STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1316

In re the Matter of:
Mark Eugene Ochu,
Appellant,

vs.

Nurianne Elizabeth Tomas,
Respondent,

Stearns County,
Intervenor.

Filed April 6, 2010
Affirmed
Schellhas, Judge

Stearns County District Court
File No. 73-F3-05-50810

Mark Eugene Ochu, St. Cloud, Minnesota (pro se appellant)

James R. Spangler, St. Cloud, Minnesota (for respondent)

Janelle Prokopec Kendall, Stearns County Attorney, Richard J. May, Assistant County Attorney, St. Cloud, Minnesota (for intervenor)

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

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

SCHELLHAS, Judge

Appellant challenges the district court's decision on a variety of issues related to child-support arrears owed to respondent and public-assistance reimbursement owed to the state. Appellant argues that the district court abused its discretion in several respects. We disagree and affirm.

FACTS

This appeal arises out of two related cases in district court: an action to establish paternity, custody, and parenting time under Minn. Stat. §§ 257.51–.85 and 518.156 (2008), filed by appellant Mark E. Ochu on June 15, 2005, and a public-assistance-reimbursement action under Minn. Stat. § 256.87, subd. 1 (2008), filed by Stearns County on January 31, 2006. The district court expedited the handling of the child-support issues pursuant to Minn. Stat. § 484.702 (2008) and Minn. Gen. R. Prac. 351–379.

The minor child in this case was born on January 22, 2004, to appellant and respondent Nurianne E. Tomas, who have never been married to one another. From February 1, 2004, until February 28, 2005, respondent received cash public-assistance benefits from the State of Minnesota and therefore assigned to the state her right to child-support payments for that period pursuant to Minn. Stat. § 256.741, subd. 2 (2008). On July 29, 2005, the district court granted temporary joint legal custody to the parties, temporary physical custody to respondent, and established a temporary parenting-time schedule. The court noted that "[c]hild support has not been decided in this Order, as it is

the Court's understanding that child support is being handled in the Expedited Child Support Process."

On April 4, 2006, a child support magistrate (CSM) temporarily ordered appellant to pay respondent child support in the monthly amount of $609; ordered the entry of judgment against appellant and in favor of respondent in the amount of $6,399 for past child support from March 1, 2005, to January 31, 2006; and ordered the entry of judgment against appellant and in favor of the state in the amount of $6,419.43 for reimbursement of public assistance. The CSM set appellant's temporary child-support obligation, based upon imputed income, after finding that appellant was voluntarily unemployed or underemployed.[1]

On October 11, 2007, upon appellant's motion, a CSM reduced appellant's temporary "basic support" obligation from $609 to $330 per month, retroactive to August 1, 2007. Appellant moved the CSM to correct clerical mistakes under Minn. Gen. R. Prac. 375.01, and the CSM granted appellant's motion in an order dated November 8, 2007. Neither party appealed this order within the 60 days allowed by Minn. Gen. R. Prac. 378.01.

On May 2, 2008, the district court granted appellant sole legal and physical custody of the child and reserved the issue of child support.

In August 2008, Stearns County sent appellant a Notice of Intent to Suspend Driver's License. The notice stated that the county would direct the appropriate authority

[1] Appellant moved the district court for review of the CSM's decision under Minn. Gen. R. Prac. 375.04. The court denied appellant's motion for review, and neither party appealed the decision within the 60 days allowed by the rules.

to suspend appellant's driver's license unless he (1) requested a hearing within 30 days to contest the suspension, at which he would have to show that he did not owe "court-ordered support or maintenance payments of at least three times [his] total monthly support or maintenance payments" or that he was complying with a payment agreement; (2) paid his arrears in full; or (3) made and complied with a payment agreement within 90 days.

On September 15, 2008, in response to the driver's-license-suspension notice, appellant moved a CSM to determine "an appropriate payment agreement/plan under Minn. Stat. § 518A.69 considering that [appellant] has sole physical and sole legal custody" of the child. On October 14, 2008, appellant further moved the CSM to: (1) determine an appropriate payment agreement/plan under Minn. Stat. § 518A.69; (2) determine that it is not appropriate to report arrears to a credit bureau; (3) determine that it is not appropriate to collect arrears through revenue recapture; (4) suspend interest on child support pursuant to Minn. Stat. § 548.091; (5) suspend the collection of arrears pursuant to Minn. Stat. § 256.87; (6) reopen the amended order, dated November 8, 2007, pursuant to Minn. Stat. § 518.145, subd. 2, and apply a downward deviation retroactively; and (7) determine that reasonable debt incurred by appellant in supporting the child should be considered in the nature of child support pursuant to Minn. Stat. § 518A.43.

