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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0218**

Nicole A. Nyhus,
Respondent,
Hennepin County,
Respondent,

vs.

Sokkhan Ka,
Appellant

**Filed December 21, 2020
Reversed and remanded
Reyes, Judge**

Hennepin County District Court
File No. 27-PA-FA-000049303

Nicole Ann Nyhus, Brooklyn Park, Minnesota (pro se respondent)

Charles S. Weber, Minneapolis, Minnesota (for respondent Hennepin County)

Sokkhan Ka, Shoreview, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Gaitas,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this appeal from a child-support magistrate's (CSM) denial of his motion to
modify his child-support award, appellant father argues that the CSM abused its discretion

by failing to (1) determine that his inability to work and respondent mother's unemployment status were substantial changes in circumstances necessary to modify child support and (2) address respondent mother's alleged failure to report her child-support obligation in her application for unemployment benefits. We reverse and remand.

FACTS

Appellant Sokkhan Ka (father) and respondent Nicole Nyhus (mother) are the parents of C.K., who was born in 2002. Father and mother signed a recognition of parentage in July 2002, but never married. They ended their relationship in 2005. C.K. lived with mother at that time. Beginning in May 2011, the district court ordered father to pay \$150 per month in child support. He failed to pay for several years, resulting in over \$4,000 in arrears he owed to mother. In 2016, C.K. began living primarily with father. Father moved to modify child support and parenting time. The CSM suspended father's child-support obligation but required him to pay \$32.80 per month towards arrears.

Subsequently, respondent Hennepin County (the county) moved to establish mother's child-support obligation, and father moved to stop his payment of arrears. Father also sought retroactive child support from mother. In its May 3, 2018 order (the order), the CSM imputed a gross monthly income of \$1,672 to father. It also found that mother had recently lost her job, but had a gross monthly income of \$1,551 from unemployment benefits. Based on the parents' income and the fact that C.K. resided primarily with father, the CSM ordered mother to pay \$244 per month in child support. However, the CSM ordered that mother's monthly obligation would "not be paid by [mother] but [would] be

applied to reduce the arrears owed” by father to mother. Once father’s arrears were reduced to \$0, mother’s payments would be made to father.¹

In October 2019, father again moved to modify child support, alleging that he could not work and that mother became voluntarily unemployed. At the motion hearing, father testified that Robert S. Finn, DNP, CNP, found him unable to work as of August 27, 2018, due to mental-health and chemical-health issues, though father acknowledged that he saw Finn only once “every six months based on Ramsey County’s asking [him] to get a medical opinion.” Father sought a retroactive increase in child support starting August 27, 2018. He also alleged that mother never received unemployment benefits, failed to contribute to C.K.’s support, and is now voluntarily unemployed. Father argued that mother’s support obligation should increase because her potential income exceeded the unemployment benefits on which the order was based.

In response to father’s motion, mother moved to decrease her child-support obligation. She noted that her unemployment benefits terminated in November 2018. After her benefits terminated, she received \$642 per month through the Minnesota Family Investment Program for four months. At the time of the hearing, she had no income even though she had looked for work. She testified that, due to her high-risk pregnancy, her doctor said she should work only four hours per day. Nevertheless, she testified that “with

¹ Father moved for review of that order, which the CSM denied. Father then appealed, arguing that the CSM miscalculated his income. This court affirmed the income calculation, but reversed and remanded because the CSM impermissibly awarded retroactive child support against mother, who was a custodial parent. *Nyhus v. Ka*, No. A18-1089, 2019 WL 1007776 at *3 (Minn. App. Mar. 4, 2019). On remand, the CSM withdrew retroactive support, but other aspects of the order remained the same.

all of my health issues, I believe it's best for me *not to work* until after I have the baby.” (Emphasis added). Mother further testified that she could pursue full-time work after her pregnancy.

