

MINNESOTA LAWYER
CHILD SUPPORT CASE SUMMARIES
(JANUARY 2008)

| Issue Date | Relevant Sections | Case Citation and Summary | Synopsis |
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| January 7, 2008 | IV.D. | <p><u>In the Matter of: Afra Bragg obo minor children vs. Johnny Hudson</u>, (Unpub.), A06-2431, filed December 31, 2007 (Minn. App. 2008):</p> <p>While it was appropriate for the court to allow respondent to invoke his 5th amendment right in an OFP where the party fears possible criminal prosecution, the district court erred in prohibiting appellant's counsel from arguing that an adverse inference could be taken from respondent invoking his 5th amendment right.</p> | OFP |
| January 21, 2008 | II.D.2. II.O.10. | <p><u>Samantha Jane Gemberling vs. Karl Hampton</u>, (Unpub.), A07-0074, filed January 15, 2008 (Minn. App. 2008):</p> <p>The CSM did not error in finding that appellant failed to meet his burden of proof regarding a change in his income in that the CSM found and the record demonstrates appellant provided incomplete information and his tax returns omitted pertinent schedules regarding his income.</p> | Change in circumstances burden not met where incomplete tax returns submitted as proof of change. |
| January 21, 2008 | II.O.1. II.O.13. | <p><u>Samantha Jane Gemberling vs. Karl Hampton</u>, (Unpub.), A07-0074, filed January 15, 2008 (Minn. App. 2008):</p> <p>A party does not meet §518.551 requirements in showing a change in circumstances simply because a temporary order is set pending a review hearing. The purpose of the review hearing was for the parties to provide financial information to clarify their financial situations.</p> | Temporary order with review does not in itself mean the change in circumstances burden has been met. |
| January 21, 2008 | II.L. | <p><u>County of Anoka ex rel Alena M. Hubacher vs. Djan M. Davis</u>, (Unpub.), A07-61, filed January 15, 2008 (Minn. App. 2008):</p> <p>The district court did not abuse its discretion by denying the county's motion for contempt where the court included findings indicating they did not find respondent to be deliberately</p> | No abuse in denying county's contempt motion where court found finding contempt was not likely to improve compliance, etc. |

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| | | and contumaciously ignoring the court's order; that the threat of confinement would not likely improve his compliance; and that the respondent may be wholly unable to perform. | |
| January 28, 2008 | II.O.1. | <p><u>In re the Marriage of Mark William Carroll v. Desiree Lucille Boelt</u>, (Unpub.), A07-1349, filed January 2, 2008 (Minn. App. 2008):</p> <p>Appellant mother argues that the court abused its discretion by ordering child support where there was no child support ordered under the dissolution and petitioner father has not demonstrated a change in circumstances from the dissolution. Court held that there was a change of circumstances making modification appropriate where the court changed parenting time from joint custody to sole with parenting time provisions, and appellant's income had increased by more than 20%.</p> | Modification requirements met where prior order reserved, custody arrangement has changed, and obligor's income has increased by more than 20%. |
| January 28, 2008 | III.H.3. II.P.3. | <p><u>In re the Marriage of Mark William Carroll v. Desiree Lucille Boelt</u>, (Unpub.), A07-1349, filed January 2, 2008 (Minn. App. 2008):</p> <p>Appellant mother argues the court abused its discretion to order judgment for her for the amount of her overpayment of past child support. Minn. Stat. 518A.52(1) requires overpayments to first be applied to reduce any arrears, then (2) used to reduce obligor's future child support payments. The lower court abused its discretion only in that the court reduced the future child support to \$0 until the overpayment was eliminated; the statute requires the reduction of future child support be limited to 20% of the obligor's child support obligation. Therefore, obligor's child support of \$590 should be reduced to \$472 per month until the overpayment has been fully credited.</p> | Overpayment of child support; first apply to arrears, then reduce current obligation by no more than 20% until overpayment eliminated. |

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| January 28, 2008 | II.O.13. | <p data-bbox="683 254 1177 453"><u>In re the Marriage of Thomas Eugene Broome v. Sandra Marie Wedmann, f/k/a Sandra Marie Broome, f/k/a Sandra Marie Lambrecht, (Unpub.)</u>, A06-2368, filed January 22, 2008 (Minn. App. 2008):</p> <p data-bbox="683 453 1177 814">Appellant father argues the child support magistrate abused discretion by departing from the guidelines in opting not to apply the Hortis/Valento formula when modifying father's obligation. The CSM's deviation from the guidelines must be reversed because, except for addressing the parties' earnings, the CSM failed to make the findings required by Minn. Stat. sec. 518.551, subd. 5(i).</p> | <p data-bbox="1221 254 1414 415">Deviations from guidelines require findings under Minn. Stat. sec. 518.551, subd. 5(i).</p> |

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(FEBRUARY 2008)

