STATE OF MINNESOTA
IN COURT OF APPEALS
A11-418

In re the Matter of:
Kendall J. Gunsallus,
Appellant,

vs.

Kathleen M. Schoeller,
Respondent,

Ramsey County,
Respondent.

Filed November 21, 2011
Affirmed in part, reversed in part, and remanded
Johnson, Chief Judge

Ramsey County District Court
File No. 62-F1-04-050432

Mark A. Olson, Burnsville, Minnesota (for appellant)

Kathleen M. Schoeller, Shoreview, Minnesota (pro se respondent)

John Jung-Hoon Choi, Ramsey County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Johnson, Chief Judge; Peterson, Judge; and Larkin, Judge.

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

JOHNSON, Chief Judge

Kendall J. Gunsallus and Kathleen M. Schoeller are the parents of a 12-year-old child. The child lives with Schoeller, who receives child-support payments from Gunsallus. This appeal concerns Schoeller's motion to modify Gunsallus's child-support obligation. A child support magistrate (CSM) granted the motion and increased Gunsallus's obligation from $307 per month to $1,293 per month. On Gunsallus's motion for review, a district court judge affirmed the CSM. On Gunsallus's appeal, we conclude that the CSM properly determined that Gunsallus could not rely on certain claimed expenses to reduce his self-employment income as an over-the-road trucker. But we conclude that the CSM erred by making a mathematical error when subtracting Gunsallus's proper business expenses from his gross receipts and by determining the effective date of Gunsallus's modified child-support obligation. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

In March 2009, a CSM issued an order setting Gunsallus's child-support obligation at $307 per month. The obligation was based on findings that, at the time, Gunsallus's gross monthly income and parental income for child support purposes (PICS) were $2,908 and $2,526, respectively, and that Schoeller's gross monthly income and PICS was $4,250.

At the time of the March 2009 order, however, Gunsallus was expecting to make a change in employment. Accordingly, the order required Gunsallus to produce to

Schoeller updated information regarding his income by June 1, 2009. The order stated that if Gunsallus's income had increased by that time, the parties should try to resolve the support question voluntarily but that, if they could not do so, either party could move to modify support without making the showing required by Minn. Stat. § 518A.39 (2008) of a substantial change in circumstances. The order further provided that such a modification would be retroactive to June 1, 2009.

Schoeller moved to modify Gunsallus's child-support obligation on December 31, 2009, and amended her motion on May 10, 2010. The motion was assigned to a CSM, who conducted an evidentiary hearing in July 2010. The main issue at the evidentiary hearing was Gunsallus's income from self-employment as an over-the-road trucker in 2009. He introduced his 2009 income tax returns, which showed gross receipts of $352,832, expenses of $389,406, and a net loss of $36,574. Schoeller argued that $272,685 of Gunsallus's expenses should not be used to calculate Gunsallus's income for purposes of child support. Specifically, she challenged $94,669 in depreciation expenses on the ground that Gunsallus had used an accelerated method of depreciation, $170,816 in unspecified "other expenses," and $7,200 in expenses relating to an employee-benefit plan.

After the hearing, the CSM issued an order stating that Gunsallus is permitted, for purposes of the PICS formula, to deduct depreciation expenses to the extent allowed by a straight-line deprecation method but not to the extent allowed by an accelerated depreciation method. The order directed the parties to submit letter briefs to address what portion of Gunsallus's depreciation expenses are not accelerated. In his letter brief,

Gunsallus argued that all of the depreciation expenses were based on a straight-line method; in her letter brief, Schoeller argued that none of the depreciation expenses should be allowed.

In September 2010, the CSM issued an order disallowing all of Gunsallus's depreciation expenses. The CSM also disallowed $7,200 of expenses for the employee-benefit plan. But the CSM allowed $170,816 in "other expenses." Relying solely on Gunsallus's self-employment as a trucker, the CSM calculated Gunsallus's gross income in 2009 for child-support purposes to be $182,016 per year, or $15,168 per month. The CSM disregarded receipts and expenses Gunsallus attributed to a separate leasing business because Gunsallus's and Schoeller's combined PICS exceeded the cap applicable to the PICS formula. Because Gunsallus has another child-support obligation, the CSM determined that Gunsallus's monthly PICS amount is $14,773. Accordingly, the CSM increased Gunsallus's monthly basic child-support obligation from $307 to $1,293. The CSM made the modified obligation effective retroactively to June 1, 2009, pursuant to the March 2009 order. Gunsallus sought review of the CSM's order by a district court judge and requested a hearing. In December 2010, the district court judge issued an order denying the request for a hearing and affirming the CSM's order. Gunsallus appeals.

