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APPELLATE COURT CASE NUMBER A111627
STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE: In re the Marriage of:

Sara Helen Jones, f/k/a Sara Jones Jarvinen, petitioner,
Respondent,

vs.

Craig Shawn Jarvinen,
Appellant.

APPELLANT'S BRIEF AND APPENDIX

KAREN TERESE KUGLER
Attorney for Respondent
2589 Hamline Ave N, Suite C
Roseville, MN 55113
Telephone: (651) 628-0265
Attorney Registration: 032128x

CRAIG SHAWN JARVINEN
Appellant, Pro Se
4113 Chowen Ave S
Minneapolis MN 55410
Telephone: 612-920-6520

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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TABLE OF AUTHORITIES

Statutes:

- Minn. Stat. § 518
- Minn. Stat. § 518.17 Custody and Support of Children on Judgment
- Minn. Stat. § 518.175 Parenting Time
- Minn. Stat. § 518A
- Minn. Stat. § 518A.36 Parenting Expense Adjustment
- Minn. Stat. § 518A.39 Modification of Orders or Decrees

Cases:

Secondary Authorities:

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LEGAL ISSUES

- I. The District Court abused its discretion in selection the method for calculation of parenting time and made an error in its subsequent order for basic child support.
- II. The District Court erred by not reversing child-care support during a period of time when there were no child care expenses. There is no evidence to justify child care support after November 2009. Child care support must be based on actual expenses.
- III. The Courts erred by not having exhibit A available during review of the Child Support Magistrate's order. This exhibit was part of the original motion for modification of child support. This exhibit was reviewed by the Magistrate, but for some reason did not make it to the District Court for review.
- IV. The District Court appears to have reviewed each issue in isolation and therefore erred in its review by not considering all aspects of the case as a whole.

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STATEMENT OF FACTS

- I. The matter came before the Court pursuant to a motion to modify child support. The Respondent's motion was served on November 23, 2010. The matter came on for hearing before James R Brinegar, presiding Child Support Magistrate, at Hennepin County on April 1, 2011. A motion to modify child support was filed because the Respondent was involuntarily terminated from employment in April, 2010 and was without earned income and unable to continue meeting child support obligations. The child support order in effect at that time was the original order dated October 17, 2007. No modifications had been requested or ordered since October 17, 2007 through November 23, 2010.
- II. The Respondent submitted a Motion for Review on April 27th, 2011 requesting review by a District Court Judge. The matter then came before Judge Lloyd B Zimmerman of District Court, based on the Respondent's Motion for Review of Child Support Magistrate James R Brinegar's Order dated April 4, 2011 and filed April 11, 2011. This case was not reviewed by a family court judge.
- III. Child Support Magistrate Brinegar's April 11, 2011 Order was modified to correct an error in the calculation of the percentage of overnights for the Respondent. The percentage of overnights for the Respondent was incorrectly calculated at 27% and was corrected to 41%. This correction was supported by both the Petitioner and the Respondent in their pleadings. Child care support was also modified by eliminating this part of child support for December 2010.
- IV. The Respondent requested in his November 23, 2010 motion to modify child support, that parenting time be found in the range from 45.1 percent to 50 percent,

which would presume parenting time is equal for the calculation of child support. A method other than overnights would be required to support this calculation. Magistrate Brinegar did not grant this request. The Respondent requested a review of this decision by a District Court Judge. District Court Judge Zimmerman modified the order, correcting the overnight parenting time percentage for the Respondent, but did not calculate parenting time using a method other than overnights as requested.

* * * * *

ARGUMENT

- I. **Parenting time is effectively equal.** The Appellant claims he is an equal parent under Minn. Stat. § 518A.36 for the calculation of basic child support. It is the position of the Appellant that child support should have been calculated using the range from 45.1 percent to 50 percent, which would presume parenting time, is equal. A significant percentage of the court ordered parenting time occurs on Tuesdays but that parenting time does not include an overnight for the children with the Appellant. The review by the District Court does not take into consideration that Tuesday parenting time is court ordered, just as overnight parenting time is court ordered. Tuesday parenting time is very significant. Tuesday parenting time begins at 9 am every Tuesday and ends at 8 pm. This parenting time is split so that each parent is with one boy for the day, alternating each week with each parent spending time with each boy every other week.

