

DOCKET NO: HHD-FA19-6119171-S : SUPERIOR COURT
AGOSTA, NITZA : JUDICIAL DISTRICT OF HARTFORD
V. : AT HARTFORD
PRIOLEAU, KEITH : June 3, 2024

FILED
JUN 03 2024
HARTFORD J.D.

**MEMORANDUM OF DECISION RE: DEFENDANT'S APPEAL FROM
FAMILY SUPPORT MAGISTRATE ORDER (DOC. # 175.00)**

This is an appeal by the defendant from the family support magistrate's orders entered on January 19, 2024. (Doc. #175.00). The parties appeared at a hearing on April 15, 2024, and submitted legal briefs. The court has fully considered the criteria set forth in General Statutes §§ 46b-86, 46b-215a, the transcript and exhibits from the hearing, case law, and arguments of the parties and hereby remands the decision of the magistrate court for further proceedings in accordance with this decision.

I. PROCEDURAL BACKGROUND

The parties have one child together, K., born in 2009. On October 28, 2019, the State of Connecticut ("State") filed a support petition on behalf of the plaintiff. (Doc. #100.30). On August 5, 2021, the magistrate court, *Gilman, F.S.M.*, found a duty to support and issued an order on the support petition (Doc. #125.00). The presumptive amount of child support per the Child Support Guidelines was \$284 per week. However, the magistrate court deviated from the presumptive amount of child support due to defendant's significant visitation expenses. The magistrate court ordered the defendant to pay child support in the amount of \$244.00 per week to the plaintiff through Support Enforcement Services ("SES") via immediate income withholding. The magistrate court found arrearage in the amount of \$36,557 as of April 2, 2021 to be paid at the amount of

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RJB amp 6-3-24

\$46.00 per week. On December 2, 2021, the defendant filed a Motion to Open Judgment seeking to challenge the magistrate court's arrearage finding. (Doc. #128.00). On May 11, 2022, the defendant filed Motion for Amended Pleading. (Doc. #139.00). On May 13, 2022, the magistrate court denied the defendant's Motion to Open Judgment and the "amended motion to open." (Doc. #139.00). Defendant filed an appeal of the decision of the magistrate court in the Appellate Court, AC 45516. (Doc. #140.00). On July 13, 2022, the Appellate Court dismissed the appeal. (Doc. #141.10). Defendant filed a Motion for Reconsideration that the Appellate Court denied on September 19, 2022. (Doc. ##142.00 and 143.00).

On October 3, 2023, the defendant filed a Motion for Modification alleging that he was "laid off" on September 22, 2023. (Doc. #144.00). Defendant filed a motion titled, Sanction For Perjury Against Plaintiff's Counsel on December 4, 2023. (Doc. #165.00). Plaintiff filed an Objection to Defendant's Motion for Sanctions on December 13, 2023. (Doc. #168.00). On December 20, 2023, Defendant filed a Rebuttal Motion to Plaintiff's Objection for Sanctions. (Doc. #170.00). Defendant also filed a Motion to Seal. (Doc. #167.00). On January 5, 2024, defendant filed a Motion for Judgment in Accordance with Opinion of Appellate Court ("Motion for Judgment") wherein defendant requested the magistrate court accept the Appellate Court's decision in *Prioleau v. Agosto*, 220 Conn. App. 248, 297 A.3d 1012 (2023). (Doc.#171.00).

On January 18, 2024, the magistrate court held a hearing on the defendant's motions (Doc. ##144, 165, 167, 171) and plaintiff's objection (Doc. #168). On January 19, 2024, the magistrate court, *Spencer, F.S.M.*, issued an order granting the defendant's Motion to Seal Personal Identifying Information (Doc. #167). (Doc. #175.00). The

magistrate court denied defendant's Motion to Modify (Doc. #144) because it did not find that there was a substantial change in circumstances or that a deviation criterion applied. (Doc. #175.00). The magistrate court also denied defendant's motion titled Motion for Judgment in Accordance with Opinion of Appellate Court (Doc. #171.00) and defendant's Motion for Sanctions (Doc. #165.00). The magistrate court denied plaintiff's request for attorney's fees. (Doc. #175.00).

The defendant timely appealed the magistrate court decision. (Doc. #176.00). On April 8, 2024, defendant filed an Addendum to Defendant's Appeal from Family Support Magistrate. (Doc. #178.00). The plaintiff filed an Objection to Defendant's Addendum on April 15, 2024. (Doc. #179.00).

