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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0605**

In re the Matter of:
Amy Sue Hagen, petitioner,
Respondent,

vs.

Daniel John Schirmers,
Appellant.

**Filed January 14, 2013
Affirmed
Stoneburner, Judge**

Benton County District Court
File No. 05-F3-04-050166

Lori L. Athmann, Rajkowski Hansmieir Ltd., St. Cloud, Minnesota (for respondent)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant-father challenges the district court's order denying his motion for a modification of child support. Father argues that the district court, on review of a child support magistrate's order, abused its discretion by reversing the child support

magistrate's decision to modify his child-support obligation. Because the district court did not abuse its discretion, we affirm.

FACTS

Appellant Daniel John Schirmers (father) and respondent Amy Sue Hagen (mother) were never married to each other, but they have a child born in 2004. In 2005, the district court issued a custody, parenting-time, and child-support order implementing the parties' stipulated agreement. The order required father to pay monthly child support in the amount of \$1,000 for basic child support, \$162.50 for childcare support, and \$16.88 for medical support.

Father's 2008 motion for a modification of child support because of his decreased income was denied in 2009, based on the district court's conclusion that father had failed to establish that a substantial change in circumstances existed to warrant modification of child support.

In 2011, father, pro se, again moved for modification of his child-support obligation based on his claim of decreased income. In support of his motion, father submitted affidavits, a list of his corporation's profits and losses through mid-December 2011, and his 2010 individual and corporate tax returns. Father and his accountant testified at the evidentiary hearing, and father submitted the corporation's 2009 tax return and 2011 bank statements. Both parties submitted written closing arguments to the child support magistrate (CSM).¹

¹ Father's closing argument was submitted by an attorney and argued, in part, that the CSM erroneously included father's wife's income to calculate child support. Mother

The CSM found that father's testimony was unreliable and that his tax returns were not a credible reflection of his actual income for child-support purposes. But, without citing any evidence in the record, the CSM found that it was "logical and credible that [father's] income has diminished somewhat in the past 2-3 years because of the recession in the construction industry that has affected employers and employees alike." The CSM then used a Minnesota salary survey to impute income to father, finding that, based on his occupation, length of employment, and geographic location, father has the ability to earn \$21.18 per hour in full-time work. Based on this imputed income, the CSM reduced father's monthly child-support obligation to \$412 for basic child support, \$59 for childcare support, and \$31 for medical support.

Mother moved for district court review of the CSM's order, arguing that father had failed to meet his burden to establish a change in circumstances that warranted modification of child support and that the CSM erred by imputing father's income to support the modification. Father objected to mother's motion and filed his own motion for review, arguing that the CSM imputed too much income to him because he is a seasonal worker. Father also alleged that his wife's unemployment, which occurred after the hearing, should reduce his income. Father attached additional bank statements and a 2007 tax return to his motion. Mother objected to father's counter-motion and response

immediately objected, arguing that counsel had not represented father in the matter, was not privy to the evidence adduced at the hearing, and was making arguments not supported by the evidence in the record.

to her motion.² Neither parent provided the district court with a transcript of the CSM hearing, and neither requested a hearing on review or remand for a new hearing before the CSM. Father did not request an order authorizing the submission of new evidence. The district court reviewed the CSM's decision without a hearing and without considering father's additional submissions.

The district court affirmed many of the CSM's findings of fact, including the CSM's credibility determination that father had failed to produce credible evidence of his current income for the purpose of child support. The district court agreed with mother's argument that "by utilizing the Minnesota salary survey to determine [father's] income for purposes of modifying support, the CSM effectively relieved [father] of his burden of proof to establish a substantial change in his income justifying a support modification, and thereby rewarded [father] for his own unreliable evidence." And the district court found

no legal basis to conclude that modification of a support Order can be based on the general assertion that there is a recession in the construction industry, without any specific showing as to whether the economy has actually negatively affected the movant's business or to what extent it has impacted his income.

