STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1721

In re the Marriage of:

Sandra Sue Grazzini-Rucki, petitioner,
Appellant,

vs.

David Victor Rucki,
Respondent,

County of Dakota, intervenor,
Respondent.

Filed June 17, 2019
Affirmed
Smith, Tracy M., Judge

Dakota County District Court
File No. 19AV-FA-11-1273

Sandra Sue Grazzini-Rucki, Dunedin, Florida (pro se appellant)

Lisa M. Elliott, Elliott Law Offices, P.A., Minneapolis, Minnesota (for respondent David Victor Rucki)

James C. Backstrom, Dakota County Attorney, James W. Donehower, Assistant County Attorney, West St. Paul, Minnesota (for respondent Dakota County)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and Smith, John, 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

SMITH, TRACY M., Judge

In this child-support dispute between appellant Sandra Sue Grazzini-Rucki and respondents David Victor Rucki and Dakota County, appellant challenges (1) a child-support magistrate's (CSM) modification of Grazzini-Rucki's child-support obligation and (2) the CSM's imposition of a payment agreement as a condition of reinstating Grazzini-Rucki's driver's license, which had been suspended for failure to pay child support. Because her arguments are time-barred or fail to demonstrate a reversible error, we affirm.

FACTS

As described below, Grazzini-Rucki challenges three orders, filed in May, July, and August 2018. We begin, however, with an October 2016 order, which sets the stage for the later, challenged orders. On October 13, 2016, Grazzini-Rucki was ordered to pay Rucki $975 per month for child support. At that time, Grazzini-Rucki had been convicted of, and was awaiting sentencing for, deprivation of parental rights. Therefore, the order provided that Grazzini-Rucki's support obligation would be suspended until she was released from incarceration, whereupon a review hearing would be held to decide whether the support obligation should be reinstated.

May order

Grazzini-Rucki was released from her incarceration related to that offense, and, in 2018, Rucki requested a review hearing and reinstatement of the child-support obligation. A CSM held the review hearing on May 3, 2018; Grazzini-Rucki did not appear or participate because she was again incarcerated from March 27 to May 15, 2018, in

connection with an unspecified matter. The CSM filed an order on May 7, 2018 (the May order), deciding that Grazzini-Rucki's child-support obligation as established by the October 13, 2016, order would be reinstated effective June 1, 2018. Grazzini-Rucki neither requested district court review of the May order nor appealed from it; instead, on May 31, 2018, Grazzini-Rucki filed a motion to modify the May order. Along with the modification motion, she also filed a motion to reinstate her driver's license, which had been suspended in 2015 due to child-support arrearages.

July order

A second CSM held a hearing in July 2018, continuing Grazzini-Rucki's motions but addressing procedural issues. After confirming that Grazzini-Rucki was appearing pro se, the CSM gave Grazzini-Rucki detailed instructions on the information that Grazzini-Rucki was expected to produce before the hearing on her motions. The CSM reiterated the instructions in a written order filed July 19, 2018 (the July order). Specifically, Grazzini-Rucki was ordered (1) "to provide verification of her income from any and all sources," (2) "to provide verification of any disability that she is claiming as a reason why she is unemployed," and (3) "to provide information on all applications for employment she has made from January 1, 2018 to date." Rucki was likewise directed to provide his income information.

August order

The hearing on the merits of Grazzini-Rucki's motions was held before the second CSM on August 7, 2018. Grazzini-Rucki did not comply with any of the directions from the July order. Rucki also did not submit any current financial information, saying that he

was consciously making the choice not to do so because of Grazzini-Rucki's past practice of disseminating his financial information; instead, he claimed that his income was at the same level as in 2016. The CSM filed an order on August 21, 2018 (the August order). In it, the CSM imputed income to both parties—the CSM found Grazzini-Rucki to have the ability to work full-time at minimum wage and, drawing an adverse inference from Rucki's refusal to supply information, found Rucki's income to be double the amount that he claimed. The CSM modified Grazzini-Rucki's child-support obligation, ordering Grazzini-Rucki to pay the minimum support obligation of $50 per month for the period of June 1, 2018, through September 2018, and $215 per month as ongoing basic support effective October 1, 2018. Also, the CSM reinstated Grazzini-Rucki's driver's license and established the August order as the "payment agreement" required by statute when ordering reinstatement of an obligor's driver's license.[1]

Grazzini-Rucki appeals the May, July, and August orders.

