

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-380

APRIL TERM, 2008

Margaret Coyle (Herrington)	}	APPEALED FROM:
	}	
v.	}	Bennington Family Court
	}	
Mark Coyle	}	DOCKET NO. 122-4-01 Bndm

Trial Judge: Nancy Corsones

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

Father appeals from the family court’s order, after remand, which reversed for a second time the magistrate’s decision regarding child support. Father argues that the magistrate acted within her discretion in ordering him to pay the guideline amount, and the family court erred by reversing her decision. We agree with father, and reverse the family court’s decision.

Many of the relevant facts are set forth in our first decision in this case. See Coyle v. Coyle, 2007 VT 21, \_\_\_ Vt. \_\_\_ (mem.). Mother and father are the parents of three minor children. Mother filed for divorce in April 2001. At that time, a magistrate determined that the guideline amount of child support was \$1,189.75 per month. Id., ¶ 2. Because parents agreed that the guideline amount was insufficient to meet the children’s needs, and after considering the statutory factors for deviating from the guideline amount, the magistrate ordered father to pay \$1,700 per month. Id. The January 2003 final divorce order continued father’s child support obligation at \$1,700 per month.

In July 2004, father filed a motion to modify, seeking to reduce his child support obligation to the guideline amount. He indicated, among other things, that mother had remarried and the parties’ financial resources differed from those present in January 2003. After a hearing, the magistrate granted father’s motion to modify. It first determined that father demonstrated the requisite change in circumstances because his child support obligation deviated more than ten percent from the guideline amount of \$764.53 per month. The magistrate made numerous findings of fact, and determined that applying the guideline was fair, and no upward deviation was warranted. Mother appealed to the family court, which reversed the magistrate’s decision. The family court concluded that the magistrate’s modification of child support was legally erroneous because there had been no actual change of circumstances. Id., ¶ 5. Father then appealed to this Court, and we reversed the family court’s decision. Id., ¶ 7. As we explained, the Court had long interpreted 15 V.S.A. § 660(b) as providing jurisdiction to modify child support whenever an order deviated more than ten percent from the guidelines, regardless of whether any actual change in circumstances had taken place. Id., ¶ 6. We thus reversed the

family court's decision and remanded for consideration of the other, nonjurisdictional issues raised in mother's appeal.

In August 2007, the family court issued its order on remand, again reversing the magistrate's conclusion that father should pay the guideline amount. The court offered four reasons why it considered the magistrate's decision erroneous: (1) the magistrate failed to analyze why it was fair to adhere to the guideline when a gap existed between the guideline amount and the children's housing and food expenses; (2) she failed to analyze why it was fair to consider mother's husband's income in determining child support; (3) she failed to analyze why it was fair to order mother to use her rehabilitative maintenance award to cover the gap between the guideline amount and the children's expenses; and (4) she failed to analyze why it was fair to reduce father's child support obligation when that obligation was based on an express determination that the 2002 guideline figure was insufficient to meet the needs of the children, and between 2002 and 2005, the parties' income changed very little. Father appealed from this decision, and we now reverse the family court's order for a second time.

The family court's review of the magistrate's decision is designed to be deferential. The family court's review is generally based on the record created before the magistrate. See 4 V.S.A. § 465; V.R.F.P. 8(g)(4). The court must uphold the magistrate's factual findings unless clearly erroneous, see V.R.C.P. 52(a)(2); V.R.F.P. 4; V.R.F.P. 8(b), and affirm the magistrate's decision "if the conclusions of law are supported by the findings." Tetreault v. Coon, 167 Vt. 396, 399-400 (1998).

As father notes, 15 V.S.A. § 659(a) creates a rebuttable presumption that the amount reflected in the child-support guidelines is the amount of support needed by the children. "To rebut this presumption and deviate from the guideline amount . . . , the court must determine that application of the guidelines would be unfair to the child or any of the parties." Coon, 167 Vt. at 405. To make such a finding, the factfinder must consider all of the relevant factors, including the nine factors set forth in 15 V.S.A. § 659(a). As we have explained, the purposes underlying the child-support guidelines "necessarily constrain the use of guideline deviation under § 659(a) and narrow the discretion that the section provides to the family court. Allowing the family court to consider every variation with respect to the needs of the children, the living situation or the expenses of the parents, would undermine the Legislature's intent in standardizing support awards." Coon, 167 Vt. at 405. We have also cautioned that "if courts were allowed to routinely deviate from the guideline amounts, then the escape valve of § 659 would eat up the rule and destroy the predictability of amounts and the maintenance of the standard of living of the children that are the desired results of a guideline system." Id. (quotation omitted).

