

No. _____

Supreme Court, U.S.
FILED

FEB 12 2018

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

vs.

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name)

(Address)

(City, State, Zip Code)

(Phone Number)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Court of Appeals court appears at Appendix 2 to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 11/14/17.
A copy of that decision appears at Appendix 1.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE ISSUES PRESENTED

1. Did the magistrate commit reversible error by failing to commence modification of support retroactive to the filing of the motion, and by making the modified support order subject to review nunc pro tunc violative of Minn. Stat. 518A.39 (2)(A)(Modification of Orders)?

In a February 1 Order, the Magistrate ruled that the modified support commence January 1, even though the Appellant's Motion to Modify Support had been filed and Served on July 29, and again on November 17 (ADD.14) Each Magistrate issued modified support orders nunc pro tunc.

Apposite Authority: Minn. Stat. 518A.39 (2)(A)

2. Did the Magistrate commit reversible error by failing to make adverse inferences when calculating a parent's gross income in contravention of Minn. Stat. 518A.28 resulting in monetary child support against an indigent parent?

The Magistrate confined its determination of gross income to paycheck stubs and ignored evidence of additional sources of income and disposing of assets and income; while imputing income to an indigent parent.

Apposite Authority: Minn. Stat. 518A.28; §518A.28(a) (Providing Income Information); Spooner v. Spooner, 410 N.W.2d 412, 413 (Minn. App. 1987)

3. Did the Magistrate commit reversible error by a temporary order assessing a minimum amount of child support against an indigent parent with no determination of basic support and no analysis of ability to pay and to support herself? pursuant to Minn. Stat. 518A.42

After a ruling that a change in circumstances warranted a modification of support, the Magistrate set support temporarily to zero, and another Magistrate assessed a minimum child support amount pending an evidentiary hearing, even though Appellant was on public assistance and had no income.

Apposite Authority: Minn. Stat. §§518A.42; 518A.29 (h)

4. Did the Magistrate commit reversible error when it obstructed a parent's right to modify child support authorized by Minn. Stat. 518A.32 by assessing potential income to support a monetary award against an indigent parent in contravention of Minn. Stat. 518A.32 (Potential Income), 518A.39 (Modification of Orders) and 518 A.42 (Ability to Pay; Self Support)?

The Magistrate imputed income assessed a child support obligation to an indigent parent by adopting income findings in an order years earlier and did not address Appellant's ability to pay or support herself.

Apposite Authority: Minn. Stat. 518A.32 (Potential Income), 518A.39 (Modification of Orders) and 518A.42 (Ability to Pay; Self Support)

5. Did the Magistrate commit reversible error when it ignored actual gross income and inequitably applied the child support laws to engineer a monetary support order from an indigent parent to a wealthy parent?

The Magistrate imputed potential income to an indigent parent to support a monetary child support award to a wealthy parent, and ignored actual gross income.

Apposite Authority: Minn. Stat. § 518A.29(a) (Calculation of Gross income); Minn. Stat. § 518A.32 (Potential Income); Minn. Stat. § 518A.34 (Computation of Support)
Moylan v. Moylan, 384 N.W.2d 859, 863 (Minn. 1986).

6. Did the Magistrate commit reversible error by prematurely ruling on a modification before appellant's sentencing and making a conditional child support order relating to future incarceration that was contrary to law, warranting reversal?

The Magistrate ordered that child support be suspended "when and if she becomes incarcerated" and ordered a review hearing for the sole purpose of whether support should be reinstated.

Apposite Authority: Minn. Stat. 518A.39; Minn. Stat. 518A.39(2)(h)

STATEMENT OF THE CASE AND FACTS

This appeal arises from flawed rulings of the Child Support Magistrate, Maria K. Pastoor, Dakota County District Court File No.: 19AV-FA-11-1273, including an *Order Concerning Discovery, Continuance, and Temporary Support* issued on August 11, 2016; *Findings of Fact, Conclusions of Law, and Order Granting in Part Motion for Review* issued on October 13, 2016; and *Findings of Fact, Conclusions of Law and Order* issued on October 13, 2016 which Appellant Sandra Grazzini-Rucki maintains violated Appellants rights pursuant to provisions of Minn. Stat. §518A.39 (Modification of Orders) through a misapplication of Minn. Stat. §518A.32 (Potential Income) and Minn. Stat. §518A.29

(Calculation of Gross Income) and Minn. Stat. §518A.42 (Ability to Pay; Self Support) by a biased judicial officer. Ms. Grazzini-Rucki sought and was granted leave to proceed in forma pauperis. Ms. Grazzini-Rucki's Notice of Motion and Motion to Modify Child Support, dated November 16, 2015 triggered a set of proceedings culminating in an evidentiary review hearing before the Child Support Magistrate, on September 15, 2016. That evidentiary hearing produced a child support Findings of Fact, Conclusions of Law and Order, entered on October 13, 2016, that imputed income to her of \$4,143.12 ordering Ms. Grazzini-Rucki to pay \$975.00 per month for basic support when she had no income, no ability to pay, no ability to support herself. The court also ordered suspension of support upon incarceration and that the child support be reinstated upon a hearing. That judgment merits reversal because it is contrary to the evidence, provisions of Minn. Stat. §518A were violated, and the court's fact findings are clearly erroneous. Therefore, Ms. Grazzini-Rucki interposed this appeal on December 9, 2016, seeking reversal of the court's orders.

Appellant (hereinafter "Ms. Grazzini-Rucki" or "Mother") conceived five children by Respondent, whom she married on August 31, 1991. Ms. Grazzini-Rucki gave birth to NR, born June 22, 1996; SR born June 24, 1998; GR born November 2, 1999; NR, born September 24, 2001; and GR, born January 20, 2003.

ARGUMENT

I. THE MAGISTRATE COMMITTED REVERSIBLE ERROR BY FAILING TO COMMENCE THE MODIFICATION OF MONETARY SUPPORT RETROACTIVE TO THE FILING OF THE MOTION, AND BY MAKING THE MODIFIED SUPPORT ORDER SUBJECT TO REVIEW NUN PRO TUCT CONTRARY TO MINN. STAT. §518A.39, SUBD. 2 (A)

The court erred by its failure to modify the support order retroactive to the date of the service of the motion violative of Minn. Stat. 518A.39 (Modification of Orders), specifically, 518A (2) (f).

A. The Magistrate erred by not Making the Temporary Support Modification Retroactive to July 1, 2015 When Appellant filed Her Motion

Mother filed her initial request for modification on June 29, 2015, before her arrest. That motion was heard before Judge Kanning, along with several other motions of the parties, who ruled that the CSM should deal with the modification of child support, prompting Mother to file another motion to modify on November 17, 2015. In her motion filed with the CSM, she requested that child support orders dated November 25, 2013 and July 17, 2014 be modified by decreasing basic support, and changing medical terms, and that the modification be retroactive to July 1, 2015, when she first filed before Judge Kanning pursuant to Minn. Stat. 518A.(f). The statute provides that a modification of support or maintenance, including accrued interest, may be “made retroactive only with respect to any period during which a petitioning party has pending a motion for modification but only from the date of service of notice of motion on the responding party ***.” Id.

Mother’s hearing relating to the motion to modify did not take place before the magistrate until January 26, 2016. The CSM found that “*there had been a change in circumstances that warrants a modification of support because Petitioner is incarcerated.*”. The CSM then ordered that Petitioner pay zero per month as ongoing basic child support “*beginning January 1, 2016.*”.

Commencing the change on January 1, 2016, rather than July 1, 2015 (the date following the filing of the motion) was an abuse of discretion, at a cost of thousands of dollars in arrears. At a minimum, the modification should have been retroactive to December 1, 2015, which was the month following the November 17, 2015 filing with the Magistrate. At a maximum, since the prior motion for modification was pending with Judge Kanning, the modification could be retroactive to July 1, 2015, as her original motion was filed June 29, 2015 with Judge Kanning. . In light of the length of time the motion was pending, the district court abused its discretion in denying Mother’s request to make the

modification retroactive to December 1, 2015, or July 1, 2015. In addition to language of Minn. Stat. §518A.39 (2)(f), the record as a whole fails to support the CSM's decision. Because Mother brought the modification motion, she bore the burden of proving that she was entitled to a modification. *Meier v. Connelly*, 378 N.W.2d 812, 818 (Minn. App. 1985). Mother was able to establish that a change in circumstances, her imprisonment, would render her unable to meet her child support and medical support obligation.

B. Appellant Requests a Ruling on the Nunc Pro Tunc language in Child Support Modification Proceeding to Assess Support as Contrary to Law

Each of the CSM orders uses the language “nunc pro tunc” stating, for example that “The Petitioner’s support obligations may be modified nunc pro tunc to January 1, 2016 at the scheduled Review hearing (ADD.16). Another example is CSM Pastoor stated “the above support shall be reviewed at the next hearing and if warranted may be changed nunc pro tunc” (ADD.53).

