This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0925

In the Marriage of:

Elizabeth Joy Glirbas, petitioner,
Appellant,

vs.

Joshua Robert Glirbas,
Respondent.

Filed March 24, 2025
Reversed and remanded
Johnson, Judge

Hennepin County District Court
File No. 27-FA-13-8939

Elizabeth Joy Glirbas, n/k/a Elizabeth Joy Southwell, Albertville, Minnesota (*pro se* appellant)

Joshua Robert Glirbas, Lino Lakes, Minnesota (*pro se* respondent)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In this post-dissolution matter, a parent moved to terminate his child-support obligation on the ground that the parties' youngest joint child had been emancipated. A child-support magistrate (CSM) granted the motion but ordered the parent to pay child support for the period in which the child had attended high school after her eighteenth birthday. In calculating the amount of the parent's child-support obligation, the CSM applied a parenting-expense adjustment, which decreased the amount of the obligor's basic support obligation. We conclude that the CSM erred by applying a parenting-expense adjustment because there was no parenting-time order in effect during the period for which child support was ordered. Therefore, we reverse and remand for a recalculation of the father's child-support obligation without the application of a parenting-expense adjustment.

FACTS

Elizabeth Joy Southwell (formerly known as Elizabeth Joy Glirbas) and Joshua Robert Glirbas were married in 2001. The parties have two joint children, who were born in March 2002 and April 2005.

Southwell petitioned for dissolution of the marriage in 2013. The parties stipulated to a dissolution judgment and decree in 2014. The decree awarded the parties joint legal custody of the two minor children and awarded sole physical custody to Southwell. The decree provided that Glirbas initially would have parenting time on alternating weekends during the school year and on two afternoons per week during the summer months, which gave Glirbas 78 overnights per year. The decree further provided that Glirbas would pay Southwell basic child support of $838 per month.

The district court later modified the parenting-time and child-support provisions of the decree. In July 2020, the district court allocated additional parenting time to Southwell, thereby reducing Glirbas's overnights to 24 per year. In September 2020, the district court modified Glirbas's basic support obligation based on the reduction in his parenting time, the older child's emancipation, and updated information concerning the parties' incomes, which resulted in a basic support obligation of $906. In March 2021, the district court reduced Glirbas's basic support obligation to $863 based on a reduction in his income.

In June 2023, Glirbas moved to terminate his child-support obligation on the ground that the parties' younger child had been emancipated. Southwell opposed the motion by arguing that the younger child, though 18 years old, was still attending secondary school. In July 2023, a CSM suspended Glirbas's child-support obligation pending a hearing on his motion. In September 2023, the CSM extended the suspension until November 30, 2023, based on Southwell's assertion that the younger child was expected to graduate from high school on that date.

The CSM held an evidentiary hearing and, in May 2024, filed an order granting Glirbas's motion. The CSM found that the younger child, who then was 19 years old, had graduated from high school in the fall of 2023. As a consequence, the younger child was emancipated upon her graduation from high school, *see* Minn. Stat. § 518A.26, subd. 5 (2024), at which time Glirbas's child-support obligation "terminate[d] automatically," *see* Minn. Stat. § 518A.39, subd. 5(a) (2024). The CSM ordered Glirbas to pay retroactive child support for the months of August to December of 2023. In calculating the amount of Glirbas's retroactive child-support obligation, the CSM applied a parenting-expense adjustment of $993 based on an assumption that the parties shared parenting time equally. The parenting-expense adjustment reduced Glirbas's basic support obligation to $357 per month for the five-month period before the younger child's emancipation. Southwell appeals.

DECISION

Southwell's primary argument on appeal is that the CSM erred by applying a parenting-expense adjustment.

To determine the existence and amount of a child-support obligation, a district court first must determine each parent's gross income and each parent's percentage share of total parental income for purposes of child support. Minn. Stat. § 518A.34(b)(1)-(3) (2024). The district court then must refer to statutory guidelines to determine the presumptively appropriate amount of the parent's combined basic child-support obligation. Minn. Stat. § 518A.34(b)(4) (citing Minn. Stat. § 518A.35 (2024)). The district court next must "determine each parent's share of the combined basic support obligation by multiplying" the combined basic child-support obligation by the parent's percentage of total parental income for purposes of child support. Minn. Stat. § 518A.34(b)(5). Finally, if the parties share parenting time pursuant to a parenting-time order, the district court must apply a parenting-expense adjustment. Minn. Stat. § 518A.34(b)(6) (citing Minn. Stat. § 518A.36 (2024)); *see also In re Dakota County*, 866 N.W.2d 905, 910 n.1 (Minn. 2015); *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013); *Nelson v. Nelson*, 983 N.W.2d 923, 925 (Minn. App. 2022).

A parenting-expense adjustment "presumes that each parent is responsible for the costs of caring for a child while the child is in that parent's care." *Nelson*, 983 N.W.2d at 925-26 (citing Minn. Stat. § 518A.36, subd. 1(a)). For that reason, "the formula requires consideration of 'the percentage of parenting time granted to or presumed for each parent.'" *Id.* at 926 (quoting Minn. Stat. § 518A.36, subd. 1(a)). In applying a parenting-expense adjustment, a district court must use "the court-ordered amounts of parenting time, not the amounts of parenting time actually being exercised." *Id.* at 929. For these purposes, "the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order averaged over a two-year period." Minn. Stat. § 518A.36, subd. 1.

Southwell argues that the district court erred by applying a parenting-expense adjustment despite the fact that there was no parenting-time order in effect at the time of the CSM's ruling or during the five-month period preceding the younger child's emancipation. Southwell's argument finds support in the statute governing parenting-expense adjustments, which provides: "If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment." Minn. Stat. § 518A.36, subd. 1(b). The CSM noted the absence of a parenting-time order by expressly stating, "There is no court order granting parenting time for the [younger] joint child, now an adult." Nonetheless, the CSM applied a parenting-expense adjustment. The CSM erred by applying a parenting-expense adjustment in the absence of a court order awarding parenting time, which is a prerequisite of a parenting-expense adjustment.

Before concluding, we note that Southwell has made two additional arguments, which we need not address in light of our resolution of her primary argument. First, Southwell argues that the CSM erred by awarding parenting time. The CSM did not purport to create any rights to parenting time; the CSM merely assumed an equal amount of parenting time for purposes of calculating a parenting-expense adjustment. But, as discussed above, the CSM erred by applying a parenting-expense adjustment. Second, Southwell argues that the CSM erred by admitting exhibits that contain hearsay statements concerning the younger child's physical and mental health. This argument is based on the premise that the evidence would be relevant to the question whether the younger child still is a "child" on the ground that the child, "by reason of physical or mental condition, is incapable of self-support." *See* Minn. Stat. § 518A.26, subd. 5. But the CSM expressly stated that that question was "not properly before the court," and Southwell does not challenge that ruling.

In sum, the CSM erred by applying a parenting-expense adjustment despite the absence of a court order for parenting time. Accordingly, we reverse the district court's application of a parenting-expense adjustment and remand to the district court for a redetermination of Glirbas's retroactive child-support obligation without the application of a parenting-expense adjustment.

Reversed and remanded.