

DOCKET NO. FST-FA-166030233-5  
KATHERINE C. SCALLEN

SUPERIOR COURT : SUPERIOR COURT  
STAMFORD-NORWALK  
JUDICIAL DISTRICT : JUDICIAL DISTRICT OF  
2024 MAY 13 A 9:27 STAMFORD-NORWALK

V.

: AT STAMFORD

TODD R. SCALLEN

: MAY 13, 2024

**MEMORANDUM OF DECISION**

On February 29 and April 23, 2024, the plaintiff, Katherine C. Scallen, and the defendant, Todd R. Scallen, were before the court for a hearing on the following motions:

- (1) The plaintiff's motion for modification re: unallocated alimony and child support, post judgment, dated April 5, 2022. (Docket Entry #125.00.)
- (2) The plaintiff's motion for counsel fees, post judgment, dated April 5, 2022. (Docket Entry #124.00.)
- (3) The plaintiff's motion for order re: breach of the parties' separation agreement, post judgment, dated July 27, 2022. (Docket Entry #133.00.)
- (4) The defendant's motion for counsel fees, dated July 26, 2022. (Docket Entry #131.00.)

The parties were represented by counsel. The court heard testimony from the parties, reviewed the exhibits that were admitted into evidence, and took judicial notice of the contents of the court file. The court reserved decision at the conclusion of the hearing.<sup>1</sup>

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<sup>1</sup> Pursuant to Practice Book § 25-59A (h), the financial affidavits of the parties are hereby unsealed because the financial orders are in dispute.

I  
FACTS

The following procedural history is relevant to this court's decision. On November 2, 2017, a judgment of uncontested dissolution was entered by the court, *Novack, J.* (Docket Entry #115.55.) The parties' separation agreement, dated November 2, 2017 (Docket Entry #108.00), was approved by the court, *Novak, J.*, and incorporated by reference into the final judgment. (Docket Entry #114.00.) On April 5, 2022, the plaintiff filed a motion to modify unallocated support and requested counsel fees, post judgment. (Docket Entry ##124.00 and 125.00.) The defendant was served with the motions on April 28, 2022. (Docket Entry #129.00.) On July 26, 2022, the defendant filed a motion for counsel fees (Docket Entry #131.00). The plaintiff then filed a motion for order re: breach of the parties' separation agreement, post judgment, on July 27, 2022. (Docket Entry #133.00.)

During the hearing, the parties stipulated that the terms of the separation agreement are clear and unambiguous. The parties further stipulated that as of August 23, 2023, their eldest son reached age of majority and graduated from high school. Pursuant to paragraph 2.2 of the separation agreement, the plaintiff was entitled to receive 45 percent of pretax compensation from the defendant. At the time of the dissolution, the defendant was employed and paid a base salary plus commission, which fluctuated. The defendant changed his employment on two occasions through no fault of his own. The terms of his salary, which was a base salary plus commission, was the same; but, the rate of his salary was significantly lower. From November 2019 to April 2022, the defendant was unemployed on two occasions. During those periods of unemployment, the defendant testified that he received severance pay and then unemployment benefits and paid the plaintiff 45 percent of the gross income he received. When those benefits

lapsed, he did not pay the plaintiff any support, which is in accordance with the parties' separation agreement.

On April 5, 2022, the plaintiff filed a motion to modify unallocated alimony and child support post judgment, requesting that the defendant pay a specified amount of unallocated alimony and child support, as opposed to 45 percent of his gross income. (Docket Entry #125.00.) The defendant is also seeking to modify the support orders and reduce the percentage amount since the eldest child reaching the age of majority.

At the time of the dissolution, the plaintiff earned a minimal income of \$30 per week, and the defendant earned a net monthly salary of \$9,978.83, and net monthly commission of \$7,164.82, totaling \$16,476.99 per month. (See, Def.'s Exs. A and B). Presently, the plaintiff's financial affidavit reports a net weekly income of \$683 and net weekly expenses of \$3,043. Pl.'s Ex. 1. The defendant testified that currently he is employed at AdTheorent as a sales director and earns \$167,000 yearly. The defendant anticipates he will receive approximately \$60,000 in commission. The defendant's gross weekly salary is \$3,077 and gross weekly commission is \$1,153.58. Pl.'s Ex. 2. The defendant reports in his financial affidavit that his net weekly expenses are \$3,487, which includes a weekly support of \$1,500. Id. Therefore, the defendant's actual weekly expenses are \$1,987. Id.

