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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1463**

County of Dakota, petitioner,
Respondent,

Lori Ann Frank, n/k/a Lori Ann Frank-Bretwisch, petitioner,
Appellant,

vs.

William James Ryan,
Respondent.

**Filed May 26, 2009
Affirmed in part and reversed in part
Shumaker, Judge**

Dakota County District Court
File No. 19-F7-00-008867

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Considered and decided by Shumaker, Presiding Judge; Bjorkman, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal for the second time from an order granting child-support modification, we are asked to determine whether the district court abused its discretion by modifying an existing child-support obligation even after finding there had been no change in circumstances. Appellant also contends it was an abuse of discretion to include her bonus income in determining her new child-support obligation. We affirm in part and reverse in part.

FACTS

In 1991, one child was born to appellant Lori Ann Frank-Bretwisch and respondent William James Ryan, who was adjudicated to be the child's father in 1997. Thereafter, the parties had many disputes about child support.

In August 2005, the parties agreed that Ryan would have sole physical custody of the child and that Frank-Bretwisch would pay sub-guidelines monthly child support of \$350. Although that sum represented a significant deviation from the child-support guidelines, the district court approved and adopted the parties' agreement in an order in September 2005 without making any findings to support the guidelines departure. Neither party appealed.

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

Ryan moved to increase the support amount in February 2006 and to have Frank-Bretwisch's bonus income included in the support calculations. A child support magistrate (CSM) heard and denied the motion to modify the existing support order, ruling that, even though she had "grave concerns" about the propriety of that order, Ryan had failed to show the requisite change of circumstances that made the order unreasonable and unfair. On review, the district court affirmed but also stated that it was concerned about the reasonableness of the support amount.

Ryan appealed. We reversed and remanded, holding that the district court's findings were inadequate to address the child's best interests. *Frank-Bretwisch v. Ryan*, 741 N.W.2d 910 (Minn. App. 2007).

After a hearing on remand, a CSM made detailed findings of fact and concluded that "there has not been a substantial change in circumstances that renders the existing child[-]support order unreasonable and unfair." The CSM then provided in her order: "The Motion to modify the child[-]support obligation is GRANTED," and ordered monthly child support of \$1,110; a payment of \$2,239 "as the child support owed from her bonus income in 2006"; and 25% of future net bonus income. Frank-Bretwisch then brought this appeal.

D E C I S I O N

We review an order modifying child support for an abuse of discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The court abuses its discretion when its decision is "against logic and the facts on [the] record." *Id.*

Although Frank-Bretwisch argues various issues regarding the applicable standard of review, the scope of review, the burden of proof in a modification proceeding and the parties' respective financial circumstances, the starting point of our analysis is our discussion in the previous appeal.

We stated that, based on the parties' circumstances at that time, "there is a statutory presumption that there has been a substantial change in circumstances" *Frank-Bretwisch*, 741 N.W.2d at 914. We also noted the rebuttable presumption that follows, namely, that the change in circumstances has made the existing order unreasonable and unfair. *Id.* We further indicated that both presumptions apply to a stipulated award. *Id.* We remanded to the district court because "[t]he current fairness and reasonableness of the 2005 award" could not be adequately addressed without more findings. *Id.* at 915.

The purpose of the remand was to determine whether the presumption of unreasonableness and unfairness had been, or could be, rebutted in light of the parties' change in circumstances and in view of the child's best interests. Although the respective incomes and needs of the parties were to be part of the context of the remand, as they must if a court is to properly assess a financial obligation, the gravamen of the remand was the issue of whether the substantially sub-guidelines support amount in the existing order was reasonable and fair and in the child's best interests. *Id.* at 916. We also directed the district court on remand to determine whether "current circumstances show regular bonus income" and whether bonus income, even if "too irregular to be calculated

as income,” might nevertheless be appropriate for a separate award of a child-support sum. *Id.* at 916.

On remand, the CSM made detailed financial findings. They are supported by the evidence. The CSM then found that there was no basis to maintain the current deviation from the child-support guidelines:

72. Considering the factors set forth in Minn. Stat. § 518.551 Subd. 5(c) the court cannot find any reason, from the child’s vantage point, why there should be a downward deviation.

73. This court cannot find any reason why it is in the child’s best interest that there is a reduced amount of support.

74. Based upon the mandate of the District Court and the Court of Appeals, the court finds that it is in the best interest of the minor child that support be set in accordance with the child support guidelines.

Thus, on remand the CSM did as directed by making findings that addressed the intertwined issues of the fairness and reasonableness of the existing child-support award and the child’s best interests. Those findings are supported by the evidence and have not been shown to be erroneous. Furthermore, those findings support the order modifying child support. The order must be affirmed.

The problem arose when the CSM drew a contradictory conclusion that there had been no change of circumstances that made the existing order unreasonable and unfair. Because there can be no modification without first showing a change in circumstances as provided by statute, this conclusion does not support the modification order. Minn. Stat. § 518.64 (2004). The conclusion was incorrect. Moreover, it was irrelevant because, in our precedential previous opinion, we had determined that the change in circumstances

had been statutorily presumed. *Frank-Bretwisch*, 741 N.W.2d at 914. Thus, the CSM did not need to reach that issue at all. Without the irrelevant and unnecessary contradictory conclusion, a conclusion which we reverse, the findings are consistent with the evidence of record, and they support the order modifying child support. Further, the related rebuttable presumption that the existing support award was unreasonable and unfair was not rebutted. Therefore, the order setting guidelines support must be affirmed.

Finally, we find no error respecting the bonus-income award. The amounts are supported by the evidence, and we left open in our prior opinion the possibility that the court could exercise its discretion by making some award of Frank-Bretwisch's bonuses. It has not been shown that the awards the CSM ordered were an abuse of discretion.

Affirmed in part and reversed in part.