STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2345

County of Nicollet on behalf of Lori Stevenson,
Respondent,

vs.

David A. Machau,
Appellant.

Filed March 4, 2008
Affirmed; motion granted in part
Stoneburner, Judge

Nicollet County District Court
File No. 52F590000265

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael K. Riley, Sr., Nicollet County Attorney, Kenneth R. White, Michelle Zehnder Fischer, Assistant County Attorneys, 326 South Minnesota Avenue, P.O. Box 360, St. Peter, MN 56082 (for respondent)

David A. Machau, 45937 551st Avenue, Courtland, MN 56021 (pro se appellant)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Poritsky, Judge.*

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

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges an order establishing payments for child-support arrears and requiring appellant to seek employment, arguing that the child-support magistrate erroneously found him to be voluntarily unemployed. We affirm.

FACTS

Under a June 1990 agreement between appellant David Machau and Nicollet County (the county), Machau agreed to pay the county $4,225.82 for assistance provided to Lori Stevenson for the birth of Machau and Stevenson's child at the rate of $42 per month and $209 per month for continuing child support. Machau did not make the agreed-to payments, and the county took various measures to collect mounting support arrears. In September 2003, the outstanding judgment against Machau was satisfied, apparently from a seizure of stock he inherited. By June 26, 2006, Machau's child-support arrears totaled $6,668.22, and the county moved for an order reducing the arrears to judgment, establishing a payment schedule for arrears, finding that Machau was voluntarily unemployed, and requiring him to seek employment. Machau submitted an affidavit to proceed in forma pauperis (IFP) listing himself as the only member of his household and stating that his household income is zero.

At the hearing on the county's motion, Machau testified that he lost his employment as a truck driver in 1999 when his driver's license was suspended for failing to make child-support payments. Machau asserted that the county refused to make a new payment plan that would have allowed reinstatement of his license. Machau testified that

he is currently a "full-time homemaker" and is homeschooling his children. Machau also disputed the amount of claimed arrears but presented no evidence to show that the claimed amount is incorrect.

The child-support magistrate (the CSM) found that Machau has the ability to work full time and earn at least minimum wage and is voluntarily unemployed. The CSM ordered Machau to seek employment and to pay $150 per month toward the arrears claimed by the county. This appeal followed.

D E C I S I O N

On appeal from a final CSM order, this court's review is limited to determining whether the evidence supports the findings of fact and whether the findings support the conclusions of law and judgment. *County of Anoka ex rel. Hassan v. Roba*, 690 N.W.2d 322, 324 (Minn. App. 2004). This court will reverse only if the CSM has abused his discretion by improperly applying the law to the facts. *See Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (stating that a reviewing court will not reverse a decision under Minn. Stat. § 256.87, involving reimbursement actions against parents for assistance furnished and continuing support obligations, absent an abuse of discretion, which occurs when law is improperly applied to facts).

The child-support obligation of a voluntarily unemployed or underemployed parent is based on the parent's potential income, calculated by assessing the parent's "employment potential, recent work history, and occupational qualifications, in light of prevailing job opportunities and earnings levels in the community." Minn. Stat.

§ 518A.32, subd. 1 (2006)[1]; *see Franzen v. Borders*, 521 N.W.2d 626, 629 (Minn. App. 1994) (concluding that determining the potential income of an obligor is appropriate if the obligor is voluntarily underemployed). The district court enjoys broad discretion in imputing income. *See, e.g.*, *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. App. 1998) (applying abuse-of-discretion standard of review to administrative-law judge's decision to set child support based on imputed income).

Additionally, a CSM may order a parent to seek employment if:

> (1) employment of the obligor cannot be verified;
> (2) the obligor is in arrears in court-ordered child support . . . in an amount equal to or greater than three times the obligor's total monthly support [obligation] . . . ; and
> (3) the obligor is not in compliance with a written payment plan.

Minn. Stat. § 518A.64, subd. 1 (2006).[2] In this case, the record supports the CSM's finding that Machau has chosen not to be employed outside of his household. Machau's arrears are much greater than three times his monthly support obligation set in the district

[1] Minn. Stat. § 518A.32 (2006) was originally codified at Minn. Stat. § 518.551, subd. 5b(d) (2004), which was amended in 2006. 2006 Minn. Laws ch. 280, § 19, at 1115. The 2004 version of the statute was in effect at the time of the hearing. The 2004 version stated that imputation of income to a parent was based on "the estimated earning ability of a parent based on the parent's prior earnings history, education, and job skills, and on availability of jobs within the community for an individual with the parent's qualifications." Minn. Stat. § 518.551, subd. 5b(d) (2004). The amendment renumbered and changed the wording, but did not change the substance of the applicable section. Because the amended statute does not otherwise change or alter the rights of the parties, the amended statute will be used throughout this analysis. *See McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986).

[2] Minn. Stat. § 518A.64 (2006) was originally codified at Minn. Stat. § 518.616 (2004), which was amended in 2005. 2005 Minn. Laws 1st Spec. Sess. ch. 7, § 28, at 3092. The 2004 version of the statute was in effect at the time of the hearing. The amendment renumbered the section and did not change the wording, therefore the 2006 version of the statute will be used for this analysis.

court's 1990 order, therefore, the CSM did not abuse his discretion by basing a payment obligation on Machau's income potential and requiring that he seek employment.

On appeal, Machau argues that he cannot work because, in exchange for room and board, he is "fully employed by Lori Stevenson" as the caretaker and home-school teacher for her children, including the child they have in common, while she works as a contractor in Iraq. But Machau did not present this argument to the CSM, and we decline to consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating this court will generally not consider matters not argued and considered in the underlying proceeding).

The county moved to strike the fact section of Machau's brief on appeal and four documents included in his appendix as not part of the record. "The papers filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. This court "may not base its decision on matters outside the record on appeal and may not consider matters not produced and received in evidence" in the district court. *Thiele*, 425 N.W.2d at 582-83.

The transcript shows that the CSM received the document on page 18 of Machau's appendix; therefore, this document is part of the record. Because the documents at pages 15-17 of Machau's appendix were not presented to the CSM, the motion to strike is granted as to those documents. Additionally, we grant the county's motion to strike facts contained in the fact section of Machau's brief that were not presented to the CSM.

Affirmed; motion granted in part.