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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0032**

In re the Marriage of:
Karen M. Barrett, petitioner,
Respondent,

vs.

Daniel T. Barrett,
Appellant.

**Filed July 16, 2012
Affirmed
Ross, Judge**

Anoka County District Court
File No. 02-F2-97-009786

Robert J. Bruno, Robert J. Bruno, Ltd., Burnsville, Minnesota (for respondent)

Daniel T. Barrett, Columbia Heights, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Toussaint, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

The district court dissolved the marriage of Daniel Barrett and Karen Barrett in 1992. Daniel Barrett now appeals the district court's order denying his postdissolution

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

motion. He has filed more than a dozen post-dissolution motions in the district court, and appealed a dozen times to this court. He argues that the district court abused its discretion by not finding Karen in contempt, by not granting him custody of his daughter J.B., by not issuing a harassment restraining order against Karen, by not reinstating his driver's license, by not modifying his parenting-time schedule, by not reopening the judgment, by not eliminating post judgments and arrearages, and by not modifying his child-support obligation. He also contends that the Minnesota child-support guidelines are unconstitutional. Because his arguments have all either been decided in his prior litigation or are without merit, we affirm.

FACTS

Daniel Barrett and Karen Barrett were married in 1992. The parties had two daughters, K.B. born in 1993 and J.B. born in 1995. The parties' marriage was dissolved by judgment and decree in January 1999. The district court awarded sole legal and physical custody of the children to Karen with parenting time for Daniel. The judgment required Daniel to pay child support and child-care costs.

Daniel has since litigated issues relating to the parties' dissolution in state and federal court. He quit paying child support in July 2000. The district court found him in contempt and entered judgment against him for arrearages. It also sentenced him to 180 days in the workhouse but conditionally stayed the sentence for one year. Daniel failed to meet the conditions and the district court executed his sentence in September 2002. He appealed, and we affirmed in an unpublished opinion. *Barrett v. Barrett*, No. C2-02-1806, 2003 WL 21652243 (Minn. App. July 15, 2003).

Daniel remained unemployed or underemployed, and failed to make his child-support payments. In 2004, the district court restricted his parenting time and suspended his driver's license. His parenting time was further modified in January 2006. Daniel appealed the district court's January 2006 modification, but we dismissed his appeal as untimely and the supreme court denied review. *Barrett v. Barrett*, No. A06-883 (Minn. App. June 8, 2006) (order op.), *review denied* (Minn. Aug. 16, 2006). Daniel filed another postdissolution motion in January 2009, which the district court denied. Daniel appealed and we affirmed. *Barrett v. Barrett*, Nos. A09-619, A09-620, 2009 WL 4251133 (Minn. App. Dec. 1, 2009).

In October 2011, Daniel moved the district court to hold Karen in civil contempt; to change legal and physical custody of J.B.; to modify his parenting-time schedule and child-support obligation; to issue a restraining order against Karen; to reinstate his driver's license; to eliminate past judgments for child-support arrearages; and to reopen the judgment as to previously entered orders based on "judicial misconduct, incorrect application of law, fraud, and deceit." The district court awarded Daniel six compensatory days of parenting time because Karen misinterpreted the parenting-time holiday schedule, but otherwise denied his motion. Daniel appeals.

DECISION

Contempt

We reject Daniel's argument that the district court abused its discretion by not holding an evidentiary hearing before refusing to find Karen in contempt. We review the district court's decision whether to find an individual in contempt for an abuse of

discretion. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). Daniel received a hearing on his contempt motion and cites no authority holding that a district court must hold an additional evidentiary hearing before denying a contempt motion. The October 24 hearing and the parties' affidavits provided the district court with a sufficient basis for its decision. The objective in a civil contempt order is to secure compliance with a prior order, not to punish for past misconduct. *Hopp v. Hopp*, 279 Minn. 170, 173, 156 N.W.2d 212, 216 (1968). Daniel's argument that a contempt finding is warranted rests entirely on alleged past misconduct, not Karen's willful failure to comply with an existing order. The district court properly exercised its discretion.

Custody

We see no merit in Daniel's contention that the district court abused its discretion by refusing to change custody of J.B. because Karen denied him parenting time. A district court has broad discretion to determine custody. *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). The only established instance of Karen denying parenting time resulted from a misunderstanding, and the district court compensated Daniel for the lost time. This is not a change in J.B.'s circumstances or an indication that custody modification is in her best interest. *See* Minn. Stat. § 518.18(d) (2010).

Harassment Restraining Order

The district court also did not abuse its discretion by refusing to issue a harassment restraining order against Karen for her alleged interference with Daniel's parental rights. The record contains no evidence of harassment.

Driver's License Reinstatement

Daniel argues that the district court erred by refusing to reinstate his driver's license, contending that Minnesota Statutes section 518A.65 (2010) is unconstitutional. A child-support obligor's license may be suspended if he is in arrears. Minn. Stat. § 518A.65(b). He may seek reinstatement by proving compliance with a court-approved payment agreement. Minn. Stat. § 518A.65(e)(1). Daniel states that he is currently \$90,000 in arrears in child-support and he does not contend that he has entered into a court-approved payment agreement. He is not entitled to reinstatement of his driver's license under the statute, and we decline to consider his constitutional argument because it was not made to and considered by the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Parenting-Time Schedule

Daniel unconvincingly argues that the district court abused its discretion by refusing to modify his parenting-time schedule. The district court has broad discretion in deciding parenting-time questions. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). The March 2, 2009 order requires mediation of the parties' disputes before a parenting-time motion may be brought. Daniel provides no evidence that the parties engaged in the required mediation.

Reopening the Judgment

Daniel argues that the district court abused its discretion by declining to reopen the judgment to eliminate past child-support arrearages and to address his fraud claims. We have twice rejected the same child-support arrearages argument, and once rejected the

fraud claim. *See Barrett*, 2003 WL 21652243, at *5; *Barrett*, 2009 WL 4251133, at *4. We reject both arguments again.

Child-Support Obligation

Daniel contends that the district court abused its discretion by refusing to modify his child-support obligation. The district court has broad discretion in deciding whether to modify child-support orders. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). The movant seeking modification must demonstrate both a substantial change in circumstances and resulting unfairness and unreasonableness. Minn. Stat. § 518A.39, subd. 2(a) (2010). Daniel provided no income information for Karen and only one paystub for himself. He did not meet his burden of demonstrating a substantial change in circumstances or unfairness.

Constitutionality of Minnesota’s Child-Support Guidelines

Daniel argues that the Minnesota child-support guidelines are unconstitutional. We previously rejected that argument. *Barrett*, 2009 WL 4251133, at *5–6 (citing *Doll v. Barnell*, 693 N.W.2d 455, 466 (Minn. App. 2005), *review denied* (Minn. June 14, 2005)).

Motion for Sanctions

After the filing of this appeal, Karen moved to strike the facts section and appendix of Daniel’s brief because he failed to separately and consecutively number the appendix pages, he included documents not in the record, and he failed to provide a copy of the order from which his appeal was taken. We have not considered any material outside the record, which consists of “[t]he papers filed in the trial court, the exhibits, and

the transcript of the proceedings.” Minn. R. Civ. App. P. 110.01. Despite the formatting deficiencies in Daniel’s brief, our decision renders Karen’s motion to strike moot.

Affirmed.