The nunc pro tunc language is not found in the child support statutes (See §518A). However, in light of the language showing up in orders here by magistrates, it appears a policy that after a modification of support, future reviews are subject to being retroactive. This is not the meaning of the word. According to Black’s Law dictionary nunc pro tunc is a Latin expression in common legal use in the English language. It means “*now for then.*” In general, a court ruling *nunc pro tunc* applies retroactively to correct an earlier ruling. The term has no basis in law, and seems to be a way of circumventing the modification statute, to review going backwards after a decision is made. There is no authority for a retroactive review of support in the support modification statute, nor is there a provision for retroactive modification, other than after a motion has been filed. Part of Mother’s Motion for Review addressed the use of this term. A “judgment nunc pro tunc is an action taken by a trial court correcting a clerical (rather than judicial) made in a prior judgment (ADD.59).

II. THE MAGISTRATE COMMITTED REVERSIBLE ERROR BY FAILING TO MAKE ADVERSE INFERENCES WHEN ADDRESSING RESPONDENT'S GROSS INCOME IN CONTRAVENTION OF MINN. STAT. §518A.28 RESULTING IN A MONETARY CHILD SUPPORT ORDER AGAINST AN INDIGENT PARENT

The court erred by its failure to adhere and hold Respondent accountable to the requirement that parties provide income information to the court in a modification proceeding; and failing to make adverse inferences in determining gross income violative of Minn. Stat. §518A.28(a) (Providing Income Information). After the November 17, 2015 motion, Respondent's response aggressively resumed discovery, including subpoenaing Mother's long time employer, without any disclosures of his own. On March 11, 2016, Mother responded to his discovery with a Statement of Assets which Respondent filed as Exhibit J to one of his responses (ADD.18-23). Respondent failed to provide data, and volunteered no information to the Court with his initial pleading objecting to the motion.

A. Appellant's Request For Adverse Inferences was Justified by the Evidence, and Ignored by the Magistrate.

Respondent was non-responsive to basic requests for discovery since the July 29, 2015 filing, On August 29, 2016, Mother filed Motion to Notice of Motion and Motion for Adverse Inferences. In a proceeding to determine child support, a party has a duty to supply financial information to the court in a proper fashion and failure to do so justifies adverse inferences. *Spooner v. Spooner*, 410 N.W.2d 412, 413 (Minn. App. 1987). The modification of support statute provides that "in *any* case where the parties have joint children for which a child support order must be determined, the parties shall serve with their initial pleadings or motion documents, a financial affidavit, disclosing all sources of gross income for purposes of section §518A.29." *Id.* The Mother's Motion for adverse inferences including an Affidavit of Mother with 29 Exhibits representing the data she collected. Mother had provided an Affidavit in Support of her Motion, stating that she had been employed since the late 80s at American Airlines, and

incorporated her pay stubs as filed with a June 29, 2015 motion. That motion for modification of child support had been pending since June 29, 2015, and Mother had filed another motion with CSM on November 17, 2015. When the CSM modified Mother's child support in its February 1, 2016 order, commencing January 1, 2016, and scheduled a Review Hearing for April 5, 2016, it was clear that a financial affidavit was required by parties for the CSM determination. The Review hearing had been scheduled to April 5, on a day after which was expected that Mother's criminal trial would take place, *"for the purpose of determining Petitioner's [Mother's] employment status and ability to pay support"* (ADD.16). When Mother requested a continuance in her motion of March 30, 2016, Respondent provided no financial data in response to the motion. The Review hearing was only met with a responsive motion to object, and no financial data from Father.

B. Mother Independently Investigated Father's Financial Dealings And Disposal of Income and Property, Evidence Wrongly Ignored by the Magistrate.

This evasiveness prompted Mother to start an investigation of her own, and she wrote letters requesting basic financials as required. Due to non-response, Mother filed a Motion to Compel Rule 361.04 discovery, as Father had been non-responsive to any letters from counsel for Rule 361 discovery disclosures of basic information. Mother had also done investigation on her own, indicating millions of dollars in gross income from Respondent's business, Rucki Trucking between 2001 and 2010. Mother provided the two paycheck stubs that Respondent had provided to the Judge at the September 11, 2013 custody trial from Kang Contracting, indicating \$5,000, to demonstrate that the documentation for Rucki Trucking or any related business provided to the trial Judge in 2013 was negligible.

On March 30, 2016, Mother served father, and filed with the CSM all of her W-2's going back as far as the 2011 divorce, and provided the CSM with the data that Respondent had subpoenaed from her employer. At the hearing on April 5, on Mother's motion to Rule 361.04 discovery. Neither Respondent

nor his attorney were present when the case was called. The CSM Mary H.C. Flynn found that “at the time of the prior order, there were no findings regarding Respondent’s income” and “Petitioner was incarcerated and had no income”.

C. Mother Provided the Statutorily Required Data, and Father Failed to Do So, Justifying Adverse Inferences that his Gross Income was More Than Reflected on Pay Stubs.

The CSM made a clearly erroneous finding with respect to Mother who had provided that “Neither party provided the court with any income information”. This is indicative of a lack of diligence, as with her motion Mother filed confidentially her W-2’s from 2011 to 2015. Mother had also filed available pages of Rucki Trucking, Inc., tax returns showing millions of dollars over the years of 2001 to 2010.¹ The CSM found that the “Respondent has not responded to the Petitioner’s Request for income information. The CSM also found the criminal trial had been pushed back to July 18, 2016, and granted Mother the continuance to August 11, 2016, after the criminal trial. The CSM ordered Respondent to provide, and the parties to exchange, the Rule 361 (1) data by May 15, 2016. Mother’s attorney provided the data to Respondent as ordered on May 16, 2016. Despite the CSM order to exchange, the Rule 361 (1) data by May 15, 2016, Father was non-responsive, and Mother filed a Motion to Compel and for Contempt with district court on June 16, 2016. Judge Kanning signed an Order to Show Cause for a hearing July 20, 2016 on June 24, 2016. Respondent responded with a request for a protective order and until Respondent’s response to the Order to Show Cause, Respondent had not requested a protective order.

D. The Magistrate Erred by Limiting Gross Income to Paystubs in the Face of Millions of Dollars and Disposal of Assets by Respondent.

¹ This was before Respondent finally disclosed his 2014 business tax return, and Respondent never provided his 2015 business tax return for TL Rucki Trucking while offering to do so.

Adverse inferences were warranted and the CSM erred by taking his two paycheck stubs indicating income of \$5,000 at face value. Here, the record shows that Respondent repeatedly failed to comply with discovery requests and ultimately provided documents that were not helpful to the determination of his gross income. The CSM took his 2 (two) paycheck stubs from TL Rucki Trucking at face value, and making a finding under "Father's Income" stating that "*in the past father has had ownership in various companies through which he earned a living*" and that "*Father testified credibly that he currently has no ownership interest in any companies*". The court concluded that Father's gross income is \$5, 000 stating that "*the Father's paychecks verify that he earns \$5,000 per month*".

E. The Magistrate Erred by Ignoring A Recent Tax Return Indicating \$1,427,644 in Gross Income for One of Respondent's Businesses.

While stating that Father's tax returns demonstrating multi-millions in gross income for Rucki Trucking, Inc. from 2001 to 2010, the CSM found these were "stale and irrelevant". But the CSM failed to address Respondent's business tax return from Kang for 2014 showing \$1,427,664 of dollars in gross receipts from another business, Kang Contracting. This was the same company he had provided pay stubs from indicating \$5,000 income for the September 11, 2013 trial. \$1,427,664 from gross income from Kang Contracting would certainly not be irrelevant or stale if the CSM had even looked at the discovery filed under seal. There is no indication that she did. The CSM's order did not include any finding as to the data that Respondent finally submitted pursuant to CSM under protective order, looking only to the paystubs. The CMS included information for the period of time of the two paycheck stubs for \$5,000.00 to determine gross income which was contrary to law, and demonstrates an administrative, rather than judicial or discretionary function upon review of evidence.

The CSM did not sufficiently determine Respondent's gross income as required by Minn. Stat. §518A.29 to calculate gross income, for purposes of the computation of the parent's respective child

support obligations pursuant to Minn. Stat 518A.34. Nor can the CSM be said to exercise any discretion determining gross income in cookie cutter fashion. It appears she was just looking for numbers to put in the boxes on the worksheet. The finding that Respondent's gross income for child support purposes was \$5,000 is clearly erroneous and represents a misapplication of the law by the CSM. The two paycheck stubs did not include any paycheck stubs for rest of the year 2015 that he had closed his business and sold it to his sister. Notably, on the supplemental affidavit of child support officer, dated September 1, 2016 income for TL Rucki trucking, for 4/1/16 appeared of 7500, alongside the 10/1/07 Rucki Trucking Inc. \$25,000 for the year 2007, and that is all (See Wage Summary, Supplemental Affidavit Child Support Officer, September 1, 2016).

