STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2236

Joddie C. Gilbertson, petitioner,
Respondent,

vs.

Terry A. Graff,
Appellant,

and

County of Clay, intervenor,
Respondent.

Filed June 24, 2008
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Clay County District Court
File No. 14-F1-89-050446

Joddie C. Gilbertson, P.O. Box 482, Lake Park, MN 56554 (pro se respondent)

Terry Graff, Graff Law Office Incorporated, 1001 Center Avenue, Suite H-1, Moorhead, MN 56560 (pro se appellant)

Brian Melton, Clay County Attorney, Michelle Winkis, Assistant County Attorney, 707 North 11th Street, Moorhead, MN 56560 (for intervenor)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Collins, Judge.[*]

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[*] Retired judge of the district court, serving as judge of 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

CONNOLLY, Judge

Appellant Terry Graff challenges the child support magistrate's (CSM) decision refusing to terminate or modify child-support payments on the basis that his son was emancipated. The CSM correctly determined that the child was not emancipated. However, because the child was no longer living with the custodial parent, the CSM needed to determine if that fact constituted a substantial change in circumstances requiring a modification in child-support payments. Therefore, we affirm in part, reverse in part, and remand.

FACTS

The facts of this case are largely undisputed. Andrew Gilbertson was born to Joddie Gilbertson and Terry Graff on June 20, 1989. Andrew's parents were never married, but appellant was adjudged to be his father by court order, and appellant was ordered to pay child support since Andrew's mother had sole physical custody. For the next ten years, numerous motions were filed seeking adjustment of child support, visitation, and custody. Several judgments were appealed to this court. In 2000, an order was filed modifying child support and denying a motion to vacate the most recent order. This order stated that "child support payments shall continue until the [child] covered by the order [reaches] the age of 18, or age 20 if still in secondary school; or until the [child] covered by the order become[s] emancipated or die[s]; or until further order." This order controlled when appellant filed his most recent motion to terminate child-support payments.

On May 4, 2007, Andrew withdrew from Hillsboro High School in Hillsboro, North Dakota. He was not attending classes regularly due to depression and was therefore receiving low grades. Andrew believed it would be better to continue high school elsewhere. He had committed to attending classes at the University of Wisconsin-La Crosse (UW-LaCrosse) beginning in the fall of 2007, and thus decided to move to La Crosse to finish high school. Andrew moved out of his mother's house and moved in with his aunt and uncle, and he enrolled at LaCrosse Central High School on May 8, 2007. He was 17 years old. His grades immediately improved and he attended classes regularly. Andrew was expected to complete high school in January 2008, and to enroll at UW-LaCrosse. He was also employed at Target.

Respondent had a letter notarized authorizing her sister and brother-in-law to make medical and educational decisions on Andrew's behalf. She also signed over the Visa debit card on the account containing the child-support funds. At no time did Andrew file for legal emancipation from his mother.[1]

Appellant filed a motion to terminate child-support payments on July 30, 2007. He asserted that Andrew became emancipated by moving out of his mother's home, and enrolling in another high school when he could have graduated from Hillsboro High School before turning 18 if he had remained in Hillsboro. He further argued that if Andrew is not emancipated, then respondent also has an obligation to financially support Andrew.

[1] Respondent did not file a brief in this case.

The CSM denied appellant's motion to terminate child-support payments and concluded that Andrew was not emancipated and that he was under 20 years old and still attending secondary school. The CSM further refused to require respondent to pay child support, stating that the person with court-ordered custody is presumptively not a child-support obligor. This appeal follows.

D E C I S I O N

"A decision to modify child support obligations lies in the broad and sound discretion of the trial court, and the trial court will not be reversed for an abuse of that discretion unless it has reached a clearly erroneous conclusion that is against logic and the facts on record." *Disrud v. Disrud*, 474 N.W.2d 857, 859 (Minn. App. 1991). On appeal from a child support magistrate's ruling, the standard of review is the same as it would be if the decision had been made by a district court. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 449 (Minn. App. 2002). Whether a child is emancipated is a finding of fact not to be set aside unless clearly erroneous. *Streitz v. Streitz*, 363 N.W.2d 135, 137 (Minn. App. 1985).

I. Did the CSM abuse its discretion by determining that the child was not emancipated?

Appellant's obligation to pay child support terminated upon three potential occurrences: (1) Andrew turned 18, or 20 if he was still in high school; (2) Andrew became emancipated; or (3) Andrew died. The CSM concluded that because Andrew had withdrawn from his first high school and enrolled in his second, all before turning 18, he was unemancipated for child-support purposes, and appellant would need to continue

making payments until Andrew turned 20 or graduated from high school. In his order, the CSM set forth his analysis as follows:

> 11. If not attending a secondary school, a child becomes emancipated for child support purposes upon reaching age 18. If attending a secondary school, a child does not emancipate at age 18 but rather remains an un-emancipated child until graduating from school or turning age 20 whichever comes first. A person may continue in the status of an un-emancipated child for child support purposes after reaching age 20 if the person is incapable of self-support by reason of a physical or mental condition.
>
> 12. Here, the child discontinued attending school prior to reaching his 18th birthday. This act did not emancipate the child because the child was still under age 18. The child returned to school before reaching age 18 and was enrolled in school at the time of his 18th birthday. As such, the child did not emancipate upon his 18th birthday because he was attending a secondary school at the time.