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| February 11, 2008 | I.B.3. | <p><u>In re the Marriage of: Debra Christine Brunette, n/k/a Debra Christine Klein vs. Scott David Brunette, (Unpub.), A07-0685, filed February 5, 2008 (Minn. App. 2008):</u> Husband appeals district court's decision to decline approval of parties' stipulation. Appellant urges a stipulation should be vacated only for fraud, duress, or mistake. Appellate court held that district court is a "third party" in dissolutions and has a duty to protect interest of both parties to ensure fair and reasonable stipulation. District court may apply equitable principles to ensure fairness. Affirmed.</p> | Stipulations. Fairness / equity. |
| February 11, 2008 | II.M.6. | <p><u>In re the Marriage of: Debra Christine Brunette, n/k/a Debra Christine Klein vs. Scott David Brunette, (Unpub.), A07-0685, filed February 5, 2008 (Minn. App. 2008):</u> Husband appeals district court's award of sanctions. Wife's motion did not establish facts showing appellant violated terms of settlement agreement; therefore, district court had no basis for imposing the sanctions. Sanctions award reversed.</p> | Award of sanctions reversed – no factual basis |
| February 11, 2008 | II.M.6. | <p><u>In re the Marriage of: Debra Christine Brunette, n/k/a Debra Christine Klein vs. Scott David Brunette, (Unpub.), A07-0685, filed February 5, 2008 (Minn. App. 2008):</u> Husband appeals district court's award of conduct based attorney's fees as wife failed to document the amount of the fees as required by Minn. R. Gen. Pract. 119. Appellate court determined that the documentation requirement is not designed to inhibit district court's discretion but to streamline process. If court is familiar with case history and parties' financial information, it may</p> | Attorney Fees Rule 119 requirement to document amount is waivable |

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| February 11, 2008 | I.B.7. III.G.6. | <p>waive the requirements of Rule 119.</p> <p><u>Northland Temporaries vs. Anthony Turpin, et al.</u>, A06-2201, filed February 5, 2008 (Minn. App. 2008): District court denied appellant's motion to vacate a default judgment. Reversed and remanded as district court's determination of <i>Hinz</i> factors based partially on mistake of fact and error of law. Dicta indicates that a lay person's failure to answer in some circumstances may not be unreasonable. Remand is appropriate where erroneous decision below is based on factual error as it is within the province of the district court to resolve factual disputes in testimony and affidavits and to determine whether excuse is reasonable.</p> <p><i>Hinz</i> and <i>Finden</i> do not limit the district court's discretion to grant rule 60.02 relief. They limit discretion to deny relief. Satisfaction of all four <i>Hinz</i> factors is not required for district court to grant relief. Cannot deny relief if all four factors met. Must show a meritorious claim or reasonable defense on the merits.</p> | <p>Rule 60.02 relief does not require all four <i>Hinz</i> factors be fully met</p> <p>Mistake of Fact</p> <p>Error of Law</p> |
| February 25, 2008 | II.F.2. | <p><u>In the Marriage of: Lynae Dana Nahring v. Curtis Norman Nahring</u>, (Unpub.), A07-0102, filed February 19, 2008 (Minn. App. 2008): Father appeals from the lower court's decision allowing mother's 13.5% deduction for retirement savings when calculating child support and spousal maintenance. Lower court failed to address whether deduction is a contribution within the meaning of § 518.551, subd. 5(b) and if so, whether it is reasonable. Reversed and remanded for findings.</p> | <p>13.5% Deduction for retirement savings.</p> |

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| February 25, 2008 | IV.B. | <p><u>In the Marriage of: Lynae Dana Nahring v. Curtis Norman Nahring</u>, (Unpub.), A07-0102, filed February 19, 2008 (Minn. App. 2008):</p> <p>Father appeals from the decision of the lower to court setting spousal maintenance. The lower court made insufficient findings when setting spousal maintenance without considering and balancing requisite statutory factors.</p> | <p>Spousal maintenance</p> <p>Findings required.</p> |

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(MARCH 2008)

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| March 3, 2008 | IV.D. Other | <p><u>Svendsen and o/b/o M.S-S., v. Strange</u>, (Unpub.), A07-166, F & C, filed February 26, 2008 (Minn. App. 2008):</p> <p>Court of Appeals affirmed issuance of an OFP because testimony in the record supported the district court's factual finding that Strange intended to cause fear in Svendsen. In addition, Minn. Stat. §578B.01, subd. 6(a) establishes that a finding of abuse of a non-child victim [Svendsen] is sufficient to allow the district court to restrict parenting time [with M.S-S.].</p> | OFP |
| March 10, 2008 | IV.A. Custody and Visitation | <p><u>Kast vs. Kast</u>, (Unpub.), A07-1567, F & C, filed March 4, 2008 (Minn. App. 2008):</p> <p>Because the record indicates that the district court performed the statutorily-mandated best-interests analysis and the district court's findings supporting its conclusions are sufficiently detailed, the Court of Appeals held that the district court was within its discretion in awarding respondent/mother sole physical custody of the parties' children. Affirmed.</p> | Custody |
| March 10, 2008 | II.P.3. Arrearages | <p><u>Kast vs. Kast</u>, (Unpub.), A07-1567, F & C, filed March 4, 2008 (Minn. App. 2008):</p> <p>Because the district court's calculation of appellant's child support arrearages is supported by sufficient evidence in the record and is authorized by Minn. Stat. §518.131, subd. 9(b), it is not an abuse of discretion. Affirmed.</p> | Child support arrearages |

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| March 10, 2008 | II.D.7. Earning Capacity/ Voluntary Unemployment or Under Employment/ Imputation of Income | <u>County of Nicollet o/b/o Stevenson vs. Machau</u> , (Unpub.), A06-2345, F & C, filed March 4, 2008 (Minn. App. 2008): Appellant father challenges an order finding him to be voluntarily unemployed and requiring him to seek employment. Appellant argued at the hearing before the CSM that he was previously employed as a truck driver, but had been unemployed since his DL was suspended for non payment of child support. Since then, he had been home schooling his subsequent child and that child's half-siblings and was a full time homemaker with no income. The CSM found appellant was voluntarily unemployed, ordered appellant to do a job search, and ordered a \$150 per month payback on arrears. No abuse of discretion; the evidence supports the CSM's findings. | Finding of voluntary unemployment and order to seek work |
| March 10, 2008 | I.A.1. | <u>County of Nicollet o/b/o Stevenson vs. Machau</u> , (Unpub.), A06-2345, F & C, filed March 4, 2008 (Minn. App. 2008): Evidence submitted by appellant on appeal not previously submitted to the CSM is stricken. | Evidence not submitted to CSM stricken from record on appeal |
| March 10, 2008 | II.A.1 Obligation to Support II.F.5. Shared Custody/Joint Custody | <u>Lubich n/k/a Miller vs. Lubich</u> , (Unpub.), F & C, A07-1159, filed March 4, 2008 (Minn. App. 2008): Appellant non-custodial father challenges denial of his motion to require respondent/custodial parent to pay child support for parties' sole remaining minor child who resides with him. Appellant argued that the district court misapplied the law and abused its discretion by not making findings to overcome the presumption that respondent was not a child support obligor (Minn. Stat. §518A.26, subd. 14) and impose a child support obligation on her because the child lives primarily with him. The district court found that appellant owes respondent many thousands in arrears and even though appellant's support obligation had previously been reduced he had not significantly | Establishing child support against parent who has custody by court order. |