D E C I S I O N

A district court has discretion to modify a child-support obligation. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). A district court's decision to modify child support will be reversed on appeal only if the district court abused its discretion by resolving the

matter in a manner contrary to logic and the facts on the record or by misapplying the law. *Gully v. Gully*, 599 N.W.2d 814, 820 (Minn. 1999); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). If a district court judge affirms a CSM's ruling, the CSM's ruling becomes the district court's ruling, and this court reviews the CSM's ruling as if it had been made by a district court judge. *See Welsh v. Welsh*, 775 N.W.2d 364, 366 (Minn. App. 2009); *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004).

I. Calculation of Gunsallus's Income

Gunsallus first argues that the CSM erred by overstating his income. To determine an obligor's basic child-support obligation, the district court calculates, among other things, the obligor's PICS by finding gross monthly income and then reducing it for any child-support obligations for non-joint children. Minn. Stat. § 518A.34(b)(1), (2) (2010). "Gross income" includes "self-employment income under section 518A.30." Minn. Stat. § 518A.29(a) (2010). Income from self-employment is determined by finding gross receipts and subtracting, among other things, ordinary and necessary business expenses. Minn. Stat. § 518A.30 (2010). "The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary." *Id.* A determination of income for purposes of child support is a finding of fact, which will be affirmed if it has "a reasonable basis in fact" and is not "clearly erroneous." *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002) (quotation omitted). A finding of fact concerning income and expenses will not be set aside unless it is clearly erroneous. *Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984).

A. Depreciation Expenses

Gunsallus argues that the district court overstated his income by disallowing $94,669 in depreciation expenses. When determining a parent's PICS, gross receipts from self-employment are reduced by the "ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30. The term "ordinary and necessary expenses" does not include "amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses." *Id.* The CSM disallowed all of the depreciation expenses claimed by Gunsallus because the CSM could not determine, from the evidence and arguments presented, what portion of the claimed amount of depreciation was justified by a straight-line method and what portion was the accelerated component.

Gunsallus contends that the district court erred in its findings of fact because he testified that the entire amount of $94,669 was based on a straight-line method and because Schoeller "did not offer any evidence to the contrary." Gunsallus did testify that none of the depreciation sought was accelerated, but his testimony is not determinative. After the evidentiary hearing, the CSM was uncomfortable with the quantity and quality of information on this issue. The CSM solicited additional input in the form of letter briefs on the question of what portion of the claimed depreciation expenses consisted of the non-accelerated component. Gunsallus submitted a letter brief but did not at that time offer any additional evidence that would allow the CSM to determine the non-accelerated component of his claimed depreciation expenses. The CSM found that Gunsallus's "2009 income tax return did not include adequate detail addressing the depreciation

deduction to identify the assets that were depreciated, or the depreciation schedule." The CSM apparently determined that Gunsallus's testimony on that issue was not credible. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (deferring to district court's "implicit[]" credibility determination). A district court is not required to adopt uncontradicted testimony if there are reasonable grounds to doubt its credibility. *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987). Furthermore, credibility determinations are afforded great deference on appeal. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Conroy v. Kleinman Realty Co.*, 288 Minn. 61, 66, 179 N.W.2d 162, 165-66 (1970).

When he sought review of the CSM's ruling by the district court judge, Gunsallus attempted to submit additional evidence from which one might determine the non-accelerated component of the claimed depreciation expenses, including a document labeled, "Depreciation Detail Listing." This document appears to describe eight trucking assets purchased before and during 2009. The document shows the amount of depreciation for each item and total depreciation of $96,925. Under a column labeled "Method," the document appears to describe, with abbreviations, accelerated methods of depreciation, such as the 200-percent declining balance method with a half-year convention ("200 DB HY"), and the 200-percent declining balance method with a mid-quarter convention ("200 DB MQ"). *See* 26 U.S.C. § 168(b), (d)(4) (2006); 2009 I.R.S. Pub. 946, *How to Depreciate Property*, at 42-43, 115-16.