III. THE MAGISTRATE COMMITTED REVERSIBLE ERROR BY A TEMPORARY SUPPORT ORDER ASSESSING A MINIMUM AMOUNT OF CHILD SUPPORT AGAINST AN INDIGENT WITH NO DETERMINATION OF BASIC SUPPORT AND NO ANALYSIS PURSUANT TO MINN. STAT. §518A.42 AND FAILING TO CONTINUE THE HEARING TO AFTER THE CRIMINAL SENTENCING

Since July 29, 2015, CSM Jon Larson, and Mary H. Flynn and Judge Kanning had heard the various motions relating to child support and made rulings. On August 11, 2016, CSM Maria Pastoor was assigned to the case, and filed an Order Concerning Discovery, Continuance, and Temporary Support. In it, she made a temporary monetary child support order assessing Ms. Grazzini-Rucki with a payment of \$50.00 per month. Mother was unemployed, had no income, and was on public assistance. Her temporary support Order assessing the minimum support contained none of the required analysis or findings, it violated Minn. Stat. §518A.42 (Ability to pay; self- support adjustment).

Notably, CSM Pastoor failed to perform a Minn. Stat. 518A.42 analysis in her final child support order, dated October 13, 2016, the subject of this appeal. Prior to the hearing scheduled for August 11, 2016, Mother filed a motion to continue the hearing, stating that she was convicted on July 28, 2016 of 6

felony counts, and notified her union of the convictions, and she has been unable to work since her arrest on October 18, 2015. With her motion she again attached the in camera responses to comply with the Court's order. It had now been over a year since she filed her initial motion for modification with Judge Kanning on June 29, 2015; 9 months since she filed her motion to modify with the CSM; and 7 months since the February 1, 2016 modification by the CSM of child support. Neither Mother nor her attorney had received any responses to the requests for discovery, or to the Court's order of April 5, 2016.

Before the hearing, on August 11, 2016, Respondent had filed the documents purportedly responsive to CSM Flynn's April 5, 2016 Order confidentially per Judge Kanning. While CSM Pastoor continued the hearing, she failed to continue it to a date after the sentencing, continuing the hearing to December. She allowed Mother's attorney to review the documents prior to the hearing, took testimony from Father and Mother relating to tax returns, and ordered Father to provide his 2014 corporate tax returns.

A. The Magistrate Randomly Assessed the Minimum Child Support Amount Because Mother's Support was Modified to Zero, Seemingly Admonishing AN Indigent Parent for Nonpayment

At the end of the hearing, the CSM announced that Mother be required to pay \$50.00 per month, and concluded the hearing. The CSM order assessing minimum child support violated Minn. Stat. 518A(2). Per the statute, the minimum basic support amount comes into effect only if the basic support amount applies. *Id.* The court made *none* of the required findings to compute child support obligations as required by Minn. Stat. 518A.34 (computation of child support obligations). This would be the first step, before the Minn. Stat. §518A(2). The CSM also did not go through any analysis whatsoever to arrive assess a \$50.00 per month temporary support obligation. To randomly assess the minimum when a modification is pending and support has not been assessed is not our law. The only factual finding

she makes is that *Mother has not had any obligation to pay support since February 1, 2016*, that she was released from jail in late February, March 2016. But the CSM had modified the Mother's support obligation to zero effective January 1. The CSM findings sound more like a contempt motion. CSM finds that "*Mother should pay at least the minimum basic support amount of \$50.00, until further order, pursuant to Minn. Stat. sec. §518A.4*". She finds that "Mother should pay the basic support amount, without doing any of the analysis required to determine a child support.

Minn. Stat. §518A.42(1)(a) states it is "*a rebuttable presumption that a child support order not exceed the obligors ability to pay*". The minimum basic child support amount only applies if the basic support amount applied. Specifically the statute says that "*if the basic support amount applied, the court must order the following amounts*" which would be \$50.00 for one or two children. Minn. Stat. §518A.42(2)(a)(1). Another indication that the court disregarded the facts and the law is that Mother has 3 children, which would require a \$75.00 minimum child support amount pursuant to the statute. *Id.* The statute also does not apply to an obligor who is incarcerated. *Id.* Notably, while purporting to use an ability to pay analysis here, without determining basic support, no analysis was made in the CSM's calculation of permanent child support below.

B. Mother was Indigent and on Public Assistance, Another Reflection of the Court's Error

Mother testified that she was on public assistance; another reason the order to pay minimum support should be reversed. The temporary order of \$50.00 was violative of §518A.29 (h) providing that gross income does not include any forms of public assistance based on need. The CSM glossed over this rule by failing to determine gross income, when it was ruled in previous CSM findings that Ms. Grazzini-Rucki had no income (ADD.15, finding 8)(ADD.31, finding 13).

IV. THE MAGISTRATE COMMITTED REVERSIBLE ERROR BY OBSTRUCTING APPELLANT'S RIGHT TO MODIFY CHILD SUPPORT AUTHORIZED BY MINN.

**STAT. §518A.32, AND ASSESSING PHANTOM INCOME TO SUPPORT A
MONETARY AWARD AGAINST AN INDIGENT PARENT VIOLATIVE OF MINN.
STAT. §518A.39 AND FAILING TO ASSESS APPELLANT'S ABILITY TO PAY AND
FOR SELF SUPPORT PER MINN. STAT. §518A.42**

On February 1, 2016, based on proper application of Minn. Stat. §518A.32, when determining Appellant's income for the purposes of child support, her child support obligation was modified to ZERO, since the prior order was considered unreasonable and unfair under Minn. Stat. §518A.39, subd. 2(b)(1). See, Minn. Stat. §518A.39, subd 2(b)(1); *see also*, Minn. Stat. §518A.32.

Minn. Stat. §518A.39, subd. 2(b)(1) states, in relevant part, "It is presumed that there has been a substantial change in circumstance under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if: (1) the application of the child support guidelines in §518A.35, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order or.." Minn. Stat. §518A.39, subd 2(b)(1). Mother's motion to modify child support was granted as the support was unreasonable or unfair. See, Minn. Stat. §518A. Having made the finding that "*there has been a change in circumstances that warrants a modification of support because the Petitioner is incarcerated.*" The CSM ordered a review hearing "*for the purpose of determining Petitioner's employment status and ability to pay support*" The review hearing was specifically ordered and the hearing was to be held after Mother's upcoming criminal trial.

**C. Our Child Support Laws Do Not Require a Case Be Made that the Children are not
Actually Being Supported with a Home and The Basic Necessities of Life.**

Generally, the child support laws and Court are not concerned about *actual* support of the children, focusing on the payment or nonpayment of orders for money, monetary contribution from one parent to the other processed by county and state collection. Whether or not the children are in fact

being supported is not an issue in this case. Child support is ordered to ensure that the children's basic needs for shelter, food, clothing, and medical care are met. See Minn. Stat. §518A.26 (d)(4) and §518A.41(1)(d); see also *Lieder v. Straub*, 42 N.W.2d 11, 13 (1950). The statute defines “basic support” to include the dollar amount ordered for a child’s housing, food, clothing, transportation and education costs, and other expenses relating to the child’s care. Minn. Stat. §518 A.26 (4). The complex statute does not require a showing that the children’s basic needs are not being met.

During the pendency of the modification action, while Ms. Grazzini-Rucki was not paying monetary support to Respondent, the record as a whole reflects that the children were in fact being supported with a home, and the basic necessities of life living with Father at the same standard of living during the marriage.

D. Parents Have a Right Authorized by Law to Modify Monetary Child Support from Time to Time Which the Magistrate Obstructed for this Indigent Parent in her Final Support Decision.

Ultimately, the CSM erred by failing to modify Mother’s child support downward as required by law, and her final order was in contravention of Minn. Stat. §518A.39 Modification of Orders. This statute gives authority providing that “after an order under this chapter or chapter 518 for maintenance or for support money ***, the court may from time to time, on motion of either of the parties *** modify the order respecting the amount of maintenance or support money.” Minn. Stat. 518A.39 (1) Authority.

Here, the court ultimately erred in the final child support order by assessing monetary support payable from a parent with no income or assets, and in forma pauperis status, payable to an obligee whom Ms. Grazzini-Rucki demonstrated had ample resources to support the children, without her monetary assistance. Mother had no income to support herself. The court ignored Minn. Stat. §518A.39

factors thereby violating the law, as an earlier CSM had already determined a substantial change in circumstances. The Court order violated a parent's legal right to modification of orders pursuant to Minn. Stat. §518A.39 (1) which provides authority for change from time to time. The CSM abuses discretion by not making orders on the side of liberties with resources and instead inflicting unrealistic and unreasonable expectation, and setting a parent up to fail, assessing child support obligations on "phantom" income.

The terms of the child support orders of July 17, 2014 were rebuttably presumed to be unreasonable and unfair pursuant to Minn. Stat. §518A.39 (2). In ruling that there had been a change in circumstances warranting modification it is presumed if there has been a substantial change in circumstances. Mother's gross income had substantially decreased to zero which warranted a modification. Minn. Stat. §518A.39 (2)(a)(1) In addition, there was change in the availability of appropriate health care coverage was inevitable due to substantial increase in costs from \$794 per month to \$1,400.00 per month. (ADD.5). And there was mother's job loss due to her arrest. Minn. Stat. §518A.39 (2)(a)(6). In addition, another of the children had been emancipated Minn. Stat. §518A.39 (2)(a)(8). The presumption applied because an earlier CSM had so ruled, and the gross income of an obligor had decreased to zero, which is by at least 20% through no fault or choice of the party. Minn. Stat. §518A.39 (2)(b)(5).

E. The Magistrate Erred by Assessing Potential Income to an Indigent Parent, thus Violating the Law.

The CSM court erred by failing to modify child support, and instead issuing a child support order based on phantom "potential" income attributable to Mother, leaving out actual income for the Respondent, and assessing child support, when it knew the obligee had no job, income or assets, and the Respondent was the propertied parent, thereby misapplying Minn. Stat. §518A.39 Modification of

Orders. If Ms. Grazzini-Rucki had a substantial change in circumstances making the original order unreasonable and unfair, entitling her to a modification of her obligation, the trial court must proceed to re-determine the amount of appellant's support obligation. *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986). A decision of that kind requires that the court address the statutory factors for determination of the amount of child support. Minn. Stat. §518A.34 (Computation of Child Support Obligations). Under this statute, the court must determine the obligors basic support obligation by determining the gross income of each parent under §518A.29. The court must also consider the factors set forth in the statute relating to ability to pay; self-support adjustment under §518A.42 which this court violated.

F. The Magistrate Failed to Determine Actual Gross Income of the Parents. Appellant's Gross Income Was Obvious and the Magistrate Blindly Set Monetary Support not Based in Reality or Law.

To set child support, the CSM would first have to determine Ms. Grazzini-Rucki's and Respondent's present gross income, and then demonstrate her ability to pay. "It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay" §518A.42(1). Ms. Grazzini-Rucki's job with the airlines was unknown and in flux. In her affidavit she indicated she had a job with the airlines for 29 years as a flight attendant (**ADD.18**). She further stated in an Affidavit dated August 1, 2016, that she was unable to work due to her arrest in Florida, and her employer being based in Charlotte North Carolina. She stated she was convicted of 6 felony counts and had notified her union (**ADD.43**). Given this evidence, there is a legitimate question whether Ms. Grazzini-Rucki will ever be able to return to the airline job, and with zero income and her job in flux, there is a legitimate question as to whether Ms. Grazzini-Rucki has the ability to pay any monetary child support.

"To blindly apply the guidelines in nonpublic assistance cases would be improper because different factors are necessarily involved." *Moylan v. Moylan*, 384 N.W.2d 859, 863 (Minn. 1986).

Courts should utilize the amounts set forth in the guidelines as starting points for the determination of child support awards. *Id.* Further, the statutory guidelines are not to be applied mechanically and to avoid this potential error, the courts should give "thoughtful consideration of departure" from the guidelines. *Linderman v. Linderman*, 364 N.W.2d 872, 875 (Minn. Ct. App. 1985).

The Income findings related to Mother were based on a 2014 court findings before her motion to modify. They were not based in reality, nor were the findings supported by the evidence. Without a finding of current income for Mother, which would be zero, and finding \$5,000 in gross income of the Father, the court proceeded to impute income to mother. Knowing full well that her employment with the airlines was unknown, the CSM reviewed Mother's March 11, 2016 statement of assets, liabilities and income to make a erroneous finding that she was "employed by American Airlines" and that her occupation is F/A flight crew". It was obvious by the evidence that she was not currently working for American Airlines, and her status was unknown and she was not able to actively work as a flight attendant due to criminal prosecution. She was trying to keep her job open in light of her arrest, incarceration, conviction, and upcoming sentencing, and the restrictions that being a defendant in a criminal matter can bring. In the March 11, 2016 statement, she wrote as her "sources of income" only American Airlines, and her length of employment as 29 years. It was clear she was not actively working or earning any money on March 11, 2016, or at the time of the evidentiary hearing months later on September 15, 2016.

Instead of making factual findings and its own decision based on the evidence before it on September 15, 2016, in its finding about Mother's income, the CSM adopts the findings of an earlier order dated April 5, 2016 *verbatim* summarizing her employment status as of the April 5, 2016 hearing. This was clear error, and contrary to the purpose of the review hearing. The CSM was charged with

making factual findings as of September 15, 2016 the day of the hearing. This review hearing was scheduled by CSM Jon Larson in his February 1, 2016 order “for the purpose of determining the Petitioner’s employment status and ability to pay support” (**ADD.16, Order 5**).

Parroting earlier findings verbatim provided no support for awarding child support and was not what the Judge was charged with doing with respect to Mother’s employment status. Ability to pay was not even addressed. The CSM finding that the current employment status with American Airlines is “unknown”, does not support a monetary child support, which turned out to be based solely on potential income.

G. The Magistrate Failed to Make the Proper Analysis Under the Law and Minn. Stat. 518A.32 and 518A.29

The court makes other vague and generalized findings, such as “*Mother’s assertions that her receipt of general assistance benefits means that she cannot be deemed voluntarily unemployed*”. The CSM makes a generalized finding that “Potential income may be imputed to Mother” without the analysis required by Minn. Stat. §518A.32. There was no analysis relating to Minn. Stat. §518A.29 (Calculation of Gross Income) either.

The CMS makes vague, generalize findings that “*Mother has not rebutted the presumption that she can work full time*”. Charged with the duty by earlier order to determine her ability to pay pursuant to Minn. Stat. §518A.42, the CSM fails to do so. It is in that analysis that there is a rebuttable presumption. *Id.* The statute says it is a rebuttable presumption that a child support order should not exceed the obligor’s ability to pay. *Id.* It is clear the child support order of \$975.00 exceed Mother’s ability to pay. The CSM never got to this analysis.

In comparing the CSM’s factual findings and order, dated October 16, 2016, to Minnesota child support laws, her analysis cannot be distinguished. Like her earlier order, where she declared that

“Mother has not had any obligation to pay support”, and assessed minimum basic support of \$50.00, she simple rules, her analysis indistinguishable. It was clear that the Mother had no gross income, and was unable to work. The court found that mother “testified” she had applied for 30 to 40 jobs locally. The evidence supported a finding that Mother had zero gross income, and the closest the court came to that finding was that she was not currently working at American Airlines. The court misapplied the law by failing to first calculate Mother’s gross income as zero, and assessing potential income. Most importantly, failing to do an analysis relating to her ability to pay and support herself (ADD.77). The CSM decision to impute income found in a prior support order after a substantial change in circumstances defeats the purpose of the parent’s statutory right to modification under Minn. Stat. §518A.39, which should be meaningful, and not an administrative task.

The decision to impute potential income by the CSM was contrary to law as it violated Minn. Stat. 518A.28 Calculation of gross income. There is no per se rule that “Potential Income” must be imputed. Assessing “potential income” to Mother to justify monetary child support, when she was on assistance, was also violative of Minn. Stat. §518A.32 (4) and §518A.42. None of the required findings to assess minimum support were complied with, let alone setting maximum support based on pretend income.

H. The Magistrate Ruling Also Violated Minn. Stat. 518A.42 Because Appellant was Indigent and Had No Ability to Pay Support or Support Herself

This also violated the Minn. Stat. §518A.42 Ability to pay. Mother’s income was zero and thus below the poverty guidelines pursuant to Minn. Stat. §518A.42. At most, Mother was n required to pay the minimum support of \$75.00, but even with the analysis because she completely lacks the ability and was on public assistance. In addition, Minn. Stat. §518.42(3) provides an exception that ability to pay and the self-support adjustment does not apply to an obligor who is incarcerated. It was a fact that

Mother had no income since her incarceration, and it clearly erroneous to gloss over any analysis, and assess support on potential income, again with no analysis.