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| | | reduced his arrears. The Court of Appeals distinguished this case from both <i>Rumney</i> [sic] and <i>Tweeton</i> because neither of those cases involved an obligor with significant arrears. The district court's refusal to require respondent to pay support was affirmed. | |
| | II.P.2. Defenses/ Offsets/ Satisfaction by Integration into NCP's home: | <u>Lubich n/k/a Miller vs. Lubich</u> , (Unpub.), F & C, A07-1159, filed March 4, 2008 (Minn. App. 2008): Appellant/non-custodial parent argues expenses he incurred while children were living with him should have been offset against his support arrears. Court of Appeals held that such an offset would be tantamount to a <i>de facto</i> retroactive modification of support. Citing Minn. Stat. §518A.39(e), the Court of Appeals ruled that appellant is entitled to reduction of arrears for only the period after he served his motion to modify. | Offset to arrears only during period when motion to modify is pending. |
| March 17, 2008 | II.D.2. Evidence of Income & Expenses/ Failure to Document II.M.6. Attorneys Fees | <u>Baudhuin vs. Baudhuin</u> , (Unpub.), F & C, A07-0156, filed March 11, 2008 (Minn. App. 2008): Appellant petitioner argues the district court erred by denying her motion for increase in maintenance, discharging alleged child support arrears, and awarding respondent attorney's fees based on appellant's conduct, among other issues. Court of Appeals finds no error; appellant effectively prevented the district court from resolving the issue of maintenance in her favor and properly addressing the Court of Appeals' instructions on a prior remand by her failure to produce properly discoverable information regarding her financial circumstances and her student (law school) status. The district court acted within its discretion in setting child support, based on the failure of both parties to timely submit evidence of financial situations for the court to properly determine child support. The court ordered each party, based on the conduct of each | No error where conduct of parties effectively prevented the court from resolving the issues of maintenance and child support. |

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| | | individually, to pay attorney's fees to the other of \$10,000 each. No abuse of discretion. | |
| March 31, 2008 | II.D.7 Earning Capacity/Voluntary Unemployment or Under Employment/ Imputation of Income; II.F.5. Shared Custody/Joint Custody | <u>Martin vs. Martin</u> , (Unpub.), F & C, A07-591, filed March 25, 2008 (Minn. App. 2008): In this joint physical custody case, the district court granted appellant's motion to reduce his child support obligation based on his decreased income, but did not impute income to respondent. Respondent was working 20 hours per week and produced no evidence that she was unable to work full time; however, the district court determined that based on her receipt of medical assistance for the children, imputing income to her was not appropriate. The Court of Appeals affirmed. | No imputation of Income to Parent on MA |
| March 31, 2008 | II. F. 1. Guidelines Generally | <u>Martin vs. Martin</u> , (Unpub.), F & C, A07-591, filed March 25, 2008 (Minn. App. 2008): Appellant argued that the court should have calculated support under the new income share guidelines. Because appellant's motion was filed before January 1, 2007, the district court was correct in using the old guidelines to calculate child support. Affirmed. | Application of old guidelines v. new guidelines |
| March 31, 2008 | IV.D. Other | <u>Goldman f/k/a Greenwood vs. Greenwood</u> , 748 N.W.2d 279 (Minn. 2008): Mother filed post-decree motion to remove child to New York State. The district court denied her motion without an evidentiary hearing. The court of Appeals, 725 N.W.2d 747, reversed and remanded. The Supreme Court ruled: (1) the locale restriction in the district court's initial custody order was valid; (2) in this case because of the wording of the initial custody order, the modification of child custody statute (Minn. Stat. §518.18(d)) rather | Removal of Child |

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| | | <p>than the statute pertaining to a custodial parent's removal of child to another state (Minn. Stat. §518.175, subd. 3) governed the mother's motion to move the child to New York; and, (3) the district court did not abuse its discretion in refusing to grant mother's request for an evidentiary hearing on the removal issue. The Supreme Court reversed the Court of Appeals.</p> | |

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| April 7, 2008 | II.F.5. | <p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor challenges the denial of his motion to decrease his support, originally set in the parties' dissolution, with parenting time 50/50. The obligor argues the court erred by failing to deem his child support satisfied while he provided a residence for the child. The Court of Appeals upheld the CSM decision noting the change in the amount of parenting time was insignificant and did not support a modification of the stipulated child support.</p> | No change of circumstances supporting modification. |
| April 7, 2008 | II.D.2. II.O.3 | <p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor argued for a decrease in support alleging his income substantially decreased since the dissolution. CSM denied because obligor failed to demonstrate that he is not voluntarily underemployed. Court of Appeals affirmed, citing obligor had the burden to show why he did not pursue work in the field he had experience and why he pursued another career.</p> | Obligor has burden of demonstrating reduced income is not voluntary underemployment |
| April 7, 2008 | I.H. II.O.13. | <p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor argued he was denied due process as a pro se litigant when CSM failed to sua sponte grant him a continuance or leave the record open for submission of documents. Court of Appeals held no abuse of discretion to fail to grant relief that obligor did <u>not</u> request, noting the obligor has the initial burden of proof and pro se litigants are held to the same standard as attorneys.</p> | No due process violation when court fails to order something not requested by pro se litigant. |

