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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1502**

In re the Marriage of:
Michelle Renee Anderson,
petitioner,
Respondent,

vs.

Dean Steven Anderson,
Appellant.

**Filed May 19, 2009
Affirmed
Crippen, Judge***

Rice County District Court
File No. 66-F9-02-001283

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Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Dean Steven Anderson disputes the child-support magistrate's refusal to order a downward child-support modification, contending that (1) the findings and conclusions do not rebut the statutory presumption that appellant's current obligation is unreasonable and unfair, and (2) the increased income of respondent Michelle Renee Anderson constitutes a substantial change in circumstances warranting modification. Because the magistrate did not abuse her discretion in deciding that the statutory presumption is rebutted and that respondent's increased income is not a substantial change in circumstances, we affirm.

FACTS

In 2002, the parties dissolved their eight-year marriage. Their only child was born in 1996. Based on the parties' agreement, the child-support order requires appellant to pay \$1,300 per month, to be annually adjusted to 25 percent of his net income as reported on his tax return from the preceding year. As last calculated in 2007, appellant is now required to pay \$2,297 per month.

In March 2008, appellant moved the magistrate to decrease his child-support obligation to the guideline levels. Both parties filed supporting affidavits and other documentation. Appellant presented evidence that he had a gross annual income of \$143,855 in 2002 and a gross annual income of \$178,397 in 2007. He also presented evidence that his obligation would be \$1,193 per month under the amended child-support guidelines, instead of \$2,297. The evidence on respondent's income established that her

gross income was approximately \$60,700, which is approximately \$10,700 more than in 2002.

The magistrate's order noted the increased income of both parties and concluded that the increase in respondent's income did not provide a basis for modification. Although the magistrate noted that appellant's obligation would be significantly less under the current guidelines, the magistrate determined that the child-support calculation formula, as agreed upon by the parties, remained appropriate and that there had not been an unanticipated or significant change in circumstances that provided a basis for modification.

D E C I S I O N

A court may modify a child-support obligation where the moving party shows both substantially changed circumstances and that the changed circumstances render the existing child-support obligation unreasonable and unfair. *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). The party seeking modification of child-support has the burden to establish a substantial change in circumstances. *Gorz v. Gorz*, 552 N.W.2d 566, 569 (Minn. App. 1996).

A magistrate has wide discretion in considering motions to modify child support, and we reverse the magistrate's order on modification only if we are convinced that the magistrate abused its discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002) (reviewing an order issued by a child-support magistrate under the abuse of discretion standard); *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002) (stating

that a magistrate's ruling is reviewed under the same standard as if a district court made the decision). A party's failure to seek the district court's review of a magistrate's decision, as permitted under Minn. R. Gen. Pract. 378.01, limits the scope of review on appeal to "whether the evidence sustains the findings of fact (to which the 'clearly erroneous' standard of review applies) and whether the findings support the conclusions of law and the judgment." Minn. R. Gen. Pract. 378.01 advisory comm. cmt. (citing *Kahn v. Tronnier*, 547 N.W.2d 425, 428 (Minn. App. 1996), *review denied* (Minn. July 10, 1996)).

1. Statutory Presumption

Under Minnesota law, a decision maker must presume that a modification is warranted due to a substantial change in circumstances if the application of the child-support guidelines to the parties' current circumstances results in a calculated obligation that "is at least 20 percent and at least \$75 per month" higher or lower than the current support obligation. Minn. Stat. § 518A.39, subd. 2(b)(1) (2008). There is an additional rebuttable presumption that the existing award is unreasonable and unfair. *Frank-Bretwisch v. Ryan*, 741 N.W.2d 910, 914 (Minn. App. 2007). Because the presumption of unreasonableness and unfairness is rebuttable, the satisfaction of the statutory requirement does not automatically mandate modification of an existing support obligation.

Appellant argues that the magistrate improperly failed to recognize the statutory presumption or find that it was rebutted by respondent. But the magistrate was aware of the facts regarding the parties' past and present income, made a finding that appellant's

obligation under the current guidelines would be substantially lower, and was aware that appellant had previously presented a similar argument to the district court on changed circumstances in 2005. Despite acknowledging the circumstances that give rise to the presumption that a modification is warranted, the magistrate found that there were no unanticipated or significant changes that provided a basis to modify support.

We conclude that these findings constitute a determination that the statutory presumption was rebutted. And on this record, the magistrate had cause to deny the presumed modification because the parties' circumstances did not involve a substantial change rendering the continued enforcement of the original award unfair and unreasonable. Therefore, the evidence sustains the magistrate's findings and her conclusions are not against logic and the facts on the record.

2. *Increase in Respondent's Income*

The terms of a child-support order may be modified upon a showing, *inter alia*, of a substantial increase of the obligee's gross income that renders the existing support order unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a)(1) (2008). Appellant argues that the increase in respondent's income from 2002 to 2007 constitutes such a change.

The magistrate found that respondent's income increased 21 percent between 2002 and 2007, from approximately \$50,000 to approximately \$60,700. The magistrate found that appellant's gross income increased from \$143,855 to \$178,397 during the same time period. Appellant presented no other evidence that could constitute a substantial change in circumstances. The magistrate ultimately concluded that the increase in respondent's

income did not constitute a substantial change in circumstances requiring modification of the child-support award.

Appellant cites two cases to support his argument that the increase in respondent's income constitutes a substantial change in circumstances, but those cases are distinguishable. In *Welsh v. Welsh*, this court held that the district court did not abuse its discretion by concluding that a 32 percent increase in the obligor's income, along with increased costs of living, constituted a substantial change in circumstances. 446 N.W.2d 191, 193 (Minn. App. 1989). Similarly, in *Prebil v. Juergens*, this court held that the district court did not abuse its discretion by concluding that a 34 percent increase in the obligor's income constituted a substantial change in circumstances. 378 N.W.2d 652, 654-55 (Minn. App. 1985). Here, by contrast, to justify a decrease in his support obligation, appellant-obligor seeks a determination of a substantial change in circumstances based on a lesser increase in respondent-obligee's income. Additionally, appellant enjoyed a 24 percent increase in his income during that same five-year period. On this record, we conclude that the evidence supports the magistrate's findings and her conclusions of law are not against logic or beyond the scope of her broad discretion.

Finally, appellant argues that the magistrate erred by failing to consider his responsibilities to his younger nonjoint child in denying his motion to modify support. "A child support order is not presumptively modifiable solely because an obligor or obligee becomes responsible for the support of an additional nonjoint child, which is born after an existing order. Section 518A.33 shall be considered if other grounds are alleged which allow a modification of support." Minn. Stat. § 518A.39, subd. 2(c) (2008).

Appellant's argument is without merit. The law does not require the magistrate to consider appellant's nonjoint child when, as here, there were no other grounds alleged to allow a modification of support.

Affirmed.