Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-432

MARCH TERM, 2002

Vicki Poulos (Office of Child Support)	}	APPEALED FROM:
v.	}	Rutland Family Court
James Poulos	}	DOCKET NO. 127-3-98 Rddm
	}	Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Father appeals the family court's affirmance of a magistrate decision denying father's motion to modify a January 4, 1999 child support order. We find no error in the court's decision, and affirm.

Viewing the facts in the light most favorable to the prevailing party below, Mullin v. Phelps, 162 Vt. 250, 260 (1994), the record establishes that the family court magistrate issued a child support order on January 4, 1999 requiring father to pay $418 per month to help support his three minor children. In December of 1999, father moved to modify the order claiming that he lacked the ability to financially support his children. Although father holds a masters degree in psychology and has taught as an adjunct professor at various Vermont higher educational institutions, father claimed that he was unable to find suitable, gainful employment. He asked the magistrate to reduce his support obligation to zero.

The magistrate took evidence on father's request on February 29, May 2, and July 10, 2000. Both parties appeared pro se in the proceeding, and the Office of Child Support was represented by counsel. After the second day of hearing, mother filed her affidavit of income and assets, along with pay stubs and completed, but unsigned, state and federal income tax returns. Father also submitted an affidavit of his income and assets, which the magistrate found was not helpful to ascertain father's income because it was hard to read and did not provide precise information.

Based on the testimony and exhibits admitted into evidence, the magistrate found that father's employment situation was no different than it was at the time the January 4, 1999 order was issued. Father was voluntarily underemployed. The magistrate found that father does not want to take a job unless he knows he will succeed at it, did not contact the Vermont Department of Employment and Training to assist him in searching for appropriate employment, and has little incentive to find gainful employment because his mother has been willing to provide him with financial support. The magistrate further found that father sought modification of his support obligation because father believes he should not be required to support them when he has not seen the children in years. The magistrate found that none of father's reasons for failing to support his children were valid. Finally, the magistrate found that the January 4, 1999 order did not vary from the child support guidelines by more than 10%, thus the statutory change-of-circumstances criterion in 15 V.S.A. 660(b) was not met in this case. Consequently, the magistrate denied father's motion, and father appealed the magistrate's decision to the family court.

Believing that the magistrate's decision was based on an incomplete record, father moved to offer additional evidence

during his appeal to the family court and asked for de novo review. The court heard arguments on the motion on April 9, 2001, and it denied father's request on the record that day. On August 21, 2001, the family court issued its opinion and order affirming the magistrate's decision. The court explained that it had previously denied father's request for de novo review with new evidence because father failed to show good cause as to why the magistrate's record was incomplete. It noted that father failed to explain why the evidence he wanted to submit was not available to him during the three-day hearing before the magistrate. The court determined that the magistrate's findings supported her conclusions, the evidence supported the magistrate's finding that father was voluntarily underemployed, and the magistrate's decision not to make some of father's requested findings was within her discretion. Father appeals.

Before a child support order may be modified, the moving party must establish the existence of real, unanticipated, and substantial change of circumstances since the order was issued. 15 V.S.A. 660(a); Harris v. Harris, 168 Vt. 13, 17 (1998). The change-of-circumstances finding is a jurisdictional prerequisite to modify an order of support. Harris, 168 Vt. at 17. Where a party challenges the magistrate's findings on appeal, we review the findings under the clearly erroneous standard, and we will affirm the magistrate's conclusions if the findings support them. Tetrault v. Coon, 167 Vt. 396, 399 (1998).

Father first argues that the family court erred by denying his request for de novo review under V.R.F.P. 8(g)(4) because the magistrate's record was incomplete. He asserts that the magistrate did not have a complete picture of the parties' incomes, debts, earning capacities, and health, and therefore its order, and the family court's affirmance of it, are based on conjecture. Our review of this claim is hampered by father's failure to produce a transcript of the hearing at which the court addressed his motion for de novo review. All we have is the court's order on the merits of father's appeal in which the court stated that father "failed to show good cause as to why the record was incomplete." Although the record contains father's list of additional evidence he feels is necessary to sustain the magistrate's decision, we do not have a transcript of the proceedings before the magistrate to know the reason for the alleged deficiencies. Thus, we are left with an inadequate record on which we can determine whether the court erred by deciding that father failed to show good cause to justify de novo review. We therefore find no reason to disturb the court's ruling. See Condosta v. Condosta, 142 Vt. 117, 121 (1982) (party claiming error on appeal has burden to produce a record which supports party's position on the issues party raises on appeal).

Father also complains that the magistrate failed to enforce her order to mother to produce certain financial documents. Again, the lack of a complete record of the proceedings below makes review of this claim problematic. We do not know what the magistrate actually ordered mother to do, and therefore cannot judge whether the magistrate's alleged failure to enforce her order was an abuse of discretion. Nevertheless, the real point of father's claim centers on his dissatisfaction with the magistrate's decision not to impute income to mother in accordance with 15 V.S.A. 662. Section 662 requires a party to a child support proceeding to file an affidavit of income and assets. Failure to do so creates "a presumption that the noncomplying parent's gross income is the greater of (1) 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of employment and training; or (2) the gross income indicated by the evidence." 15 V.S.A. 662(b). The record reflects that mother filed the required affidavit of income and assets, although she did not file it until after the second day of hearing. The statutory presumption father sought was therefore not required because mother fulfilled the requirements of 662(a).

Father next argues that it is apparent that the family court did not review the record before the magistrate because had it done so, it would have found the record incomplete. Father's conjecture, which contains no real argument and no citations to the record or to pertinent legal authority, does not constitute a claim susceptible to appellate review. See Tallarico v. Brett, 137 Vt. 52, 61 (1979) (the Court is not required to, and thus will not, search for claimed error where it is inadequately briefed, unsupported by argument or not pointed out in the record).

Finally, father claims the magistrate and the family court based their decisions on the sex of the parties, and alleges that both decisions were tainted by prior decisions of this Court in other cases involving father. Again, father's assertions are more conjecture than argument, and they do not meet the standard for appellate review. Id.

Affirmed.

BY THE COURT:

_____

Jeffrey L. Amestoy, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Denise R. Johnson, Associate Justice