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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1733**

Margaret Susan Meagher,
f/k/a Margaret Susan Demmessie,
Appellant,

vs.

Nadew Ijjigu Demmessie,
Respondent,

Ramsey County,
Respondent.

**Filed June 22, 2010
Affirmed
Lansing, Judge**

Ramsey County District Court
File No. 62-F5-04-001685

Margaret Susan Meagher, Murfreesboro, Tennessee (pro se appellant)

Nadew Ijjigu Demmessie, Golden Valley, Minnesota (pro se respondent)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and
Harten, Judge.*

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

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from a child-support modification order, Margaret Meagher challenges a child-support magistrate's determination of Nadew Demmessie's income for purposes of computing child support. Meagher also argues that the magistrate failed to properly interpret and apply the terms of the 2005 dissolution judgment that required Demmessie to provide income information. Because we conclude that the magistrate properly interpreted the dissolution judgment and did not abuse its discretion in computing Demmessie's income, we affirm.

FACTS

Margaret Meagher and Nadew Demmessie were married from 1991 to 2005 and are the parents of two children, born in 1996 and 2001. Their 2005 dissolution judgment incorporated the parties' agreement addressing all issues. The dissolution judgment granted sole physical custody of the children to Meagher and joint legal custody to Meagher and Demmessie.

Since 1993 Demmessie has worked as an independent contractor providing courier services. Meagher was employed during and after the marriage by CARE USA. The dissolution judgment provided that Demmessie would pay monthly child support of \$800, subject to cost-of-living adjustments. This amount was based on a factual finding that Demmessie's income for a two-week period in March 2005, as reflected on a "[d]river's [s]ettlement [r]eport," was \$2,045.97. A "driver's settlement report" is a statement of the

driver's sixty percent commission on total sales, without deductions for the driver's employment-related gas or mileage costs.

Because of the variations in Demmessie's independent-contractor income, the dissolution judgment required that Demmessie provide Meagher with income documentation in January 2006, and in January of each following year to permit the parents to agree on a support amount. The judgment further provided that "[i]f an amount of support cannot be agreed upon by the parties . . . or if [Demmessie] fails to provide his financial information, the [c]ourt shall review the issue of support on a de novo basis."

In April 2009 Demmessie filed a motion to decrease his adjusted monthly child-support obligation of \$834 and to stay the pending cost of living adjustment (COLA). Demmessie claimed that his income had been significantly reduced and that he could no longer meet his living expenses. Meagher opposed the motion, requested a continuance, and argued that Demmessie's failure to provide her with his annual income information, as required by the 2005 dissolution judgment, precluded his ability to request a reduction of his child-support obligation.

A district court child-support magistrate denied Meagher's request to continue the hearing to a later date and conducted the hearing on June 18, 2009. The magistrate concluded that Demmessie had shown a change in circumstances sufficient to modify child support. The determination was based on a comparison of the two-week income figure used in the 2005 dissolution judgment (\$2,045), with the magistrate's calculation of a two-week income figure for early 2009 (\$1,399). The magistrate stated that this

income comparison did not take into account Demmessie's business expenses because these expenses were not taken into account in the child-support calculation in the 2005 dissolution judgment.

Applying the de novo review provisions in the 2005 dissolution judgment, the magistrate found that Demmessie's average annual commission income from 2006-08 was \$47,865. After deducting Demmessie's business expenses from his average commission income, the magistrate determined that Demmessie's monthly parental income for child-support purposes was \$1,896. Meagher's current monthly income was \$6,917. Based on the new parental-income figures, the child-support magistrate decreased Demmessie's monthly child-support obligation from \$834 to \$353.

Meagher appeals, contending that the district court abused its discretion by (1) allowing Demmessie to present evidence of a change in financial circumstances and denying her request for a continuance despite Demmessie's failure to comply timely with the financial-information requirements in the 2005 dissolution judgment, (2) failing to make a finding on whether Demmessie was voluntarily underemployed, and (3) allowing excessive self-employment-expense deductions in the calculation of Demmessie's parental income. Meagher also requests an order for payment of "all direct costs related to responding to [Demmessie's] original motions and filing of [a]ppeal."

