

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-210

JANUARY TERM, 2018

Honie M. Glabach v. Christopher Glabach	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	
	}	
	}	DOCKET NO. 261-10-15 Bndm
		Trial Judge: David A. Howard

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

Mother appeals pro se from the trial court's affirmance of a magistrate's child support order. She argues that the magistrate erred in calculating her child-support obligation. We affirm.

The parties have one minor child, born in June 2012. The child resides primarily with father but has parent-child contact with mother 28% of the year. Mother sought a downward deviation from the child-support-guideline amount of \$1104.55 per month, asking to have it reduced to zero. Following a hearing, the magistrate made numerous findings. With respect to the downward departure, it considered the party's respective financial circumstances, the child's standard of living, and the costs of parent-child-contact transportation. It found the remaining factors neutral as to deviation. The court found that although mother could not pay all her monthly obligations on her income, this was due to the extraordinary expenses that she had chosen for her housing and transportation. Mother was leasing a 2013 Jaguar XL for \$876 per month with a loan balance of approximately \$34,000; she rented a two-bedroom apartment in Long Island, New York for \$2564 per month. Mother did not intend to reduce these costs or look for a less expensive apartment. Nonetheless, because mother was paying one-half of the mortgage and the full cost of house insurance for the marital home where father and the child resided, the court believed that the guideline amount was unfair to mother and it granted her request for deviation. It ordered mother to pay \$400 per month until the martial home was sold. At that point, the court indicated that the parties would be free to seek a modification of child support.

Mother appealed this decision to the superior court. Following an on-the-record review, the court affirmed the magistrate's decision. It found that mother essentially argued that the magistrate did not properly consider her evidence. The court found that the magistrate had considered and made findings concerning the evidence, and mother simply disagreed with the magistrate's conclusions. The court found no legal error or clear factual inaccuracy of importance. It noted that the magistrate had provided a substantial downward deviation in mother's favor. The court also rejected mother's claims of bias and issues concerning timely production of exhibits and scheduling matters. This appeal followed.

Like the superior court, we conduct an on-the-record review of the magistrate’s decision based on the record before the magistrate. Patnode v. Urette, 2015 VT 70, ¶ 6, 199 Vt. 306. We defer to the magistrate’s factual findings, and will affirm “if the conclusions of law are supported by the findings.” Id. (quotation omitted).

Many of mother’s arguments refer to allegations that post-date the magistrate’s ruling below. We do not consider material that was not part of the record below. Morse v. Morse, 126 Vt. 290, 292 (1967). Thus, we do not address mother’s assertions that the court should have taken into account that: she has purchased clothing for the parties’ son that he does not wear; she has paid for the cost of painting and otherwise maintaining the marital home; father is making it difficult to sell the marital home; and father took steps that hurt her credit. Mother also argues that she cannot obtain a less expensive car because she owes more on her car than it is worth, and that her rent represents an average cost for housing in the area. Additionally, she asserts that it is expensive to engage in activities with her son in New York City. Mother asks this Court to review the facts and conclude that her obligation exceeds the guidelines without a deviation. To the extent that mother raised these arguments below, the magistrate considered and rejected them.* It is the magistrate’s province, as the trier of fact, to “determine the credibility of witnesses and weigh the persuasiveness of the evidence.” Cabot v. Cabot, 166 Vt. 485, 497 (1997). This Court will not reweigh the evidence on appeal. Mullin v. Phelps, 162 Vt. 250, 261 (1994). We find no basis to disturb the magistrate’s decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice

* Mother did not order a transcript of the proceedings below. She thereby “waive[d] the right to raise any issue for which a transcript is necessary for informed appellate review.” V.R.A.P. 10(b)(1). Without a transcript, we cannot review the evidence to determine if it supports the magistrate’s factual findings. We thus “assume[] that the [magistrate’s] findings are supported by the evidence.” Airi v. Nagra, 2017 VT 42, ¶ 5 (quotation omitted).