In this case, the magistrate determined, based on numerous findings, that application of the guideline would not be unfair. Her findings are supported by the record, and they supported her conclusion. The family court therefore erred in reversing the magistrate's decision.

The family court offered various reasons for reversing the magistrate's decision and allowing an upward deviation from the child-support guideline, but none withstand scrutiny. The family court stated, for example, that the magistrate reversibly erred by failing to explain "how the gap created between the child support guideline amount and housing and food expenses for the children" supported its conclusion that adherence to the guideline was fair. The family

court appears to have misconstrued the record. Mother indicated in her financial affidavit that she did not pay any expenses for the children's food, other than paying for their school lunches. Instead, her husband paid \$800 per month for the family's food, as well as other household expenses, while mother paid the full mortgage on their jointly-owned home, among other household costs. Mother indicated in her financial affidavit that the total monthly expenses for the children were \$744.59. Thus, the magistrate did not err by concluding that the guideline amount alone (\$764.53) would enable mother to cover all of the children's activities and maintain the children's standard of living.

The family court's second ground for reversal is equally unfounded. The family court concluded that the magistrate erred by failing to assess the fairness of using a stepparent's income to meet the needs of the children that were not met by the application of the guidelines. The magistrate did not conclude that the stepfather's income should be used to meet the children's needs, however. It concluded that the children's needs, identified by mother in her financial affidavit, were met by the guideline amount. More specifically, the magistrate explained that mother claimed monthly expenses of \$3,755.18. This figure included mother's student loan payment of \$350, the children's expenses and activities, and mother's credit card payments. It did not include the \$1,690 per month that mother's new husband contributed to the household expenses. The magistrate found that with child support of \$764.53 per month, mother would have financial resources of \$3,147.86 per month. Her household would thus have a deficit of \$607.32 per month. The magistrate found it reasonable to conclude that with her husband's income, there were reasonable financial resources in the family to cover any household deficits. The magistrate did not conclude that wife's husband would pay for any gap between the guideline amount and the children's expenses. She merely noted that wife's husband could contribute to any household expenses—not the children's expenses—that wife could not meet through her own financial resources. It made such findings in support of its conclusion that it would not be unfair to adhere to the guideline amount, and it did not err in doing so.

The family court also erred in concluding that the magistrate was required "to analyze why it was fair to order mother to use her rehabilitative maintenance award to cover the gap between the guideline amount of child support and the children's expenses." The magistrate did not order mother to do this. Mother's maintenance award is considered part of her "gross income" under 15 V.S.A. § 653(5)(A)(i), and it was properly considered by the magistrate as a financial resource available to mother. The statute does not carve out an exception to this definition for cases where a parent seeks a deviation from the child-support guideline amount. Indeed, creating such exception would likely swallow the rule. The magistrate found that the guideline amount covered the children's expenses, and thus, mother can use her maintenance award to pay her student loan or any other expense she chooses.

Finally, the family court mistakenly found error in the magistrate's "failure to analyze why it was fair to discontinue the deviation from the guideline, which had been based on an express determination that the guideline figure in 2002 was insufficient to meet the needs of the children and between 2002 and 2005, parents' income had changed very little." The court misframes the issue. As previously discussed, the threshold determination of changed circumstances was satisfied by the fact that the existing child support order deviated more than 10% from the guidelines. The guideline amount is presumptively sufficient and, thus, the magistrate needed to determine if application of the guideline amount would be unfair. She did

not need to analyze if it was fair to “discontinue” the current level of support. The record indicates that in 2002, father was “reluctantly willing” to pay \$1,700 per month in child support. Coyle, 2007 VT 21, ¶ 2. Father’s position has changed since that date, as have both parties’ financial and personal circumstances. Certainly, the magistrate was not obligated to continue support at the same level simply because at one time, the parties agreed that \$1,700 per month was appropriate. The magistrate evaluated the parties’ current circumstances, and the factors set forth in 15 V.S.A. § 659(a), and she did not commit legal error in concluding that adherence to the guideline was fair.

Reversed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice