DOCKET NO. KNO-FA22-6107761-S	**SUPERIOR COURT**
GLENN PORTERFIELD	**J.D. OF NEW LONDON**
V.	**AT NORWICH**
AMY PORTERFIELD	**MAY 24, 2024**

MEMORANDUM OF DECISION REGARDING PLAINTIFF'S MOTION TO REARGUE

The parties were divorced after a contested trial by memorandum of decision dated February 15, 2024. The plaintiff has moved to reargue the memorandum of decision by motion filed March 5, 2024. Argument on the motion to reargue was heard on April 30, 2024.

A motion to reargue is properly presented "to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts." (internal citations and quotations omitted) *Opoku v. Grant*, 63 Conn. App. 686, 692–93 (2001). Reargument may also be used to "address alleged inconsistencies in the trial court's memorandum of decision" or allegedly unaddressed claims of law that were presented at trial. *Id.* A motion to reargue however, is "not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument." *Id.* The plaintiff raises six issues in his motion to reargue, which were heard by the court on April 30, 2024. The court will address each of these issues in turn below.

5/24/24 - Sent to all parties of the record and recorder of judicial decisions.
Chris Hodgman
CFC

Quitclaim of the Former Marital Residence. The plaintiff claims that he cannot comply with the court order that he quitclaim his interest in the former marital residence as such a quitclaim "would violate the terms of the existing VA mortgage loan." The plaintiff did not previously raise this claimed limitation to the court. Both parties also proposed, in their proposed orders initially submitted for the trial of this matter, that the plaintiff quitclaim the marital residence to the defendant, without reference to any limitation imposed by the Department of Veterans Affairs. *See e.g.,* Plaintiff's Revised Proposed Orders, May 12, 2023, Docket Entry No. 129.00, Paragraph C.1 (plaintiff proposing that he "shall quitclaim his interest in said property [the marital residence] to Defendant.")

The plaintiff now cites 38 C.F.R. § 36.4508 for the premise that he is barred from quitclaiming the former marital residence to the defendant. The cited regulation provides that "direct loans for which commitments are made on or after March 1, 1988 are not assumable without the prior approval of the Department of Veterans Affairs or its authorized agent." 38 C.F.R. 36.4508(a). The court has already ordered the parties to cooperate in the process of seeking this approval.

The cited regulation also requires that the instrument securing the loan include a provision that "the Department of Veterans Affairs or other holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714." 38 C.F.R. § 36.4508(a)(2)(i). 38 C.F.R. § 36.4508(a)(2)(i)(G) provides, however, that "this option may not be exercised if the transfer is the result of... a transfer resulting from a decree

of dissolution of marriage...by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability under 1813(a)..." The plaintiff has not shown that he is barred from quitclaiming the property by the note encumbering the loan, and the authority that he cites, which he could have cited to the court at the trial of this matter, provides that a transfer resulting from a decree of a dissolution of marriage *will not* trigger a declaration that the loan is immediately due and payable.

Reargument is denied on this claim.

Costs of Survivor Benefit Plan and VA Disability Payment. The plaintiff wrongfully claims that the court did not consider the cost of the survivor benefit plan or VA disability in its calculation of the defendant's share of the plaintiff's military retirement pay. The court's orders provide that the defendant wife is to receive fifty percent of the plaintiff's net military retirement pay. As noted in the defendant's objection to the plaintiff's motion to reargue, the cost of any survivor benefit plan is reduced from the gross benefit, and so therefore the cost of such plan will be born equally by the parties. To the extent that a clarification of this issue[1] is necessary, the court will clarify the order accordingly.

The plaintiff further takes issue with a portion of court Order No. 23, which provides as follows, in pertinent part:

[1] The motion to reargue notes a typographical error in Order No. 23 of the court's memorandum of decision, in which the court mistakenly referred to the "defendant's retired military pay," which should read as the "plaintiff's retired military pay."

> It is intended that the defendant receive her full share of defendant's military retirement pay calculated as set out above without reduction for disability compensation. To the extent plaintiff receives Veteran's Administration disability pay in lieu of disposable military retirement pay in the future, the plaintiff shall make payments to the defendant directly, to ensure that the defendant receives an amount equivalent to fifty percent (50%) of his net military retirement and disability payments.

At the hearing of the plaintiff's motion, he cites to *Howell v. Howell,* 581 U.S. 214 (2017) for the proposition that a state court cannot order reimbursement or indemnification to restore the portion of military retirement pay lost due to a postdivorce waiver in favor of disability pay. *See Howell v. Howell*, 581 U.S. 214, 222 (2017). The court agrees, grants reargument on this issue, and will revise its order accordingly. As noted in *Howell*, "a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognizes, take account of reductions in value when it calculates or recalculates the need for spousal support." *Howell,* 581 U.S. at 222. Here, the court entered a time-limited alimony order, rather than a lifetime one, under the premise that the wife would receive a portion of the plaintiff's military retirement pay during her lifetime. To the extent that the plaintiff is able to unilaterally reduce the defendant's military retirement pay in the future, that would raise the question of whether the defendant requires additional spousal support. The court will therefore amend its prior order, as stated below, to provide that any such reduction in the defendant's retirement pay in the future shall be a basis for modification of the court's alimony order.

Reargument is granted in part on this claim, and the court amends Order No. 23 of its February 15, 2024 Memorandum of Decision as stated below.