D E C I S I O N

The decision on whether to modify child support is discretionary with the district court, and a district court's child-support decision will be altered on appeal only if the district court resolved the issue in a manner that is against logic and the facts on the

record or in violation of an applicable statute. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). When reviewing a child-support magistrate’s determination of a child-support modification motion, we apply the same standard of review that we apply to a district court’s decision. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). The interpretation of provisions in a dissolution judgment is a question of law that we review de novo. *Stewart v. Stewart*, 400 N.W.2d 157, 158 (Minn. App. 1987).

I

Meagher first argues that the 2005 judgment included a provision intended to preclude Demmessie from presenting evidence of any changed financial circumstances if he did not first submit this information to her. Paragraph 5 of the conclusions of law in the dissolution judgment sets forth Demmessie’s child-support obligations and also provides that “[Demmessie] shall be prohibited from [presenting] evidence to the [c]ourt on the issue of support if he failed to provide the information to [Meagher] as required in this paragraph.”

The financial information that Demmessie was required to provide Meagher includes his “2005 income information . . . including, but not limited to W-2’s, 1099’s, year-end paycheck stubs, tax documents, and driver settlement reports, including [a] 2005 year-end [d]river [s]ettlement [r]eport.” The judgment also states that “[i]t is in the children’s best interests to revisit the issue of support in this manner in January each year after [Demmessie] provides this income information to [Meagher].” The record reflects that Demmessie did provide all of his income and tax information from 2006 to 2008 for consideration at the child-support hearing in June of 2009. Meagher argues that because

Demmessie admitted his failure to comply timely with this requirement on an annual basis, he should not have been allowed to present any information on his financial circumstances.

“Interpretation of a [dissolution judgment] that is ambiguous or uncertain on its face and, because of its language, is of doubtful meaning or open to diverse constructions, may be clarified by the tribunal that ordered it.” *Mikoda v. Mikoda*, 413 N.W.2d 238, 241 (Minn. App. 1987), *review denied* (Minn. Dec. 22, 1987). The judgment should be interpreted so the original intent is accurately expressed. *Bone v. Bone*, 438 N.W.2d 448, 451 (Minn. App. 1989). It should also be interpreted in a way that insures that the terms are “reasonable, effective, and conclusive” to harmonize both the law and the facts of the case. *Stewart*, 400 N.W.2d at 159. The district court’s interpretation of a judgment incorporating a settlement agreement raises a question of law that we review de novo. *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010).

The magistrate interpreted paragraph 5 of the dissolution judgment to mean, “if it’s not provided before [the hearing], it doesn’t come in.” The magistrate’s interpretation essentially limited the preclusive effect to financial information from 2005, based on the failure to provide Meagher with that information by January 2006. The magistrate allowed financial information from years after 2005. This interpretation takes into account the additional language in paragraph 5 that states that if Demmessie “fails to provide his financial information, the court shall review the issue of support on a de novo basis.” A de novo review would necessarily require evidence on which the court or a

magistrate could make a reasoned determination. The magistrate's interpretation reasonably balances the language to harmonize the two provisions.

Demmessie argues that if the language is interpreted in the way Meagher advocates, he would *never* be able to obtain a modification of his child-support obligation. Minnesota child-support statutes allow for modification of a child-support obligation when the terms are unreasonable or unfair due to a change in circumstances. Minn. Stat. § 518A.39, subd. 2(a) (2008). To permanently preclude Demmessie from pursuing a child-support modification, while still allowing Meagher to bring forward evidence in pursuit of an upward child-support modification, would not be reasonable.

Giving weight to the magistrate's interpretation, and looking at the plain language of the 2005 dissolution judgment, we conclude that it was within the magistrate's discretion to interpret the judgment as precluding evidence not presented prior to the child-support hearing. Therefore, the magistrate reasonably allowed Demmessie to present financial evidence in support of a child-support modification.

Meagher extends this argument by contending that Demmessie's failure to provide her with verification of life insurance also triggered the paragraph 5 preclusion. Additionally, she argues that Demmessie's failure to submit these documents to her provided a basis for a continuance and that the district court abused its discretion by denying a continuance. The dissolution judgment provided that Demmessie must maintain and pay for a life-insurance policy with a death benefit of no less than \$200,000, payable to Meagher.