The record does not establish that this document was presented to the CSM. On a motion for review of a CSM's ruling, "the parties shall not submit any new evidence

unless the [CSM] or district court judge, upon written or oral notice to all parties, requests additional evidence." Minn. R. Gen. Pract. 377.09, subd. 4. The district court judge did not solicit additional evidence regarding depreciation. Thus, the document was not properly before the district court judge. Because the document was not properly before the district court judge, the document may not be considered on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

Even if we were to consider the document, we would conclude that Gunsallus's testimony before the CSM on this issue—that all of his depreciation expenses were based on a straight-line method of depreciation—was false. Although the CSM asked the parties to address this issue with specificity, Gunsallus apparently withheld evidence that would have shed light on the issue in dispute and allowed the CSM to determine the portion of Gunsallus's depreciation expenses that was attributable to an accelerated method of depreciation. We do not know whether Gunsallus's evidence was intentionally false or inadvertently false. In either event, we cannot allow Gunsallus to obtain reversal of the CSM's ruling. A party cannot withhold evidence initially, in an effort to obtain a favorable ruling, and then offer the evidence at a later stage, after having failed to obtain the favorable ruling.

Thus, we conclude that the district court did not err when it disallowed Gunsallus's claimed depreciation expenses of $94,669.

B. Expenses of Employee-Benefit Plan

Gunsallus argues that the district court overstated his income by disallowing $7,200 in expenses that purportedly relate to an employee-benefit plan. The CSM

rejected these expenses because Gunsallus "was unable to explain the nature of the employee benefit program costs." On appeal, Gunsallus contends that he did in fact explain the expenses by testifying that he reimbursed drivers for their lodging expenses while driving. But, as Schoeller notes, the transcript of the evidentiary hearing reflects that Gunsallus admitted that he did not know the nature of the $7,200 in expenses. Thus, in light of Gunsallus's burden of proof, the district court did not err by finding that Gunsallus failed to establish that these expenses were "ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30.

C. Other Expenses

Gunsallus argues that the district court overstated his income by omitting $116,721 in expenses when subtracting the allowable expenses from his revenues. After the CSM disallowed Gunsallus's depreciation expenses of $94,669 and employee-benefit expenses of $7,200, there remained $287,537 in claimed expenses that either were unchallenged by Schoeller or were challenged but allowed by the district court. The CSM should have subtracted that amount from Gunsallus's gross receipts of $352,832 to arrive at income of $65,295 for the year, or $5,441 per month. The CSM, however, calculated Gunsallus's income to be $182,016. It appears that the CSM reduced Gunsallus's gross receipts ($352,832) only by the expenses that Schoeller had unsuccessfully challenged ($170,816) without considering the expenses that Schoeller did not challenge ($116,721). The CSM made a mathematical error. Thus, Gunsallus's income in 2009 should be reduced to $65,295, or $5,441 per month.

D. Leasing Business

Gunsallus argues that the district court overstated his income by not reducing his income by $1,865 to account for a loss in a separate leasing business. Gunsallus's income or loss from the leasing business was an issue at the evidentiary hearing, but the CSM determined that the issue did not need to be resolved because Gunsallus's and Schoeller's combined PICS already exceeded the income cap of the PICS formula by an amount that was more than Gunsallus's alleged loss on his leasing business. That premise no longer is true in light of our conclusion above in part I.C. The CSM also noted that the issue "is plagued by the same depreciation issues that were discussed in relationship to [Gunsallus's] income from his self-employment as the owner-operator of his trucking business." On appeal, Gunsallus does not offer any argument as to why the district court's reasoning and findings were incorrect or why the depreciation issues for the trucking business and the leasing business were different. We need not consider issues that are inadequately briefed. *Department of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal). Thus, we conclude that the CSM did not err by finding that Gunsallus failed to establish that these expenses were "ordinary and necessary expenses required for self-employment or business operation." Minn. Stat. § 518A.30.

II. Effective Date of Modification

Gunsallus argues that the district court erred by determining that the modification of his child-support obligation should be effective June 1, 2009, rather than a later date.

Generally, a modification of a child-support obligation "may be made retroactive" to any date during which a modification motion is pending, but not before the date of service of the motion. Minn. Stat. § 518A.39, subd. 2(e) (2010). The date to which a modification may be made retroactive is committed to the district court's discretion, so long as the date chosen is within the statutory limits and is "based on the facts as found by the district court." *Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009).