The plaintiff testified that she was paid the unallocated alimony and child support when the defendant was employed and when he received benefits from unemployment and his severance package. The defendant testified that he has been compliant, except for the most recent bonus he received in the amount of \$7000. The defendant paid the plaintiff 35 percent of his earnings instead of the required 45 percent.

The child support guidelines filed at the time of the dissolution showed a presumptive child support amount of \$823 to be paid weekly by the defendant, which is 20.61 percent of the defendant's income. (Docket Entry #111.00.) The guidelines filed on February 29, 2024, showed a presumptive child support amount of \$549 for two children to be paid by defendant, which is 18.94 percent of the defendant's net income. (Docket Entry #156.00.)

Based on the evidence presented, the court finds the following: (1) that the child support guidelines submitted to the court at the time of the dissolution was based on the plaintiff working minimally, and essentially having little to no income; (2) that the defendant at the time was employed for Viant Inc. and earned a net monthly income of \$16,476.99 (including a salary of \$9978.83 and a commission \$7164.82); and (3) that the child support guidelines filed on November 2, 2017, states that the basic child support obligation for three minor children was \$823 per week.

## II DISCUSSION

“Orders for unallocated alimony and child support are severable, and adjustments may be made when circumstances require.” *Kolkmeier v. Kolkmeier*, 18 Conn. App. 336, 341, 558 A.2d 253 (1989). “[T]here is implicit in such order the contemplation that when the child attains majority the trial court, upon motion of either party, must conduct a hearing to ascertain what part, if any, of the order is then attributable to child support and it must modify the order to reflect the same.” *Matles v. Matles*, 8 Conn. App. 76, 81, 511 A.2d 363 (1986); see also *Sweeny v. Sweeny*, 9 Conn. App. 498, 502–503, 519 A.2d 1237 (1987). The modification can be retroactive only to the date of service of the motion. General Statute § 46b-86 (a).

“Even though an unallocated order incorporates alimony and child support without delineating specific amounts for each component, the unallocated order . . . necessarily includes

a portion attributable to child support in an amount sufficient to satisfy the guidelines.”

*Tomlinson v. Tomlinson*, 305 Conn. 539, 558, 46 A.3d 112 (2012). In *Tomlinson*, the unallocated child support and alimony order was nonmodifiable in amount and term of payments. *Id.*, 543. Nevertheless, our Supreme Court ruled that such an order would be modifiable if a change in custody occurred because General Statutes § 46b-224 permits a modification of child support when a change of custody occurs, despite the provisions in § 46b-86 prohibiting the modification of nonmodifiable orders. *Id.*, 549–50. The court then concluded that, to decide a motion to modify based on an order of unallocated child support and alimony, the trial court must determine what part of the original decree constituted modifiable child support and what part constituted alimony. *Id.*, 558. *Malpeso v. Malpeso*, 165 Conn. App. 151, 165–66, 138 A.3d 1069 (2016), similarly supports the previously stated requirement for modification of unallocated orders in post dissolution matters. In *Malpeso*, the court stated: “[i]n cases such as this one, where the parties incorporate the child support into an unallocated alimony and child support order that limits the modification of the alimony pursuant to an agreement, modification requires additional considerations. Because an unallocated order incorporates alimony and child support without delineating specific amounts for each component, the unallocated order, along with other financial orders, necessarily includes a portion attributable to child support in an amount sufficient to satisfy the guidelines. . . . Thus, to decide a motion to modify in this situation, a trial court must determine what part of the original decree constituted modifiable child support and what part constituted nonmodifiable alimony.” (Citation omitted; internal quotation marks omitted.) *Id.*

Further, as our Supreme Court has explained, “[g]iven that [t]he original decree [of dissolution] . . . is an adjudication by the trial court as to what is right and proper *at the time it is*

*entered* . . . the trial court must first determine what portion of the unallocated order represented the child support component at the time of the dissolution. Additionally, because questions involving modification of alimony and support depend . . . on conditions as they exist *at the time of the hearing* . . . it is necessary to evaluate the parties' present circumstances in light of the passage of time since the trial court's original calculation." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Tomlinson v. Tomlinson*, supra, 305 Conn. 558.

In unbundling an unallocated order, the court "will need to ascertain the intent of the parties." *Malpeso v. Malpeso*, supra, 165 Conn. App. 171; see also *Brent v. Lebowitz*, 67 Conn. App. 527, 532, 787 A.2d 621; cert. granted on other grounds, 260 Conn. 902, 793 A.2d 1087; appeal withdrawn (2002) (court must determine what was intended to be child support within unallocated alimony and child support order to ensure agreement did not run afoul of guidelines).

