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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1647**

In re the Matter of:
Bradley Joseph Patraw,
Respondent,

and

Ramsey County, intervenor,
Respondent,

vs.

Alicia Kay Wittmer, petitioner,
Appellant.

**Filed May 28, 2019
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-FA-14-1817

Larry John Laver, Laver Law Office, Woodbury, Minnesota (for respondent Bradley Joseph Patraw)

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Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother challenges the district court's grant of respondent-father's motion to reduce his child-support obligation, arguing that father failed to show a substantial change in circumstances that rendered the existing obligation unreasonable and unfair, and that the district court erred by failing to address mother's discovery motion. We affirm.

FACTS

On July 11, 2012, respondent-father Bradley Joseph Patraw was ordered to pay \$448 per month in child support to appellant-mother Alicia Kay Wittmer for their two joint minor children. Two years later, father petitioned to establish custody and parenting time. Mother counter-petitioned to modify child support. The parties entered into a stipulated judgment and decree, agreeing to joint legal and joint physical custody of the children, and establishing a temporary parenting-time schedule. Father had requested an additional night on his parenting-time weekends. The district court reserved the child-support and parenting-time issues for a hearing.

In September 2015, father moved to reduce his child-support obligation. In November 2015, respondent Ramsey County intervened. The parties resolved their issues, and on December 17, 2015, the child-support magistrate (CSM) filed an order incorporating the parties' agreement. Among other things, the CSM granted father's request for additional parenting time and ordered father to continue paying \$448 per month in child support.

In November 2017, father moved to reduce his child-support obligation. Mother moved to increase father's child-support obligation. When father was unresponsive to mother's discovery request, she moved to compel father to respond. During a hearing, the parties agreed to exchange discovery, but father remained noncompliant, and mother, again, moved to compel father to respond.

The CSM held a hearing on May 31, 2018. On July 3, 2018, the CSM filed an order granting mother's motion to increase father's child-support obligation. The CSM found that at the time of the prior order, July 11, 2012, father's monthly income was \$1,743, and mother's monthly income was \$1,256. The CSM found that father was ordered to pay \$448 per month in child support. The CSM further found that in December 2015, father was ordered to continue paying \$448 per month in child support.

The CSM found that father is self-employed and did not provide documentation of his current income. The CSM found that father provided his 2016 tax return, and testified that he earns the same income that he did in 2015. Using father's 2016 tax return, the CSM found that father's gross monthly income is \$3,189. The CSM also found that father has a legal duty to support a non-joint child.

The CSM found that mother was working an average of 43 hours bi-weekly, and earning \$9.50 per hour plus tips. The CSM found that mother is voluntarily underemployed because she did not claim to be unable to work full time. The CSM found that mother has the ability to work an additional 37 hours bi-weekly, earning \$9.50 per hour, and attributed income to mother, finding that mother's average monthly income is \$2,263.00.

The CSM determined that the combined parental income for determining child support is \$6,213, and that the combined basic support obligation for two children is \$1,433. The CSM found that father's percentage share is 51% and mother's is 49%. The CSM found that father has court-ordered parenting time between 10-45% and applied a 12% parenting-time-expense adjustment. The CSM found that father's basic support obligation would be \$643 per month, which is 20% higher and \$75 higher than the current obligation. The CSM concluded that there was a substantial change in circumstances that rendered the existing order unreasonable and unfair. The district court denied father's motion to reduce his child-support obligation, and increased father's child-support obligation to \$643 per month.

Father filed a motion for review, challenging findings on income, parenting time, and credit for his non-joint child. Mother filed a responsive motion, seeking correction of clerical mistakes and review of the finding that she is voluntarily underemployed.

On September 20, 2018, the CSM filed amended findings of fact, conclusions of law, and order. The CSM found that father has 50% parenting time, and a non-joint child residing in his home, resulting in a \$306 credit. The CSM did not amend the finding that mother is voluntarily underemployed.

The CSM found that the combined parental income for determining child support is \$5,907, and the combined basic support obligation is \$1,390. The CSM found that father's percentage share is 49% and mother's is 51%, and that the parties each have 50% parenting time. The CSM determined that father's basic support obligation is \$0 per month after the parenting-time-expense adjustment. The CSM found that father's basic support obligation

is more than 20% and more than \$75 lower than the current support obligation; thus, there has been a substantial change in circumstances rendering the existing obligation unreasonable and unfair. The CSM granted father's motion to reduce his child-support obligation. This appeal followed.

D E C I S I O N

Child support

Mother argues that the CSM erred in modifying father's child-support obligation because father failed to establish past and current income. A party may appeal from a final order or judgment of a CSM. Minn. R. Gen. Pract. 378.01. We apply the same standard of review to an appeal from a CSM's order as that applied to an appeal from a district court's child-support decision. *See Brazinsky v. Brazinsky*, 610 N.W.2d 707, 710 (Minn. App. 2000) (stating that authority of CSM with respect to establishing, modifying, and enforcing child support is comparable to that of district court). A district court, and thus a CSM, has broad discretion to modify child support. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). The district court abuses its discretion if its decision is based on a misapplication of the law or is contrary to the facts or logic. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017).