On December 18, 2008, at a hearing on appellant's motions, a child support officer (CSO) testified that appellant's total arrears were $19,708.82, which included $13,443.14 owed to respondent, including the judgment in her favor in the amount of $6,455.29 and $6,265.68 still owed to the state. The balance owed appears to include unadjudicated

arrears of child support owed by appellant to respondent for the period from February 2006 through April 2008. The CSO testified that these totals included interest, which was continuing to accrue. When asked if there was a current order for child support, the CSO responded that "[t]he last Order that we have reserves support, so no." The CSO also stated that in May 2008, current child support stopped being charged to appellant "as a result of a Court Order," apparently referring to the district court's order of May 2, 2008, granting appellant custody and reserving support. The CSO also testified that there was no order for "Court-ordered payback of arrearages."

On February 6, 2009, the CSM issued findings of fact, conclusions of law, and an order, denying appellant's motions except that the CSM ordered appellant to pay his child-support arrears according to a payment plan of $150 per month. On May 14, 2009, in response to appellant's combined motion to correct clerical errors and for review by the district court pursuant to Minn. Gen. R. Prac. 375.04, the district court made numerous technical and clerical modifications to the CSM's order, but otherwise affirmed the CSM's decision in all respects. This appeal follows.

D E C I S I O N

Appellant argues that the district court abused its discretion by: (1) denying his motion to suspend collection of the arrears he owed to the state; (2) denying his motion to suspend the accrual of interest on his arrears; (3) concluding that his motion for a determination that it "is not appropriate" to report his arrears to the credit bureaus was moot; (4) denying his request for a hearing on his motion for review; (5) denying his motion to reopen the November 8, 2007 child-support order; (6) denying his motion for a

determination that certain indebtedness was incurred for the necessary support of the child and that it should be considered in the nature of child support; and (7) establishing the payment plan of $150 per month.[2]

We review the district court's decisions in a child-support matter for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). A district court abuses its discretion when its ruling is against logic and the facts on record, *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), or when it misapplies the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998).

Suspension of Collection Efforts

Appellant argues that the district court abused its discretion by denying his motion to suspend collection of arrears under Minn. Stat. § 256.87, subd. 9 (2008). A parent is liable to state and county agencies for public assistance provided to and on behalf of the parent's child, including amounts provided to the child's caretaker, that the parent has had the ability to pay. Minn. Stat. § 256.87, subd. 1. But the parent "may seek a suspension of collection efforts . . . or a payment agreement based on ability to pay if the parent has reunited with that parent's family and lives in the same household as the child on whose behalf the assistance was furnished." *Id.*, subd. 9(a). The agency may then suspend collection of arrearage as long as the parent and the child continue to live in the same household and the gross household income is less than 185% of the federal poverty

[2] Although many of these decisions were made by a CSM, when a district court affirms the ruling of a CSM, the CSM's ruling becomes the ruling of the district court, and this court reviews the district court's decision. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004).

level. *Id.*, subd. 9(c). In evaluating the parent's ability to pay a proposed payment agreement, the agency must consider the parent's individual financial circumstances. *Id.*, subd. 9(b). Payment agreements must be reasonable and tailored to the parent's individual financial circumstances. *Id.*

As a threshold matter, the county argues that appellant is not entitled to relief because he failed to exhaust his administrative remedies by making a request to the administrative agency prior to moving the CSM and district court for relief. But the record reflects that appellant sent a letter to Stearns County Child Support Services on October 10, 2008, requesting suspension of arrearage collections under section 256.87, subdivision 9, on the basis that the child was living with him. The record does not reflect how or whether the county responded to appellant's request, but on October 29, 2008, it sent a letter and proposed payment plan of $150 per month to appellant's counsel. Appellant then moved the CSM for suspension of arrears collections at the December 18, 2008 hearing. The CSM denied the motion, and the district court affirmed.

Appellant argues that the district court incorrectly focused on whether appellant and the child lived in the same household at the time the arrears accrued, because the parents' current circumstances are what is actually relevant under the statute. Even if appellant is correct, the statute provides that suspension of arrears collection efforts are at the discretion of the agency, not of the court. *See id.*, subd. 9(c) (stating that the "agency may suspend collection of arrears"). Nothing in the statute gives the court authority to suspend collection of arrears, or to compel the agency to do so. The district court did not

abuse its discretion by denying appellant's motion to suspend collection of child-support arrears.