Only if a parent is “voluntarily unemployed, underemployed, or employed on a less than full time basis, or there is no direct evidence of income, child support must be calculated based on a determination of potential income”. Minn. Stat. 518A.32 (1). However, it is a rebuttable presumption. The CSM found that mother’s current employment status with American Airline is unknown, after adopting findings as to her employment status from an April 5, 2016 earlier order. She made findings that Mother “testified she applied for 30 to 40 jobs”; that she had “no job offers and has not earned any income since March 2016”.

There was no evidence or finding of bad faith. However, the CSM found that “*If Mother was in fact unemployed; her duty to support her children mandates that she provide any information necessary to allow her to return to work as a flight attendant*”. This judgment seems to imply bad faith as if Mother was attempting to avoid her child-support obligation, and disregards the impact of an arrest, incarceration, felony convictions, and criminal restrictions on her long time job as an airline stewardess, a job she had for 29 years. The court never concludes that Mother is voluntarily unemployed. See Putz v. Putz, 645 N.W.2d 343, 351 (Minn. 2002) (noting that, in addressing whether a parent was voluntarily unemployed or underemployed, the predecessor to Minn. Stat. §518A.32 did not preclude the district court from considering “whether an obligor’s unemployment or underemployment [was] in bad faith toward his or her support obligation”); *Giesner v. Giesner*, 319 N.W.2d 718 (Minn. 1982) (addressing the process of imputing income to parents for purposes of child support and spousal maintenance before statutes addressed the question).

Whether a parent is voluntarily unemployed for purposes of setting child support is a finding of fact, which appellate courts review for clear error. *Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009) (citing *Putz*, 645 N.W.2d at 352; Minn. R. Civ. P. 52.01). Appellate courts are not bound by findings of fact that are influenced by errors of law, even if those findings are otherwise supported by the record. *Flynn v. Beisel*, 257 Minn. 531, 534, 102 N.W.2d 284, 288 (1960).

A parent is not "voluntarily unemployed" if the parent shows that "the unemployment is because [he] is physically or mentally incapacitated or due to incarceration" Minn. Stat. §518A.32, subd. 3(3). The CSM had already granted Mother's motion to modify child support obligation, acknowledging that Mother testified that "she is unable to return to employment because she is unable to give the court scheduling information, and that "as a flight attendant her employer requires her to fly whenever they need her and that it is a violation of TSA rules for Petitioner to provide her flight schedule". That court hearing took place on April 5, before Mother's conviction of felony counts, which she reported to her union. There was no evidence that Mother was doing anything but trying to appease the criminal court at the same time as appeasing her employers. In her ruling the CSM reasoned that "Mother has not claimed that her employment with American Airlines has been terminated; and that Mother could have her passport and work on domestic flights by providing the ordered information***". But this is flawed reasoning, in particular due to her incarceration, terms of her release, the nature of her work as an airline stewardess, and the upcoming sentencing hearing, and the tolerance and flexibility of an employer. This finding is not sufficient to show bad faith.

The CSM violated a parent's right to modify by misapplying the statute relating to potential income and thereby violated Minn. Stat §518A.32 (potential income). Here, Ms. Grazzini-Rucki was not voluntarily unemployed, underemployed, and the CSM had already concluded that she was entitled

to a modification. The CSM violated Minn. Stat. §518A.32 (3). Mother's unemployment was due to incarceration, and therefore the CSM violated Minn. Stat. §518A.32 (3) by assessing potential income.

The court violated the law as found in Minn. Stat. §518A.32 by its failure to recognize that Mother had rebutted any presumption of ability for gainful employment with her arrest, incarceration, felony convictions, and pending sentencing on those convictions. The Review hearing was scheduled to "determine the Petitioner's employment status and ability to pay support". The CSM disregarded the earlier rulings and purpose of the review hearing. The CSM disregarded Minn. Stat. §518A.32 by her failure to recognize that those in the airline industry do not work 40 hours a week, and that a normal work week in the in the airline industry was less than 40 hours. The CMS failed to use the required methodology when imputing potential income, as it simply adopted a finding on income years earlier in an order. This is not a methodology required by Minn. Stat. §518A.32 (2) Methods. The court's finding of gross income stated that "at the time of the July 17, 2014 order , the Mother earned gross monthly income of \$4,143.12 from working as a flight attendant with U.S. Airways, which at the time was in the process of merging with American Airlines". To adopt a finding in an order 3 years earlier as to Mother's income was not a statutory methodology. The finding is clearly erroneous because Mother's income is zero.

I. The Magistrate Erred by Adopting a Court Finding Years Earlier and Ignoring Actual Income, and Appellant Provided Evidence of Her Actual Gross Income From Employment Before Her Arrest.

If the CSM was to use her airline job to impute income, Mother had provided 5 years of actual W-2 gross income ADD. 28. The court's earlier finding of \$4,143.00 in monthly gross income indicates \$49,716 in annual income (\$4,143 X12). Mother's *actual* gross income in 2013, when the child support order was entered, was \$30, 098.27 or \$2,508 per month, and her actual income in 2014 was \$24,405.89 or \$2033 per month. The 2013 and 2014 actual figures were hundreds less than what the court found in

the November 25, 2013 and July 17, 2014 orders. Mother's actual income submitted in the evidentiary income was zero, and the evidence of her actual income history was far less than the \$4,143.00 the finding in the prior order of July 17, 2014 adopted by the CMS for potential income, which violated Minn. Stat. 518A.32(2) methodology. Mother had also provided her 2015 W-2, showing \$23,566.72 or \$1,963.89 per month. The CMS's finding on Mother's income is clearly erroneous. For the reasons set forth above, through the analysis of Minn. Stat. 518A.32 (5), it is not appropriate to impute any potential income to Appellant. Penalizing a party is not the objective or intention of the statute.

While the final analysis involves Minn. Stat. 518A.42 relating to an obligor's ability to pay, and self support adjustment, no such analysis was done here.

It is a rebuttable presumption that a child support order should not exceed the obligor's ability to pay. Minn. Stat. 518A (1). This analysis takes place once child support is computed. Ms. Grazzini-Rucki had zero income, and was facing sentencing. See Register of Actions, State of Minnesota vs. Sandra Grazzini-Rucki, Case no. 19HA-CR-15-2669. The fact of being a felon is one thing, but the conditions of her probation to November 18, 2020, and local confinement each year for 15 days, confines her to the state. The court abused its discretion requiring Ms. Grazzini-Rucki to pay monetary child support on gross income that she clearly did not have.

V. THE MAGISTRATE COMMITTED REVERSIBLE ERROR BY IGNORING RESPONDENT'S ACTUAL GROSS INCOME, AND INEQUITABLY APPLYING THE CHILD SUPPORT LAWS TO ENGOMEER A MONETARY SUPPOR ORDER FROM AN INDIGENT PARENT TO A WEALTHY PARENT

In 2006, with the enactment of Minn. Stat. 518A.34 and .35, the statutory child support changed significantly. One of the primary changes is both parents' gross income must be taken into account to determine basic support obligations, rather than focusing solely on the net income of the noncustodial parent. The formula, Minn. Stat. § 518A.34, takes all gross income into consideration Minn. Stat. §

518A.29(a) (calculation of gross income; A. 29); Minn. Stat. § 518A.32 (5) (calculation of potential income based on rebuttable presumption parent can be gainfully employed on a full-time basis). In accord with Minn. Stat. § 518A.39, subd. 2, Mother made a motion on child support statutes. In so calculating, the court is charged with determining both parents' gross income pursuant to Minn. Stat. §§ 518A.34(b) (1) and 518A.37. A parent's gross income is now the driving force in calculating a child support obligation.

The current statutory definition of "gross income" is:... any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income under section 518A.30, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments ...”See Minn. Stat. § 518A.29 (a)

Gross income for Respondent was relevant, and the determination of gross income limited to two paystubs, taking those at face value, with all of the other evidence, was clearly erroneous. The calculation of the Respondent’s gross income as \$5,000 per month or \$60,000 per year from employment in light of the transferred of businesses that made millions to his sister, misapplies the law as to calculation of gross income, and violated Minn. Stat. 518A.29.

Respondent’s gross income was obviously not limited to the salary his sister Tammy Love paid him from a business he previously owned, now known as TL Rucki trucking. Like here, in the November 25, 2013 custody and child support order, the court had found Respondent’s income from employment at Kang Construction to be \$5,000.00 with the submission of two paycheck stubs, except this time the Mother had submitted Affidavits and 29 Exhibits doing her own research.

