSM to rely on information provided by the county that insurance for the children is available through mother's employment, despite mother's testimony to the contrary. Father sought a downward deviation to $430 per month, supporting his motion with a modified financial statement and updated insurance-rate information.

The CSM denied father's motion, noting that although the county's household-expense information for the parties had been overlooked, the parties' reasonable expenses remained unknown because the county did not itemize the expenses and the CSM could not evaluate the reasonableness of the totals presented. The CSM declined to consider father's post-hearing financial statement. And the CSM rejected father's challenge to the finding that mother does not have insurance available for the children through her

employment, noting that the finding is supported by mother's testimony. This appeal followed.

D E C I S I O N

The standard of review of a CSM's ruling is the same as it would be if the decision had been made by the district court. *See Brazinsky v. Brazinsky*, 610 N.W.2d 707, 712 (Minn. App. 2000) (applying the standard of review for district court decisions to the decision of a CSM). Whether to modify child support is discretionary with the district court, and a decision to modify child support will be altered on appeal only if the matter was resolved in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986). This court views the record in the light most favorable to the CSM's findings and defers to the CSM's credibility determinations. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (stating that "the appellate court views the record in the light most favorable to the [district] court's findings" and that "appellate courts defer to [district] court credibility determinations"). "If a [district] court's determination with respect to child support has a reasonable and acceptable basis in fact, . . . it must be affirmed." *Strauch v. Strauch*, 401 N.W.2d 444, 447 (Minn. App. 1987).

I. The downward departure granted by the CSM was not an abuse of discretion.

Although father asked the CSM for a downward departure to $430 per month, on appeal he argues that his obligation should be reduced to $44 per month. For purposes of this appeal, we assume that father's new argument regarding the extent of the deviation

from the guideline child-support amount is properly before this court. *But see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, a party may raise neither a new issue nor a new theory on appeal); *Vangsness*, 607 N.W.2d at 478 (citing *Thiele*, 425 N.W.2d at 582). Father argues that he is entitled to such a reduction because he has 45% parenting time, which he contends is only one-tenth of one percent less than the amount of parenting time that would entitle him to such a reduction under the current guidelines.

Minnesota law provides that where an obligor's parenting time is "45.1 percent to 50 percent," parenting time is presumed to be equal, which generally results in no child-support obligation for either parent if the parents' incomes for determining child support are equal. Minn. Stat. § 518A.36, subds. 2–3 (2008). But if parenting time is less than 45.1%, the parenting-expense adjustment is 12%. *Id.* Here, the CSM used a parenting-expense adjustment of 12% to calculate father's support obligation of $783 per month under the guidelines. The CSM exercised discretion by considering father's considerable parenting time and awarding a downward departure from the guideline amount. There is no basis for us to conclude that the CSM abused that discretion by declining to presume equal parenting time.

II. Father was not prejudiced by the CSM's failure to consider expense evidence submitted or to reopen the record.

Father asserts, without citing any authority, that the CSM was required to accept the monthly household-expense totals for the parties submitted by the child-support

officer as evidence of the parties' reasonable monthly expenses. We conclude that the CSM did not err by declining to use the child-support officer's evidence of expenses.

But because the CSM specifically noted that the absence of expense information impeded assessment of the need for deviation from the guidelines, the better course of action would have been for the CSM to have permitted each party to supplement the record with evidence of itemized expenses. Reopening the record would have been preferable particularly because the parties had presented itemized expenses to the county attorney and could have reasonably assumed that the county was submitting expense totals without questioning the reasonableness of itemized expenses, making submission of itemized expenses to the CSM unnecessary.

Nonetheless, in his motion for review, father used the expense totals to "illustrate" the effect that the amount of child support ordered will have on his ability to maintain his current household and provide for the children under the parenting-time arrangement, but was able to argue for a further departure even without consideration of the parties' monthly household expenses by noting how the amount awarded affects each party's disposable income and ability to meet monthly expenses. We conclude that the CSM's failure to reopen the record to permit the parties to submit itemized expenses did not substantially prejudice father and is not reversible error. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that appellant must show both error and prejudice resulting from the error to prevail on appeal).

III. The record is inadequate to permit review of the CSM's determination that mother's testimony about the availability of insurance was credible.

Generally, we defer to the credibility determinations of the fact finder. *See Brazinsky*, 610 N.W.2d at 712 (applying the standard of review for district court decisions to the decision of a CSM); *Vangsness*, 607 N.W.2d at 472 (stating that appellate courts defer to district court credibility determinations). But even if we were disposed to review the CSM's credibility determination, this record is inadequate to permit such review because we have not been provided with a transcript of mother's testimony. *See Custom Farm Servs., Inc. v. Collins*, 306 Minn. 571, 572, 238 N.W.2d 608, 609 (1976) (declining to consider allegation of error in absence of a transcript); *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (stating that error is never presumed on appeal), *review denied* (Minn. Oct. 31, 1997).

Affirmed.