Tuesday parenting time represents approximately 14% of all parenting time.

Consider that Minnesota Statutes 518A.36 defines three ranges of parenting time: Less than 10%, 10% to 45% and 45.1% to 50%. To say that 14% of parenting time is not important and is okay for Courts to use discretion to ignore it, is to say that the first range of parenting time is irrelevant, which it is not. Under this Minnesota Statute, the court has a duty to calculate parenting time based on what is written in the stipulated agreement and order dated March 1, 2005 (and extended from 7:30pm to 8pm by decision of our parenting consultant), even if in doing so is not as simple as counting overnights. This is a very significant amount of parenting time and to ignore this time is to abuse discretion. The net effect of this 14% of parenting time is 7% for each parent since the time is split. If it is assumed that the Appellant has 41% of the overnights, adding 7% for Tuesday one to one parenting time, the Appellant's parenting time becomes 48%.

The District Court's review seems confused about the Appellant's actual overnight parenting time. Based on what is written in the 7/12/2011 Order (see page 41 of the Appendix), under Finding of Fact and Conclusions of Law, part 9, then part 4, the Court initially appears to be basing a decision about total parenting time by adding Tuesday parenting time to the incorrect 27% overnight parenting time, when in fact Tuesday parenting time should be added to 41%. Later on that same page, the Court switches to using 41% for overnight parenting time. However the logic switches back to 27% on the top of page 42 of the appendix when the Magistrate's conclusion about Tuesday parenting time is used to concluded that it

wasn't enough to make parenting time effectively equal. Again, the Magistrate was considering this point with the understanding that overnight parenting time was only 27% for the Appellant. The District Court judge should have drawn his own conclusions based on the entire body of corrected information and not on isolated parts decided by the Magistrate using incorrect information.

II. The both the District Court order and the Magistrate's order are not consistent with a big picture view of what is best for our boys and the reality of our situation. As it stands, the Court has ordered a fully equal parent, equal in involvement and time with our boys, to pay child support when after 23 years of continuous employment in the same job, unexpectedly is without earned income, to a parent who is fully employed and earning close to \$100,000. Minnesota law provides for alternative methods of calculating parenting time for exactly situation like this. It doesn't make any sense to for the courts to force additional legal and financial problems to an already difficult situation. Our boys need two parents with workable financial arrangements; the current state is not workable.

III. The appellant should not have been ordered to pay child care support after October 2009. Appellant was ordered to pay child care support during a period of time when actual child care expenses had terminated. For some reason, this case was not reviewed by a family court judge. The District Court did not consider Minnesota Statue 518A.39 MODIFICATION OF ORDERS OR DECREES. Subdivision 7. Child care exception. Child 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. The court erred by not applying this special exception for modification of child support prior to the date of filing a motion for modification. Child care support must be reversed for all the months and/years prior to November 2010. Child care ended before November 2009.

IV. **A key exhibit was missing for the district court review; therefore a full and fair review of the Magistrate's order was not possible.** The district court did not have Exhibit A during its review of the Magistrates order. It is the position of the Appellant that the exhibit contained critical information for the calculation of parenting time. While the court order defines parenting time, an accurate description of actual parenting becomes important when the court has discretion about how to calculate parenting time when applying Minnesota Statutes. In this case, parenting time ordered March 1, 2005, years before new child support laws took effect in 2007. In this case, the order did not specify a percentage, so interpretation of the order was required. The missing Exhibit A is important documentation demonstrating essentially equal involvement by both parents. Since the District Court did not have this document for review, its review is incomplete and should be reconsidered with all the evidence filed for the trial.

* * * * *

CONCLUSION

For the reasons stated above, I ask that the court of appeals for the following changes:

1. Determine that parenting time is effectively equal for both parents based on a calculation other than overnights and recalculate child support starting November 2010 based on equal parenting time. Or remand the issue of basic support in my case back to the district court so that all evidence and exhibits can be fairly considered.
2. Order zero child care support starting November 2009.

Respectfully submitted,

Craig Shawn Jarvinen
Appellant, Pro Se
4113 Chowen Ave S
Minneapolis MN 55410
Telephone: 612-920-6520