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| April 7, 2008 | II.O.1. I.C. | <p><u>In re the Marriage of Leah Grace Staquet v. Paul John Staquet</u>, (Unpub.), A07-0493, filed April 1, 2008 (Minn. App. 2008): Obligor originally brought a motion to modify before a district court judge, asserting stress from his dissolution prevented him from working as a pilot. Obligor produced no medical documentation of disability, but provided pay stubs showing the amount of disability he was receiving. The district court judge denied the modification, finding obligor did not meet his burden of proof to show he was not voluntarily unemployed or underemployed. Less than 2 months later, appellant obligor sought modification before a CSM, presenting the same documentation and testimony. The CSM reduced appellant's support. The Court of Appeals held the CSM abused discretion by effectively overruling the district court without additional evidence of obligor's disability.</p> | CSM abuse of discretion by overruling district court's decision. |
| April 7, 2008 | IV.B. | <p><u>In re the Marriage of Brenda Lee Stifel v. Daniel Charles Stifel</u>, (Unpub.), A07-0198, filed April 1, 2008 (Minn. App. 2008): Appellant obligor appeals the order of the district court asserting the court made erroneous findings with regard to his ability to pay and respondent's needs. Court of Appeals affirmed, noting obligor's living expenses were not credible in that it failed to quantify contributions by obligor's live-in companion. Obligor's budget was speculative and duplicative. Also, obligee was a stay-at-home parent for 19 years, has physical custody of the parties' four children, works part-time and is taking college courses, and does not have the ability to contribute more toward her monthly expenses.</p> | No abuse of discretion to order spousal maintenance where traditional homemaker needs the maintenance and other spouse can provide. |

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| April 7, 2008 | II.F.3. II.F.6 | <p><u>In re the Marriage of Brenda Lee Stifel v. Daniel Charles Stifel</u>, (Unpub.), A07-0198, filed April 1, 2008 (Minn. App. 2008):</p> <p>Appellant obligor appeals order setting support at 39% of appellant's income, including his commission and annual draw. Appellant argues that, because the support award is a fixed percentage of his entire income, it is possible the award will exceed the statutory cap of \$7,360 per month. The district court made no findings to support an upward deviation. Because the district failed to make findings to support an upward deviation, and obligee agreed at oral argument that a cap on the monthly income is appropriate, this court modified the child support to impose a cap at 39% of the maximum monthly income as provided in the guidelines.</p> | Abuse of discretion where child support set at percentage of appellant's income could result in an upward deviation to the statutory cap, and no findings were made to support deviation. |
| April 14, 2008 | II.O.10. II.D.2. II.O.3. | <p><u>Jennifer Gwen Loveland v. Francis Joseph Brosnan</u>, (Unpub.), A07-0388, filed April 8, 2008 (Minn. App. 2008):</p> <p>Appellant obligor appeals from the district court's order denying his motion to modify his child support. The CSM found that appellant had failed to provide sufficient or reliable information regarding his income. Obligor's ability to maintain a lifestyle incurring over \$6,000 in monthly expenses while on an unpaid medical leave for over 1 ½ years cut against his claim that his reduced earnings prevented him from making child support payments. Obligor failed to submit any information regarding his future employment prospect at his previous employer. Additionally, the documents submitted by obligor called into question his actual current income. No abuse of discretion.</p> | Moving party has burden to demonstrate his earning capacity is diminished, his financial situation has deteriorated, or that he has made a good faith effort to seek reinstatement of re-employment. |

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| April 14, 2008 | II.A.1. | <p><u>David Roger Williams v. Margaret Mary Williams</u>, (Unpub.), A06-1918, filed April 8, 2008 (Minn. App. 2008): Appellant father appeals from the district court's order increasing child support. The original order granted the parties joint custody and set no support obligation for either parent. The order required mother to pay for the child's clothing and health insurance expenses and required father to pay for camp and extracurricular activities. The district court implied, but never made findings, establishing the prior order as unreasonable based on public policy because no specified dollar amount of child support was ordered. The Court of Appeals held the public policy concern in favor of a specified dollar amount is not triggered in this case as the dissolution does not assign child support on a percentage basis. Therefore, there is no presumption on this basis alone that the support is unreasonable or unfair. The Court of Appeals remands.</p> | Public policy argument for a set dollar amount of child support does not apply when no support is ordered by either parent. |
| April 14, 2008 | II.O.1. | <p><u>David Roger Williams v. Margaret Mary Williams</u>, (Unpub.), A06-1918, filed April 8, 2008 (Minn. App. 2008): Appellant obligor challenges decision to modify based on termination of obligor's \$1500 mortgage payment. The Court of Appeals remanded because the findings of the original decree are silent as to obligor's expenses and no basis is stated by the District Court comparing the current expenses against the prior expenses, thus the findings do not support a change in circumstances. Furthermore, the District Court never expressly found that the original support obligation is unreasonable or unfair.</p> | Order not unreasonable or unfair if a large expense terminates, but no findings as to prior expenses compared to current expenses. |