A. Father’s Recent Tax Return For a Business He Disposed of Showed \$1,427,664 in Gross Income

Aside from Mother's affidavits reflecting her research, Father submitted by protective order a 2014 business tax return from Kang Contracting, indicating the corporate address as his own address with gross receipts of \$1,427,664, ignored by the CMS. Father, while ordered to provide paycheck stubs October 1, 2015 through April 2006, provided only two paystub, pay date 5/31/16, year to date pay \$2,500 from TL Rucki Trucking; and a paystub , pay date 6/30/16, year to date pay \$7,500, from TL Rucki Trucking. He provided BMO Harris bank records for Rucki Trucking, Inc. starting 6-1-2016, even though he transferred the business to his sister, January 2015, stating he had no personal bank accounts. The BMO account showed significant deposits and withdrawals, for example 9-1-15 showed a previous balance of \$33,479.67, ending balance of \$7,908.95, with \$2,778.11 in deposits and \$28,348.83 in withdrawals.

Ms. Grazzini-Rucki had provided tax returns from Rucki Trucking, Inc. indicating millions of dollars in gross income from 2001 to 2010, the year before the May 2011 divorce (**ADD 63**). While the court made a finding that these Rucki Truck Co, Inc tax returns were "stale" and "irrelevant", the CMS failed to address the more recent 2014 tax return for \$1,427,664, and the claim he no longer had interest in business effective 2015, the year Ms. Grazzini-Rucki filed her modification motion.

Gross income is defined by our child support laws as "The income of the parent calculated under section 518A.29."

It is clear that Father's gross income was in excess of the two paychecks stubs he provided showing \$5,000 per month from a business he had recently transferred to his sister, and was still operating out of his home.

B. The Magistrate Erred by Imputing Income to an Indigent Mother While Ignoring Gross Income and Resources of the Propertied Parent

The CMS further found that the “Father is not voluntarily under-employed” (Add 78, finding 47). It is notable that the CMS made no finding that mother was voluntarily under-employed. If gross income includes “potential income,” the same holds true for the Respondent, as the newer child support law looks at both parents’ gross incomes.

The court erred by not determining potential income for Respondent. Pursuant to Minn. Stat. 518A.32 who could be deemed voluntarily under-employed having transferred his businesses interests. Respondent’s self-employment potential had generated millions of dollars in gross proceeds over the years, and the CSM failed to adopt the required methodology of occupational qualifications in light of prevailing job opportunities as required by Minn. Stat. 518A.32.

Although Respondent was self-employed for all of the years, had not shown income with the county since 2007, and only now the county showed income from TL Rucki trucking. Mother had provided data that in 2007 when the county showed Respondent earning \$25,000 in wages, the tax return for Rucki Trucking showed gross income of \$4,125,422 for the same year. (Add 28).

Respondent had obviously been setting himself up to show minimal gross income, the similar minimal income he provided at the 2013 custody trial, except the paystubs for \$5000 then were from Kang Contracting, and not TL Rucki Trucking. At trial September 11, 2013, Respondent entered 2 paycheck stubs totaling \$5,000 from Kang Contracting, that the Court took at face value, and found this as his income. The county did not show this income. At this evidentiary hearing, Respondent once again submitted two pay check stubs from TL Rucki Trucking, claiming that this was his income from employment.

Respondent’s only bank account was for Rucki trucking, Inc., a company he claimed he recently sold to his sister, Tammy Love, TL Trucking. Respondent claimed to have no personal bank account. To

ignore evidence of gross income was an abuse of discretion and violated the Court's obligation to calculate gross income pursuant to Minn. Stat. 518A.29. This focus on gross income was an intentional move away from the previous statute's focus on the obligor's net income, and was intended by the Legislature to simplify calculation of child support. State Senator Tom Neuville, The New Income Shares Model for Calculating Child Support in Minnesota, 15 Family Law Forum 4 (Winter 2006) One of the goals of the new child support system was to simplify the calculation of child support. It does this by calculating support on gross, rather than net, income. The statute is expansive and it specifically specifies what is not included in gross income. Minn. Stat. § 518A.29.

If the CSM wants to pretend that Respondent's actual gross income is \$5000, then it is unfair to pretend that Mother's actual gross income potential is \$4,143.12 when her actual income is zero, and she is on public assistance. Under the law, Respondent would not be required to be assessed child support, if Mother was appropriately determined not to have the ability to pay. The CMS could have concluded that Respondent's child support was satisfied pursuant to Minn. Stat. 518.38 (3) because the children were living with him. Both parents are obligors under the newer statute, as the calculation of gross income applies to both.

While it is clear that Respondent disposed of his business assets and income, there was no analysis, or mention of relating to Father's income relating to from self-employment which was reflected on the more recent 2014 tax return, as proprietor Kang Contracting. This ignorance of the CMS was violative of Minn. Stat. 518A.30 income from self-employment or operation of a business. While the CSM found that tax returns showing millions from Rucki Trucking 2001 to 2011 were irrelevant and stale, the 2014 gross receipts of \$1,427,664 from Kang Contracting was certainly not irrelevant or stale, showing costs of goods sold of \$1,282.04 and gross profits of \$145,624.00.

Respondent had been self-employed for years as Rucki Trucking, Inc. Respondent continued to maintain bank accounts as Rucki Trucking, Inc. as his only bank account. Respondent was a shareholder and employee of Kang Contracting Inc. The CSM ignored that Father had been operating a lucrative business, Rucki Trucking for years; and the disposal and transfer to his sister as violative of Minn. Stat. 518 S.30. The CSM did not treat both parents similarly when came to imputing potential income. It was obvious that mother was unable to work as a flight attendant, having been convicted of felony and subject to a sentencing hearing. She had no ability to pay any monetary child support.

As acknowledged by the Court of Appeals in Marx v. Marx, courts *must* ultimately ascertain a child support obligor's ability to pay child support, whether that is best assessed by taxable income, cash flow or some combination of the two. 409 N.W.2d 526, 528, -29 (Minn. Ct. App. 1987).

VI. THE MAGISTRATE COMMITTED REVERSABLE ERROR BY PERMATURELY RULING ON THE MODIFICATION BEFORE APPELLANT'S SENTENCING AND MAKING A CONDITIONAL CHILD SUPPORT ORDER RELATING TO FUTURE INCARCERATION THAT WAS CONTRARY TO LAW, WARRANTING REVERSAL

The Court committed gross error by prematurely holding the Review hearing before the Mother's sentencing, and conditionally assessing permanent child support. The CMS had scheduled a review hearing after Mother's criminal trial and Mother was presumed innocent. When Mother's trial was moved, and earlier CMS also rescheduled the Review hearing until after the continuance date of Mother's criminal trial. Mother's sentencing hearing was after the date of the date of the review hearing, it was prudent to continue the Review hearing until after that to get a permanent child support. The CMS at the August 11 hearing, the CMS rescheduled the hearing until a date *before* the sentencing hearing over objection. The CSM ignored concerns by the county attorney that holding the review hearing before sentencing and determining the child support was contrary to law. In its October 13, 2016, the CMS's made an order for "*suspension of support*." The CMS ordered that "Because the

Mother was convicted of the crime due to be sentenced on September 21, 2016 payment of support should be suspended if and when Mother is incarcerated and a review hearing should be held after release from incarceration concerning the sole issue of whether support should be reinstated. The CSM then ordered that "the Mother's support obligations shall be suspended if and when she is incarcerated.

The County attorney had concerns about holding the hearing because Ms. Grazzini-Rucki had not been sentenced, and her income was uncertain. T.9-15-16, p.16 , line 8-18. The CSM essentially ordered that Mother's obligations to be suspended upon incarceration and then reinstated at a level equal to the pre-incarceration level upon her release from jail, upon a hearing. Additionally, the CMS required a review hearing only designed to reinstate support. IN RE MOSKAL v. MOSKAL• C2-99-580 (Minn. Ct. App. 1999) is an unpublished case. In Moskal, the amended order required appellant to contact the court and respondent's attorney when he learned of the date of his release in order to determine whether a hearing will be necessary on the issues of his child-support obligations. In Moskal, the Court noted that it sympathized with the district court's desire to "alleviate respondent's burden to bring a motion following appellant's release from prison." Moskal held that the district court's order regarding appellant's obligations was a modification under Minn. Stat. § 518.64, subd. 2 (1998). Because the district court ordered a modification, the automatic reinstatement of appellant's obligations following his release from prison was inappropriate. The Court noted that the effect of our decision simply shifts the burden to respondent to establish that she is entitled to a modification at a future date. *Meier*, 378 N.W.2d at 818. If respondent wishes to seek a modification following appellant's release from prison, she must bring an appropriate motion.