A district court may modify a child-support obligation if the moving party shows that the obligor or the obligee has experienced a substantial change in circumstances that makes the existing obligation unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2018); *Bormann v. Bormann*, 644 N.W.2d 478, 480-81 (Minn. App. 2002) (stating that moving party bears burden of proof). A substantial change in circumstances is presumed

if application of the child-support guidelines to the parties' current financial circumstances would result in a child-support obligation that is at least 20% more or less, and at least \$75 more or less than the amount of the existing obligation. Minn. Stat. § 518A.39, subd. 2(b)(1) (2018).

Mother argues that father failed to show the parties' current incomes and incomes in December 2015, which was required in gaging whether father's income substantially decreased since the time support was last set. *See Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (stating that determining whether a substantial change in circumstances renders an existing obligation unreasonable and unfair generally requires comparing the parties' circumstances at the time support was last set or modified to their circumstances at the time of the motion to modify). The CSM determined that child support was last set on July 11, 2012, not in December 2015 as mother asserts. Mother acknowledges that the July 11, 2012 order provided the parties' incomes for child-support purposes, but claims that child support was modified in the December 2015 order, which did not recite the parties' incomes at that time.

The CSM found that "[i]n the prior order dated July 11, 2012, [father] was ordered to pay child support of \$448.00 per month." The CSM found that at the time, father's monthly income was \$1,743 and mother's monthly income was \$1,256. Thus, child support was set on July 11, 2012. In December 2015, the CSM found that "[father] will continue to pay child support to [mother] in the amount of \$448.00 per month." This December 2015 order did not set or modify child support. It did not set an amount because it was merely an agreement to continue paying the amount previously set. And it certainly

did not modify child support because, again, father agreed to continue paying the amount he was previously ordered to pay. The record supports the CSM's determination that child support was last set in July 2012.

Mother argues that father failed to show a change in circumstances because he failed to provide evidence of the parties' incomes at the time of the last order. However, the CSM correctly identified July 2012 as the last time support was set or modified, and thus, had a baseline from which to determine whether father showed a substantial change in circumstances that rendered the original child-support order unreasonable and unfair. Mother does not challenge any other component of the CSM's order; therefore, mother has not shown that the CSM abused her discretion in modifying father's child-support obligation.

Discovery

Mother also argues that by refusing to respond to discovery, father failed to establish that his income decreased. *See* Minn. Stat. § 518A.39, subd. 2(a)(1) (stating that a showing of substantially increased or decreased gross income of an obligor or obligee may constitute a change in circumstances that renders an existing order unreasonable and unfair). Mother claims that the CSM erred by modifying child support without addressing her motion to compel father to respond to discovery. A district court has "wide discretion" regarding discovery and, absent an abuse of that discretion, the decision will not be reversed. *Kielley v. Kielley*, 674 N.W.2d 770, 780 (Minn. App. 2004).

In the July 3, 2018 order, the CSM found that father did not provide documentation of his current income. The CSM's findings on father's income are based on his 2016 tax

returns. The CSM did not make findings regarding mother's motion to compel discovery. After the July 3, 2018 order, father requested review and mother sought to "fix clerical mistakes," and for review of the finding that she is voluntarily underemployed. Mother did not raise a discovery issue.

During a conference addressing father's motion and mother's responsive motion, the CSM stated that, because father did not request a hearing in his motion, the CSM would not be "taking any more information" in deciding the motions. Mother agreed that she was "happy with . . . just relying on [the] paperwork." At no time did mother raise the discovery issue prior to the CSM issuing the amended order. *See* Minn. R. Gen. Pract. 377.03, subd. 2(a), (e) (stating that a motion for review shall state the reasons review is requested and state whether the party is requesting authorization for new evidence). Because mother never brought the discovery issue to the attention of the CSM after the July 2018 order, it cannot be raised for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that, generally, an appellate court will consider only matters argued to and considered by the district court); *Berquam v. Berkner*, 374 N.W.2d 802, 803 (Minn. App. 1985) (holding that an alleged defect in district court findings not brought to the attention of the district court cannot be raised for the first time on appeal).

Even in considering mother's claim, however, it appears that the CSM implicitly denied mother's motion to compel discovery when it granted father's motion to modify child support. *See Kielley*, 674 N.W.2d at 780-81 (stating that while the district court did not explicitly rule on the motion to compel discovery, it denied the motion by denying the motion to modify maintenance).

Father was required to disclose all sources of gross income in order to calculate his gross income for child-support purposes. *See* Minn. Stat. § 518A.28(a) (2018). If a parent does not provide a financial affidavit, “the court shall set income for that parent based on credible evidence before the court.” *Id.* (c). “Credible evidence may include documentation of current or recent income” *Id.*

Father provided his 2016 tax returns. Father testified that he asked for an extension on his 2017 taxes. He stated that he was “on the same path this year as . . . last year,” and has been on the same financial path “for the last two years.” Father testified that his income has not changed since 2016. Father testified that he likely earned \$3,000 in May 2018, \$2,800 in April, and \$1,200 in March. He stated that his income has been “pretty consistent for the past three years.” Based on father’s testimony, the CSM used father’s 2016 tax returns to determine his income. The CSM’s implicit denial of mother’s motion to compel discovery was within the broad discretion afforded in addressing discovery matters.

Affirmed.