The parties¹ also have a custody action in Docket Number HHD-FA19-6121325. On January 6, 2022, the court ordered that the parties shall share joint legal custody of K. and mother shall have primary residence. (Doc. #139.00, Memorandum of Decision, p. 5). The court ordered that father shall have parenting time every weekend from Friday at 6 p.m. until Sunday evening at 7 p.m. (Doc. #139.00, Memorandum of Decision, p. 5). On February 8, 2022, the court ordered: "Upon reconsideration, the court determines that it is in the best interests of the minor child to amend the parenting schedule as follows: The defendant Mother shall have the child on the third weekend of each month, from after school on Friday until the start of school on Monday morning. During the fourth week of each month, the plaintiff Father shall have parenting time with the child one afternoon during the week, from after school until 7 p.m. If the parties are unable to agree on the

¹ In Docket Number HHD-FA19-6121325, father is the plaintiff and mother is the defendant.

day of the week, the Father shall have the child on Wednesdays after school until 7 p.m. In all other respects, the court's January 6, 2022 orders remain unchanged." (Doc. #143.10). Father appealed the trial court's decision to the Appellate Court, AC 45317. The Appellate Court affirmed the decision of the court in *Prioleau v. Agosto*, 220 Conn. App. 248, 297 A.3d 1012 (2023).

On August 4, 2023, father filed a Motion to Remove and Dismiss Child Support Contempt Sanctions Against Him in Docket Number HHD-FA19-6121325. (Doc. #174.00). In the motion, father requested "that the Superior Court remove CONTEMPT Sanctions against him after the Magistrate court incorrectly documented he was in default of arrearage... ." (Doc. #174.00). The court denied father's Motion to Remove and Dismiss Child Support Contempt Sanctions Against Him on August 7, 2023. (Doc. #174.01). Father appealed the court's decision to the Appellate Court, AC 46948. (Doc. #177.00). The appeal is currently pending.

II. STANDARD OF REVIEW

Practice Book § 25a-29 provides that "[a]ny person who is aggrieved by a final decision of a family support magistrate may appeal such decision in accordance with the provisions of General Statutes § 46b-231. The appeal shall be instituted by the filing of a petition which shall include the reasons for the appeal." The court's authority to review the decision of the family support magistrate is derived from General Statutes § 46b-231 (n). General Statutes Section 46b-231 (n) (7) provides in relevant part: "The Superior Court may affirm the decision of the family support magistrate or remand the case for further proceedings. The Superior Court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the decision of the family support

magistrate is: (A) in violation of constitutional or statutory provisions; (B) in excess of the statutory authority of the family support magistrate; (C) made upon unlawful procedure; (D) affected by other error of law; (E) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

III. DISCUSSION

A. Shared Physical Custody

Defendant argues that he has shared legal and physical custody of the minor child. Defendant cites the decision of the Appellate Court in *Pringleau v. Agosto*, 220 Conn. App. 248, 297 A.3d 1012 (2023). The definition of shared physical custody can be found in § 46b-215a-1 (23) of the Regulations of Connecticut State Agencies. Pursuant to § 46b-215a-1 (23) of the Regulations of Connecticut State Agencies, shared physical custody is defined as “a situation in which the physical residence of the child is shared by the parents in a manner that ensures the child has substantially equal time and contact with both parents. An exactly equal sharing of physical care and control of the child is not required for a finding of shared physical custody.” The Commission for Child Support Guidelines explains that a “finding of shared physical custody should be made only where each parent exercises physical care and control of the child for periods substantially in excess of two overnights on alternate weekends, alternate holidays, some vacation and other visits of short duration, which may occasion an overnight stay during the week.” Child Support and Arrearage Guidelines (2015), preamble, § (D), p. xxii (child support guidelines). Courts must determine what level of shared parenting is sufficient to warrant deviation from presumptive support amounts.

At the conclusion of the contested custody action, the trial court found that the parenting schedule the parties followed prior to October 2019 where defendant had parenting time with the child every weekend is the child's best interests. (Memorandum of Decision, 1/6/2022). Plaintiff filed a motion for reconsideration and the defendant's parenting time with the child is on the weekends, except the third weekend of every month, from Friday at 6 p.m. until Sunday evening at 7 p.m. On the fourth week of every month, one afternoon during the week, defendant has parenting time from after school until 7 p.m. (Doc. #143.10). The court is mindful that an exact equal amount of parenting time is not required. The court is compelled by the Appellate Court's statement regarding the parties' parenting time. The Appellate Court stated that "the court determined, pursuant to § 46b-56, that it was in Kayla's best interests to allow both parents to enjoy *roughly equal amounts of parenting time* with Kayla and attempted to apportion the parties' visitation accordingly." (emphasis added). *Prioleau v. Agosto*, 220 Conn. App. 248, 266, 297 A.3d 1012, 1024 (2023). The record before the court supports shared physical custody by the parties which is substantial change in circumstances.

However, the existence of a shared physical custody parenting plan does not end the inquiry. The child support guidelines recognize that in certain circumstances, a deviation from the presumptive child support order is warranted. Regulations of Connecticut State Agencies § 46b-215a-5c (b) (6) provides: "When a shared physical custody arrangement exists, it may be appropriate to deviate from the presumptive support amounts when: (i) such arrangement substantially: (I) reduces expenses for the child, for the parent with the lower net weekly income, or (II) increases expenses for the child, for the parent with the high net weekly income; *and* (ii) sufficient funds remain for

the parent receiving support to meet the needs of the child after deviation; or (iii) both parents have substantially equal income.” (Emphasis added.). There is no evidence in the record that the magistrate court considered whether deviation was warranted. The court remands this provision of the January 19, 2024 decision of the magistrate court, *Spencer, F.S.M.*, for further proceedings to consider whether it is appropriate to deviate from the presumptive support amount based on the shared physical custody in accordance with Regulations of Connecticut State Agencies § 46b-215a-5c (b) (6).