Suspension of Interest

Appellant argues that the district court abused its discretion by denying his motion to suspend interest on his arrears pursuant to Minn. Stat. § 548.091, subd. 1a (2008). Any child-support payment not made by its due date is a judgment by operation of law. Minn. Stat. § 548.091, subd. 1a(a). Generally, interest accrues on this judgment. *Id.* But, "upon motion to the court . . . the court *may* order" interest on a child support debt or arrearage to stop accruing if: (1) the obligor provides proof "of 12 consecutive months of complete and timely payments of both current support and court-ordered paybacks of a child support debt or arrearage"; or (2) the court finds that the obligor is "a recipient of . . . public assistance based upon need." *Id.*, subd. 1a(b), (c)(2) (emphasis added).

Appellant argues that he qualifies for the suspension of interest under each of these provisions, pointing out that he receives public assistance in the form of MinnesotaCare, eligibility for which is based on need, *see* Minn. Stat. § 256L.04, subd. 1(a) (2008), and claiming that "for 12 months prior to the [CSM's] February 6, 2009 Order . . . there were 12 consecutive months of timely payments."

Whether to suspend accrual of interest on arrears is discretionary with the court. *See* Minn. Stat. § 548.091, subd. 1a (b), (c) (stating that the court "may" order interest suspended); *compare* Minn. Stat. § 645.44, subd. 15 (2008) ("'May' is permissive."), *with* Minn. Stat. § 645.44, subd. 16 (2008) ("'Shall' is mandatory."). Here, as required by the statute, the district court considered whether appellant had made 12 consecutive

months of complete and timely payments and whether appellant was a recipient of public assistance based on need. The district court acknowledged that appellant receives public assistance in the form of MinnesotaCare, but found that appellant had not made 12 consecutive months of complete and timely payments. This finding is supported by the evidentiary record that appellant underpaid in February 2008. While the district court "may" suspend the accrual of interest if either statutory condition is satisfied, on this record, because the district court's decision was based on facts in the record, it did not abuse its discretion by denying appellant's motion to suspend the accrual of interest on his child-support arrears.

Appellant also argues that the district court should have ordered the accrual of interest suspended under Minn. Stat. § 548.091, subd. 1a(e), which provides that "the public authority must suspend the charging of interest" if (1) the obligor makes a request that interest accrual be suspended, (2) "the public authority provides full IV-D child support services," and (3) "the obligor has made, through the public authority, 12 consecutive months of complete and timely payments of both current support and court-ordered paybacks of a child support debt or arrearage." The record reflects that appellant requested relief from interest accrual from the county by letter, dated October 10, 2008. The record does not reflect the county's response to this request. But as mentioned above, the record supports the district court's finding that appellant had not made 12 consecutive months of complete and timely payments. Therefore, paragraph (e) of section 548.091, subdivision 1a, does not provide appellant a basis for relief.

Reporting of Child-Support Arrears to Credit Bureau

Appellant moved the district court to "determin[e] that it is not appropriate to report arrears to a credit bureau and not appropriate to collect arrears through revenue recapture." Appellant did not identify who or what governmental agency reported his child-support arrears to the credit bureau. In his supporting affidavit, appellant requested that "all enforcement remedies be halted, including: Intent to Suspend Driver's License, Reporting of Arrears to Credit Bureau, and Revenue Recapture." Again, appellant did not identify who or what entity the court should halt from reporting appellant's child-support arrears to the credit bureau. Appellant based his request on three arguments: (1) reporting is not mandatory; (2) the purpose of enforcement remedies is to "help collect support," and, in this case, reporting appellant's arrears to a credit bureau would not advance that purpose; and (3) as the custodial parent, reporting his arrears to the credit bureau is not in the child's best interest. The district court found that "[a]rrears were reported to the credit bureau on May 12, 2008. This makes [appellant's] request for non-reporting moot. There is no evidence that this enforcement remedy will not induce compliance with the Court's Order."

Appellant now argues that the district court erred by concluding that the issue of reporting to the credit bureau is moot. Appellant argues that the issue is not moot because "it is capable of repetition yet evading review." He argues that his child-support arrears may be reported again, which "will have the effect of extending the length of time that derogatory information about [appellant] will remain in his credit report."

We agree with appellant that this issue is not moot. But appellant's reliance on 42 U.S.C. § 666(a)(7)(A) (2006), as support for his argument that reporting arrears to the credit bureau is "not appropriate," is misplaced. Section 666(a)(7)(A) merely requires a state to have laws and procedures in place "requiring the State to report periodically to consumer reporting agencies . . . the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent." Nothing in this law limits the state's authority to report delinquencies to the credit bureau under other circumstances. And appellant has provided no legal authority to support his argument.