The CMS child support order (under appeal) stays the proceedings upon jail time, and requires another hearing. The support order imputes income that it knows does not exist. The law does not

require an evidentiary hearing on a motion for modification of support. Holding an evidentiary hearing when critical consideration were pending with the criminal court was reversible error, as contrary to Minn. Stat. 518A.39(2)(h) which states that a court need not hold an evidentiary hearing on a motion for modification of maintenance or support. Mother's circumstances of employment had not changed since the CMS order of no support, so it was reversible error to assess child support on gross income that did not exist and contrary to a parent's right to modification orders pursuant to Minn. Stat. 518A.39

Due to Mother's arrest and incarceration and felony conviction, Mother had experiences an associated decrease in employability. The Court's ruling may have unintended consequences if it becomes the law of the State. Often, an obligor's gross income may change substantially as a result of being out of the workforce. It is of concerned that failing to calculate the percentage of the child support each parent is obligated to pay based on a parents actual income results in financial inequity and unsustainable child support obligations. Court can simply take a factual finding from a prior order and impute the income you may have one time made. In Minnesota, it is mandatory that you go to court to modify the order, otherwise the order stands. That makes it imperative, that when an obligor goes to court to demonstrate changed circumstances, the CSM look at the circumstances de novo, and not speculate on the ability of the parent to get a job. Clearly, the CSM seems only to have a hearing to impute income. Appellant was homeless, jobless, penniless (and on assistance), with no assets, having been arrested, jailed in a criminal proceeding, convicted, and facing sentencing. With respect to the oblige, the millions he made in the past was determined "stale", and the income he claimed to have made at the hearing, about 60k a year, and \$5,000 in the selected snapshot of paycheck stubs, was satisfactory, as his "current" gross income, Appellant's gross income was zero, the CSM could not even

bring itself to make such an accurate factual finding. The CSM findings as to what evidence was *not* presented are argument and not fact.

The appellate court sums up that “Due to the difficulty in ascertaining Grazzini-Rucki’s actual income, it was reasonable for the CSM to refer to these findings from the district court as an accurate measure of what she is capable of earning as a flight attendant on a full time basis” (Order p. 16). Here, income was not difficult to discern because she had none. The court had before it actual past income in the form of W-2s for 2011- 2015, up until the time of arrest. Why can’t courts accept the reality of the facts before it, rather than speculate. The court used paycheck stubs, ignoring actual income of millions. The courts operate in fantasy and not truth. Grazzini-Rucki does not, nor did she ever, earn regular monthly income of \$4,143. The CSM only used a couple of David Rucki’s paycheck stubs, even in light of the evidence that his company the year before made millions, and provided two paycheck stubs confirming \$5000 income per month (Order p.17). Grazzini-Rucki’s actual income of ZERO was ignored. Imputed income without the finding that she was voluntarily unemployed, and did not impute income to Rucki from the past, finding he was not voluntarily underemployed. While Appellant argued that the CSM wrongfully created a support order that compelled “an indigent parent” to pay support to “a wealthy parent” by imputing income (See Order p. 19), if Courts take a parents income at the time at face value, why be myopic with one parent, and not the other. Gross income is broadly construed and may include a parties’ potential income. Minn. Stat. 518A.29 (a) 2016). A district court’s determination of a parties income is a finding of fact reviewed for clear error. Id at 685 (Order p. 12).

The Court of Appeals was asked to review proceedings to modify a child support order pursuant to 518A.39 (Modification of Orders) and 518 A.42 (Ability to Pay; Self Support) and instead enabled the imputation of potential income as “gross income” in the child support calculation for an indigent parent,

with no income. Based on Minn. Stat. § 518A.34, and in accord with Minn. Stat. § 518A.39, subd. 2, Appellant sought modification of her child support obligation. With the enactment of Minn. Stat. §§ 518A.34 and .35, effective January 1, 2007, statutory child support has changed significantly. One of the primary changes is both parents' gross income must be taken into account to determine basic support obligations, rather than focusing solely on the net income of the noncustodial parent. The formula, Minn. Stat. § 518A.34, takes all gross income into consideration, as well as the percentage of parenting time exercised by the noncustodial parent. Minn. Stat. § 518A.29(a) (calculation of gross income; A. 29); Minn. Stat. § 518A.32, subd. 5 (calculation of potential income based on rebuttable presumption parent can be gainfully employed on a full-time basis). In accord with Minn. Stat. § 518A.39, subd. 2, Appellant made a motion on current child support statutes. In so calculating, the court is charged with determining both parents' gross income pursuant to Minn. Stat. §§ 518A.34(b)(1) and 518A.37. The modification statute provides that on a monetary support order the court may from time to time, on motion of either of the parties modify the order respecting the amount § 518A.39. This statute gives authority providing that *"after an order under this chapter or chapter 518 for maintenance or for support money ***, the court may from time to time, on motion of either of the parties *** modify the order respecting the amount of maintenance or support money."* Minn. Stat. § 518A.39 (1) Authority.

Here, the court ultimately erred in the final child support order by assessing monetary support payable from a parent with no income or assets, and in forma pauperis status, payable to an obligee with ample resources to support the children, without her monetary assistance. Mother had no income to support herself. The court ignored Minn. Stat. § 518A.39 factors thereby violating the law, as an earlier CSM had already determined a substantial change in circumstances. The Court order violated a parent's legal right to modification of orders pursuant to Minn. Stat. § 518A.39 (1) which provides authority for

change from “time to time”. The CSM abuses discretion by not making orders on the side of liberties with resources and instead inflicting unrealistic and unreasonable expectations, and setting a parent up to fail, assessing child support obligations on “phantom” income.

Child support is ordered to ensure that the children's basic needs for shelter, food, clothing, and medical care are met. *See* Minn. Stat. § § 518A.26, sub d. 4, and 518A.41, subd. 1(d) (2012); *see also* *Lieder v. Straub*, 42 N.W.2d 11, 13 (1950). Child support obligors who are unable to meet their court-ordered child support obligation may have their child support obligation reduced by making a showing that the amount is "unreasonable and unfair." Minn.Stat. § 518A.39, subd. 2(a). A child support obligation is presumed unfair by statute if obligors meet any of six criteria, which consider factors such as changes in medical support and health coverage, changes in income, and changes resulting from recalculation of their child support obligation under statutory guidelines. Minn. Stat. § 518A.39, subd. 2(b). Additionally, an obligor may make a showing that the existing child support obligation is unreasonable or unfair if the obligor shows a substantial change in income for the obligor or obligee, a substantial change in need, a new or changed receipt of public assistance by the obligor or obligee, a change in the cost of living for either party, extraordinary medical expenses for the child, a change in the availability of health coverage for the child, a change in child care expenses, or the emancipation of a child. Minn. Stat. § 518A.39, subd. 2(a). Child support obligations may be retroactive to the date a motion for modification is served and filed. Minn. Stat. § 518A.39, subd. 2(e). The decision below failed to follow the statutory requirements for modifying support orders. In 2006, the Legislature changed Minnesota's child support calculation process to better account for both parents' ability to contribute to the support of their children. As part of that process, the Legislature enacted provisions that require a court to make a detailed calculation to determine the income of each parent and apply any applicable

adjustment to their income for the needs of other children. Minn. Stat. §§518A.34(b)(1) (2016); and 518A.34(b)(2) (2016). A court is then required to calculate the percentage of the child support each parent is obligated to pay based on the ratio of each parent's income to the combined income of both parents. Minn. Stat. §518A.34 (b)(3) (2016). Based on the parents' combined countable income, the court must then calculate the amount of basic support the children are entitled to receive. Minn. Stat. §518A.34 (b)(4). The court must determine the child support obligation of each parent by multiplying the amount of basic support by that parent's share of the basic support amount. Minn. Stat. §518A.34(b)(5) (2016). After determining the child care and medical support each parent must provide, the court is required to add the parent's basic support, child care support and medical care support together to determine the parent's total child support obligation. Minn. Stat. §518A.34(c), (d), (e) (2012). In this matter, the Court of Appeals affirmed the lower court's decision to impute income to the Appellant obligee, and then retroactively have the child support start at a date much earlier, using a finding in an earlier order as to impute income, even though she had no income at all. In other cases they impute more income than the obligee actually makes. The Court proceeded without performing any of the preceding steps required by Minnesota law to determine the obligee's ability to pay. Often, an obligee's gross income may change substantially as a result of being out of the workforce. Failing to calculate the percentage of the child support each parent is obligated to pay based on the ratio of each parent's income to the combined income of both parents results in financial inequity and unsustainable child support obligations - harming the children in the long run. Furthermore, adjusting child support obligations may be perceived as a simple administrative function. This would contravene the legislature's intent that all child support modifications must be reviewed by the court and recalculated based on Minnesota law, considering numerous factors. Neither county child support agencies nor the

courts have been given authority to automatically impute potential income for the noncustodial parents. **Appellant is not attempting to avoid a child support obligation, rather her income and resources available to her must be considered in calculating child support, not phantom income that is unavailable for purposes of supporting Mother and the children. To award child support based on this non-existent income, or past income which was fully used to pay income taxes, expenses and child support obligations is illogical and is an inequitable result. The primary goal behind the amendment to the child support laws in 2007 was to "create a more fair and equitable child support guideline."** See *The New Income Shares Model for Calculating Child Support in Minnesota* by State Senator Tom Neuville, Family Law Forum, Winter 2006, Volume 15, No. 1. Potential income is speculative, nor is it a dependable source for child support, as it is not available to the parent, and parent has no ability to pay child support from phantom funds. Has the appellate court devolved into forums designed to justify money orders not based in reality? A judges essential duty is to discern facts, apply those facts to the law, reach legal conclusions and make an order. If the facts discerned are not real, how can speculation by the court with full knowledge that it's finding is erroneous be logical? Our appellate courts have devolved into forums where those in poverty, are in a no win situation. Appellate court seems to find any way possible to justify what lower courts are doing to parents in family court. Income must reflect actual available financial resources and not a fictional financial picture created by the application of the statute. Further, the primary goal behind the amendment to the child support laws in 2007 was to "create a more fair and equitable child support guideline." See *The New Income Shares Model for Calculating Child Support in Minnesota* by State Senator Tom Neuville, Family Law Forum, Winter 2006, Volume 15, No. 1. "To blindly apply the guidelines in nonpublic assistance cases would be improper because different factors are necessarily involved." *Moylan v. Moylan*, 384 N.W.2d 859, 863