Finally, "[i]n modifying the [unallocated child] support [and alimony] order in a subsequent proceeding, a trial court may consider the same factors applied in the initial determination to assess any changes in the parties' circumstances since the last court order. . . . [General Statutes §] 46b-215b (c) mandates that the guidelines shall be considered in addition to and not in lieu of the criteria for such awards established in [General Statutes §§] 46b-84 [and] 46b-86 . . . . Specifically, § 46b-84 (d) stipulates that the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child." (Citation omitted; footnote omitted; internal quotation marks omitted). *Tomlinson v. Tomlinson*, supra, 305 Conn. 559.

Prior to unbundling an unallocated support order, this court must determine the intent of the parties at the time of signing the financial agreement. The court is required to determine what was intended to be child support, within the unallocated alimony and child support, to ensure the agreement did not run afoul of the guidelines. *Brent v. Lebowitz*, supra, 67 Conn. App. 532. In addition, this court must consider the criteria set forth in General Statutes §§ 46b-84 and 46b-86.

At the time of the agreement, the parties were represented by counsel and fairly considered their economic conditions. The agreement states that the defendant would pay 45 percent of his base salary and any additional pretax compensation from employment received, such as commissions and bonuses, within three days of receipt. The defendant was the sole provider in the family, which allowed him to progress in his career. It is clear from the language of the agreement that the unallocated alimony and child support would exist for a limited period. Since the dissolution, the plaintiff has sought employment and has gross earnings of \$452 per week.

The child support guidelines submitted to the court at the time of the dissolution was mostly based on the defendant's income. The defendant testified that he lost his employment on two occasions through no fault of his own, and immediately sought new employment. He further testified that he complied with the terms of the separation agreement regarding support payment, except when he did not receive a salary, severance, or unemployment benefits, he provided no support to the plaintiff.

While there has been a significant change in circumstances, that is, the oldest child reaching age of majority, the plaintiff significantly increased her income, and the defendant has a reduced base pay and commission, the court finds that the unallocated alimony and child

support should continue until November 1, 2024, the date of expiration. The court credits the parties' testimonies, whereby the defendant confirmed that he complied with the separation agreement by paying 45 percent of his income, and the plaintiff's testimony that the defendant paid support in accordance with the agreement when employed, receiving severance pay, or unemployment benefits. Since there was a period of nonpayment by the defendant due to no source of income, the court finds that the plaintiff will benefit from the support orders entered at the time of the dissolution. Commencing November 1, 2024, when the unallocated support terminates, the defendant shall commence paying weekly child support for the two children in the amount of \$549, or \$2378 monthly. This court finds no basis to disturb the terms of the support provision of the separation agreement.

### III ORDERS

The court has fully considered the criteria set forth in General Statutes §§ 46b-84 and 46b-86, as well as the applicable case law, the evidence, the demeanor and credibility of the parties, the arguments of counsel, the parties' proposed orders, and the contents of the court file judicially noticed, in making the findings set forth above and in reaching the decisions that are reflected in the orders that issue below.

- (1) The plaintiff's motion for modification, post judgment (Docket Entry #125.00) is DENIED.
- (2) Both the plaintiff's and the defendant's motions for counsel fees (Docket Entry ##124.00 and 131.00) are DENIED.
- (3) The plaintiff's motion for order re: breach of the parties' separation agreement, post judgment (Docket Entry #133.00) is DENIED.



The defendant shall continue to pay the unallocated alimony and child support until November 1, 2024, pursuant to the parties' separation agreement. The defendant shall pay \$700 to the plaintiff, which is the 10 percent difference due on the bonus check received earlier this year. Commencing November 1, 2024, the defendant shall pay weekly child support in the amount of \$549, or \$2378 monthly.

The parties shall exchange their 1099s, K1s, and state and federal tax returns no later than February 15, following the end of each tax year, so long as a party has a financial obligation to the other party.

The court retains jurisdiction to modify child support pursuant to General Statutes § 46b-86. Unless otherwise specifically set forth herein, these orders are effective immediately.



DeCastro Tunard, JSC

Decision entered in  
accordance with the  
foregoing 5/13/24.

DONO sent 5/13/24

All counsel of record  
Notified on 5/13/24

D. Jean  
Assist. Clerk