B. Severance Pay

Defendant’s Motion for Modification alleged that he was “laid off” on September 22, 2023. (Doc. #144.00). Defendant argues that the magistrate court, *Spencer, F.S.M.*, incorrectly found that his termination from employment was not a material change in circumstances. (Addendum to Defendant’s Appeal from Family Support Magistrate). At the hearing on January 18, 2024, plaintiff argued that there were not grounds for modification because defendant received a severance package from his employer. (See Plaintiff’s Exhibit #1). Defendant argues that severance pay is not included in the child support guidelines as something to be determined in calculating child support and even if severance pay is included, it would only be applicable for child support determination the actual week received. The court is not persuaded.

Pursuant to the Child Support and Arrearage Guidelines effective in July 2015, severance pay is included under the definition of gross income inclusions. See Regulations of Connecticut State Agencies § 46b-215a-1. Indeed, Regulations of Connecticut State Agencies § 46b-215a-1 (11) (A) (iv) states, in part, that gross income inclusions include “profit sharing, deferred and incentive-based compensation and

severance pay." (Emphasis added). It is uncontroverted that plaintiff received severance pay from his employer. According to Plaintiff's Exhibit 1, defendant's separation date from his employment was September 22, 2023. Defendant received a "Lump sum severance: 21 weeks with signed releases." The Summary of Benefits with Signed Release of Claims stated, in part, that enhanced payments and benefits were available to the defendant in exchange for accepting the terms of the Release of Claims. (Plaintiff's Exhibit #1, p. 2). The paragraph titled "Cash Severance Payment" stated that defendant will receive a cash severance payment of \$52,906.37 less applicable tax withholdings. (Plaintiff's Exhibit #1, p. 2). Defendant signed the agreements on October 2, 2023. (Plaintiff's Exhibit #1, pp. 10, 13). Thereafter, the defendant received the equivalent of 21 weeks of his gross salary as severance. On November 14, 2023, defendant received a severance payment in the gross amount of \$46,348.08 with a net amount of \$29,134.40. (Plaintiff's Exhibit 2). In addition, the defendant testified that he is receiving unemployment compensation benefits. Thus, at the time of the magistrate hearing, defendant was collecting unemployment compensation benefits in addition to the equivalent of 21 weeks of his salary he received as severance pay. Based on the facts and evidence presented at the hearing in the magistrate court, the court cannot find that there are grounds under 46b-231 (n) (7) to reverse or modify the decision of the magistrate court.

Defendant's claim that severance pay does not constitute wages under the General Statutes §§ 31-72 et. seq., 31-222 and the Unemployment Compensation Act is not persuasive. Whether or not severance pay is considered wages pursuant to General Statutes §§ 31-72, 31-222 and the Unemployment Compensation Act is not determinative as to whether severance pay is included as gross income in consideration of child support

pursuant to the Regulations of Connecticut State Agencies § 46b-215a-1. Gross income under the Regulations of Connecticut State Agencies § 46b-215a-1 is not limited to “wages.” Gross income includes earned and unearned income from all sources, except those excluded in subparagraph B. Indeed, gross income “means the average weekly earned and unearned income from all sources before deductions, including but not limited to the items listed in subparagraph (A) of the subdivision, but excluding the items listed in subparagraph (B) of this subdivision.” Regulations of Connecticut State Agencies § 46b-215a-1 (11). The court does find that there are grounds under General Statutes § 46b-231 (n) (7) to reverse or modify the decision of the magistrate court based on defendant’s argument regarding severance pay.

C. Sanctions for Perjury

The magistrate court denied defendant’s motion for Sanctions for Perjury Against Counsel. Defendant sought sanctions against plaintiff’s attorney regarding arguments made to the magistrate court regarding existence of a shared parenting plan. Plaintiff’s counsel was zealously advocating for her client. There is no evidence that plaintiff’s counsel ever testified and committed perjury. The court does not find that there are grounds under § 46b-231(n) (7) to reverse or modify the decision of the magistrate court on this issue.

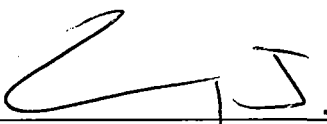
IV. ORDER

Accordingly, pursuant to General Statutes § 46b-231 (n) (7) (B), the January 19, 2024 decision of the magistrate court (*Spencer, F.S.M.*) is remanded for further proceedings to consider whether it is appropriate to deviate from the presumptive support

amount based on the shared physical custody in accordance with Regulations of Connecticut State Agencies § 46b-215a-5c (b) (6).

SO ORDERED.

BY THE COURT,

A handwritten signature in black ink, appearing to be "J. Larock", written over a horizontal line.

Larock, J.