STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1712

Traverse County, petitioner,
Appellant,

Debra J. Kellen, petitioner,
Respondent,

vs.

Steven Paul Kellen,
Respondent.

Filed May 31, 2011
Affirmed in part and remanded
Minge, Judge

Traverse County District Court
File No. 78-FA-10-17

Matthew P. Franzese, Traverse County Attorney, Alexandria, Minnesota (for appellant)

Jeffrey D. Skonseng, Krekelberg & Skonseng, P.L.L.P., Fergus Falls, Minnesota (for respondent Debra J. Kellen)

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Harten, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

MINGE, Judge

Appellant Traverse County challenges the district court's determination of respondent-father Steven Kellen's child-support obligation, arguing that the district court failed to: (1) consider documentary and testimonial evidence that father's income included imputed amounts for employer-provided housing and utilities; and (2) include father's medical-support obligation. The district court ruled that the documentary evidence regarding housing-related income was not part of the record and that the related testimony lacked necessary foundation or detail. Because the district court did not abuse its discretion in these evidentiary rulings, we affirm. Because father's medical-support obligation needs to be redetermined and added, we remand for inclusion of that amount.

FACTS

Mother Debra Kellen and father are the divorced parents of two children. Mother receives child care and medical assistance from appellant-county and has assigned to them her rights to child-support payments from father.[1]

The county sued father, asserting its right to child-support payments. Rhonda Antrim, director of the county's social services department, sent a letter dated February 4, 2010 to the child-support magistrate (CSM) explaining that father's monthly income should include $350 for housing and $219 for utilities furnished by father's employer. Father works for his sister as a beekeeper and lives on property owned by her. The letter

[1] Any individual receiving public assistance under certain designated programs is considered to have assigned to the state all rights to child support or maintenance from a co-parent. Minn. Stat. § 256.741, subd. 2 (2010).

does not explain how Antrim calculated the value of housing, although an attachment includes the appraised value of the home and the electricity and utility billing statements for the property.

During a hearing before the CSM, director Antrim testified that her research on values and rent was summarized in the attachment to her February 4 letter and, when asked, declined to explain how she made the calculations, saying it was clear in the letter. The letter was not introduced as an exhibit, admitted into evidence, or otherwise explained. The CSM determined that father had monthly imputed income of $350 for housing and $219 for utilities. In addition, the CSM used the MinnesotaCare premium table to determine that father should contribute $119 per month toward the children's premium costs of public-health coverage.[2] Overall, including the medical-support obligation, the CSM ordered father to pay $921 per month as child support.

Father requested a de novo review of the CSM's decision by the district court. The district court found that the evidence was not sufficient to establish the value of the home, its fair rental value, or the $350 of imputed rental income. In addition, the district court determined that the evidence in the record supported only a finding that father had imputed income of $150 per month for utilities provided by his employer. The district court reduced father's monthly child-support obligation to $733. Although the district court ruled that father's medical-support obligation should continue as determined by the CSM, it did not include any amount in its calculation for such medical support.

[2] This medical-support obligation fluctuates depending on the noncustodial parent's income for determining child support.

The county requested clarification of the order, arguing that the district court overlooked Antrim's letter and made a drafting error in not including a medical-support obligation. The district court explained that the record did not include the letter because it was not introduced as an exhibit or discussed in sufficient detail during testimony to be orally incorporated into the record or to constitute an affidavit. The district court also ordered the parties to use the child-support-guidelines worksheet attached to its previous decision to determine the appropriate medical-support obligation. This appeal follows.

D E C I S I O N

I. IMPUTED INCOME

The first issue is whether the district court clearly erred in determining that the housing and, except for $150, the utilities furnished by father's employer were not imputed income for the purposes of determining father's child-support obligation. We review a district court's child-support determination for an abuse of discretion, reversing when the decision is against the logic and facts on record or a misapplication of the law. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court's determination of a party's income will be affirmed on appeal if it has a reasonable basis in fact and is not clearly erroneous. *State ex rel. Rimolde v. Tinker*, 601 N.W.2d 468, 470 (Minn. App. 1999). We review evidentiary decisions of the district court for an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997).

