**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-2260**

In re the Marriage of: Wendy Lurleen Engelking,
n/k/a Wendy Lurleen Hime, petitioner,
Respondent,

vs.

John Paul Engelking,
Appellant,

and

County of Stearns, intervenor,
Respondent.

**Filed September 21, 2010**
**Affirmed**
**Muehlberg, Judge**[*]

Stearns County District Court
File No. 73-F2-01-002531

Wendy L. Hime, St. Cloud, Minnesota (pro se respondent)

John P. Engelking, St. Cloud, Minnesota (pro se appellant)

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent Stearns County)

Considered and decided by Kalitowski, Presiding Judge; Bjorkman, Judge; and Muehlberg, Judge.

---

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

**MUEHLBERG**, Judge

Pro se appellant-father challenges the denial of his motion to reduce his child-support obligation, arguing that changed circumstances render the existing support obligation unreasonable and unfair. We affirm.

## FACTS

Following the parties' marriage dissolution in 2001, appellant John Paul Engelking was awarded sole physical custody of the parties' children. Although unemployed at the time, the district court determined that, "[b]ased on past employment history and job skills . . . [appellant is able] to earn $50,000 to $60,000 gross per year." In 2006, physical custody was temporarily transferred to respondent Wendy Lurleen Engelking, n/k/a Wendy Lurleen Hime, while appellant served a prison sentence.

In April 2008, respondent Stearns County intervened and moved the district court to establish child support. The attached affidavit indicated that appellant's monthly income was $2,072 and, based on the child-support guidelines and after parenting-expense adjustments, appellant's child-support obligation was $517 per month. Appellant requested a hearing, following which the child support magistrate (CSM) issued an order on May 26, 2008. The CSM found that appellant had earned $2,072 monthly, but voluntarily terminated his employment in 2008 to become self-employed. The CSM found that "[appellant] has not established that a change in his career and the resultant decreased income outweighs the adverse affect on the children due to the reduced income." The CSM found that "[appellant] is voluntarily unemployed or

underemployed and child support shall be based on potential income. [Appellant] has the ability to earn $2,072 per month based on his employment history and job skill." The CSM further found that appellant had no court-ordered parenting time and was not entitled to a parenting-time-expense adjustment. The CSM ordered appellant to pay $517 per month in child support and $89 per month in medical support.

In June 2008, appellant moved to change custody and to modify child support. Appellant claimed that he suffered "from a debilitating injury and degenerative condition," and was "unable to work." Appellant stated that he had to undergo reconstructive leg surgery and claimed that his condition was complicated by diabetes, edema, hypertension, and heart disease. On November 26, 2008, the CSM amended the May 26 order, finding that appellant had surgery, which caused him to be unable to work from May 19, 2008 to June 30, 2008. Appellant provided a report indicating that he was unable to work until November 2008. Thus, the CSM suspended appellant's support obligations from June 1, 2008 to December 1, 2008, but indicated that on December 1, 2008, the child-support order would be reinstated.

On August 3, 2009, appellant moved to modify child support, alleging that he suffers from "considerable medical problems related to heart disease, diabetes, a sleep disorder . . . as well [as] venous insufficiency and severe swelling in the right thigh, caused by the injury and subsequent surgical repair." Appellant claimed that he had filed for Social Security Disability benefits, and was receiving public assistance. Appellant also alleged he had increased parenting time.

At the hearing on appellant's motion, the CSM asked appellant what had changed since the last child-support order. Appellant explained that he is disabled and his federal probation officer prohibited him from becoming self-employed. Appellant also argued that the income imputed to him was inappropriate and that at the time of the first order, he was on general assistance, which the CSM failed to take into consideration. Appellant provided a "disability notice from [his] primary physician . . . laying out the medical conditions and the fact that [he is] unable to work." But respondent objected to the letter. The CSM stated to appellant: "It seems obvious to me that you prepared this disability notice and asked [the physician] to sign it. It is not on letterhead from his medical clinic."

The CSM denied appellant's motion, finding that appellant "failed to meet his burden of proving that his employment situation, or potential employment situation, has significantly changed since the [May 26,] 2008 order." The CSM found that "[a]lthough [appellant] submitted a letter, supposedly from a doctor. . . . the medical issues listed in the letter [high blood pressure, Type 2 diabetes, and obesity] do not appear to be those which normally prevent a person from being employed." The CSM concluded that appellant is "voluntarily unemployed or underemployed and child support shall be based on a determination of potential income. [Appellant] has the ability to earn $2,072 per month." This appeal follows.

**D E C I S I O N**

Appellant challenges the CSM's decision denying his motion to modify support. On review of a CSM's order relating to child support, this court applies the same standard

of review as would be applied to an order of the district court. *Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000). The district court has broad discretion in determining whether to modify child support. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). This court will reverse an order relating to child support only if convinced that the district court abused its discretion by making "a clearly erroneous conclusion that is against the logic and the facts on the record." *Id.* (quotation omitted).

A party may move to modify an existing child-support obligation under Minn. Stat. § 518A.39 (2008). Modification requires (1) a substantial change in circumstances that (2) renders the existing support obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2. As the moving party, appellant bore the burden of proof on these elements. *See Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002) (stating that the moving party bears the burden of proof in a child-support-modification proceeding).

Appellant argues that the changed circumstances are his "bona fide physical incapacitation due to his medical disability." The CSM found that this was not a changed circumstance because the original order was amended to account for appellant's temporary disability. Appellant's medical conditions have not changed since the original support order. Further, the CSM did not find the letter from appellant's physician to be credible. Appellant admitted that he prepared the letter. And the CSM found that the letter was "supposedly from a doctor," and that the medical conditions listed in the letter are not the type of conditions that would "normally prevent a person from being employed." The CSM found that appellant's evidence lacked credibility. *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").

Appellant also argues that the CSM failed to address the issue of a parenting-time adjustment. But appellant presented no evidence regarding how much time he spends with each of his children. Respondent has sole physical custody of the children. Appellant is allowed parenting time at the children's discretion and is allowed a minimum of eight days per month parenting time with his eldest daughter. If appellant maintained this parenting-time schedule with his eldest daughter, eight days out of a month is not a significant change in the parenting-time schedule that would render the previous child-support order unreasonable and unfair.[1]

Appellant next argues that the CSM ignored the fact that appellant receives public assistance and that he is entitled to a retroactive adjustment due to that receipt. But the CSM indicated that the hearing was focused on changed circumstances since the last order. The hearing and resulting order were not to address a reconsideration of the last order; thus, any issue regarding retroactive adjustment was not properly before the CSM.

[1] Generally, appellate courts do not address questions not previously presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Under *Hesse v. Hesse*, 778 N.W.2d 98, 103 (Minn. App. 2009), the percentage of parenting time granted to a parent for purposes of calculating a parenting-expense adjustment under Minn. Stat. § 518A.36, subd. 1(a) (2008) is the percentage of parenting time scheduled under an existing court order, regardless of whether the parent exercises the full amount of court-ordered parenting time. The impact, if any, of *Hesse*, was not addressed by the CSM, and we decline to address that question here.

Appellant also argues that the CSM abused its discretion by imputing income to appellant. "If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income." Minn. Stat. § 518A.32, subd. 1 (2008). A determination of potential income must be made according to one of three methods: (1) the parent's "probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community"; (2) the amount of unemployment compensation or workers' compensation benefits received, if any, by the parent; or (3) "the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher." *Id.*, subd. 2 (2008).

The CSM did not impute income to appellant. The imputation results from the original order, which appellant did not appeal. The CSM was not obligated to recalculate appellant's income based on current circumstances unless appellant established a substantial change in circumstances rendering the current support order unreasonable and unfair. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (holding, in spousal-maintenance context, that a failure to show a substantial change in circumstances precludes a modification of maintenance obligations under the statute, and a remand for findings on other factors addressed in the statute is therefore unnecessary). Absent proof of a substantial change in circumstances, there was no basis for modification and no need to recalculate appellant's income imputation. Therefore, the CSM did not abuse its

discretion in finding that appellant failed to prove changed circumstances that rendered the original child-support order unreasonable and unfair.

Finally, appellant argues that the county should be barred from filing a response to the appeal. This is not an issue because neither respondent-mother nor respondent-county filed a response.

**Affirmed.**