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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1516**

Etsegenet Setegn, petitioner,
Respondent,

Hennepin County, petitioner,
Respondent,

vs.

Belay Assefa,
Appellant.

**Filed May 7, 2018
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-FA-10-6350

Etsegenet Setegn, St. Louis Park, Minnesota (pro se respondent)

Michael O. Freeman, Hennepin County Attorney, Charles S. Weber, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Belay Assefa, New Brighton, Minnesota (pro se appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Rodenberg, Judge;
and Hooten, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

On appeal from the district court's denial of his motion for modification of his basic child-support obligation, appellant father argues that his income has been greatly reduced by working part-time to pursue graduate studies and was overstated for the purposes of determining child support. Because appellant has not demonstrated how the district court abused its discretion in determining that father did not establish a substantial change in circumstances warranting modification of his child-support obligation, we affirm.

FACTS

Appellant Belay Assefa (father) and respondent Etsegenet Setegn (mother) share two minor children. In a 2010 order predating their marriage dissolution, father was ordered to pay basic child support of \$381 per month.

In August 2016, father first moved for modification of his support obligation. In support of this request, father explained that he was working part-time to attend graduate school and had taken out a \$10,250 student loan to pay his expenses. In October, a child-support magistrate (CSM) denied father's motion, finding that father's income while in school was still "sufficient for the current support obligation and does not warrant any change in support." In early November, father moved for district court review of the CSM's October order denying modification, arguing that his then-current income was lower than what the CSM had calculated. Because father's motion for review was untimely, the district court dismissed it without further review.

In March 2017, father filed a second motion for modification, asking the district court to “suspend child support” while he completed his graduate studies. A hearing was held before a second CSM. In an order filed June 5, that CSM also denied father’s motion to modify, concluding that there had not been a substantial change in circumstances rendering his existing child-support order unreasonable and unfair. Father timely sought review of the CSM’s order in district court. In an order filed August 9, the district court affirmed the CSM’s order and denied father relief from his child-support obligation.

Father appeals, seeking review of the district court order affirming the second CSM’s denial of his motion for modification.

D E C I S I O N

Appellate courts review orders addressing motions to modify child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). When a district court affirms a CSM’s decision, the CSM’s decision becomes the decision of the district court and subject to our appellate review. *See Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004) (explaining appellate review of decisions made in the expedited child-support process). While a district court has broad discretion in ordering modifications, it abuses its discretion when it acts outside the statutory limits set by the legislature, or when it resolves the question in a manner “that is against logic and the facts on record.” *Haefele*, 837 N.W.2d. at 708 (quotation omitted).

A district court may modify an existing award for child support if the moving party shows both a substantial change in circumstances and that the changed circumstances render the existing child-support order unreasonable and unfair. Minn. Stat. § 518A.39,

subd. 2(a) (2016); *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002). The party seeking modification of a child-support order has the burden to prove a substantial change in circumstances. *Gorz v. Gorz*, 552 N.W.2d 566, 569 (Minn. App. 1996).

A substantial change in circumstances that may warrant a modification of child support exists if a parent experiences “substantially increased or decreased gross income.”

Minn. Stat. § 518A.39, subd. 2(a)(1). Gross income is defined by statute:

Subject to the exclusions and deductions in this section, gross income includes *any form of periodic payment to an individual*, including, but not limited to, salaries, wages, commissions, self-employment income, . . . workers’ compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child, . . . and potential income

Minn. Stat. § 518A.29(a) (2016) (emphasis added). Whether a source of funds is considered to be income for child-support purposes is a legal question reviewed de novo. *Hubbard Cty. Health & Human Servs. v. Zacher*, 742 N.W.2d 223, 227 (Minn. App. 2007).

The CSM found that father has a gross monthly income of \$2,028. That amount was based on father’s income from his part-time job as well as the funds father receives from his student loan. Using father’s gross monthly income and mother’s gross monthly income, the CSM calculated a basic child-support obligation for father of \$521 per month. Because that amount is higher than father’s current obligation, the CSM found no basis to reduce basic child support. The CSM concluded that “[father] has not demonstrated any

decrease in his income or earning ability”¹ and that “there has not been a substantial change in circumstances that renders the existing child support order unreasonable and unfair.”

Father challenges that determination, arguing that the CSM miscalculated his gross income, specifically, by improperly considering his potential summer work, teaching-assistant position, and student-loan distribution as sources of income. We address those issues.

Although father’s teaching-assistant income and summer-work income were included in calculating his gross income to determine his child-support obligation in the October 2016 order, they were not considered in the June 2017 order, which is the order under review. Rather, in the June 2017 order, only father’s part-time-work income and student-loan distributions were used to calculate his income. Father’s assignment of error based on his potential summer work and on a teaching-assistant position is therefore without merit.

Turning to the student-loan issue, father argues that his student-loan distributions were erroneously included as gross monthly income based on the entire \$10,250-per-semester distribution, rather than based on the amount of loan money left over after his

¹ The CSM also found that father “remains voluntarily underemployed as determined in the Order dated October 5, 2016.” While father does not appear to directly challenge the voluntarily-underemployed finding, we note that, regardless, this finding would not impact the outcome of father’s appeal. First, father forfeited his opportunity to challenge the voluntarily-underemployed determination made in the October 2016 order. Second, the findings of voluntary underemployment in the October 2016 order and in the order currently under review did not impact father’s support obligation; in fact, neither CSM used it as a basis to impute additional income to father. As discussed below, the CSM, in the order under review, calculated father’s support obligation based only on his actual gross monthly income.

educational expenses were paid. Father provided documents showing that he received a \$10,250 student loan for his 2017 fall semester. While father asserts that “in Fall 2017, out of \$10,250 I borrowed, the University deducted \$9,269.67 and refunded me only \$871.03 on September 15, 2017 at the beginning of the semester,” he provided no documentation to support this assertion.

Father has a duty to present this court “with a record which is sufficient to show the alleged errors and all matters necessary for consideration of the questions presented.” *Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964). Error is never presumed on appeal; “[i]t must be made to appear affirmatively before there can be reversal[.] . . . [And] the burden of showing error rests upon the one who relies upon it.” *Waters v. Fiebelkorn*, 216 Minn. 489, 495, 13 N.W.2d 461, 464-65 (1944). “When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review.” *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990).

Father complains that the CSM included the full distribution of his student loan in determining his gross monthly income. But father did not produce any documentation showing how his 2017 student-loan distribution was used. Father thus did not establish whether all, none, or some of the loan proceeds were left over after paying educational expenses and might properly be subject to inclusion as gross income. He thus fails, on appeal, to present a record that is sufficient to demonstrate error in the calculation of his gross income and to demonstrate what, if any, impact such error would have on the

determination of whether child-support modification is warranted. Consequently father has failed to meet his burden of showing that the district court abused its discretion in concluding that there is no substantial change in circumstances warranting modification of father's child-support obligation under Minn. Stat. § 518A.39, subd. 2. We express no opinion on what result would be reached on a more fully developed record.

Affirmed.