D E C I S I O N

I. The May order was not timely appealed.

Grazzini-Rucki challenges various aspects of the May order. But, as the county correctly points out, appeal from the May order is time-barred. The time to appeal an appealable order is 60 days from service by a party of written notice of the filing of the order. Minn. R. Civ. App. P. 104.01, subd. 1. The record contains an affidavit of service for the notice of filing of the May order. Service on all counsel of record was perfected

[1] *See* Minn. Stat. § 518A.65(e)(2) (2018), discussed *infra* in section II.

through the electronic filing system on May 9, 2018. Grazzini-Rucki does not challenge that service. Grazzini-Rucki could have appealed the May order within 60 days, or she could have timely filed a motion for review and stopped the running of the 60-day time for appeal while the motion was pending. Minn. R. Civ. App. P. 104.01, subd. 2. But Grazzini-Rucki did not employ any of those procedural devices; instead, she filed a new motion to modify her child support obligation on May 31, 2018, and did not appeal the May order until October 2018. A motion to modify support does not extend the time for appeal of the order sought to be modified. *See id.* (listing motions that extend the time for appeal); Minn. R. Civ. App. P. 104.01 1998 advisory comm. cmt. (stating that motions to modify "no longer extend the time in which to appeal"). Grazzini-Rucki's challenge of the May order in the current appeal is untimely.

Moreover, even if an error in the May order were timely, the asserted error is harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of Minn. R. Civ. P. 61). On Grazzini-Rucki's motion to modify the May order, the CSM issued the new order in August 2018. The August order overrode the May order, and the two orders have the same effective date—June 1, 2018. Therefore, any challenge to the May order is moot, and any error harmless.

II. The CSM did not reversibly err in reinstating Grazzini-Rucki's driver's license and establishing the payment agreement.

In the August order, the CSM established a driver's license payment agreement. Under the agreement, Grazzini-Rucki's driver's license was immediately reinstated and

Grazzini-Rucki was held to "complete and timely payment of support" beginning October 1, 2018. Grazzini-Rucki argues that the CSM should have reinstated her driver's license without reservation—i.e., without requiring "complete and timely payment of support." Each of her specific arguments will be addressed in turn.

A. Consent to the payment agreement

Grazzini-Rucki argues that, in reinstating her driver's license, the CSM should not have held her to the obligations of the August order because the order was not a payment agreement that she agreed to. On "a motion for reinstatement of the driver's license" brought by a child-support obligor, "if the . . . child support magistrate orders reinstatement of the driver's license, the . . . child support magistrate *must* establish a written payment agreement pursuant to section 518A.69." Minn. Stat. § 518A.65(e)(2) (2018) (emphasis added); *see* Minn. Stat. § 645.44, subd. 15a (2018) ("'Must' is mandatory."); *Greene v. Comm'r of Human Servs.*, 755 N.W.2d 713, 721 (Minn. 2008) (citing this definition). The CSM acted in accordance with section 518A.65(e)(2) by imposing the payment agreement when reinstating Grazzini-Rucki's driver's license.

Grazzini-Rucki argues that the August order could not be a "payment agreement" because she did not agree to its terms. Even if the statute required Grazzini-Rucki's consent to a payment agreement and the CSM erred by not securing it, the error is harmless. Had the CSM not established the payment agreement, Grazzini-Rucki's reinstatement motion would have been denied and her license would have remained suspended. *See* Minn. Stat. § 518A.65(e)(2). In addition, the payment agreement does not require Grazzini-Rucki to pay any of the arrearages that led to the suspension; it only requires her to make complete

and timely payment of child support as set out in the August order. With or without a payment agreement, violation of a support obligation can result in suspension of the obligor's driver's license. *See* Minn. Stat. § 518A.65(a) (2018). Grazzini-Rucki has not shown how she was prejudiced by the imposition of the August order as a payment agreement in the reinstatement of her driver's license.

