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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1849**

Shane Foss,
Appellant,

vs.

Justine Topel,
Respondent.

**Filed August 26, 2019
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-FA-11-76

Glenn P. Bruder, Mitchell, Bruder and Johnson, Eden Prairie, Minnesota (for appellant)

Ruta Johnsen, Jessica Altmann, Nancy Zalusky Berg, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

After appellant-father Shane Foss and respondent-mother Justine Topel's relationship ended, father was ordered to pay mother \$800 per month in child-care support. Seven years later, father filed a motion challenging the child-care support obligation and seeking a retroactive modification. The district court affirmed the child support

magistrate's decision to deny father's motion. Because the district court did not abuse its discretion when it affirmed the child support magistrate's decision and because the district court did not make or tolerate procedural errors that denied father de novo review of the child support magistrate's decision, we affirm.

FACTS

Appellant-father Shane Foss and respondent-mother Justine Topel are the parents of two children, born in 2007 and 2009. Father and mother never married. Father's child-support obligation was first established in January 2011 and modified by an amended order in March 2011. The district court's amended order set father's child support as follows: (1) \$1,180 in monthly basic child support; (2) \$104 per month for medical support; and (3) \$1,070 per month in child-care support. In addition to the child-support obligation, father was ordered to pay \$4,104.27 in child-support arrears. Both the monthly child-support obligation and arrears were collected by Hennepin County Support and Collections (the county) through wage withholding.

Five months later, in August 2011, father and mother entered into a stipulation to establish custody, parenting time, and child support. After receiving the stipulation, the district court then issued an order based upon the stipulation. The order adjudicated father's paternity of the children, established father's custody and parenting, and modified father's child-support obligation.

At the time of the August 2011 order, mother was incurring \$1,942 in monthly child-care costs. And based upon mother's and father's respective incomes, father's child-care support obligation was calculated at \$1,049 per month. But mother and father

agreed that a downward deviation in father's child-care support obligation was "fair under the circumstances and [was] in the best interest[s] of the children." Accordingly, father's monthly child-care support obligation was set at \$800.

Nearly seven years later, in April 2018, father filed a motion for repayment of his overpayment of child support due to administrative error.¹ And concerned that his child-care support obligation exceeded mother's actual child-care costs, father also sought modification of his child-care support obligation and requested a judgment for the overpaid child-care support. Specifically, father requested that his child-care support obligation be recalculated retroactively for the years 2011 through 2017. Mother opposed this motion.

The child support magistrate heard father's motion in June 2018. At the hearing, mother and father placed an agreement to modify father's future child-care support obligation on the record. Beginning on July 1, 2018, father's child-care support obligation would be modified to be calculated according to the parties' parental income for child support and based on expenses incurred. But mother opposed father's motion for retroactive modification.

At the motion hearing, the parties offered oral arguments, in addition to their affidavits, in support of their respective positions regarding retroactive child-care support modification. After hearing the arguments, the child support magistrate determined that

¹ When the child-support obligation was modified in August 2011, the county did not accurately adjust the child support to be collected from father. The child support magistrate addressed this issue in its July 2018 order. And the county was ordered to correct its administrative error and credit father with the overpayment incurred consistent with the county's policies. Father does not challenge this portion of the district court's order on appeal.

no additional testimony was needed, and the matter would be taken under advisement. At this time, father's counsel requested that father be allowed to testify about "how the [c]ourt might adjust the downward deviation or when that ends, and [father] can provide testimony to the [c]ourt that might allow that to happen." But the child support magistrate declined the additional testimony, noting that sufficient submissions had been provided by the parties.

About one month later, the child support magistrate issued an order denying father's motion to retroactively modify his child-care support obligation, reasoning that father "failed to establish any good cause as to the delay in bringing the motion." The magistrate noted that the parties stipulated in 2011 to a sum-certain child-care support amount, which was considered a deviation in father's contribution that provided him with a significant benefit. Father sought district court review of the child support magistrate's order. But the district court denied father's motion for review. Two days after the issuance of the order, father submitted correspondence to the court seeking to reopen the record to allow for submission of a memorandum of law. The court denied father's request for reconsideration. Father appeals.

D E C I S I O N

Father challenges the district court's decision on two grounds. First, father argues that the district court abused its discretion when it denied his motion for retroactive child-care support modification. Then, father argues that the district court made, or tolerated, a series of procedural errors that deprived him of de novo review of the child support magistrate's decision. We address each argument in turn.

I. The district court did not abuse its discretion when it denied father’s motion for retroactive child-care support modification.