Neither argument is well supported. First, the requirement that Demmessie must provide verification of the life-insurance policy is contained in paragraph 8, not paragraph 5, of the 2005 dissolution judgment. The preclusive language is only in paragraph 5 and is specifically limited to the “information” required “in this paragraph.” Furthermore, the magistrate specifically found, undisputed on appeal, that Demmessie had maintained the life-insurance policy required by the dissolution judgment. It was not an abuse of discretion for the magistrate to refuse to exclude evidence on the ground that Demmessie had failed to verify life insurance.

We also reject Meagher’s assertion that the magistrate improperly denied her request for a continuance. The decision of whether or not to grant a continuance is committed to the magistrate’s discretion. *Chahla v. City of St. Paul*, 507 N.W.2d 29, 31 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). A significant consideration in exercising that discretion is whether a denial prejudices the outcome of the trial. *Id.* at 32.

Meagher requested a continuance to ask the district court to address Demmessie’s alleged failure to comply with the income and life-insurance verifications required in the dissolution judgment. The child-support magistrate denied the continuance for lack of good cause. The magistrate stated, “The child-support issue can be addressed in the expedited process. If it appears that [the] parenting time or insurance issues cannot be resolved, the issues may need to be addressed by a judge or referee.” The evidence at the hearing was sufficient to address all issues, and Meagher has failed to show how the

denial of this continuance affected the outcome of the child-support modification. It was not an abuse of discretion for the magistrate to deny Meagher's motion for a continuance.

II

Meagher's second argument is that the magistrate erred in granting a child-support modification without addressing the question of voluntary underemployment of the child-support obligor. Meagher presented evidence that Demmessie has a college degree that allows him to work in the finance industry, but he had refused job opportunities that would have provided him with a higher income.

"If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income." Minn. Stat. § 518A.32, subd. 1 (2008). Although the statute is clear about the types of work that would be excluded from classification as underemployment, it does not define the term "underemployment." Additionally, nothing in the statute establishes that the district court or magistrate *must* make a finding on voluntary underemployment. "Whether a parent is voluntarily unemployed is a finding of fact, which we review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009).

During the hearing on child-support modification, Meagher made references about possible underemployment. She stated that at the time of the dissolution proceedings Demmessie "was dressing for work and leaving the home, as if he were working, but he wasn't actually working . . . [and his intention was] to reduce his income, to increase his chances of . . . paying less." Meagher contended that this past behavior made

Demmessie's current conduct suspect and also argued that Demmessie could easily relocate in search of a higher paying job because he had family on the east coast who could support him. Meagher did not provide any concrete evidence to support her claims, and the magistrate informed her that if she had no evidence to provide at the hearing, her assertions of underemployment would not be considered as part of the child-support-modification proceedings.

Demmessie claimed that he was working a fifty-hour week to keep up with his child-support payments. He acknowledged that he had looked at a position in the finance industry out east that would have paid him \$52,000 annually. Demmessie testified that he did not receive an offer for this position, but even if he had, the costs associated with relocating and the higher cost of living on the east coast would have made his financial situation worse. He has been employed as a courier since 1993, and nothing in the record permits a conclusion that he has changed employment or voluntarily diminished his income. He testified that the current economy has resulted in less business and increased expenses for couriers. See Minn. Stat. § 318A.32, subd. 6 (2008) (stating that self-employed person is not underemployed if decreased income is caused by related economic conditions).

The only solid evidence in the record indicates that Demmessie was not voluntarily underemployed. Thus, it was not an abuse of discretion for the magistrate to decline to impute income or to make a finding on voluntary underemployment.

III

Meagher's third argument is that the magistrate erred in its calculation of Demmessie's income for the purposes of child support by allowing Demmessie to deduct expenses related to his self-employment. Meagher argues that deductions should not have been allowed in the child-support-modification calculations because deductions were not considered in the original judgment. In the alternative, Meagher argues that the expense deductions allowed by the magistrate were unreasonable.