In reviewing the district court's decision on imputing income to father, we first consider the threshold question of whether Antrim's February 4 letter is part of the record. The CSM can admit any evidence possessing probative value provided it is the

type of evidence which "reasonable, prudent people are accustomed to rely on in the conduct of their serious affairs." Minn. R. Gen. Pract. 364.10, subd. 1. Under Minn. R. Gen. Pract. 364.10, subd. 2, "[a]ll pleadings and supporting documentation previously served upon the parties and filed with the court, unless objected to, may be considered by the magistrate." The rule also provides that the CSM may only consider evidence (1) offered and received during the hearing; or (2) submitted following the hearing with permission of the CSM. Minn. R. Gen. Pract. 364.10, subd. 2. The district court reviews the decision of a CSM de novo. *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001). The district court's review is limited to the CSM's decision, any transcript of the proceedings that is provided, and any exhibits or affidavits filed. Minn. R. Gen. Pract. 377.09, subd. 3.

At oral argument before this court, the county agreed that the letter was not offered into evidence as an exhibit during the hearing. However, the county argues that the February 4 letter had been sent to the father and to the CSM prior to the hearing and that it was not necessary to formally introduce it as an exhibit for it to be part of the record. The county asserts that this pretrial mailing should constitute a filing under the rule. However, we note that the record does not contain an affidavit of service or other evidence to establish that the letter was actually sent to father. *See* Minn. R. Gen. Pract. 355.04, subd. 1 (requiring proof of service for all documents filed in the expedited-support process). Without such evidence of having provided father with a copy of the letter, we conclude the letter was not filed prior to the hearing and is not part of the record.

Appellant argues that director Antrim's testimony is the equivalent of an affidavit and is sufficient to place the contents of the letter in the record. A valid affidavit "must be sworn to or affirmed by the affiant." *Wesely v. Flor*, 791 N.W.2d 583, 587 (Minn. App. 2010). Although the formal requirements are not strict, the essential element of an affidavit is "that the party taking the oath shall go through some declaration, or formality, before the officer which indicates to him that the applicant consciously asserts or affirms the truth of the fact to which he gives testimony." *Id.* (quoting *State v. Day*, 108 Minn. 121, 124, 121 N.W. 611, 613 (1909)). Contrary to appellant's assertion, Antrim never testified to the contents of the letter; instead, she only stated that the calculations of income within the letter were based on updated financial information. Neither attorney asked Antrim whether the contents of the letter were true, and she did not volunteer testimony confirming the contents of the letter. Without such a representation, the district court did not abuse its discretion in determining that Antrim's testimony failed to incorporate her letter and thus make it part of the record.

Despite having found the letter not to be a part of the record, the district court went on to address the lack of testimonial foundation for the opinions within the letter. The district court has discretion to determine the sufficiency of foundation for a particular item of evidence. *McKay's Family Dodge v. Hardrives, Inc.*, 480 N.W.2d 141, 147 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Mar. 26, 1992). The district court's evidentiary ruling regarding foundation "will only be reversed when that discretion has been clearly abused." *Johnson v. Wash. Cnty.*, 518 N.W.2d 594, 601 (Minn. 1994).

The district court found that the testimony regarding the fair market value of the home was insufficient to establish its *rental* value. Accordingly, the district court found that there was inadequate foundation for Antrim's opinion that father should have an additional $350 of imputed income. Antrim did not testify as to how she calculated the amount imputed for housing nor did she include her calculations in the letter. In addition, the county did not elicit testimony establishing Antrim's qualifications to give an opinion regarding rental value of a home. Therefore, we conclude that the district court did not abuse its discretion in rejecting such imputed rental income and limiting imputed income for utilities to $150 per month.

II. MEDICAL SUPPORT

The second issue is whether the district court clearly erred by omitting the medical-support obligation in calculating father's overall child-support payment. When children receive public health-care coverage because neither parent has appropriate coverage available, the noncustodial parent must contribute monthly to the actual cost of public coverage in an amount determined by applying that parent's income for determining child support (PICS) to the MinnesotaCare premium schedule. Minn. Stat. § 518A.41, subd. 4(f)(2) (2010). The district court ordered the parties to recalculate father's medical-support obligation using father's amended PICS. Because it was error not to include this new medical-support figure in the district court's order, we remand for entry of the correct figure. Because, at oral argument, both parties agreed that father would pay a monthly medical-support obligation as determined by the statutory guidelines, we direct that on remand the parties recalculate father's medical-support

obligation using his amended PICS and stipulate to the addition of this amount of medical-support obligation to father's monthly child-support payment.

Affirmed in part and remanded.

Dated: