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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1042**

Lisa Jensen,
Respondent,

vs.

Robert Otto,
Appellant,

Ramsey County, intervenor,
Respondent.

**Filed April 10, 2017
Reversed and remanded; motion denied
Kirk, Judge**

Ramsey County District Court
File No. 62-F8-04-000840

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Considered and decided by Kirk, Presiding Judge; Schellhas, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from the district court's affirmance of the Child Support Magistrate's (CSM's) decision in this support dispute, appellant-father argues that the district court: (1) failed to apply the de novo review of the CSM's ruling required under Minn. R. Gen. Pract. 377.09, subd. 2(b); (2) erred in allowing mother to move to establish child support; and (3) failed to grant him a downward deviation in child support. Because the district court did not engage in a de novo review of the CSM's ruling, we reverse and remand. We also deny mother's motion for conduct-based attorney fees on appeal.

DECISION

When "a party moves for review of the CSM's original decision, the reviewing authority conducts an 'independent review' of that decision." *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004) (quoting Minn. R. Gen. Pract. 377.09, subd. 2(b)). "[T]he requirement that the district court make an independent review of findings and provisions in the [CSM's] decision means that the district court was to make its review free from the influence, guidance, or control of the magistrate." *Blonigen v. Blonigen*, 621 N.W.2d 276, 280 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). This court examines the district court's decision on child-support matters for an abuse of discretion. *Kuronen v. Kuronen*, 499 N.W.2d 51, 53 (Minn. App. 1993), *review denied* (Minn. June 22, 1993). This court will reverse the district court's decision for abuse of that discretion only when the court's resolution of the issue is against logic and the facts on the record. *Id.*

Appellant-father Robert Otto argues that the district court applied the wrong standard of review when it reviewed the CSM's ruling. He asserts that the district court should have applied a "de novo" standard of review under Minn. R. Gen. Pract. 377.09, subd. 2, but instead it applied the appellate standard of review as enunciated in *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002) (holding that the supreme court will reverse a district court's order regarding child support only if it is convinced that the district court abused its direction by resolving the matter in a manner that is against logic and the facts on the record). Respondent-mother Lisa Jensen and intervenor-respondent Ramsey County argue that the district court independently reviewed the record and the CSM's ruling and that the court reached its own decision on the merits.

The record establishes that the parties divorced in 2006, after six years of marriage, and are the parents to Y.O., a minor child. According to the terms of a stipulation that was incorporated into the dissolution judgment and decree, the parties shared joint legal custody, and mother had "primary residency" of Y.O., subject to father's reasonable parenting time. The district court ordered father to pay child support, child-care costs, and child-care expenses.

In 2008, mother moved to find father in constructive civil contempt of court for failing to pay child support and child-care expenses. In 2009, the district court scheduled an evidentiary hearing after it found that mother had met her burden of a prima facie case for modifying custody and parenting time. Prior to and during the evidentiary hearing, the parties engaged in settlement negotiations. Through letter and email, mother proposed to forego any future child support and discontinue her legal motions if father agreed to give

her sole legal and sole physical custody of Y.O. In March 2010, the parties reached a settlement and read the terms of the stipulation into the record before the district court. Based on the parties' stipulation, the district court filed an order amending the terms of the original judgment and decree. The district court's amended judgment stated that mother was awarded sole legal custody and that physical custody was to remain "as is." Basic child support was reserved, but father was ordered to pay all outstanding child-support arrearages in full and to pay child-care costs.

In December 2015, mother moved to establish father's basic child-support obligation and to modify his medical-support obligation. On January 12, 2016, a CSM conducted an evidentiary hearing on mother's motion. Both parties appeared at the hearing with counsel. Father argued that mother was estopped from requesting child support under *McNattin v. McNattin*, because she had made specific representations to father in 2010 whereby he agreed to give mother full legal custody and in exchange she would forego any future child support. 450 N.W.2d 169 (Minn. App. 1990). Father also asked that if support was awarded to mother, he be given a downward deviation in child support.

The CSM issued its findings of fact, conclusions of law, and order establishing child support and modifying medical support. The CSM concluded that the May 2010 amended judgment reserved the issue of basic child support, and that there was nothing in the record establishing that mother had waived child support in exchange for an award of full legal custody. Based on father's average monthly gross income, the CSM established father's basic child-support obligation at \$758 per month and also modified father's medical-

support obligation. The CSM rejected father's request for a downward deviation in child support.

Father requested that the district court conduct an independent review of the CSM's findings, conclusions, and order under Minn. R. Gen. Pract. 376.01 and 376.03. In an order and memorandum, the district court denied father's motion for review in its entirety. Citing *Putz*, the district court reviewed the CSM's decision for an abuse of discretion and whether the CSM "came to a clearly erroneous decision in a manner that is against logic and the facts of the record."

We conclude that the district court erred in applying the appellate standard of review to the CSM's findings, conclusions of law, and order. According to Minn. R. Gen. Pract. 377.09, subd. 2(b), the district court judge "shall make an independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested in the motion." Caselaw affirms that the CSM's decision is subject to de novo review by the district court. See *Kilpatrick*, 673 N.W.2d at 530 n.2; *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001); *Blonigen*, 621 N.W.2d at 280. For this reason, we remand the issue to the district court for an independent analysis of the CSM's order under Minn. R. Gen. Pract. 377.09, subd. 2(b).

Because we are reversing and remanding to the district court, we do not reach father's argument that the district court erred in failing to grant him a downward deviation in child support. We also deny mother's motion for \$5,303.50 in conduct-based attorney fees incurred in defending this appeal. Attorney fees on appeal may be allowed as a matter of substantive law or as a sanction. Minn. R. Civ. App. P. 139.06 (1998 advisory comm.

note); *see also* Minn. Stat. § 518.14, subd. 1 (2016) (stating that conduct-based fees “may” be awarded against a party who unreasonably contributes to the length or expense of the proceeding). Father did not unreasonably contribute to the length or expense of the appeal by challenging the district court’s application of the wrong standard of review to the CSM’s ruling. *See* Minn. Stat. § 518.14, subd. 1.

Reversed and remanded; motion denied.