In this case, the March 2009 order contained a provision stating that, in certain circumstances, a modification of Gunsallus's child-support obligation would be retroactive to June 1, 2009. Paragraph 3 of the March 2009 order required Gunsallus, on June 1, 2009, to produce "comprehensive information and documentation about his income year-to-date." The order directed the parties to attempt to agree on a modified child-support obligation or, in the alternative, to move for a modification. The order provides, "Any modification of child support *under this paragraph* may be made without showing a substantial change in circumstances, and shall be effective June 1, 2009." (Emphasis added.)

The CSM relied on paragraph 3 of the March 2009 order and expressly stated that its modification of Gunsallus's child-support obligation should be effective retroactively to June 1, 2009. Gunsallus contends that the CSM erred because, among other reasons, his child-support obligation was not modified pursuant to paragraph 3 of the March 2009 order. Gunsallus is correct. The CSM did not make any finding that Gunsallus's income had increased as of June 1, 2009. Rather, the CSM increased Gunsallus's child-support obligation by relying on evidence concerning Gunsallus's income from self-employment

throughout all of 2009. Accordingly, the June 1, 2009, effective date provided by paragraph 3 of the March 2009 order does not apply. *See Robertson v. Robertson*, 376 N.W.2d 733, 735-36 (Minn. App. 1985) (stating that judgments should be enforced according to their terms unless ambiguous). Thus, the CSM erred by specifying that the modification of Gunsallus's child-support obligation shall be effective June 1, 2009.

The CSM found that Schoeller served Gunsallus with the motion to modify on March 13, 2010. Gunsallus's modified child-support obligation may not become effective before that date. Minn. Stat. § 518A.39, subd. 2(e). On remand, the district court shall exercise its discretion to determine the effective date of the modification of Gunsallus's child-support obligation. *See Lee*, 775 N.W.2d at 643.

III. Due Process

Gunsallus argues that the district court erred in the manner by which the district court judge reviewed the CSM's ruling. More specifically, Gunsallus contends that the district court judge erred by summarily denying his motion for review, without an evidentiary hearing and without making findings of fact, such that the district court violated his right to due process of law.

The district court judge's review of the CSM's ruling is authorized by rule 377.09, subdivision 2(b), of the General Rules of Practice for District Courts. That rule provides, in part, that the district court judge may conduct a hearing on the motion for review "[i]f the court determines that the findings and order are not supported by the record or the decision is contrary to law." Minn. R. Gen. Pract. 377.09, subd. 2(b). The rule also provides, in part, "The child support magistrate or district court judge may affirm the

order without making additional findings." *Id.* The rule further provides that, "[i]f any findings or other provisions of the child support magistrate's or district court judge's decision and order are approved without change," the district court judge "need not make specific findings or conclusions as to each point raised in the motion." *Id.*

Gunsallus contends that the above-described rule deprived him of his constitutional right to due process of law. He does not cite any caselaw in support of his argument. He merely asserts that he is entitled to timely notice, an opportunity to be heard, and the opportunity to present evidence. To determine whether a person was deprived of the right to procedural due process, a court must balance three factors: "(1) 'the private interests affected by the proceeding'; (2) 'the risk of error created by the State's chosen procedure'; and (3) 'the countervailing governmental interest supporting use of the challenged procedure.'" *SooHoo v. Johnson*, 731 N.W.2d 815, 823 (Minn. 2007) (quoting *Santosky v. Kramer*, 455 U.S. 745, 754, 102 S. Ct. 1388, 1395 (1982)).

In this case, Gunsallus had multiple opportunities to be heard by the CSM prior to the motion for review by a district court judge. In some instances, Gunsallus failed to take advantage of opportunities to obtain careful review by the CSM, such as when he did not introduce evidence of the accelerated component of his claimed depreciation expenses. We are unaware of any caselaw that gives a litigant in a child-support matter a constitutional right to have a district court judge, rather than another type of judicial officer, conduct certain proceedings and determine certain issues. Thus, we conclude that the district court did not violate Gunsallus's constitutional right to due process of law.

In sum, Gunsallus's income from self-employment derived from his trucking business is reduced from $15,168 per month to $5,441 per month. On remand, the district court judge or the CSM shall use the $5,441 figure to calculate the proper child-support obligation and shall determine the effective date of the modification of Gunsallus's child-support obligation.

Affirmed in part, reversed in part, and remanded.