Father asserts that he is entitled to retroactive modification of his child-care support obligation because his contributions exceeded mother’s actual child-care expenses. The district court reviews the decision of a child support magistrate de novo, and this court evaluates the decision of the district court on child-support matters for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001); *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). But the application of a statute to undisputed facts presents a question of law, which this court reviews de novo. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007).

Minnesota Statutes section 518A.39, subdivision 7 (2018) states that “[c]hild care support must be based on the actual child care expenses. The court may provide that a decrease in the amount of the child care based on a decrease in the actual child care expenses is effective as of the date the expense is decreased.” When considering a motion to retroactively modify child-care support, the district court may look beyond the date of the filing of the motion to modify, though it is not required to do so. *Jones v. Jarvinen*, 814 N.W.2d 45, 47 (Minn. App. 2012).

Here, the district court determined that father’s delay in bringing his motion for retroactive modification and the prior beneficial stipulation demonstrated that retroactive modification was not warranted. And after reviewing the record, the district court found that the magistrate properly based her decision on Minnesota Statutes section 518A.39, subdivision 7, the applicable statute governing child-care support modification.

Accordingly, the district court denied father's motion for retroactive child-support modification. We agree.

In 2011, the parties stipulated to child-care costs. The stipulated amount was considered a downward deviation. And father was bound by this order, which, at the time, provided him with a significant financial benefit. While mother's child-care support expenses may have decreased between 2011 and 2018, father failed to bring a motion for modification within those seven years. Accordingly, the district court did not abuse its discretion by declining to retroactively modify father's child-care support obligation.

Still, father asserts that the child support magistrate inappropriately grounded its decision on the doctrine of laches.² Father's assertion is based upon the child support magistrate's comments at the motion hearing regarding the retroactive modification of child-care support. Specifically, the child support magistrate stated that her "inclination is not to provide [a retroactive modification], and I think the [*laches*] argument is appropriate here, but I will look again and see if there is a basis for a retroactive modification." But the child support magistrate was clear that this was her inclination, not her decision. And in a written order, the magistrate stated her reasons for denying father's motion, including that father failed to establish good cause as to the delay in bringing the motion, that father and mother stipulated to a downward-deviation child-care amount in the underlying order, and that this deviation provided father with a significant reduction in his contribution.

² Laches is an equitable doctrine that provides that a person's legal or equitable claim should be barred if it is brought "after unreasonable delay" and "results in prejudice." *In re K.L.B.*, 759 N.W.2d 409, 413 n.2 (Minn. App. 2008), *review denied* (Minn. Feb. 25, 2009).

In its review of the child support magistrate's decision, the district court found that the decision was based on the child support magistrate's discretionary authority regarding retroactive modification, rather than the defense of laches. We agree. Accordingly, the district court did not abuse its discretion in affirming the child support magistrate's order denying father's retroactive child-support modification.

II. The district court did not make or tolerate any procedural errors that deprived father of de novo review.

Father asserts that the district court made or tolerated a series of procedural errors that deprived him of de novo review of the child support magistrate's decision. Specifically, father asserts that the district court utilized the incorrect standard of review when it evaluated the magistrate's decision, that the district court ignored the magistrate's decision to not allow father to testify at the motion hearing, and that before it denied father relief, the district court should have allowed him to file a memorandum of law in support of his position. We address each argument in turn.

Standard of Review

Father argues that the district court utilized the improper standard to review the child support magistrate's order and, as such, did not afford him de novo review to which he was entitled.

It is well established that a district court reviews a child support magistrate's decision de novo. *Davis*, 631 N.W.2d at 825; see Minn. R. Gen. Prac. 377.09, subd. 2(b) (stating that 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”). If the district court affirms the order, it may do so without making additional findings. Minn. R. Gen. Prac. 377.09, subd. 2(b). But the district court should review the decision “free from the influence, guidance, or control of the [child support] magistrate.” *Blonigen v. Blonigen*, 621 N.W.2d 276, 280 (Minn. App. 2001), review denied (Minn. Mar. 13, 2001).