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| April 14, 2008 | II.O.2. II.F.3. | <u>David Roger Williams v. Margaret Mary Williams</u> , (Unpub.), A06-1918, filed April 8, 2008 (Minn. App. 2008): Appellant obligor appeals from the district court's order increasing child support to a level exceeding the guidelines amount in an attempt to equalize the parties' standards of living. Although the court is directed to take into consideration the standard of living the child would have enjoyed had the marriage not been dissolved, equalizing income may not be a basis to deviate when calculating child support. Without evidence that the child requires more support from the higher-income parent, disparity in the income of the parents does not justify a deviation from the <i>Hortis/Valento</i> formula. | Equalizing income of the parties is not enough to deviate from guidelines without additional findings. |
| April 14, 2008 | II.N.4. I.B.2 III.G.8 III.G.9. | <u>County of Freeborn v. Walker</u> , (Unpub.), A07-375, filed April 8, 2008 (Minn. App. 2008): The county served a person identified by a social security number and name located in California with a paternity action. That person failed to appear or answer and a paternity order was entered by default. Subsequently, the county intercepted tax refunds and began income withholding against appellant, a person with the same or similar name and social security number. Appellant objected, argued he wasn't served with any paternity action, indicated he was a victim of identity theft, and was later excluded as the biological father of the child through genetic testing. The district court order required the county to reimburse appellant for child support collected from him and distributed to obligee. The county appealed. The Court of Appeals held that the undisputed lack of proper service renders the resulting judgments void. Restitution is equitable in nature and there is no abuse of discretion to order | County ordered to reimburse defendant past child support collected based on default adjudication, where service on defendant was defective. |

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| | | <p>the county to reimburse the monies. Finally, the court rejected the argument that the funds should be recouped from mother citing (1) that the funds are disbursed does not absolve the county from having to reimburse Appellant if the facts warrant repayment. (2) A series of mistakes by the county resulted in the void judgments. (3) an innocent child support payor should not sue an innocent mother on public assistance to attempt to recover funds incorrectly procured from the payor as a result of void judgments. This is not in the best interest of the child for whom the child support system was created.</p> | |
| April 21, 2008 | II.D.7. | <p><u>Wayne Alan Butt v. Eleanor Anna Schmidt</u>, (747 NW 2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008):</p> <p>The District Court, in a joint physical custody case, declined to establish any income for mother (obligee) citing there was "scant evidence" to find mother voluntarily unemployed or underemployed. Father (obligor) appeals, arguing that mother has the burden of showing her employment is not voluntary. The Supreme Court stated that lack of information was not a proper basis to decline to impute income to mother. Minn. Stat. § 518.551, subd. 5b(a) requires each party to produce their own income information. Second, Minn. Stat. § 518.551, subd. 5b(e) provides a mechanism for the court to impute income if the court lacks sufficient information. It also provides for when income shall not be imputed to a party. Absent such evidence, the statute directs the court to presume that each party is capable of full time employment, which pays at least 150% of the minimum wage. Considering these statutory provisions, and because the respondent failed to</p> | It is error to fail to impute income when there is insufficient information regarding a party's employability. |

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| | | <p>provide sufficient income information to the district court, the district court abused its discretion by not attributing income to the mother (obligee) for purposes of computing child support.</p> | |
| April 21, 2008 | IV.B. | <p><u>Wayne Alan Butt v. Eleanor Anna Schmidt</u>, (747 NW 2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008): The Court of Appeals erred by authorizing the district court to modify spousal maintenance on remand. The parties' Judgment and Decree contractually waived the parties' rights to modify maintenance, divested the court of jurisdiction over maintenance and affirmation of disclosure, fairness, and consideration were included in the MTA.</p> | <p>Court of Appeals erred in authorizing a modification of maintenance after a <i>Karon</i> waiver consistent with Minn. Stat. § 518551, subd. 5 (2006)</p> |

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| April 21, 2008 | II.O.9 III.K. | <p><u>Wayne Alan Butt v. Eleanor Anna Schmidt</u>, (747 NW 2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008):</p> <p>Appellant argues that the district court erred in failing to modify his child support obligation retroactive to the date of the parties' MTA. The Court of Appeals held that appellant waived his right to raise this issue because he failed to raise it in the district court. The Supreme Court affirmed.</p> <p>Additionally, the Court noted that even if it was not waived, the claim lacks merit as there was a temporary child support order in place. Appellant could have moved to amend or vacate the temporary order anytime before the court entered its final decree. However, Minn. Stat. § 518.64, subd. 2(d) (2004) limits the period of retroactive application to the period during which a motion for modification is pending. Appellant made no motions to modify any time before the final decree was issued. Therefore, the temporary order cannot be modified, as upon entry of the final decree, the temporary order was no longer in effect.</p> | Modification of temporary child support; retroactivity |
| April 28, 2008 | III.H.1. I.H. | <p><u>In re the Matter of: County of Carver ex rel Lori J. Schuman vs. Daniel L. Revsbech</u>, (Unpub.), A07-0442, filed April 22, 2008 (Minn. App. 2008):</p> <p>Appellant father appeals order determining medical and child care arrears existed. The Court of Appeals affirmed, stating (1) it was not an abuse of discretion to interpret language in a prior order concluding that the prior order modified only basic support arrearages, and not medical or childcare support arrearages. (2) Appellant argues that the arrearages merged into the subsequent order which recalculated appellant's basic support arrearages, but did not address medical or childcare</p> | Medical and childcare arrears did not merge with district court's recalculation of basic support arrears. |

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| | | <p>arrearrages. The court rejected the argument noting the order was not temporary as defined by Minn. Stat. § 518.131 nor is it a temporary alimony order. Finally, the issue was established after full litigation of the claim, in which Appellant had counsel and presented arguments and facts. As such, Appellant was not denied due process.</p> | |