Award of Plaintiff's Military Retirement Pay. The plaintiff seeks re-argument of the court's order awarding the defendant wife fifty percent of his net military retirement pay, claiming that the plaintiff relied upon the defendant's proposed orders, which requested only the marital portion (eighteen of twenty-three years of military service) be awarded to her. It is well-settled that "[t]he power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution of a marriage." *Pasquariello v. Pasquariello*, 168 Conn. 579, 585 (1975). A party's proposed orders do not limit the court's discretion to consider all of the facts and fashion appropriate relief in a dissolution of marriage action. *See* e.g., *Callahan v. Callahan*, 157 Conn. App. 78, 100–01 (2015) (discussing the trial court's distribution of marital property in accordance with Conn. Gen. Stat. § 46b-81, and recognizing that "[n]owhere does this statute limit the court's ability to award a marital asset to one of the parties in a dissolution proceeding, even if they both are in agreement regarding how the property be distributed."); *Fitzsimons v. Fitzsimons*, 116 Conn. App. 449, 459 (2009) ("We never have held that proposed orders serve to limit parties' post judgment requests for relief or the discretion of the trial court.").

Reargument is denied on this claim.

Unreimbursed Medical Expenses and Eligible Childcare Expenses; Transportation of the Minor Child. The plaintiff takes issue with the court's decision not to deviate from the presumptive amount of child support determined by application of the Child Support and Arrearage Guidelines for the State of Connecticut to order the parties to share equally in any unreimbursed medical expenses and qualifying childcare costs. The plaintiff also takes issue

with the court's decision not to deviate from the Guidelines-determined child support amount because of the court's orders concerning transportation of the minor child. It is well-settled that the decision to deviate from the presumptive child support award is within the broad discretion of the court, and the court may, but is not required, to deviate if deviation criteria are met. *See e.g., Marcus v. Cassara*, 223 Conn. App. 69, 96 (2023). Here, the court applied the presumptive unreimbursed medical expense and childcare expense allocations determined by the Guidelines. The court found that these allocations were fair and equitable under the circumstances of the case.

The court was further not persuaded that a deviation was appropriate for the costs of transportation of the minor child for father's parenting access time. The plaintiff father chose to relocate from Connecticut to California to live with his significant other. This changed the parties' previous parenting access plan significantly, which had provided for midweek and alternating weekend access for father. It would be inequitable and improper to deviate from the presumptive child support award on the basis of father's decision to relocate to California and the resulting transportation costs for his parenting access.

Reargument is denied on these two claims.

Life Insurance Coverage. The plaintiff takes issue with the court's decision not to provide for a step down in the life insurance the plaintiff is required to maintain as security for the child support and alimony orders in this case. As discussed in the court's decision, it is not clear at the present time whether the minor child will require additional support pursuant to the terms of Conn. Gen. Stat. § 46b-84(c)(1), or whether the child will require a post-majority educational

support order pursuant to Conn. Gen. Stat. § 46b-56c in the future. As the court indicated in its decision, those issues may be raised by appropriate motion in the future. If a change in the life insurance coverage orders is appropriate in the future, the plaintiff may certainly request such a change by his own motion, or as part of any motion addressing support for a child with a disability or post majority educational support. *See Crews v. Crews*, 107 Conn. App. 279, 304 (2008), *aff'd*, 295 Conn. 153 (2010) ("The court did not abuse its discretion, therefore, by issuing a financial order that would secure any educational support order that might be entered in the future, at about the time the children become eighteen and are making decisions about their educational futures. It is often said that common sense is not left at the courthouse door.")

Reargument is denied on this claim.

ORDERS

1. The plaintiff's Motion to Reargue is granted in part, and denied in part as stated in more detail in this decision.

2. Order No. 23 of the court's February 23, 2024 Memorandum of Decision is hereby amended and clarified as follows:

Plaintiff's Military Retirement Pay: The plaintiff's retired military pension is currently in pay status, and the court has jurisdiction over the plaintiff. Pursuant to 10 U.S.C. § 1408 *et seq.*, the defendant wife is assigned fifty percent (50%) of the plaintiff's net retirement military pay earned through the date of divorce, including a proportionate share of cost-of-living adjustments.

If the plaintiff has not already done so, the plaintiff shall immediately elect and maintain the defendant wife as the sole and irrevocable beneficiary of any spouse or former spouse survivor benefit plan. The cost of the survivor benefit plan shall be reduced from the gross military retirement paid to the parties, so that each party shares equally in the cost of such survivor benefit plan. The defendant shall notify the Defense Finance Accounting Service within one year of the date of judgment of her deemed former spouse election, using the appropriate forms.

Following the end of the initial alimony term ordered within the judgment, the plaintiff shall continue to pay alimony to the defendant in the amount of $1.00 per year until her death, modifiable only in the event that the plaintiff causes the reduction of the military retirement payments made to the defendant.

The assignment of the plaintiff's military retirement pay will be made by a domestic relations order to be prepared by a neutral attorney of the parties' choosing. The parties shall equally share in the costs of the preparation of the domestic relations order. The parties shall retain an attorney to prepare the domestic relations order within thirty (30) days of the date of the judgment. If the parties are unable to agree on an attorney to retain for the preparation of the domestic relations order, they shall retain Attorney Elizabeth McMahon for this purpose.

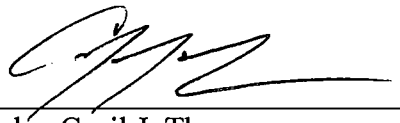
Until such time as the division of the plaintiff's military retirement pay is effectuated, such that the defendant begins to receive direct payments from the military,

the plaintiff shall make such payments, equivalent to fifty percent (50%) of his net weekly military retirement pay, on a weekly basis directly to the defendant wife.

The court shall retain jurisdiction over this provision to effectuate the division of the plaintiff's military retirement pension.

SO ORDERED.

BY THE COURT,



Judge Cecil J. Thomas