Because the district court found that father failed to meet his burden of proof to show decreased income justifying a modification of child support, the district court

² In his reply brief filed in this court, father erroneously asserts that mother failed to object to his motion and suggests, but does not argue, that the district court should have granted his motion by default. He also asserts that the district court ruled on the motions prematurely, but this assertion has no merit.

vacated the CSM's order and ordered that the existing child-support order remain in full force and effect. This appeal followed.

D E C I S I O N

On appeal from an order deciding a motion for review of a CSM's decision, we review only the order from which the appeal is taken. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). Where, as here, the parties failed to submit to the district court a transcript of the hearing before the CSM, we are precluded from considering the transcript on appeal because it is not part of the record on appeal. *See Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001).

Father argues, without citing any authority, that a district court cannot review a CSM's decision de novo absent a transcript or hearing. We disagree. A district court is required to review a CSM's order de novo whether or not a transcript of the hearing before the CSM has been submitted to the district court. *Id.* at 825-26; *Blonigen v. Blonigen*, 621 N.W.2d 276, 279-80 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001); *see also* Minn. R. Gen. Pract. 377.09, subd. 2(b) (stating that the district court must make an independent review of any finding or provision of the CSM's decision). The absence of a transcript does not affect the standard by which review of a CSM's ruling is conducted. Likewise, the failure of the reviewing authority to conduct a hearing on review does not affect the standard of review. Minn. R. Gen. Pract. 377.09, subd. 5, provides that no hearing shall be held on review unless ordered by the reviewing authority on its own initiative or on the motion of a party, and "[a] party's motion shall be

granted only upon a showing of good cause.” The rules do not preclude de novo review without a hearing, even when no transcript is provided.

Father also argues that the district court abused its discretion by failing to remand this matter to the CSM for additional findings regarding his income. We disagree. As the district court noted, father had the burden to prove a substantial change in circumstances that makes the terms of the existing support order unreasonable and unfair. *See* Minn. Stat. § 518A.39, subd. 2(a) (2012); *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). Because father failed to provide credible evidence of his current income, he failed to meet his burden to prove a change in circumstances that warrants modification of child support. Although a reviewing authority has discretion to remand any issue to the CSM,³ father has not presented any authority that would require a remand to give either party an additional opportunity to meet a burden of proof. The district court did not abuse its discretion by failing to remand this matter to the CSM.

Father also argues that the district court, on review of the CSM’s decision, was required to impute income to him under Minn. Stat. § 518A.32, subd. 1 (2012), which requires imputation of income for determination of a parent’s child-support obligation “[i]f a parent is voluntarily unemployed, underemployed, . . . or there is no direct evidence of any income.” But father does not meet any of the criteria for imputation of income, and we also find this argument meritless because generally a failure to show changed circumstances means that the obligor’s financial circumstances need not be

³ *See* Minn. R. Gen. Pract. 377.09, subd. 2(b) (providing that a “district court judge may remand one or more issues back to the [CSM] with instructions”).

specifically addressed. *See Heaton v. Heaton*, 329 N.W.2d 553, 554 (Minn. 1983) (stating burden of proof in child-support modification proceeding is on the moving party); *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (stating, in the context of a motion to modify spousal maintenance, that because a finding of no substantial change in circumstances is fatal to modification, other findings were not required).

Father's allegation that his wife's income was considered in establishing his support obligation is less than clear. The district court found that, because no argument about wife's income had been raised in the hearing before the CSM, the argument was therefore beyond the scope of the district court's review. On appeal, father characterizes the "question" as whether the district court abused its discretion by denying a hearing to receive new evidence that was not available at the time of the CSM hearing. Father argues that the district court's failure to conduct a hearing on father's proffered new evidence that his wife lost her job after the hearing before the CSM "is contrary to the goal of expeditious resolution of child support disputes." But father's motion for review did not request an order permitting submission of new evidence or a hearing.

A district court's decision on modification of child support will be altered on appeal only if the district court resolves the matter in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986). In this case, the district court's decision is logical and supported by the record.

Affirmed.