We will reverse a district court's child-support order only if the court abused its broad discretion by making a "clearly erroneous conclusion that is against the logic and the facts on [the] record." *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999). The gross income for a self-employed parent is the "gross receipts minus costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30 (2008). The statute does not allow the deduction of "business expenses determined by the court to be inappropriate or excessive for determining gross income for purposes of calculating child support." *Id.* "The court in its discretion must decide what expenses, if any, are allowable deductions." *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009).

Demmessie's income in the 2005 dissolution judgment was determined solely on income information for a two-week period in March 2005. The district court's order provided that because of the lack of required information, the child-support determination would be revisited in the future and that more income information would be necessary. The magistrate compared two comparable figures, one that covered a two-week period in

March 2005, and the average of several statements for February through May 2009. From these numbers, the magistrate established a thirty-two percent decrease in Demmessie's income. If a parent's income decreases by at least twenty percent through no fault of his own, the change is presumed sufficient to trigger child-support modification. Minn. Stat. § 518.39, subd. 2(b)(5) (2008). It was not an abuse of discretion to find a substantial change in Demmessie's financial circumstances.

After the determination of a substantial change in circumstances, the magistrate reviewed Demmessie's income to calculate the parental income for purposes of ordering child support. This de novo review of income was consistent with the provisions of the 2005 dissolution judgment. Under this review, it was not an abuse of discretion for the magistrate to deduct Demmessie's self-employment expenses, which are allowable deductions under section 518A.30.

Meagher also argues that the amount of the expenses that the magistrate allowed was excessive and unreasonable. Under section 518A.30, it is within the district court's discretion to allow deductions for "ordinary and necessary" expenses of self-employment. "The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary." Minn. Stat. § 518A.30. Minnesota courts have held that "[l]egitimate business expenses must be considered by the [district] court in determining an obligor's net income." *County of Nicollet v. Haakenson*, 497 N.W.2d 611, 615 (Minn. App. 1993).

The magistrate allowed an annual deduction of \$20,550 for Demmessie's car-related expenses for his independent-contractor courier service. This number represents

\$8,478 for car depreciation, \$1,836 for insurance, \$1,620 for repairs, and \$8,616 for gas and oil. The record reflects Demmessie's testimony and the magistrate's evaluation of gas, repair, and insurance costs. The magistrate rejected the higher amounts that Demmessie claimed on his tax submissions: \$41,452 for a general mileage deduction and \$29,380 for vehicle depreciation. *See* Minn. Stat. § 518A.30 (limiting amounts otherwise allowable as deductions by Internal Revenue Service). The magistrate deducted separate amounts for gas, repairs, and insurance rather than allow the general mileage deduction. The magistrate's determination of the business-expense deductions is reasonable, consistent with the statutory allowances, and not clearly erroneous. It was not an abuse of discretion for the magistrate to deduct the reasonable costs of business for an independently contracting courier who uses his own car.

Meagher contends that the magistrate incorrectly calculated Demmessie's gas costs. The record shows that Demmessie spent an average of \$704 a month on gas. After deducting ten percent for his personal use, Demmessie testified that he spent \$634 a month on gas for his employment. The magistrate's calculation indicated a monthly cost of \$643 for business-related gas which is a \$9 difference between the testimony and the magistrate's child-support order. Although precision is preferable, a calculation error of \$9 does not amount to an abuse of discretion. *See e.g., Bunge v. Zachman*, 578 N.W.2d 387, 390 n.3 (Minn. App. 1998) (indicating that mistake that would change childcare payment by approximately \$10 per month was *de minimis*), *review denied* (Minn. July 30, 1998); *Hogsven v. Hogsven*, 386 N.W.2d 419, 421 (Minn. App. 1986) (making similar determination on \$32 calculating error).

IV

Finally, Meagher requests that this court order Demmessie to pay for “all direct costs related to responding to [Demmessie’s] original motions and filing of [a]ppeal.” When a request for costs incurred in the district court proceedings is not raised in the district court, it is waived on appeal. *See In re Bender*, 671 N.W.2d 602, 606 (Minn. App. 2003) (declining to address attorney fees issue not raised in district court). To the degree Meagher’s request refers to appellate costs, Meagher is required to submit a motion that sets forth the specific costs and the basis on which she makes the request. Minn. R. Civ. App. P. 139.06.

Affirmed.