B. Notice

Grazzini-Rucki also argues that the underlying suspension of her driver's license, which occurred in 2015, was illegal because it violated her due-process rights. Minn. Stat. § 518A.65(b) (2018) provides:

> If . . . the [child-support] obligor is in arrears in court-ordered child support . . . payments . . . in an amount equal to or greater than three times the obligor's total monthly support . . . payments and not in compliance with a written payment agreement pursuant to section 518A.69 that is approved by the court, a child support magistrate, or [a] public authority [responsible for child support enforcement], the public authority shall direct the commissioner of public safety to suspend the obligor's driver's license.

Before the public authority can direct suspension of the obligor's driver's license, however, "the public authority must mail a written notice to the obligor at the obligor's last known address, that it intends to seek suspension of the obligor's driver's license and that the obligor must request a hearing within 30 days in order to contest the suspension." Minn. Stat. § 518A.65(c) (2018); *cf. Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 606 (Minn. 2016) ("Procedural due process . . . requires any notice to be reasonably calculated to apprise interested parties of the pendency of the action before depriving them of life, liberty, or property." (quotations omitted)).

Grazzini-Rucki's due-process argument is that the child-support office did not send her a written notice prior to the suspension. "Factual disputes regarding the adequacy of notice are reviewed for clear error, while the legal adequacy of any notice that may have been given is reviewed de novo." *Cook v. Arimitsu*, 907 N.W.2d 233, 240 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018). "When determining whether [factual] findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings," *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000), and reverses only if it "is left with the definite and firm conviction that a mistake has been made," *Goldman*, 748 N.W.2d at 284 (quotation omitted).

The CSM did not make a finding whether the child-support office had in fact sent Grazzini-Rucki a notice prior to the suspension. But the only reasonable determination that the CSM could make on this record is that the requisite notice was in fact provided. A child-support officer stated in an affidavit that, on May 16, 2015, "the Dakota County Child Support Office sent a Notice of Intent to Suspend Driver's License to [Grazzini-Rucki]." A copy of the notice was attached to the affidavit, which shows that the notice was sent to the office of the person who was Grazzini-Rucki's attorney at the time. Also, Grazzini-Rucki used the attorney's office as her own mailing address. Based on this record, the child-support office unquestionably complied with Minn. Stat. § 518A.65(c). Contrary to Grazzini-Rucki's argument, the fact that the notice was not docketed in the court file is of no import. Nothing in the statute, or the due-process jurisprudence, required the child-support office to file the notice with the district court. *See* Minn. Stat. § 518A.65 (2018).

This record shows that Grazzini-Rucki was adequately notified of the suspension of her driver's license, and, therefore, that the suspension did not violate her due-process rights.

C. Ability to pay

Third, Grazzini-Rucki argues that the CSM abused her discretion by establishing the payment agreement because Grazzini-Rucki does not have the ability to pay according to the agreement. Minn. Stat. § 518A.69 (2018) provides that the "child support magistrate . . . shall consider the individual financial circumstances of each obligor in evaluating the obligor's ability to pay any proposed payment agreement and shall propose a reasonable payment agreement tailored to the individual financial circumstances of each obligor." Here, the CSM, in establishing the payment agreement, did not seek to hold Grazzini-Rucki accountable for any of the arrearages that resulted in the suspension in 2015. All that is required from Grazzini-Rucki under the agreement is to comply with her new child-support obligation. Therefore, whether the payment agreement complies with Minn. Stat. § 518A.69 depends on Grazzini-Rucki's ability to pay child support according to the August order. As discussed below, the record supports the CSM's determination that Grazzini-Rucki has the ability to pay the child support. The CSM did not make a reversible error in determining the terms of the payment agreement.

III. The CSM did not abuse her discretion in modifying the May order.

Grazzini-Rucki did not seek the district court's review of the orders that she is now appealing. On appeal from a child support magistrate's order that has not been reviewed by the district court, this court uses the same standard to review issues as would be applied if the order had been issued by a district court. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn.

App. 2009). Whether to modify child support is within the broad discretion of the district court. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017); *see Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013) (stating that, generally, appellate courts "review orders modifying child support for abuse of discretion"). A district court abuses its discretion if its decision is based on a misapplication of the law, is contrary to the facts, or is contrary to logic. *Shearer*, 891 N.W.2d at 77.

A. The support amount

Throughout her brief, Grazzini-Rucki argues that she does not have the ability to pay the child support ordered. *See* Minn. Stat. § 518A.42, subd. 1(a) (2018). ("It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay."). In support of that general contention, she makes three sub-arguments.

