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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0850**

Ramsey County,  
Respondent,

Jennifer M. Hare,  
f/k/a Jennifer M. Parker,  
Respondent,

vs.

Michael K. Grewe,  
Appellant.

**Filed May 20, 2008  
Affirmed in part, reversed in part, and remanded  
Klaphake, Judge**

Ramsey County District Court  
File No. F9-96-50132

Susan Gaertner, Ramsey County Attorney, 50 West Kellogg Blvd., Suite 315, St. Paul,  
MN 55102 (for respondent Ramsey County)

Jennifer M. Hare, 101 Pullman Avenue, St. Paul Park, MN 55071 (pro se respondent)

Michael K. Grewe, 4910 39th Avenue South, Minneapolis, MN 55417 (pro se appellant)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and  
Halbrooks, Judge.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Appellant Michael K. Grewe challenges the child support magistrate's (CSM) order determining past child support due and setting his future child support obligation for the benefit of his child, now in the custody of respondent Jennifer M. Hare. Appellant argues that the amounts of both the past and future awards are not supported by the record evidence of his income.

Because there is evidence in the record supporting the CSM's order for past support due to both respondent and Ramsey County from December 1, 2004, through February 28, 2006, we affirm the CSM's order for reimbursement of past child support for that period of time. But because there is insufficient evidence in the record of appellant's income beginning March 1, 2006, and his current income, we reverse the CSM's order setting future support and remand for further findings on appellant's income.

## DECISION

This action was initiated by Ramsey County because respondent receives public assistance for the parties' child. When a parent receives direct support, the parent is deemed to have assigned to the state all rights to support or maintenance from any other person. Minn. Stat. § 256.741, subd. 2 (2006). Respondent received \$2,858.24 in public assistance from Ramsey County for the period from December 1, 2004, to December 31, 2006.

A parent is liable for the amount of public assistance received for the benefit of his or her child, up to the parent's ability to pay. Minn. Stat. § 256.87, subd. 1 (2006). The parent's ability to pay is determined in accordance with the provisions of chapter 518 governing child support.<sup>1</sup> *Id.* Where no support order is in place, the state may seek contributions for up to two years prior to the proceeding. *Id.* In the same proceeding, the court may issue an order for continuing support contributions. *Id.* at subd. 2 (2006).<sup>2</sup>

The parent's ability to pay is made in accordance with the guidelines of Minn. Stat. § 518.551, subd. 5 (2004).<sup>3</sup> This subdivision sets forth the computations and considerations made when ascertaining income for purposes of a support order. Generally, income is proved by submitting employer statements, pay stubs, receipt and expense statements, tax forms, workers' compensation statements, and unemployment benefit statements. Minn. Stat. § 518.551, subd. 5b(a) (2004). But if there is insufficient information to determine actual income or to impute income, "the court may calculate support based on full-time employment of 40 hours per week at 150% of the federal minimum wage or the Minnesota minimum wage, whichever is higher." *Id.* at subd. 5b(e) (2004); *see Butt v. Schmidt*, \_\_\_ N.W.2d \_\_\_, 2008 WL 1747395, at \*8-11 (Minn.

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<sup>1</sup> Minn. Stat. § 256.87, subd. 1, refers to chapter 518A; chapter 518A became effective on January 1, 2007. Because this hearing took place in December 2006, the appropriate chapter is 518, as set forth in the 2004 and 2005 versions of the law.

<sup>2</sup> Appellant is correct in asserting that modifications to an order for support may be made retroactive only to the date of service of notice of a motion for modification, unless certain findings are made by the court. Minn. Stat. § 518.64, subd. 2(d) (2004). But the court may modify support retroactively if the party seeking modification was a recipient of public assistance based on need, as respondent was. *Id.* at subd. 2(d)(2).

<sup>3</sup> Again, the current statute is found in chapter 518A.

Apr. 17, 2008). Once the court determines income, it applies the guidelines of subdivision 5 to presumptively set support.

The county submitted documentation, obtained through the Minnesota State Wage Match, that appellant earned at least \$2,000.00 per month for the period of December 1, 2004, through February 28, 2006. After applying the standard deductions, the CSM determined that appellant had a net income of \$1,284 per month for that period of time, resulting in a child support obligation of \$321 per month for those 14 months. We see no error here.

The CSM found that there was not enough information in the record to establish appellant's income for the period of March 1, 2006, through December 31, 2006, or appellant's current income for purposes of establishing ongoing support and calculated support based on full-time employment of 40 hours per week at 150% of minimum wage. *See* Minn. Stat. § 518.551, subd. 5b(e) (2004). But appellant submitted an employment verification form from his employer, First Equity Mortgage. The employer stated that appellant was paid strictly by commission, and that he averaged about \$758 gross per month or about \$540 net per month after deductions.

We see nothing in the record that explains why the CSM rejected this information. An employer statement is an approved method for proving income. *See* Minn. Stat. § 518.551, subd. 5b(a). The CSM may reject evidence that is not credible, but there is nothing in this record to suggest that the employer statement was not accurate or that appellant was not credible in his testimony. Absent findings of a failure of proof or lack

of credibility, we conclude that the CSM abused his discretion by calculating appellant's income under Minn. Stat. § 518.551, subd. 5b(e).

We therefore reverse the CSM's determination of past support due from March 1, 2006, through December 31, 2006, and the ongoing child support obligation, and remand for further findings to establish appellant's income during that period of time and his current income.<sup>4</sup>

#### *Other Issues*

Appellant also challenges the CSM's refusal to grant him a continuance for the December 26, 2006 hearing. The district court may in its discretion continue a matter, and its decision regarding a continuance will not be reversed absent an abuse of discretion. *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). A court abuses its discretion when the denial of a continuance prejudices the outcome of a trial. *Weise v. Comm'r of Pub. Safety*, 370 N.W.2d 676, 678 (Minn. App. 1985). Appellant had sufficient notice of the hearing and time to hire an attorney or prepare for the hearing. We see no abuse of discretion.

Appellant asserts that the CSM erred by refusing to offset his arrears against respondent's arrears in support. There is no evidence in the record establishing arrears

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<sup>4</sup> Although we hold that the CSM properly calculated the arrears from December 1, 2004, to February 28, 2006, at \$4,494, the total arrears to December 31, 2006, must be recalculated. Of this total, \$2,858.24 is owed to Ramsey County for reimbursement, with the balance owed to respondent.

owed by respondent in any amount. This court will not review matters not argued and considered below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

**Affirmed in part, reversed in part, and remanded.**