On December 13, 2019, the CSM issued a two-page order with its findings of fact and conclusions of law denying both parties' motions to modify child support. The CSM found that “[b]oth parties remained unemployed,” and determined that “[t]here has not been a substantial change in circumstances that makes the existing order unreasonable and unfair.” This appeal follows.²

DECISION

We review a district court's order denying child-support modification for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013). The district court abuses its discretion if its decision stems from a misapplication of the law or contradicts the facts or logic. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009). We review the district court's factual findings for clear error. *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014) (citations omitted). These same standards apply to a CSM's decision. *Hesse*, 778 N.W.2d at 102. Because father appeals directly from the CSM's order, our scope of review is limited to “whether the evidence sustains the [CSM's] findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Kahn v. Tronnier*, 547 N.W.2d 425, 428 (Minn. App. 1996), *review denied* (Minn. July 10, 1996).

² Neither mother nor the county filed a brief or otherwise opposed this appeal. This court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

I. The CSM's order lacks sufficient findings of fact to allow meaningful review.

Father argues that his inability to work and mother's voluntary unemployment both constitute substantial changes warranting modification of child support and asks for reversal because the CSM failed to address his arguments. Because the CSM's factual findings are insufficient, we are unable to adequately review this issue.

A CSM may modify a child-support order when (1) a substantial change in circumstances (2) renders the terms of the existing order unreasonable or unfair. Minn. Stat. § 518A.39, subd. 2(a) (2018). Circumstances supporting modification include a substantial increase or decrease in the income of either party. *Id.* The party requesting modification of child support bears the burden of proving both prongs of the child-support modification test. *See Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997) (making a similar observation in the context of a motion to modify maintenance).

A parent's income ordinarily includes any form of periodic payment to the individual. Minn. Stat. § 518A.29(a) (2018). If a party is voluntarily unemployed or underemployed, child support must be determined based on potential income. Minn. Stat. § 518A.32, subd. 1 (2018). Potential income derives from a parent's (1) "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) actual amount of unemployment or workers' compensation benefits; or (3) amount of income earnable working 30 hours per week at minimum wage. Minn. Stat. § 518A.32, subd. 2 (2018). But if a parent is physically or mentally incapacitated, the parent is not voluntarily unemployed or underemployed. Minn. Stat. § 518A.32, subd. 3(3)

(2018). As a result, potential income may not be imputed to a physically or mentally incapacitated parent.

The CSM must provide sufficient factual findings to ensure that it considered the relevant statutory factors, facilitate appellate review, and satisfy the parties of careful and fair consideration. *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976). The basis for the CSM's decision must "be set forth with a high degree of particularity if appellate review is to be meaningful." *Id.* (quotation omitted) (noting importance of factual findings in custody and domestic-relations matters).

Here, the CSM did not address either of father's assertions regarding both parties' employment statuses. Instead, it found that "[b]oth parties remain unemployed" and concluded that "[t]here has not been a substantial change in circumstances." The CSM did not address whether father remained able to work, and if not, whether this inability constitutes a substantial change in circumstances warranting a change in support obligations. Similarly, the CSM did not address whether mother became voluntarily unemployed, and if she did, whether income should be imputed to mother and how much. Because the CSM's factual findings are insufficient on both issues, we cannot adequately review the CSM's decision. *Rosenfeld*, 249 N.W.2d at 171.

We therefore reverse and remand for additional findings and conclusions on whether father's alleged inability to work and mother's employment status constitute substantial changes in circumstances that render the existing order unreasonable or unfair. We express no opinion on the merits of father's arguments, and leave to the CSM's discretion whether to reopen the record.

II. The CSM did not determine whether mother failed to notify the unemployment insurance office of her child-support obligation in violation of Minn. Stat. § 268.155, subd. 2 (2018). We therefore cannot adequately review this issue.

Father argues that mother failed to disclose her child-support obligation in her unemployment-benefits application as required under Minn. Stat. § 268.155, subd. 2, and that had she done so, he would have received child-support payments. The CSM did not address father's argument, even though father brought the argument in his motion to modify child support. "An undecided question is usually not amenable to appellate review." *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). We therefore remand for additional findings and conclusions on this issue, and leave to the CSM's discretion whether to reopen the record.

Reversed and remanded.