1. Imputation of income

Grazzini-Rucki first argues that the CSM should not have imputed to her any income. Minn. Stat. § 518A.32, subd. 1 (2018) provides:

> If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.

The CSM found that Grazzini-Rucki was voluntarily unemployed because Grazzini-Rucki failed to provide any verification of the reasons why she was unemployed despite the CSM's explicit direction to do so.

It is undisputed that Grazzini-Rucki is unemployed, and "[w]hether a parent is voluntarily unemployed is a finding of fact, which we review for clear error." *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009). Grazzini-Rucki argued to the CSM that she is not employable because of her six felony convictions and because she was homeless and lacked a means of transportation. Grazzini-Rucki also stated that she did not have food "to maintain the energy to put one foot in front of the other" and that she suffered from injuries impairing her ability to work. The CSM did not ignore Grazzini-Rucki's assertions; the CSM found that, given Grazzini-Rucki's criminal history, Grazzini-Rucki could not earn the same level of income as she had prior to the felony convictions. However, finding "no reported job search efforts" in between and after Grazzini-Rucki's incarcerations and "no evidence that [she] is mentally or physically unable to work full time," the CSM did not accept Grazzini-Rucki's statements that she could not obtain any kind of employment. Grazzini-Rucki does not argue that, contrary to the CSM's finding, her statements are corroborated by other evidence. Grazzini-Rucki's claim that her good-faith job-search efforts were unfruitful, or that her predicament prevented her from even trying to search for a job, relies solely on her own statements. Therefore, the issue becomes a matter of Grazzini-Rucki's credibility. Appellate courts do not "decide issues of witness credibility, which are exclusively the province of the factfinder." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). The CSM's finding that Grazzini-Rucki is voluntarily unemployed is not clearly erroneous.

2. Calculation of potential income

Grazzini-Rucki also argues that, to the extent that the CSM could impute income to her, the amount was erroneously calculated. Minn. Stat. § 518A.32, subd. 2 (2018) provides:

> Determination of potential income must be made according to one of three methods, as appropriate:
>
> (1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;
>
> (2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or
>
> (3) the amount of income a parent could earn working 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher.

The CSM found that Grazzini-Rucki could work 40 hours a week at Florida's minimum wage.

Grazzini-Rucki argues that the CSM should have determined her potential income based on working 30 hours a week, implying that the CSM could use minimum wage in the calculation of potential income only under subdivision 2(3) of section 518A.32. But she does not explain why Minn. Stat. § 518A.32, subd. 2, must be construed that way. An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is forfeited unless prejudicial error is obvious on mere inspection. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017). Nothing in the plain language of Minn. Stat. § 518A.32 (2018) prohibits the court from determining, based on a parent's "employment potential, recent work history, and

occupational qualifications," that the parent has the capacity to earn minimum wage working 40 hours a week. Minn. Stat. § 518A.32, subd. 2(1). Thus, the CSM did not commit an obvious error by finding that Grazzini-Rucki's potential earnings level was full-time employment at minimum wage.

3. Living expenses

Third, Grazzini-Rucki argues that the CSM abused her discretion by finding that her living expenses were paid by others. The CSM stated that Grazzini-Rucki's "monthly living expenses are unknown," but the CSM did not find that they were paid by others. It is Rucki whose living expenses the CSM found were paid by others. Grazzini-Rucki does not argue that she provided the CSM any information on her living expenses or that some hypothetical amount should have been imputed to her. On this record, the CSM did not abuse her discretion in making her findings about Grazzini-Rucki's living expenses. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("[A] party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003).

In sum, Grazzini-Rucki fails to demonstrate that the CSM abused her discretion in determining the amount of Grazzini-Rucki's modified child-support obligation.

B. The July order

Grazzini-Rucki argues that the CSM sent a copy of the July order, which laid out the information to be produced by the parties, to the wrong address and that she did not

receive the July order before the August hearing. She goes on to argue that, instead of proceeding with the hearing, the CSM should have granted a continuance to allow her to adequately prepare. However, at the August hearing, the CSM stated that the July order had been sent to the address that Grazzini-Rucki identified as her mailing address at the July hearing. Nothing in the record suggests that the CSM sent the July order to the wrong address.

Moreover, even if the July order was sent to the wrong address for Grazzini-Rucki, it is not clear how she was prejudiced by the mistake. The July order largely reiterated the CSM's instructions to Grazzini-Rucki at the July hearing. The order called for nothing out of ordinary—it was a list of things that Grazzini-Rucki needed to provide to support her motion. It would be unreasonable to conclude that Grazzini-Rucki did not know how to corroborate the claims she was making because she did not have the July order in front of her. Grazzini-Rucki establishes no reversible error on this issue.

C. Rucki's financial information

Grazzini-Rucki argues that the CSM should have held Rucki in contempt for his refusal to provide current financial information. "The contempt power gives the trial court inherently broad discretion to hold an individual in contempt but only where the contemnor has acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Dec. 15, 2015). "The supreme court has characterized contempt as an extreme remedy, and this court has instructed that civil contempt powers must be exercised with caution." *Id.* (quotations omitted). Here, nothing in the record suggests that Rucki

acted "contumaciously, in bad faith, and out of disrespect for the judicial process." *Id.* He clearly represented to the CSM that he was not going to submit his current financial information due to Grazzini-Rucki's past practice of wrongfully disseminating his financial information. He then faced the adverse inference that his income was double what it had been in 2016. Assuming that child-support magistrates have the contempt power, it was not an abuse of discretion to not hold Rucki in contempt.

D. Jurisdiction

Grazzini-Rucki argues that the adverse inference of income drawn against Rucki deprived the CSM of jurisdiction to preside over this case. In general, child-support magistrates can only hear IV-D cases. *See* Minn. R. Gen. Prac. 353.01.

> "IV-D case" means a case where a party has assigned to the state rights to child support because of the receipt of public assistance as defined in section 256.741 or has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

Minn. Stat. § 518A.26, subd. 10 (2018). Here, the CSM found that Rucki had "assigned to the state rights to child support because of the receipt of public assistance" and exercised jurisdiction under the first prong of the definition of a IV-D case. *Id.* The CSM's finding is supported by the record: according to the affidavit of a child-support officer, "Rucki receives Medical Assistance for himself and the parties' [two] joint children."

But Grazzini-Rucki argues that the CSM did not have jurisdiction to hear the case as a IV-D case because the CSM imputed to Rucki $10,000 in gross monthly income and he would be ineligible for public assistance were he actually earning that amount. Her argument fails. Even if actual gross monthly income in the amount of $10,000 would make

Rucki ineligible for public assistance, Grazzini-Rucki has not shown that *imputation* of that income would have the same effect. "[O]n appeal, error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944). Inadequately briefed issues are not properly before an appellate court. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). The relationship, if any, between eligibility for public assistance and the imputation of income for purposes of IV-D jurisdiction is not adequately briefed, and Grazzini-Rucki has not shown that the CSM lacked jurisdiction over the case due to an imputation of income to Rucki.

E. Credits and arrearages

Lastly, Grazzini-Rucki argues that the CSM failed to consider some child-support credits and arrearages purportedly owed to her. Grazzini-Rucki asserts that, because the August order reduced her monthly obligation from $975 to $215, she is "owed a credit of $760 per month." But, at the time of the August order, it was Grazzini-Rucki's future obligation that was being reduced to $215. The reduction itself did not result in an overpayment, and Grazzini-Rucki does not cite any other evidence of overpayment. *Cf.* Minn. Stat. § 518A.52 (2018) (providing that overpayments of a child-support obligation can be credited against past and future support obligations). The credits that Grazzini-Rucki is claiming do not seem to exist. Also, according to Grazzini-Rucki, arrearages "owed to [her] from the time prior to September 7, 2012," were suddenly deemed paid in full, "without [her] receiving a dime of that money." Specifically, she argues that Rucki currently owes $62,822.52 in arrearages to her. Her calculation is based on imposing

Rucki's support obligation of $13,673 per month for the months of May to September 2011. But, in an order dated September 21, 2011, that support award was subsequently vacated due to mistake, discovery of new evidence, and fraud by Grazzini-Rucki. When the $13,673 support payments are removed from the equation, Rucki does not owe any arrearages to Grazzini-Rucki even according to her own calculation.

Affirmed.