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CHILD SUPPORT CASE SUMMARIES
(MAY 2008)

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| May 5, 2008 | II.F.3. II.F.6. | <p>Wagner vs. Mehle, III, (Unpub.), A07-0677, F&C, filed April 29, 2008 (Minn. App. 2008): The County appealed from the district court's setting of respondent-father's various child support obligations at amounts below that called for by the guidelines. Where the child support recipient has assigned her right to receive support to the public agency, the obligor's support obligation may be set below the guideline amount "only" if the court "specifically" finds that the failure to deviate downward from guidelines would impose an "extreme hardship" on the obligor, not "an undue hardship" as stated here. For the court to deviate, the court must specifically address the criteria in Minn. Stat. § 518.551, subd. 5(c) [note: this is an "old guidelines" case, filed in 2006] and how the deviation serves the best interests of the child. Here, the trial court did not make the proper findings explaining its deviation from the guideline amount either as to ongoing or past support.</p> | Deviation from guidelines requires specific findings |
| May 5, 2008 | II.F.6. | <p>Sperling vs. Sperling, (Unpub.), A07-980, F&C, filed April 29, 2008 (Minn. App. 2008): Appellant mother challenged the district court's order reducing respondent father's child support. Respondent argued decreased income. The court reduced father's monthly obligation based solely on "finding" that father had "furnished salary information". The court failed to make findings under the guideline statute, did not consider whether a deviation from the guidelines might be appropriate in light of mother's assertions of increased need, or whether father should have</p> | Deviations from guidelines must make specific findings related to the statutory factors. |

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| | | <p>anticipated and planned for the potential downturn in his earnings. Additionally, father continues to maintain his lifestyle despite the asserted decreased earnings. The record is inadequate to permit appellate review without specific findings related to the statutory factors.</p> | |
| May 5, 2008 | I.B.1. | <p><u>Sperling vs. Sperling</u>, (Unpub.), A07-980, F&C, filed April 29, 2008 (Minn. App. 2008): The district court cannot abdicate its statutory role as the final arbiter of support determinations to a third party for annual review and adjustment.</p> | Alternative Dispute Resolution of Child Support |
| May 5, 2008 | II.J. | <p><u>Sperling vs. Sperling</u>, (Unpub.), A07-980, F&C, filed April 29, 2008 (Minn. App. 2008): Father ordered to provide medical in J&D. Moves for modification. Mother asserts that because of an increased medical deductible of \$5000, the coverage father has obtained is not "the same or comparable" to the insurance provided during the marriage. Father is to provide insurance coverage, and the decree does not permit him to shift a significant cost of coverage to mother.</p> | Medical insurance- new coverage requiring \$5000 deductible not "comparable". |

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| May 26, 2008 | IV.D. | <p><u>Rotter vs. Hansen</u>, (Unpub.), A06-2315, F&C, filed May 20, 2008 (Minn. App. 2008): To obtain an initial OFP, the petition must allege the existence of "domestic abuse", but Minnesota law sets forth less stringent requirements for granting a second OFP after an earlier order has expired. The court may grant new order upon a showing that: 1) a prior or existing OFP has been violated; 2) the party seeking the OFP is reasonably in fear of physical harm from the opposing party; 3) the opposing party has engaged in acts of harassment or stalking; or 4) the opposing party is incarcerated and about to be released, or has recently been released from incarceration.</p> | <p>The requirements for granting a subsequent OFP are less stringent.</p> |
| May 26, 2008 | I.D.3. | <p><u>Perry vs. Perry, n/k/a Hall-Dayle</u>, A07-0981, F&C, filed 5/20/08 (Minn. App. 2008): A district court/CSM has jurisdiction over a motion to modify support during the pendency of the appeal of a previous child support order if the motion is properly grounded on changed circumstances and where the motion is supplemental and collateral to the issue on appeal. A party must be able to request modification when circumstances change to avoid the statutory bar on retroactive modification. However, in the interest of judicial economy, the district court also has discretion to stay or defer its decision until after the appeal is determined.</p> | <p>While an appeal is pending, the district court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.</p> |

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| May 26, 2008 | II.D.7. | Hare, f/k/a Parker vs. Grewe, (Unpub.), A07-0850, F&C, filed 5/20/08 (Minn. App. 2008): The court did not error in setting past support by determining obligor's income using information obtained from the Minnesota State Wage Match, where no other income information for that time period was submitted to the court. | Obligor's past earning ability may be determined by using the Minnesota State Wage Match. |
| May 26, 2008 | II.F.6. | Hare, f/k/a Parker vs. Grewe, (Unpub.), A07-0850, F&C, filed May 20, 2008 (Minn. App. 2008): Where the obligor submitted an employment verification from his current employer stating straight commission basis pay, the court may reject the statement, but must make findings. Absent findings of a failure of proof or lack of credibility, the court abuses its' discretion in imputing income where other information is available. | The court may not ignore income information and impute income without making appropriate findings. |
| May 26, 2008 | II.B.1. | Hare, f/k/a Parker vs. Grewe, (Unpub.), A07-0850, F&C, filed May 20, 2008 (Minn. App. 2008): District court/CSM has discretion to deny continuance when requesting party had sufficient notice and time to hire an attorney and prepare for hearing, and was therefore not prejudiced. | Discretion to deny continuance. |
| May 26, 2008 | II.D.4. II.F.2. | Reuter vs. Reuter, (Unpub.), A07-0338, F&C, filed 5/20/08 (Minn. App. 2008): The district court's computation of net income should properly take into account depreciation deductions for dairy cows, farm buildings and farm equipment when calculating the appellant's child support obligation. A self-employed obligor's income is equal to gross receipts minus ordinary and necessary expenses. Minn. Stat. § 518A.30 (2006). This amount does not include amounts allowed by the IRS for accelerated-depreciation expenses, investment credits or other business expenses. However, total | The court may not disregard depreciation absent evidence that the obligor has no corresponding replacement costs in his farming operation. |