Appellant also argues that because the CSM raised the issue of mootness sua sponte, due process required that the district court give the parties a reasonable opportunity to submit evidence and argument on the issue. Appellant argues that he was entitled to prove that "credit bureau reporting is an ongoing, monthly occurrence, and therefore the motion to suspend credit bureau reporting is not 'moot.'" The district court denied appellant's request for a hearing. Whether to grant a hearing and accept additional evidence on review from a CSM's decision is subject to the district court's discretion. Minn. Gen. R. Prac. 377.09, subds. 4, 5.

Even assuming the accuracy of appellant's contention—that "credit bureau reporting is an ongoing, monthly occurrence,"—we conclude that the district court did not abuse its discretion by denying appellant's request for a hearing because appellant has provided no support for his argument that such reporting is "not appropriate." We therefore do not remand the credit-bureau-reporting issue to the district court.

Reopening Previous Child-Support Order

Appellant argues that the district court erred by denying his motion to reopen the November 8, 2007 order because it improperly calculated his child-support obligation. He argues that under Minn. Stat. § 518.145, subd. 2 (2008), a child-support order may be reopened on the basis of mistake, excusable neglect, or misrepresentation. But the November 8, 2007 order was issued by a CSM under the expedited process on appellant's motion to correct clerical mistakes in the October 11, 2007 order. The November 8, 2007 order therefore was subject to the Expedited Child Support Process Rules, Minn. Gen. R. Prac. 351–379. *See* Minn. Gen. R. Prac. 351.01 (stating that the rules govern cases conducted under the expedited process). Under the expedited process, "[e]xcept for motions to correct clerical mistakes, motions for review, or motions alleging fraud, *all other motions for post-decision relief are precluded,* including those under Minn. R. Civ. P. 59 and 60 and Minn. Stat. § 518.145 (2000)." Minn. Gen. R. Prac. 377.01 (emphasis added). Appellant did not seek review of the November 8, 2007 order and does not allege fraud. Appellant's request to reopen the November 8, 2007 order under Minn. Stat. § 518.145, subd. 2, is expressly barred in the expedited process by Minn. Gen. R. Prac. 377.01.

The district court did not abuse its discretion by denying appellant's motion to reopen the November 8, 2007 order.

Debt Incurred for Support of Child

Appellant argues that, under Minn. Stat. § 518A.43, subd. 2(a)(2) (2008), he is entitled to have his indebtedness to private creditors serve as a basis for the district court

to retroactively deviate downward from the child-support guidelines in determining his support amount. But the district court found that "[t]he vast majority of his debt is related to the costs of litigation of the custody matter, as *admitted* by [appellant] at the hearing." The court further stated: "The Court does not find any extraordinary significant debt incurred for the support of the parties' child to justify a credit toward [appellant's] arrears owed to [respondent] or to the State." We agree. Moreover, to the extent appellant seeks to revisit the amount of child support set in previous child-support orders, as above noted, any attempt to do so is barred under the Expedited Child Support Process Rules. The district court did not abuse its discretion by denying appellant's request to modify his past child-support obligation because of his indebtedness.

Payment Plan

Appellant argues that the plan that the district court established for the payment of his child-support arrears is "not appropriate." The court established the payment plan in response to appellant's motions, filed on September 15 and October 14, 2008. Appellant claims that he moved the court for a payment plan "only because the county child support agency had served a Notice of Intent to Suspend Driver's License on him and had not accepted any of the plans he had offered for the payment of arrears." Appellant then argues that the agency did not have the right to suspend his driver's license, because only the licenses of *obligors* may be suspended and he is presumptively not an obligor because he has custody of the child. In essence, his argument is that the Notice of Intent to Suspend Driver's License was sent to him in error and that error caused him to move the court for a payment plan to avoid license suspension. Even if appellant is correct that the

agency had no right to suspend his driver's license, the court's establishment of a payment plan was appropriate in consideration of appellant's child-support arrears.

In establishing a payment plan, the court is to consider "the amount of the arrears, the amount of the current support order, any pending request for modification, and the earnings of the obligor." Minn. Stat. § 518A.69 (2008). The court must also consider "the individual financial circumstances of [the] obligor in evaluating the obligor's ability to pay . . . and shall propose a reasonable payment agreement tailored to the individual financial circumstances of [the] obligor." *Id.* Here, the district court's order reflects that when it set the amount of the monthly payment at $150, it considered the amount of arrears, appellant's earnings, and appellant's financial circumstances. The district court did not abuse its discretion in establishing the payment plan.

Affirmed.