Emancipation, however, is also an independent basis for termination of child-support payments regardless of the age of the child or his student status. Thus, appellant argues that Andrew became emancipated by moving out of his mother's home, thereby terminating child-support payments even though he was under age 20 and still in high school.

"A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties." *In re Fiihr*, 289 Minn. 322, 326, 184 N.W.2d 22, 25 (1971) (quotation omitted). The critical inquires regarding emancipation involve whether the parent relinquished control and authority over the child's actions and the degree of severance of the parent-child relationship. *Cummins v. Redman*, 312 Minn. 237, 240, 251 N.W.2d 343, 345 (1977).

The record contains some guidance as to whether Andrew emancipated for child-support purposes. The transcript contains the following exchange between respondent and her attorney:

> RESPONDENT'S ATTORNEY: At any time did your son ever take legal steps to become emancipated from you?
> RESPONDENT: No, he did not. I had to sign all the paperwork, to get him enrolled in school. I had to sign release forms for doctors. I had to sign a release form to get his, since he's diabetic, they had to have, the school had to have a particular form from the doctor, as in to get special, in case his sugar levels are certain numbers. Then they have to give him shots or, of insulin and so I had to sign that form. I still had to sign all the forms. They faxed them to me. I faxed them back. So I still had to sign all the forms.

Thereafter, appellant was questioned by his attorney:

> APPELLANT'S ATTORNEY: Are there any affidavits in the file that show what, what Andrew's financial situation is at this time?
> APPELLANT: I haven't seen any.
> APPELLANT'S ATTORNEY: Are there any affidavits that show what this 18 year old, what his cost of living is or how much money he's making?
> APPELLANT: I haven't seen any information on that.
> APPELLANT'S ATTORNEY: Okay and if he's not living with your former (inaudible) then she isn't providing support for him either at this time. Is that correct?
> APPELLANT: Not to my knowledge.

In her affidavit, respondent stated:

> At no time did Andrew ever quit high school or become emancipated from me. I had a letter notarized in May authorizing Tricia and Dennis Gibbons to make medical or educational decisions on Andrew's behalf. I also signed a medical form on Andrew's behalf after he moved to Wisconsin. If he were emancipated, my signature would not have been required on either of these documents. . . .

> I have no further involvement with the funds Andrew receives from [appellant]. After Andrew's move to Wisconsin, I gave the Visa debit card (where the child support funds go) to my sister and brother-in-law.

The foregoing evidence in the record is sufficient to sustain the CSM's determination that Andrew was not emancipated. *See Bettes v. Fuel-Scott*, 415 N.W.2d 409, 411 (Minn. App. 1987) ("Generally, where the record is reasonably clear and the facts not seriously disputed, the judgment of the trial court can be upheld in the absence of trial court findings.") (quotation omitted). Therefore, because the CSM did not clearly err in finding that Andrew was not emancipated, it was not an abuse of the CSM's discretion to leave appellant's child-support obligation undisturbed.

II. Did the CSM abuse its discretion by denying appellant's request for respondent to also pay child support?

Appellant asserts that if Andrew is not emancipated, necessitating further child-support payments, then respondent must pay a portion of that support because she is no longer providing for Andrew financially. The CSM denied appellant's motion, stating that "[t]he person with court ordered custody is presumptively not a child support obligor. The facts presented did not overcome this presumption."

The CSM is correct in holding that the individual with court-appointed custody is presumptively not the obligor for child-support purposes. *Bender v. Bender*, 671 N.W.2d 602, 607 (Minn. App. 2003). *Bender* states that "'obligor' is defined as 'a person obligated to pay . . . support' and includes the caveat that a person who is designated as the sole physical custodian of a child is presumed not to be an obligor for purposes of calculating current support . . . unless the court makes specific written findings to

overcome this presumption." *Id.* (citation and quotation omitted).[2] The CSM did not find facts that would support the conclusion that appellant has overcome the presumption, and therefore determined that only appellant, as the obligor, was required to provide child support for Andrew.

However, the inquiry cannot end here. Andrew is living with his aunt and uncle, and presumably they are incurring costs for his care. Appellant is still required to provide child-support payments to Andrew. Respondent is not required to contribute anything financially, nor is she incurring costs by having Andrew living in her home. It appears that the parties' circumstances have changed substantially. Such a change may require a recalculation of child support to determine whether appellant's obligations should be decreased or respondent's increased. Minn. Stat. § 518A.39 (2006). We reverse and remand so the district court may determine if child-support payments need to be recalculated.

III. Should an individual older than 18 years who is capable of self support be required to support himself?

Lastly, appellant argues that someone over 18 years of age, who is capable of self support, should be required to support himself. He admits that he is making a blanket assertion on this issue, with no caselaw or statute to support his position.

[2] *Bender* refers to Minn. Stat. § 518.554, subds. 1, 8 (2002). The definition of obligor has remained the same but it is renumbered as Minn. Stat. § 518A.26, subds. 1, 14 (2006).

The child-support-modification order clearly sets forth the conditions that would terminate the child-support obligation. It simply does not matter that Andrew is capable of supporting himself. Child-support obligations cannot be terminated on this basis.

Affirmed in part, reversed in part, and remanded.