(Minn. 1986). Courts should utilize the amounts set forth in the guidelines as starting points for the determination of child support awards. *Id.* Further, the statutory guidelines are not to be applied mechanically and to avoid this potential error, the courts should give "thoughtful consideration of departure" from the guidelines. *Linderman v. Linderman*, 364 N.W.2d 872, 875 (Minn. Ct. App. 1985). Income and resources *available to her* must be considered in calculating child support, not phantom income that is unavailable for purposes of supporting Parent and the children.

Appellant "asserts that the statutory analysis in calculating child support does not require a showing of need. "In essentials, unity; in non-essentials, liberty; in all things, charity." ---Augustine of Hippo. As for the absence of a finding of need, the Court of appeals stated that "*Grazzini-Rucki does not refer to the record regarding the minor children's needs nor does she appear to contend that the CSM erred in considering the children's basic needs*" Order page 12. The court of appeals goes on to state that "*Because the claim does not create an issue, it does not present a basis for reversal*" (order page 12). The fact that actual support or need is not an issue is the point. The guidelines are based on an income sharing model which presumes what the needs of the children are, instead of actually examining the needs of the children. In the case of imputing income, the income that is ordered to be shared is not real. Rather than determining that mother had no income, pretends that she does, not only now, but during the time of the pending motion, by skipping to potential income analysis. We have no idea of the individual circumstances. Then to pretend that a court ordered monetary amount actually results in money exchanging hands, when the reality is that the actual result is one parent is going further and further into debt each month, is another way imputation of income always, and in particular as here, that did not at all follow the statutory scheme, is absurd. If there is one clear need today, it is for parents to be closer to their children,

the support of the love and companionship of both parents. Fathers are as irreplaceable in the lives of children as mothers. Minnesota's child support statutes, which are part of the State's federally approved plan, require the district court to use a complex calculation to determine the amount of child support a parent will be ordered to pay. Minn. Stat. § 518A.27, *et seq.* The Court of Appeals' decision here essentially permits district courts to simply impute income essentially to fabricate the monthly child support obligation of the obligor, contrary to the courts' obligation to determine gross income for the obligor and take other necessary steps when considering a child support modification. Appellant respectfully submits that the Court of Appeals' decision is in error because it fails to give effect to the entire statutory child support calculation, it is contrary to federal law, and it negatively impacts Minnesota's children. Unchanging orders can represent a debtors prison, requiring parents whose circumstances change to accrue arrearages, or go to court to litigate changes in their or the other parents income, which is burdensome. **The Supreme Court must restore the Constitution to parents by prohibiting prosecution when the child is in fact being supported, and when payments unconstitutionally deprive fit parents of their own determination of how to use their property and income. Court involvement should only be necessitated when a child is actually not being supported. The unfortunate backlash resulting from the child support and enforcement of these orders is disruption of familial relations. There are countless ways a parent provides care and support to their children.** Support should not be paid to one parent at the expense of the other being unable to provide basic needs. Due to the fact that this issue appears to be of first impression, there is no case law that is directly on point and therefore the argument and support thereof is based on interpretation of Minn. Stat. §518A. The Court erred by imputing potential income to Appellant. Minn. Stat. §518A.32, subd. 1 recites, "If a parent is voluntarily unemployed, underemployed, or employed on

a less than full time basis *OR* there is no direct evidence of any income, child support must be calculated based on determination of potential income." Minn. Stat. §518A.32, subd. 1 (emphasis added). In the present case, Appellant does have direct evidence of income, which relieves the Court from having to impute potential income. Were the Court to impute income, statute does not allow the courts to impute income if a party is on assistance. Of course, **the best way to reduce the crippling debt that many low-income, non-custodial parents currently face is to ensure that child support orders are set at a right-sized level when they're established. Minnesota relies on a statutory formula** to calculate child support orders but the real problem is when states are forced to impute a non-custodial parent's income. Establishing right-sized orders—and ensuring that those orders can be easily modified if circumstances change—is the key to eliminating the child support debt problem. **Pretending that one of the parents has money does not provide money to the child."**

The Court Failed to properly apply the statutory analysis for calculating gross income and potential income. Erroneously applied *Newstrand v. Arend* <https://mn.gov/law-library-stat/briefs/pdfs/a140723car.pdf> to determine Grazzini-Rucki's potential income. Case cited regarding determination of child support has very different facts from this case, and required different interventions from CSM due to these unique facts. Therefore *Newstrand* does not control/apply. *Newstrand v. Arend* states, "Determining whether a parent is voluntarily underemployed or unemployed is a factual determination made in the district court's discretion..."

A finding of fact is clearly erroneous if this court is left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

This Court must be left with a definite and firm conviction that a mistake has been made in order to conclude that findings of fact are clearly erroneous.

Determination of potential income must be made according to one of three methods, as appropriate:

- 1. the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;**

FAILED to consider employment potential changed after sentencing, when charged with 6 felonies.

Minn.Stat. § 518A.32, subd. 1 when properly applied Takes into consideration that a parent's earnings level is based on employment potential. Grazzini-Rucki's earning level, and employment potential had decreased after being charged and convicted of 6 felonies. Grazzini-Rucki testified that her employment status with the airline she worked for was unknown and that she had applied for approximately 30 to 40 jobs but had not received any employment. The CSM issued two orders on October 13, 2016. In the second order, the CSM imputed potential income to Grazzini-Rucki and found that she had the ability to earn \$4,143 in gross monthly income. Statement "had ability to earn" is speculative in nature and not proper basis for child support order. Proper application should be based on Minn.Stat. § 518A.32, subd.

(p. 10) Appellate court notes "Grazzini-Rucki's unsettled employment status" **occupational qualifications in light of prevailing job opportunities** CSM stated Grazzini-Rucki has ability to work as a flight attendant. However, her occupational qualifications as a flight attendant do not guarantee or assure job opportunities due to her status as a convicted felon. As noted by the Appellate court,

Grazzini-Rucki has been unable to obtain work as a flight attendant after being convicted of the felonies

GREATER IMPACT: -Erroneous calculation of child support creates a debtor's prison - is

Unconstitutional. Creates a situation where people who are not willfully avoiding child support but

unable to pay or unable to pay at the erroneous level imputed, face further legal and civil penalties - the

threat of jail. Does not benefit child, hinders ability of a parent to provide care and support.. This creates an unfair, and unconstitutional, burden on the obligor who is forced into a situation where immediate consequences will be experienced, financially, legally and in their ability to support themselves at a reasonable standard of living. Second - the children involved do not benefit in any way, because a parent's ability to pay child support is based on their unique circumstances, and current financial situation, and now that ability to pay some amount is robbed by the financial burden imposed by the court. Incorrectly imputing income hinders a parent's ability to provide financial support to a child because they are caught in an impossible web that creates instability, and uncertainty, through continued legal action and threat of incarceration should they be unable to pay.

The law also states child support should be calculated according to RECENT income and that income, at the time of the order, was GA.

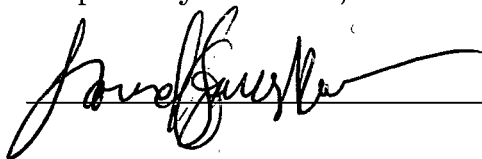
The court abused its discretion by making a material misrepresentation of S actual monthly income and earning potential, and disregarding evidence that factually demonstrated her current financial situation.

"All child support awards must be supported by detailed findings of fact.." (citing: Moylan v Moylan, <https://www.leagle.com/decision/19861243384nw2d85911172>)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-12-18