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| | | disregard of depreciation is reversible error. <i>Citing Stevens County Social Serv. Dep't ex rel. Banken v. Banken</i> , 403 N.W.2d 293, 297 (Minn. App. 1987). The court may not disregard depreciation absent evidence that the obligor has no corresponding replacement costs in his farming operation. | |

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CHILD SUPPORT CASE SUMMARIES
(JUNE 2008)

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| June 2, 2008 | I.B.2. | <p><u>Ayala vs. Ayala</u>, (594 N.W.2d 257), A07-0657, filed May 27, 2008 (Minn. App. 2008):</p> <p>Service of an OFP by publication is not effective unless there has first been an attempt at personal service by law-enforcement personnel that has failed because the respondent concealed himself, and either a copy of the petition and notice of hearing have been mailed to the respondent's residence or the petitioner does not know the address. Where both requirements are not followed, service is lacking, and the court does not have personal jurisdiction over the respondent.</p> | Service by publication |
| June 2, 2008 | I.E. | <p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008):</p> <p>There was no error where the lower court declined appellant's representation by a non-attorney agent (acting under POA) where appellant was able to competently engage in the hearing on his own.</p> | Power of Atty Limits |
| June 2, 2008 | I.A.4. | <p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008):</p> <p>The time limit for a party to directly appeal to this court from a CSM's order is 60 days after service of notice of filing of the order. Appellant does not contest that he neither appealed the CSM's 2005 order to this court nor filed a motion for district court review. Therefore, appellants' appeal for review of the 2005 order is untimely.</p> | Untimely appeal |
| June 2, 2008 | II.F.6. | <p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008):</p> <p>A district court is not required to make findings where the interested party fails</p> | No findings required where interested party doesn't meet burden. |

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| | | to meet his burden to produce evidence on the issue. <i>Farrar v. Farrar</i> , 383 N.W.2d 436, 440 (Minn. App. 1986). | |
| June 2, 2008 | II.O.9. | <u>Schirmer vs. Guidarelli, f/k/a Schirmer</u> , (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008): Although generally a modification may be made retroactive only to the date of service of the motion, an exception may be made when, as here, the court finds that the party seeking modification is a recipient of public assistance. Minn. Stat. §518.64, subd. 2(d)(2). | Retroactive modification where recipient of public assistance. |
| June 9, 2008 | I.A.2. | <u>Askar vs. Sharif</u> , (Unpub.), A07-897, filed June 3, 2008 (Minn. App. 2008): The County challenges the district court's affirmance of a CSM's decision to reinstate respondent's driver's license. Because the county acquiesced in the CSM's decision to reinstate the obligor's drivers license, the county has waived its arguments on appeal that the CSM had no authority to do so. | Where a party agrees at the hearing, cannot later raise an appeal as to agreed upon issues. |
| June 9, 2008 | I.D.1. | <u>Askar vs. Sharif</u> , (Unpub.), A07-897, filed June 3, 2008 (Minn. App. 2008): The County challenges the district court's affirmance of a CSM's decision to reinstate respondent's driver's license. Because the county acquiesced in the CSM's decision to reinstate the obligor's drivers license, the county has waived its arguments on appeal that the CSM had no authority to do so. Additionally, the County argues that the procedure violated the county's due process rights. Because the county is a legislatively created body, it cannot be deprived of due process rights because counties have no such rights. | County has no due process rights |
| June 9, 2008 | II.M.3. II.N.4. | <u>Askar vs. Sharif</u> , (Unpub.), A07-897, filed June 3, 2008 (Minn. App. 2008): Under certain circumstances, as in | Reinstatement of drivers license |

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| | | this case, allowing the CSM to reinstate an obligor's driver's license sua sponte is consistent with the intent of § 518A.65 and with the legislative policy underlying the child support statutes. | |
| June 9, 2008 | II.F.2. II.E.2. | <u>Lynch, vs. Lynch, and County of Mower, Intervenor</u> , (Unpub.), A07-763, filed June 3, 2008 (Minn. App. 2008): Where an employee of the federal government receives a "territorial cost of living allowance" because they live in a remote area with a relatively high cost of living, such allowance should not be considered in determining that party's child support obligation. Although the territorial allowance is within the statutory definition of income, the nature of the territorial allowance requires a downward deviation from the guidelines, as the allowance does not increase the obligor's income, but merely places him in the same financial position he would occupy if he were living in Minnesota, where the cost of living is lower than in Alaska. | Territorial cost of living allowance should not be included in gross income when calculating child support. |
| June 16, 2008 | II.S. | <u>Buzzell vs. Buzzell</u> , (Unpub.), A07-1096, filed June 10, 2008 (Minn. App. 2008): Appellant argues that the district court abused its discretion by reserving the issue of child support. The appellant's gross yearly income averaged \$463,893.88 while the respondent obligor's yearly gross income averaged \$82,858. Based on this and other factors, the court concluded it was in the best interests of the children to reserve support at this time. The findings of the court are supported by the record and its decision to reserve child support is reasonable under the circumstances. | Child support reservation appropriate where in the best interests of the children. |