Here, the district court first referenced this “independent review” in its order denying father’s motion for review of the child support magistrate’s decision, but also stated that it “shall affirm the order unless the court determines that the findings and order are not supported by the record or the decision is contrary to law.” In short, the district court cited to two different standards of review in its decision.³

Father directs this court’s attention to nothing more than this language to support his assertion that the district court did not conduct a de novo review. But this court cannot assume that the district court erred based on its language alone. See *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that appellate courts cannot assume district court error); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*, stating appellate courts “cannot assume that the district court will neglect its duty to independently

³ Father asserts that the district court’s statement that “[r]ule 377.09 subd. 3, requires a review to be based upon the decision of the child support magistrate” demonstrates that the child support magistrate’s decision was a template for the judge’s analysis and that modification is permitted only when the findings and order were not supported by the record or contrary to law. But father excludes the rest of what the district court wrote, which identified “all exhibits and affidavits filed with the court” and the audio recording of the hearing if no transcript was ordered. Looking at the text as a whole, it undercuts father’s argument because the district court went beyond the child support magistrate’s order to review the entire record.

evaluate the proposed judgment or will err or abuse its discretion in performing that evaluation”). And though the district court utilized inexact language when reciting the standard of review, it did not fail to *conduct* a de novo review of the child support magistrate’s decision. In its order, the district court stated that its review would be based upon the child support magistrate’s decision and all exhibits and affidavits filed with the court. The district court also indicated that it reviewed the transcript of the hearing prior to issuing its order. And according to the rules regarding motions for review of child-support obligations, this is the proper procedure. See Minn. R. Gen Prac. 377.09, subd. 2(b). As such, the district court conducted a de novo review of the child support magistrate’s order.⁴

Opportunity to Testify

Father challenges the child support magistrate’s decision to not allow his testimony at the June 2018 hearing and argues that the district court ignored this decision. But at the hearing, father did not object to the child support magistrate’s decision to bar his testimony. Nor did father raise this issue in his request for review of the child support magistrate’s decision, or when he requested permission to reopen the record for additional briefing and to bring a motion for reconsideration. And in his brief, father states, “[a]dmittedly, this [argument] is not explicitly set forth in the Notice filed by [father’s] attorney seeking

⁴ Father also asserts that “by utilizing this unwarranted, lenient, standard of review, the [d]istrict [c]ourt [j]udge effectively turned a blind eye to Article VI Section 3 of the Minnesota Constitution.” But because the district court *did* conduct an independent review of the record, we do not reach this issue.

review.”⁵ As such, father did not preserve for appeal any allegation of error on this point. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, appellate courts address only issues previously presented to and considered by the district court). Accordingly, the child support magistrate did not improperly deny father the opportunity to testify at the June 2018 hearing.

Opportunity to Submit a Memorandum of Law

Father contends that the district court erred by issuing its decision before receiving memoranda from the parties. Appellate courts will only reverse a district court’s child-support order where a district court abused its discretion. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). And “[m]isapplying the law is an abuse of discretion.” *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009).

To address father’s argument, we turn to the Minnesota General Rules of Practice. Under rule 377.03, subdivision 2(a), the motion for review shall state the reason or reasons why review is being requested. And pursuant to rule 377.02(e), an aggrieved party bringing a motion for review may order a transcript, if they so desire. But while a party is permitted to order a transcript, rule 377.02(e) does not allow extra time, beyond the allotted 20 days, to submit a memorandum of law. And the due date is not extended by the ordering and

⁵ Father states that due to a change in attorney following the hearing, his new counsel was not aware of the child support magistrate’s decision to not allow him to testify until counsel received the hearing transcript on September 5. But on September 20, father submitted correspondence to the court requesting that the record be reopened and requesting reconsideration.

filing of the transcript. Minn. R. Gen. Prac. 366.01, subd. 2. Once the transcript is filed with the court, the record is closed. *Id.*

Here, the child support magistrate issued its order on July 16, 2018. And father waited until August 3, 2018 to order the transcript from the hearing. While father stated in his motion for review that he intended to submit a memorandum of law incorporating information from the transcript within 20 days of receipt of the transcript, the Minnesota General Rules of Practice do not entitle father to submit a memorandum of law incorporating matters transcribed at the child support magistrate hearing. Rather, a 20-day timeline remains applicable. And allowing father to submit his memorandum of law 20 days after receipt of the transcript would have allowed him 71 days past the child support magistrate's decision to submit his final part of his motion for review—well beyond the 20-day timeframe. As such, the district court was not required to accept father's memorandum of law before issuing its decision.

Still, father asserts that the district court “rush[ed]” to reach a decision, without referencing the transcript, and he was adversely affected. But in its order, the district court explicitly stated that it reviewed the transcript when addressing father's retroactive child-care support obligation argument. Accordingly, father's argument is unpersuasive.

Because father was not entitled to submit a memorandum of law following the receipt of the transcript, the district court did not abuse its discretion in denying father an opportunity to submit a memorandum of law in support of his motion for review.

Affirmed.