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| June 16, 2008 | II.F.3. | <p><u>Buzzell vs. Buzzell</u>, (Unpub.), A07-1096, filed June 10, 2008 (Minn. App. 2008):</p> <p>The court abused its discretion in ordering respondent to pay the cost of the children's sport activities in lieu of child support. The costs associated with the sporting activities are not fixed and requiring said payments would likely require regular, ongoing negotiations and cooperation between the parties, who have demonstrated an inability to cooperate. Additionally, the payment of support is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation. §518.68, subd. 2.4(a) (2004).</p> | Ordering payment of children's sporting activities in lieu of child support and abuse of discretion. |
| June 16, 2008 | IV.C. | <p><u>Buzzell vs. Buzzell</u>, (Unpub.), A07-1096, filed June 10, 2008 (Minn. App. 2008):</p> <p>Federal tax law presumes that, upon dissolution of a marriage, the parent with primary custody of a child is entitled to claim the child as a dependant for tax purposes. See 26 U.S.C. § 152(a), (c), (e) (2000). However, this presumption does not preclude courts from allocating tax dependency exemptions to a noncustodial parent if the court determines it is in the best interests of the child. The court may also consider the relative resources of the parties and the financial benefits that will accrue from such a transfer. <i>Crosby v. Crosby</i>, 587 N.W.2d 292, 298 (Minn. App. 1998).</p> | Tax exemptions for dependents (may award to non custodial parent) |
| June 16, 2008 | II.D.7. | <p><u>Staupe vs. Staupe</u>, (Unpub.), A07-0900, filed June 10, 2008 (Minn. App. 2008):</p> <p>Whether to impute income to a child support obligor is discretionary with the court. The court is justified in imputing income to an obligor where the weight of the evidence showed that the</p> | Imputing income to self employed obligors. |

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| | | <p>impracticability of determining the obligor's actual net income because the obligor 1) failed to be forthcoming about his financial circumstances throughout the proceedings and 2) appeared to have continued earning supplemental, self-employment income.</p> | |
| June 23, 2008 | II.H. | <p><u>Grachek vs. Grachek</u>, (Unpub.), A07-1226, filed June 17, 2008 (Minn. App. 2008): Parties' agreement to waive the right to receive a cost of living adjustment to a spousal maintenance award must be expressed in the dissolution judgment in clear and express language. Where the waiver does not specifically express the intent of the parties to waive the COLA, an obligee has the right to seek a COLA.</p> | COLA for spousal maintenance |
| June 23, 2008 | II.F.6 | <p><u>Martin vs. Martin</u>, (Unpub.), A07-1295, filed June 17, 2008 (Minn. App. 2008): The reviewing court is not required to reverse merely because the district court could have provided more detail. Despite lack of explicit findings regarding appellant's income, the district court's determination was appropriate where supported by the record.</p> | Explicit findings not required where decision is supported by the record. |
| June 23, 2008 | I.A.4. | <p><u>Martin vs. Martin</u>, (Unpub.), A07-1295, filed June 17, 2008 (Minn. App. 2008): Appellant argues the court abused its discretion by denying his motion to modify his child support obligation. Appellant argues the order is not supported by the record. Even assuming the record lacks clear support for the findings of the district court, appellant has the burden to show that a modification is justified, and has failed to meet that burden. Additionally, lacking any credible support to contradict the findings of the district court, appellant fails to meet his burden to demonstrate the district</p> | Petitioning party has burden |

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| | | court abused its discretion. | |
| June 23, 2008 | I.A.1. | <p><u>Martin vs. Martin</u>, (Unpub.), A07-1295, filed June 17, 2008 (Minn. App. 2008): Appellant argues that the district court erred in refusing to modify his health care obligation. The lower court refused to consider the matter on review after concluding the issue had not been raised before the CMS. Although appellant checked a box on the notice of motion form marked "establishing medical support", there is no other evidence on the record that he raised the issue before the CSM. Simply checking a box on a standardized form does not conclusively establish that the issue was raised below.</p> | Review denied where Issue not properly before lower court. |
| June 30, 2008 | II.G.4. | <p><u>Gilbertson vs. Graff and County of Clay, Intervenor</u>, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Where, as in here, the child discontinues attending school prior to reaching his 18th birthday, and reenrolls before reaching his 18th birthday, he is not emancipated upon his 18th birthday because he was still attending secondary school at the time.</p> | Emancipation |
| June 30, 2008 | II.G.4. | <p><u>Gilbertson vs. Graff and County of Clay, Intervenor</u>, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties. <i>In re Fiihr</i>, 184 N.W.2d 22, 25 (1971). The critical factor in emancipation is whether the parent relinquished control and authority over the child's actions and the degree of severance of the parent-child relationship. <i>Cummins v. Redman</i>, 251 N.W.2d 343, 345 (1977). Because the court did not clearly err in</p> | Emancipation factors; child support |

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| | | finding the child was not emancipated, it was not an abuse of the CSM's discretion to leave appellant's child support obligation in place. | |
| June 30, 2008 | II.A.1. | <u>Gilbertson vs. Graff and County of Clay, Intervenor</u> , (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Appellant argues that, because the child is not longer living with respondent (but with a third party), respondent should also be responsible for child support. The individual with court-appointed custody is presumptively not the obligor for child support purposes. <i>Bender v. Bender</i> , 671 N.W.2d 602, 607 (Minn. App. 2003). However, where the child begins to reside with a third party, there is presumably a change in circumstances that would support a recalculation of child support. | Support owed to third parties |
| June 30, 2008 | II.A.1. II.G.4. | <u>Gilbertson vs. Graff and County of Clay, Intervenor</u> , (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Appellant asserts that someone over 18 years of age, who is capable of self-support, should be required to support himself. The child support order clearly sets forth the conditions that would terminate the child support obligation. It does not matter that the child is capable of supporting himself; child support obligations cannot be terminated on this basis. | Termination of child support not warranted solely because child able to support himself. |